

# ***NORTH CAROLINA REGISTER***

**VOLUME 41 • ISSUE 08 • Pages 652 – 756**

**October 15, 2026**

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**PUBLISHED BY**

*The Office of Administrative Hearings  
Rules Division  
1711 New Hope Church Road  
Raleigh, NC 27609  
Telephone 984-236-1850  
Fax 984-236-1947*

*Melissa Owens Lassiter, Director  
Brian Liebman, Codifier of Rules  
Julie B. Eddins, Publications Coordinator  
Serena Samuels, Publications Assistant*

## **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.**

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

Raleigh, North Carolina 27609

984-236-1850

984-236-1947 FAX

contact: Brian Liebman, Codifier of Rules  
Julie B. Eddins, Publications Coordinator  
Serena Samuels, Publications Assistant

brian.liebman@oah.nc.gov

julie.eddins@oah.nc.gov

serena.samuels@oah.nc.gov

984-236-1941

984-236-1937

984-236-1948

### **Rule Review and Legal Issues**

Rules Review Commission

1711 New Hope Church Road

Raleigh, North Carolina 27609

984-236-1850

984-236-1947 FAX

contact: Seth M. Ascher, Commission Counsel  
Travis Wiggs, Commission Counsel  
Christopher S. Miller, Commission Counsel  
Meghan E. Barney, Commission Counsel  
Alexander Burgos, Paralegal

seth.ascher@oah.nc.gov

travis.wiggs@oah.nc.gov

christopher.miller@oah.nc.gov

meghan.barney@oah.nc.gov

alexander.burgos@oah.nc.gov

984-236-1934

984-236-1929

984-236-1935

984-236-1925

984-236-1940

### **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

Fiscal Research Division

Legislative Office Building

300 N. Salisbury Street, Suites 619 and 400

Raleigh, NC 27603-5925

Contact: Brian Matteson

brian.matteson@ncleg.gov

919-733-4910

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Amy Bason

919-715-2893

amy.bason@ncacc.org

NC League of Municipalities

424 Fayetteville Street, Suite 1900

Raleigh, North Carolina 27601

contact: Baxter Wells

919-715-2925

bwells@nclm.org

### **Legislative Process Concerning Rulemaking**

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27611

919-733-2578

919-715-5460 FAX

Jason Moran-Bates, Staff Attorney

Chris Saunders, Staff Attorney

Aaron McGlothlin, Staff Attorney

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2026 – December 2026

| 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/Latest date for public hearing | Deadline to submit to RRC for review at next meeting | RRC Meeting Date | Earliest Eff. Date of Permanent Rule | 270 <sup>th</sup> day from publication in the Register |
| 40:13                 | 01/02/26   | 12/11/25            | 01/17/26                         | 03/03/26                                                      | 03/20/26                                             | 04/28/2026       | 05/01/26                             | 09/29/26                                               |
| 40:14                 | 01/15/26   | 12/23/25            | 01/30/26                         | 03/16/26                                                      | 03/20/26                                             | 04/28/2026       | 05/01/26                             | 10/12/26                                               |
| 40:15                 | 02/02/26   | 01/09/26            | 02/17/26                         | 04/06/26                                                      | 04/20/26                                             | 05/28/2026       | 06/01/26                             | 10/30/26                                               |
| 40:16                 | 02/16/26   | 01/26/26            | 03/03/26                         | 04/17/26                                                      | 04/20/26                                             | 05/28/2026       | 06/01/26                             | 11/13/26                                               |
| 40:17                 | 03/02/26   | 02/09/26            | 03/17/26                         | 05/01/26                                                      | 05/20/26                                             | 06/25/2026       | 07/01/26                             | 11/27/26                                               |
| 40:18                 | 03/16/26   | 02/23/26            | 03/31/26                         | 05/15/26                                                      | 05/20/26                                             | 06/25/2026       | 07/01/26                             | 12/11/26                                               |
| 40:19                 | 04/01/26   | 03/11/26            | 04/16/26                         | 06/01/26                                                      | 06/20/26                                             | 07/30/2026       | 08/01/26                             | 12/27/26                                               |
| 40:20                 | 04/15/26   | 03/24/26            | 04/30/26                         | 06/15/26                                                      | 06/20/26                                             | 07/30/2026       | 08/01/26                             | 01/10/27                                               |
| 40:21                 | 05/01/26   | 04/10/26            | 05/16/26                         | 06/30/26                                                      | 07/20/26                                             | 08/27/2026       | 09/01/26                             | 01/26/27                                               |
| 40:22                 | 05/15/26   | 04/24/26            | 05/30/26                         | 07/14/26                                                      | 07/20/26                                             | 08/27/2026       | 09/01/26                             | 02/09/27                                               |
| 40:23                 | 06/01/26   | 05/08/26            | 06/16/26                         | 07/31/26                                                      | 08/20/26                                             | 09/29/2026       | 10/01/26                             | 02/26/27                                               |
| 40:24                 | 06/15/26   | 05/22/26            | 06/30/26                         | 08/14/26                                                      | 08/20/26                                             | 09/29/2026       | 10/01/26                             | 03/12/27                                               |
| 41:01                 | 07/01/26   | 06/10/26            | 07/16/26                         | 08/31/26                                                      | 09/20/26                                             | 10/29/2026       | 11/01/26                             | 03/28/27                                               |
| 41:02                 | 07/15/26   | 06/23/26            | 07/30/26                         | 09/14/26                                                      | 09/20/26                                             | 10/29/2026       | 11/01/26                             | 04/11/27                                               |
| 41:03                 | 08/03/26   | 07/13/26            | 08/18/26                         | 10/02/26                                                      | 10/20/26                                             | 11/24/2026       | 12/01/26                             | 04/30/27                                               |
| 41:04                 | 08/17/26   | 07/27/26            | 09/01/26                         | 10/16/26                                                      | 10/20/26                                             | 11/24/2026       | 12/01/26                             | 05/14/27                                               |
| 41:05                 | 09/01/26   | 08/11/26            | 09/16/26                         | 11/02/26                                                      | 11/20/26                                             | 12/17/2026       | 01/01/27                             | 05/29/27                                               |
| 41:06                 | 09/15/26   | 08/24/26            | 09/30/26                         | 11/16/26                                                      | 11/20/26                                             | 12/17/2026       | 01/01/27                             | 06/12/27                                               |
| 41:07                 | 10/01/26   | 09/10/26            | 10/16/26                         | 11/30/26                                                      | 12/20/26                                             | 01/28/2027*      | 02/01/27                             | 06/28/27                                               |
| 41:08                 | 10/15/26   | 09/24/26            | 10/30/26                         | 12/14/26                                                      | 12/20/26                                             | 01/28/2027*      | 02/01/27                             | 07/12/27                                               |
| 41:09                 | 11/02/26   | 10/12/26            | 11/17/26                         | 01/04/27                                                      | 01/20/27                                             | 02/25/2027*      | 03/01/27                             | 07/30/27                                               |
| 41:10                 | 11/16/26   | 10/23/26            | 12/01/26                         | 01/15/27                                                      | 01/20/27                                             | 02/25/2027*      | 03/01/27                             | 08/13/27                                               |
| 41:11                 | 12/01/26   | 11/05/26            | 12/16/26                         | 02/01/27                                                      | 02/20/27                                             | 03/25/2027*      | 04/01/27                             | 08/28/27                                               |
| 41:12                 | 12/15/26   | 11/20/26            | 12/30/26                         | 02/15/27                                                      | 02/20/27                                             | 03/25/2027*      | 04/01/27                             | 09/11/27                                               |

\*Dates not approved by RRC

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

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2027 – December 2027

| <b>REGISTER<br/>FILING DEADLINES</b> |            |                        | <b>NOTICE OF TEXT</b>                  |                                                                                  | <b>PERMANENT RULE</b>                                         |                     |                                            | <b>TEMPORARY<br/>RULES</b>                                   |
|--------------------------------------|------------|------------------------|----------------------------------------|----------------------------------------------------------------------------------|---------------------------------------------------------------|---------------------|--------------------------------------------|--------------------------------------------------------------|
| Volume &<br>issue<br>number          | Issue date | Last day<br>for filing | Earliest date<br>for public<br>hearing | Latest date for<br>public hearing<br>and end of<br>required<br>comment<br>period | Deadline to submit<br>to RRC<br>for review at<br>next meeting | RRC Meeting<br>Date | Earliest Eff.<br>Date of<br>Permanent Rule | 270 <sup>th</sup> day from<br>publication in the<br>Register |
| 41:13                                | 01/04/27   | 12/11/26               | 01/19/27                               | 03/05/27                                                                         | 03/20/27                                                      | 04/29/2027          | 05/01/27                                   | 10/01/27                                                     |
| 41:14                                | 01/15/27   | 12/23/26               | 01/30/27                               | 03/16/27                                                                         | 03/20/27                                                      | 04/29/2027          | 05/01/27                                   | 10/12/27                                                     |
| 41:15                                | 02/01/27   | 01/08/27               | 02/16/27                               | 04/02/27                                                                         | 04/20/27                                                      | 05/27/2027          | 06/01/27                                   | 10/29/27                                                     |
| 41:16                                | 02/15/27   | 01/25/27               | 03/02/27                               | 04/16/27                                                                         | 04/20/27                                                      | 05/27/2027          | 06/01/27                                   | 11/12/27                                                     |
| 41:17                                | 03/01/27   | 02/08/27               | 03/16/27                               | 04/30/27                                                                         | 05/20/27                                                      | 06/24/2027          | 07/01/27                                   | 11/26/27                                                     |
| 41:18                                | 03/15/27   | 02/22/27               | 03/30/27                               | 05/14/27                                                                         | 05/20/27                                                      | 06/24/2027          | 07/01/27                                   | 12/10/27                                                     |
| 41:19                                | 04/01/27   | 03/10/27               | 04/16/27                               | 06/01/27                                                                         | 06/20/27                                                      | 07/29/2027          | 08/01/27                                   | 12/27/27                                                     |
| 41:20                                | 04/15/27   | 03/24/27               | 04/30/27                               | 06/14/27                                                                         | 06/20/27                                                      | 07/29/2027          | 08/01/27                                   | 01/10/28                                                     |
| 41:21                                | 05/03/27   | 04/12/27               | 05/18/27                               | 07/02/27                                                                         | 07/20/27                                                      | 08/26/2027          | 09/01/27                                   | 01/28/28                                                     |
| 41:22                                | 05/17/27   | 04/26/27               | 06/01/27                               | 07/16/27                                                                         | 07/20/27                                                      | 08/26/2027          | 09/01/27                                   | 02/11/28                                                     |
| 41:23                                | 06/01/27   | 05/10/27               | 06/16/27                               | 08/02/27                                                                         | 08/20/27                                                      | 09/28/2027          | 10/01/27                                   | 02/26/28                                                     |
| 41:24                                | 06/15/27   | 05/24/27               | 06/30/27                               | 08/16/27                                                                         | 08/20/27                                                      | 09/28/2027          | 10/01/27                                   | 03/11/28                                                     |
| 42:01                                | 07/01/27   | 06/10/27               | 07/16/27                               | 08/30/27                                                                         | 09/20/27                                                      | 10/28/2027          | 11/01/27                                   | 03/27/28                                                     |
| 42:02                                | 07/15/27   | 06/23/27               | 07/30/27                               | 09/13/27                                                                         | 09/20/27                                                      | 10/28/2027          | 11/01/27                                   | 04/10/28                                                     |
| 42:03                                | 08/02/27   | 07/12/27               | 08/17/27                               | 10/01/27                                                                         | 10/20/27                                                      | 11/23/2027          | 12/01/27                                   | 04/28/28                                                     |
| 42:04                                | 08/16/27   | 07/26/27               | 08/31/27                               | 10/15/27                                                                         | 10/20/27                                                      | 11/23/2027          | 12/01/27                                   | 05/12/28                                                     |
| 42:05                                | 09/01/27   | 08/11/27               | 09/16/27                               | 11/01/27                                                                         | 11/20/27                                                      | 12/16/2027          | 01/01/28                                   | 05/28/28                                                     |
| 42:06                                | 09/15/27   | 08/24/27               | 09/30/27                               | 11/15/27                                                                         | 11/20/27                                                      | 12/16/2027          | 01/01/28                                   | 06/11/28                                                     |
| 42:07                                | 10/01/27   | 09/10/27               | 10/16/27                               | 11/30/27                                                                         | 12/20/27                                                      | 01/20/2028*         | 02/01/28                                   | 06/27/28                                                     |
| 42:08                                | 10/15/27   | 09/24/27               | 10/30/27                               | 12/14/27                                                                         | 12/20/27                                                      | 01/20/2028*         | 02/01/28                                   | 07/11/28                                                     |
| 42:09                                | 11/01/27   | 10/11/27               | 11/16/27                               | 12/31/27                                                                         | 01/20/28                                                      | 02/17/2028*         | 03/01/28                                   | 07/28/28                                                     |
| 42:10                                | 11/15/27   | 10/22/27               | 11/30/27                               | 01/14/28                                                                         | 01/20/28                                                      | 02/17/2028*         | 03/01/28                                   | 08/11/28                                                     |
| 42:11                                | 12/01/27   | 11/05/27               | 12/16/27                               | 01/31/28                                                                         | 02/20/28                                                      | 03/16/2028*         | 04/01/28                                   | 08/27/28                                                     |
| 42:12                                | 12/15/27   | 11/22/27               | 12/30/27                               | 02/14/28                                                                         | 02/20/28                                                      | 03/16/2028*         | 04/01/28                                   | 09/10/28                                                     |

\*dates not yet approved by RRC

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## **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 Human Resources 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 but not later than 60 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.

**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.

**The ~~2026~~2027 Low-Income Housing Tax Credit Qualified Allocation  
Plan  
for the State of North Carolina**

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## I. INTRODUCTION

The ~~2026~~2027 Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term "Agency" shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

### A. Selection criteria to be used in determining the allocation of tax credits:

- Project location and site suitability.
- Market demand and local housing needs.
- Serving the lowest income tenants.
- Serving qualified tenants for the longest periods.
- Design and quality of construction.
- Financial structure and long-term viability.
- Use of federal project-based rental assistance.
- Use of mortgage subsidies.
- Experience of development team and management agent(s).
- Serving persons with disabilities and persons who are homeless.
- Willingness to solicit referrals from public housing waiting lists.
- Tenant populations of individuals with children.
- Projects intended for eventual tenant ownership.
- Projects that are part of a community redevelopment effort.
- Energy efficiency.
- Historic nature of the buildings.

### B. Threshold, underwriting and process requirements.

### C. Description of the Agency's compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

In the process of administering the tax credit, Rental Production Program (RPP) and Workforce Housing Loan Program (WHLP), the Agency will make decisions and interpretations regarding project applications and the Plan. RPP and WHLP are state investments dedicated to making rental developments financially feasible and more affordable for working families and seniors. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major:

- natural disaster
- pandemic / epidemic,
- disruption in the financial markets, or
- reduction in subsidy resources available, including tax credits, RPP, and WHLP funding

The Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

## II. SET-ASIDES, AWARD LIMITATIONS, AND COUNTY DESIGNATIONS

The Agency will determine whether applications are eligible under Section II(A) or II(B). This Section II only applies to 9% Tax Credit applications.

### A. REHABILITATION SET-ASIDE

The Agency will award up to ten percent (10%) of tax credits available after forward commitments to projects proposing rehabilitation of existing housing. The Agency may exceed this limitation to completely fund a project request. In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3). The maximum award under this set-aside to any one Principal will be one project.

The following will be considered new construction under Section II(B) below:

- adaptive re-use projects,
- entirely vacant residential buildings,
- proposals to increase and/or substantially re-configure residential units.

### B. NEW CONSTRUCTION SET-ASIDES

#### 1. GEOGRAPHIC REGIONS

The Agency will award tax credits remaining after awards described above to new construction projects, starting with those earning the highest scoring totals within each of the following four geographic set-asides and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside to award the next highest scoring application statewide under Section II(G)(1).

| West 16%  |              | Central 23% |            | Metro 38%   | East 23%  |             |
|-----------|--------------|-------------|------------|-------------|-----------|-------------|
| Alexander | Lincoln      | Alamance    | Moore      | Buncombe    | Beaufort  | Jones       |
| Alleghany | Macon        | Anson       | Orange     | Cumberland  | Bertie    | Lenoir      |
| Ashe      | Madison      | Cabarrus    | Person     | Durham      | Bladen    | Martin      |
| Avery     | McDowell     | Caswell     | Randolph   | Forsyth     | Brunswick | Nash        |
| Burke     | Mitchell     | Chatham     | Richmond   | Guilford    | Camden    | New Hanover |
| Caldwell  | Polk         | Davidson    | Rockingham | Mecklenburg | Carteret  | Northampton |
| Catawba   | Rutherford   | Davie       | Rowan      | Wake        | Chowan    | Onslow      |
| Cherokee  | Surry        | Franklin    | Scotland   |             | Columbus  | Pamlico     |
| Clay      | Swain        | Granville   | Stanly     |             | Craven    | Pasquotank  |
| Cleveland | Transylvania | Harnett     | Stokes     |             | Currituck | Pender      |
| Gaston    | Watauga      | Hoke        | Union      |             | Dare      | Perquimans  |
| Graham    | Wilkes       | Iredell     | Vance      |             | Duplin    | Pitt        |
| Haywood   | Yadkin       | Lee         | Warren     |             | Edgecombe | Robeson     |
| Henderson | Yancey       | Montgomery  |            |             | Gates     | Sampson     |
| Jackson   |              |             |            |             | Greene    | Tyrrell     |
|           |              |             |            |             | Halifax   | Washington  |
|           |              |             |            |             | Hertford  | Wayne       |
|           |              |             |            |             | Hyde      | Wilson      |
|           |              |             |            |             | Johnston  |             |

#### 2. REDEVELOPMENT PROJECTS

- (a) If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in awards for two (2) Redevelopment Projects. Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not meet the criteria below

will be awarded to the next highest ranking Redevelopment Project(s). The Agency may make such adjustment(s) in any geographic set-aside.

(b) The following are required to qualify as a Redevelopment Project:

- (i) The site currently contains or contained at least one structure used for commercial, residential, educational, or governmental purposes.
- (ii) The application proposes adaptive re-use with historic rehabilitation credits and/or new construction.
- (iii) Any required demolition has been completed or is scheduled for completion in ~~2026~~2027 (not including the project buildings). For a Rental Assistance Demonstration (RAD) project under the U.S. Department of Housing and Urban Development (HUD), any required demolition must be scheduled to be completed by June 30, 202~~6~~7.
- (iv) A unit of local government initiated the project, evidenced by a Request for Proposal, Council minutes, or other documentation stipulating the project was originally envisioned by the local government, and has invested community development resources in the Half Mile area within the last ten years. A resolution will not suffice as evidence of local government initiation.
- (v) As of the preliminary application deadline, a unit of local government formally adopted a plan to address the deterioration (if any) in the Half Mile area and approved one or more of the following for the project:
  - donation of at least one parcel of land,
  - waiver of impact, tap, or related fees normally charged,
  - commitment to lend/grant at least \$750,000 in the Metro region and \$250,000 in the East, Central or West of its housing development funds (net of any amount paid to the unit of government) as a source of permanent funding, or
    - is part of the RAD program under HUD.

The Agency will require official documentation of each element of local government participation.

### ~~3. DISASTER RECOVERY~~

(a) Additional Tax Credits

Twelve percent (12%) of tax credits available will be added to the West region before the Rehabilitation Set-Aside and before any allocations under the New Construction Set-Aside.

(b) ~~County Award Limits~~

~~Should each county with an eligible application in the West region receive one new construction award and credits remain in the respective region, counties designated as a HUD Identified or State Identified Most Impacted and Distressed (MID) area under Tropical Storm Helene ((see II(B)(3)(c))) are eligible to receive a second new construction award.~~

~~If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in no less than one award for Buncombe County in the Metro region. The initial maximum under II(F)(1)(b) will not apply to Buncombe County should that county be eligible for a second new construction award.~~

(c) ~~Bonus Points (Non DIIHS Priority Counties)~~

~~New construction applications in counties designated as a HUD Identified or State Identified Most Impacted and Distressed (MID) area under Tropical Storm Helene will receive 1 bonus point. Additional point does not apply to counties listed under section IV(F)(5)(b).~~

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|           |           |                              |              |
|-----------|-----------|------------------------------|--------------|
| Alexander | Clay      | Madison                      | Transylvania |
| Alleghany | Cleveland | McDowell                     | Watauga      |
| Ashe      | Gaston    | Mecklenburg (zip code 28214) | Wilkes       |
| Avery     | Haywood   | Mitchell                     | Yadkin       |
| Buncombe  | Henderson | Polk                         | Yancey       |
| Burke     | Jackson   | Rutherford                   |              |
| Caldwell  | Lincoln   | Surry                        |              |
| Catawba   | Macon     | Swain                        |              |

(d) Disaster Recovery Funds

Any new construction or rehabilitation application submitted in the counties below agrees to accept CDBG-DR funds in the form of a loan as part of a tax credit award, should funding be available. The funds will require, at a minimum, not undertaking any choice limiting activity prior to successful completion of the U.S. Department of Housing and Urban Development (HUD) environmental clearance review as well as complying with Davis-Bacon wage requirements and all applicable federal and state cross-cutting provisions and reporting.

|          |           |          |              |
|----------|-----------|----------|--------------|
| Ashe     | Caldwell  | Madison  | Rutherford   |
| Avery    | Cleveland | McDowell | Transylvania |
| Buncombe | Haywood   | Mitchell | Watauga      |
| Burke    | Henderson | Polk     | Yancey       |

The loan will be a zero percent (0%) interest, thirty-year loan with a balloon payment due on the maturity date. As long as the project is not in default under the loan documents, there will be no payments due during the loan term. Loans will be closed in accordance with applicable industry standards and relevant agency guidelines and procedures.

Applicants submitting a 9% Tax Credit application may request a minimum of \$500,000 up to \$2,000,000 as part of their application.

Applicants submitting an application for tax-exempt bond volume and 4% Tax Credits may request a minimum loan of \$500,000 up to \$15,000,000 as part of their application.

CDBG-DR funds will be awarded to new construction applications before rehabilitation applications. Should each county listed in this section with an eligible application receive one CDBG-DR award and CDBG-DR funds remain, counties are eligible to receive a second CDBG-DR award.

~~Requesting a CDBG-DR loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds.~~

**C. USDA RURAL DEVELOPMENT**

Up to \$750,000 will be awarded to one eligible rehabilitation project with existing U.S. Department of Agriculture, Rural Development (RD) Section 515 financing and project-based rental assistance for at least fifty percent (50%) of the units. This project will count towards the applicable set-asides and limits. Other RD applications will be considered under the applicable set-asides.

**D. NONPROFIT AND CHDO SET-ASIDES, NATIONAL HOUSING TRUST FUND, AND CHOICE NEIGHBORHOODS IMPLEMENTATION SET-ASIDE**

**1. SET-ASIDES AND NATIONAL HOUSING TRUST FUND**

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in:

- ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax-exempt organizations (nonprofits),
- fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs) and
- all funds available from the National Housing Trust Fund have been awarded.

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s). The Agency may make such adjustment(s) in any set-aside.

**(a) Nonprofit Set-Aside**

To qualify as a nonprofit application, the project must either:

- not involve any for-profit Principals or
- comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2).

**(b) CHDO Set-Aside**

To qualify as a CHDO application,

- the project must meet the requirements of subsection (D)(1)(a) above and 24 CFR 92.300(a)(1),
- the Applicant, any Principal, or any affiliate must not undertake any choice-limiting activity prior to successful completion of the U.S. Department of Housing and Urban Development (HUD) environmental clearance review, and
- the project and owner must comply with regulations regarding the federal CHDO set-aside.

The Agency may determine the requirements of the federal CHDO set-aside have been or will be met without implementing subsection (D)(1)(b).

**(c) National Housing Trust Fund**

To qualify for the National Housing Trust Fund, the project must:

- commit at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income. See **Appendix G** for additional information.

2. CHOICE NEIGHBORHOODS IMPLEMENTATION SET-ASIDE

The Agency will make a forward commitment of 2028~~7~~ tax credits for no more than two applications, and no more than one application per housing authority, provided such applications meet all Plan requirements and are not awarded through the regular competition. To be eligible under this set-aside the Agency must have approved the application for submission under this set-aside prior to the preliminary application submission deadline. Any Public Housing Authority involved in more than one application containing CNI funds will be required to indicate their priority project.

E. PRINCIPAL AND PROJECT AWARD LIMITS

1. PRINCIPAL LIMITS

- (a) The maximum awards to any one Principal will be a total of \$2,600,000 in tax credits, including all set-asides. New construction awards will be counted towards this limitation first (in score order), then rehabilitation awards. No Principal can receive more than 2 new construction awards.
- (b) The Agency may further limit awards based on unforeseen circumstances.
- (c) For purposes of the maximum allowed in this subsection (E)(1), the Agency may determine that a person or entity not included in an application is a Principal for the project. Such determination would include consideration of relationships between the parties in previously awarded projects and other common interests. Standard fee for service contract relationships (such as accountants or attorneys) will not be considered.

2. PROJECT LIMIT

The maximum award to any one project will be \$1,500,000 .

3. AGENCY-DESIGNATED BASIS BOOST

The Agency can boost the eligible basis of new construction projects committing to the targeting in Section IV(B)(2) or that are located in an Opportunity Zone by up to ten percent (10%). ~~Counties located in Tropical Storm Helene disaster areas are eligible to request up to thirty percent (30%).~~ Projects using the DDA or QCT basis increase are not eligible under this section.

F. COUNTY AWARD LIMITS AND INCOME DESIGNATIONS

1. AWARD LIMITS

(a) Rehabilitation and East, Central, and West Regions

No county will be awarded more than one project under the rehabilitation set-aside. No county will be awarded more than one project under the new construction set-aside

(b) Metro Region

The initial maximum award(s) for a county will be its percent share of the Metro region based on population (see **Appendix K**), unless exceeding this amount is necessary to complete a project request. If any tax credits remain, the Agency will make awards to the next highest scoring application(s). A county may receive one additional award, even if in excess of its share. See Section II(B)(3)(b) for Buncombe County exception.

**2. INCOME DESIGNATIONS**

The Agency is responsible for designating each county as High, Moderate or Low Income. The criteria used as a guide in making this determination was HUD's FY 2023-2025 Median Family Income.

| High      |             | Moderate       |                | Low       |             |
|-----------|-------------|----------------|----------------|-----------|-------------|
| Brunswick | Johnston    | Alamance       | <u>Jackson</u> | Alleghany | Lenoir      |
| Buncombe  | Lincoln     | Alexander      | Macon          | Anson     | Martin      |
| Cabarrus  | Madison     | Avery          | Mitchell       | Ashe      | McDowell    |
| Chatham   | Mecklenburg | Beaufort       | Nash           | Bertie    | Montgomery  |
| Currituck | Moore       | Burke          | Onslow         | Bladen    | Northampton |
| Dare      | New Hanover | Caldwell       | Pamlico        | Cherokee  | Richmond    |
| Durham    | Orange      | Camden         | Pasquotank     | Chowan    | Robeson     |
| Franklin  | Pender      | Carteret       | Perquimans     | Cleveland | Rutherford  |
| Gaston    | Union       | Caswell        | Person         | Columbus  | Sampson     |
| Henderson | Wake        | Catawba        | Pitt           | Duplin    | Scotland    |
| Iredell   | Watauga     | Clay           | Polk           | Graham    | Surry       |
|           |             | Craven         | Randolph       | Greene    | Tyrrell     |
|           |             | Cumberland     | Rockingham     | Halifax   | Vance       |
|           |             | Davidson       | Rowan          | Hertford  | Warren      |
|           |             | Davie          | Stanly         | Hyde      | Washington  |
|           |             | Edgecombe      | Stokes         | Jones     | Wayne       |
|           |             | Forsyth        | Swain          | Lee       | Wilkes      |
|           |             | Gates          | Transylvania   |           |             |
|           |             | Granville      | Wilson         |           |             |
|           |             | Guilford       | Yadkin         |           |             |
|           |             | Harnett        | Yancey         |           |             |
|           |             | Haywood        |                |           |             |
|           |             | Hoke           |                |           |             |
|           |             | <u>Jackson</u> |                |           |             |

**G. OTHER AWARDS AND RETURNED ALLOCATIONS**

1. The Agency may award tax credits remaining from the geographic set-asides to the next highest scoring eligible new construction application(s) in the East, Central, and West regions and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.
2. An owner who received an award of 9% tax credits in 2024 and 2025 is eligible to receive an allocation of ~~2026~~2027 tax credits equal to or less than the amount of the original tax credits awarded to the project. The Owner must request an allocation of ~~2026~~2027 credits between November 1, 2026~~5~~ and December 31, 2026~~5~~. The allocation will not count against the ~~2026~~2027 Principal limit.

The following will apply to those owners requesting a new tax credit allocation:

- Owners will return their allocation for an allocation of the following year -tax credits.
- Projects must comply with the requirements in the Qualified Allocation Plan for the original allocation and all representations made in the original awarded application (unless otherwise waived by the Agency).
- Any award of 9% tax credits allocated in 2024 or later will be limited to one return of credits for a new allocation.

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- The project's design is the same as approved at full application (other than changes approved by the Agency).

Projects seeking additional credits will need to re-apply in a future cycle.

3. The Agency may make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.

### III. DEADLINES, APPLICATION AND FEES

#### A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the ~~2026~~2027 application process for 9% Tax Credits and the first round of tax-exempt bond volume and 4% Tax Credits.

|                          |                                                                                          |
|--------------------------|------------------------------------------------------------------------------------------|
| January <del>22</del> 23 | Deadline for submission of preliminary applications (12:00 noon)                         |
| March <del>12</del> 13   | Market analysts will submit studies to the Agency and Applicants                         |
| March <del>19</del> 20   | Notification of final site scores                                                        |
| March <del>26</del> 27   | Deadline for market-related project revisions (5:00 p.m.)                                |
| April <del>9</del> 10    | Deadline for the Agency and Applicant to receive the revised market study, if applicable |
| May <del>14</del> 15     | Deadline for full applications (12:00 noon)                                              |
| August                   | Notification of tax credit awards                                                        |

The Agency will also accept tax-exempt bond volume and 4% Tax Credit applications any time between May 1 and October 1 (5:00 p.m.). When a preliminary application has been submitted in this timeframe, a schedule of milestones will be provided to the Applicant. The preliminary application submission date will determine when those milestones occur which will follow a time frame similar to the 9% Tax Credit round. The Agency will work with the Applicant to determine if the project will receive ~~2026~~2027 or ~~2028~~2027 volume cap. Full applications can be submitted no later than January ~~14~~15, ~~2028~~2027.

The Agency reserves the right to change the schedule to accommodate unforeseen circumstances.

#### B. APPLICATION, ALLOCATION, MONITORING, AND PENALTY FEES

1. All Applicants are required to pay a nonrefundable fee of ~~\$6,220~~\$6,200 at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a ~~\$1,520~~\$1,500 preliminary application processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).
2. All Applicants are required to pay a nonrefundable processing fee of ~~\$1,520~~\$1,500 upon submission of the full application.

3. Entities receiving tax credit awards, including those involving tax-exempt bond volume, are required to pay a nonrefundable allocation fee equal to ~~0.98%~~0.96% of the project's total eligible basis.
4. The allocation fee will be due at the time of either the carryover allocation or bond volume award. Failure to return the required documentation and fee by the date specified may result in cancellation of the allocation. The Agency may assess other fees for additional monitoring responsibilities.
5. Owners must pay a monitoring fee of ~~\$1,340~~ \$1,320 per unit (includes all units, qualified, unrestricted, and employee) prior to issuance of the project's IRS Form 8609. Any project utilizing income averaging or for which the Agency is the bond issuer must pay an additional monitoring fee of \$300 per unit.
6. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the owner which jeopardize use of the tax credits, such legal costs will be paid by the owner in the amount charged to the Committee or Agency.
7. The Agency may assess Applicants or owners a fee of up to \$2,000 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed; such a delay in processing may result in disqualification of application(s).

**C. APPLICATION PROCESS AND REQUIREMENTS**

1. The Agency may require Applicants to submit any information, letter, or representation relating to Plan requirements or point scoring as part of the application process.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.
3. Only one active application can be submitted per site (new construction or rehabilitation).
4. For any rehabilitation application proposing to combine multiple existing properties into one property, the properties must be adjacent or not separated by more than one like parcel, or by more than a road, street, stream, or other similar property.
5. No Principal or Applicant can be in the ownership entity of more than five (5) new construction 9% Tax Credit preliminary or full applications.
6. The Agency will notify the appropriate unit of government about the project after submission of the full application.
7. For each application one individual or validly existing entity must be identified as the Applicant and execute the preliminary and full applications. An entity may be one of the following:
  - (a) corporation, including nonprofits,
  - (b) limited partnership, or
  - (c) limited liability company.

Only the identified Applicant will have the ability to make decisions with regard to that application and be considered under Section IV(D)(1). The Applicant may enter into joint venture or other agreements but the Agency will not be responsible for evaluating those documents to determine the

relative rights of the parties. If the application receives an award the Applicant must become a managing member or general partner of the ownership entity.

#### IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

Applications must meet all applicable threshold requirements to be considered for award and funding. Scoring and threshold determinations made in prior years are not binding on the Agency for the ~~2026~~2027 cycle.

##### A. SITE AND MARKET EVALUATION

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

##### 1. SITE EVALUATION (MAXIMUM 68 POINTS)

###### (a) General Site Requirements:

- (i) Sites must be sized to accommodate the number and type of units proposed. The Applicant or a Principal must have site control by the preliminary application deadline as evidenced by an option, contract or deed. The documentation of site control must include a plot plan.
- (ii) Required zoning must be in place by the full application deadline, including special/conditional use permits, and any other discretionary land use approval required (includes all legislative or quasi-judicial decisions).
- (iii) Water and sewer must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the owner's responsibility to extend utilities and roads to the site. In such cases, the Applicant must explain and budget for such plans and document the right to perform such work.
- (iv) All preliminary applications must contain the Agency's "Notice of Real Property Acquisition" form. The form must be executed by all parties before or at the same time as the option or contract.

###### (b) Criteria for Site Score Evaluation:

Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories. An application must have a minimum total score of 50 points.

###### (i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 10 POINTS)

Good: 10 points if structures within a Half Mile are well maintained or the site qualifies as a Redevelopment Project (see Section II(B)(2)(b))

Fair: 5 points if structures within a Half Mile are not well maintained and there are visible signs of deterioration

Poor: 0 points if structures within a Half Mile are Blighted or have physical security modifications (e.g. barbed wire fencing or bars on windows)

Half Mile: The half mile radius from the approximate center of the site (does not apply to Amenities below).

Blighted: A structure that is abandoned, deteriorated substantially beyond normal wear and tear, a public nuisance, or appears to violate minimum health and safety standards.

(ii) AMENITIES (MAXIMUM 46 POINTS)

Other than applications with tribally-appropriated funds or near bus/transit stops (described at the end of this subsection), points will be determined according to the matrix below. For an amenity to be eligible for points, the application must include documentation required by the Agency of meeting the applicable criteria. In all cases, the chosen amenity must be open to the general public, have a physical location that offers in-person services, and operating as of the preliminary application deadline with no announced closing prior to the notification of final site scores.

|                                                   | <u>Driving Distance in Miles</u> |         |        |        |
|---------------------------------------------------|----------------------------------|---------|--------|--------|
| <i>Primary Amenities</i><br>(maximum 26 points)   | ≤ 2                              | ≤ 2.5   | ≤ 3    | ≤ 4    |
| Grocery                                           | 12 pts.                          | 10 pts. | 8 pts. | 6 pts. |
| Shopping                                          | 7 pts.                           | 6 pts.  | 5 pts. | 4 pts. |
| Pharmacy                                          | 7 pts.                           | 6 pts.  | 5 pts. | 4 pts. |
| <i>Secondary Amenities</i><br>(maximum 20 points) | ≤ 2                              | ≤ 2.5   | ≤ 3    | ≤ 4    |
| Other Primary Amenity                             | 5 pts.                           | 4 pts.  | 3 pts. | 2 pts. |
| Service                                           | 3 pts.                           | 2 pts.  | 1 pt.  | 0 pts. |
| Healthcare                                        | 3 pts.                           | 2 pts.  | 1 pt.  | 0 pts. |
| Public Facility                                   | 3 pts.                           | 2 pts.  | 1 pt.  | 0 pts. |
| Public School                                     | 3 pts.                           | 2 pts.  | 1 pt.  | 0 pts. |
| Other Retail                                      | 3 pts.                           | 2 pts.  | 1 pt.  | 0 pts. |

|                                                   | <u>Driving Distance in Miles, Small Town*</u> |         |        |        |
|---------------------------------------------------|-----------------------------------------------|---------|--------|--------|
| <i>Primary Amenities</i><br>(maximum 26 points)   | ≤ 3.5                                         | ≤ 4     | ≤ 4.5  | ≤ 5.5  |
| Grocery                                           | 12 pts.                                       | 10 pts. | 8 pts. | 6 pts. |
| Shopping                                          | 7 pts.                                        | 6 pts.  | 5 pts. | 4 pts. |
| Pharmacy                                          | 7 pts.                                        | 6 pts.  | 5 pts. | 4 pts. |
| <i>Secondary Amenities</i><br>(maximum 20 points) | ≤ 3.5                                         | ≤ 4     | ≤ 4.5  | ≤ 5.5  |
| Other Primary Amenity                             | 5 pts.                                        | 4 pts.  | 3 pts. | 2 pts. |
| Service                                           | 3 pts.                                        | 2 pts.  | 1 pt.  | 0 pts. |
| Healthcare                                        | 3 pts.                                        | 2 pts.  | 1 pt.  | 0 pts. |
| Public Facility                                   | 3 pts.                                        | 2 pts.  | 1 pt.  | 0 pts. |
| Public School                                     | 3 pts.                                        | 2 pts.  | 1 pt.  | 0 pts. |
| Other Retail                                      | 3 pts.                                        | 2 pts.  | 1 pt.  | 0 pts. |

\* A Small Town is a municipality with a population of less than 10,000 people. The list of town sizes can be found on the Office of State Budget and Management website at <https://demography.osbm.nc.gov/explore/assets/2024-certified-population-estimates/view/>. The Certified 2024 Population Estimates, Municipal Estimates – Alphabetically by municipality will be used to determine a town's population. For

municipalities listed in multiple counties, the combined population will be used. A site is not required to be within the town limits to qualify but must have an address of a Small Town. Any application in an unincorporated town not appearing on the Small Town list but recognized as a community must have Agency approval to be considered a Small Town prior to the preliminary application deadline.

Only one establishment will count for each row under Primary and Secondary Amenities. For example, an application for a site with a public park and library between two (2) miles and two point five miles (2.5) miles will receive only 2 points under Public Facility.

The driving distance will be the mileage as calculated by Google Maps and must be a drivable route as of the preliminary application deadline. The drivable route must be shown in satellite view map format (written directions optional). A photo of each amenity must also be provided. The measurement will be:

- the point closest to the site entrance to or from
- the point closest to the amenity entrance.

Driveways, access easements, and other distances in excess of 500 feet between the nearest residential building of the proposed project and road shown on Google Maps will be included in the driving distance. For scattered site projects, the measurement will be from the location with the longest driving distance(s). Scattered site is defined as buildings on separate parcels, not connected by internal drive, and with separate entrances. A scattered site cannot have parcels separated by more than one like parcel, or by more than a road, street, stream, or other similar property.

The following establishments qualify as a Grocery:

|                            |                            |                        |                                    |
|----------------------------|----------------------------|------------------------|------------------------------------|
| <u>Aldi</u>                | <u>Food Lion</u>           | <u>Just Save</u>       | <u>Sprouts</u>                     |
| <u>Bestway Grocery</u>     | <u>Food Matters Market</u> | <u>Lidl</u>            | <u>Super Target</u>                |
| <u>Bi-Lo</u>               | <u>The Fresh Market</u>    | <u>Lowes Foods</u>     | <u>Trader Joe's</u>                |
| <u>Bo's Food Stores</u>    | <u>Galaxy Food Centers</u> | <u>Piggly Wiggly</u>   | <u>Walmart Neighborhood Market</u> |
| <u>Compare Foods</u>       | <u>Harris Teeter</u>       | <u>Publix</u>          | <u>Walmart Supercenter</u>         |
| <u>Earth Fare</u>          | <u>Hopey &amp; Company</u> | <u>Red &amp; White</u> | <u>Wester Street Market</u>        |
| <u>Fairvalue</u>           | <u>IGA</u>                 | <u>Sav-Mor</u>         | <u>Wegmans</u>                     |
| <u>Family Foods</u>        | <u>Ingle's Market</u>      | <u>Save-A-Lot</u>      | <u>Whole Foods</u>                 |
| <u>Aldi</u>                | <u>The Fresh Market</u>    | <u>Lowes Foods</u>     | <u>Walmart Neighborhood Market</u> |
| <u>Bestway Grocery</u>     | <u>Galaxy Food Centers</u> | <u>Piggly Wiggly</u>   | <u>Walmart Supercenter</u>         |
| <u>Bi-Lo</u>               | <u>Galaxy Food Centers</u> | <u>Piggly Wiggly</u>   | <u>Walmart Supercenter</u>         |
| <u>Bo's Food Stores</u>    | <u>Harris Teeter</u>       | <u>Publix</u>          | <u>Weaver Street Market</u>        |
| <u>Compare Foods</u>       | <u>Hopey &amp; Company</u> | <u>Red &amp; White</u> | <u>Wegmans</u>                     |
| <u>Earth Fare</u>          | <u>IGA</u>                 | <u>Sav-Mor</u>         | <u>Whole Foods</u>                 |
| <u>Fairvalue</u>           | <u>Ingle's Market</u>      | <u>Save-A-Lot</u>      |                                    |
| <u>Family Foods</u>        | <u>Just Save</u>           | <u>Sprouts</u>         |                                    |
| <u>Food Lion</u>           | <u>Lidl</u>                | <u>Super Target</u>    |                                    |
| <u>Food Matters Market</u> |                            | <u>Trader Joe's</u>    |                                    |

The following establishments qualify as Shopping:

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| Big Lots                     | Maxway                 | Super Target        |
| Dollar General/DGX/DG Market | Ollie's Bargain Outlet | Walmart             |
| Dollar Tree                  | Roses                  | Walmart Supercenter |
| Family Dollar                | Roses Express          |                     |
| Fred's Super Dollar          | Target                 |                     |

To qualify as a Pharmacy, the establishment must have non-medical general merchandise items for sale (not including pharmacies within hospitals, specialty or compounding only pharmacies).

To qualify as a Secondary Amenity, the establishment must meet the applicable requirement(s) below.

Other Primary Amenity: second Grocery, Shopping or Pharmacy (not used as Primary Amenity)

Service: restaurant, bank/credit union, or gas station with convenience store  
Healthcare: hospital, urgent care business, general/family practice, or general dentist (not to include orthodontist); does not include medical specialists or clinics within pharmacies.

Public Facility (any of the following)

- public park owned and maintained by a local government containing, at a minimum, playground equipment and/or walking/bike trails and listed on a map, website, or other official means; a greenway or trailhead will qualify with dedicated parking
- library operated by a local government open at least five days a week
- Senior Center, Recreation Center or Community Center: with scheduled activities operated by a local government

Public School: non-alternative elementary, middle, high school (charter and magnet public schools are eligible)

Other Retail: any Grocery or Shopping not listed as a Primary or Other Primary Amenity; any strip shopping center or commercial hub located in the central business district or downtown area with a minimum of 4 operating establishments within a block and/or strip center; any grocery or general merchandise establishment

A commitment of at least \$250,000 in tribally-appropriated funds (including through the Native American Housing Assistance and Self Determination Act) qualifies for 6 points, not to exceed the total for subsection (ii). The commitment must meet the requirements of Section VI(B)(6)(b) and be submitted as part of the preliminary application.

A bus/transit stop qualifies for 6 points, not to exceed the total for subsection (ii), if it is:

- in service as of the preliminary application date,
- at a fixed location and has a covered waiting area,
- served by a public transportation system six days a week, including for 10 consecutive hours on weekdays, and
- within 0.25 miles walking distance of the proposed project site entrance using existing continuous sidewalks (excluding the proposed project site) and crosswalks.

A bus/transit stop qualifies for 2 points, not to exceed the total for subsection (ii), if all of the above criteria are met except for a covered waiting area.

(iii) SITE SUITABILITY (MAXIMUM 12 POINTS)

3 points if there is no Incompatible Use, which includes the following activities, conditions, or uses within the distance ranges specified:

Half Mile

- airports
- chemical or hazardous materials storage/disposal
- industrial or agricultural activities with environmental concerns (such as odors or pollution)
- commercial junk or salvage yards
- landfills currently in operation
- sources of excessive noise
- wastewater treatment facilities

A parcel or right of way within 500 feet containing any of the following:

- adult entertainment establishment
- distribution facility
- factory or similar operation
- jail or prison
- large swamp

Any of the following within 250 feet of a proposed project building:

- electrical utility substation, whether active or not
- frequently used railroad tracks (not to include passenger light rail)
- roads with a posted speed limit of 55 mph or greater (500 feet for an interstate)
- power transmission lines and tower

3 points if there are no negative features, design challenges, physical barriers, or other unusual and problematic circumstances that would impede project construction or adversely affect future tenants, including but not limited to: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive re-use projects: suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition)

3 points if the project would be visible to potential tenants using normal travel patterns and is within 500 feet of a building that is currently in use for residential, commercial, educational, or governmental purposes (excluding Blighted structures or Incompatible Uses)

3 points if traffic controls allow for safe access to the site; for example limited sight distance (blind curve) or having to cross three or more lanes of traffic going the same direction when exiting the site would not receive points.

(iv) SITE NEGATIVE POINTS (NEGATIVE 3 POINTS)

Up to 3 points will be deducted from a site deemed to be unsuitable for housing. This determination recognizes a site may meet all site evaluation scoring criteria but not be suitable for housing regardless of having required zoning or local government support.

**2. MARKET ANALYSIS**

The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

- (a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix, targeting). Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the Applicant for the full application. Only one request for revisions by the Applicant will be allowed.
- (b) The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.
- (c) The following four criteria are threshold requirements for new construction applications:
  - (i) the project's capture rate,
  - (ii) the project's absorption rate,
  - (iii) the vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances), and
  - (iv) the project's effect on existing or awarded properties with 9% Tax Credits or Agency loans.
- (d) Applicants may not increase the total number of units after submission of the preliminary application. Unless ~~2026~~2027 rent and income limits are released by the 9% preliminary application deadline, ~~2026~~2025 rent and income limits must be used for the preliminary application, market study, and any market study revision. Preliminary applications submitted during the open bond cycle may use the current rent and income limits. After the deadline for completing market-related project revisions Applicants may not increase:
  - (i) rents, irrespective of a decrease in utility allowances,
  - (ii) the number of income targeted units in any bedroom type, or
  - (iii) the number of units in any bedroom type.
- (e) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this subsection (A)(2).
- (f) Projects may not give preferences to potential tenants based on:
  - (i) residing in the jurisdiction of a particular local government,
  - (ii) having a particular disability, or
  - (iii) being part of a specific occupational group (e.g. artists).
- (g) Age-restricted (senior) projects may not contain three or more bedroom units.
- (h) No project can have more than four (4) income bands consisting of: 20%, 30%, 40%, 50%, 60%, 70%, 80% of area median income, and market rate.

**B. RENT AFFORDABILITY**

**1. FEDERAL RENTAL ASSISTANCE**

Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated similar to a funding source under Section VI(B)(6)(e); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements

may involve the public housing authority's (PHA's) Annual Plan, selection policy, and approval for advertising.

**2. TENANT RENT LEVELS AND RPP (MAXIMUM 2 POINTS)**

An application may earn points under one of the following scenarios:

- (a) If the project is in a High Income county:
  - 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
  - 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
- (b) If the project is in a Moderate Income county:
  - 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.
  - 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.
- (c) If the project is in a Low Income county:
  - 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.
  - 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.

To qualify for an RPP loan, at least forty percent (40%) of qualified low-income units in a project will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income. Targeting in subsection (a), (b) or (c) above counts towards this requirement. For additional information about the RPP, refer to **Appendix G** (Rental Production Program Guidelines).

**3. INCOME AVERAGING**

Only new construction projects and rehabilitation projects not subject to an existing Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits are eligible to utilize income averaging. Applicants electing to use income averaging must comply with the following:

- (a) The income average for the property cannot exceed 60% of area median income,
- (b) The income average for any bedroom type cannot exceed 60% of area median income,
- (c) At least ten percent (10%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
- (d) Market rate units are prohibited, and
- (e) For projects with more than one building, Owners must select that each building is part of a multiple building set-aside on line 8b in Part II of IRS Form 8609.

**C. PROJECT DEVELOPMENT COSTS, RPP LIMITATIONS, AND WHLP**

**1. MAXIMUM PROJECT DEVELOPMENT COSTS (NEGATIVE 10 POINTS)**

- (a) The Agency will assess negative points to applications listing more than the following in lines 5 and 6 of the Project Development Costs (PDC) description, as outlined in Chart A below. The point structure in Chart B will apply to the following:
- all units are detached single family houses or duplexes,
  - serving persons with severe mobility impairments,
  - development challenges resulting from being within or adjacent to a central business district,
  - public housing redevelopment projects, or
  - building(s) with both steel and concrete construction and at least four stories of housing.

The per-unit amount calculation includes all items covered by the construction contract, ENERGY STAR, certifications for green programs, and any other costs not unique to the specific proposal.

| Chart A         | Chart B         |
|-----------------|-----------------|
| \$135,000   -10 | \$150,000   -10 |

- (b) Total Replacement Costs must not exceed \$350,000 per unit, excluding land costs (line 64).

Applicants may request a waiver of the Total Replacement Cost cap by submitting providing documentation that clearly identifies the project specific circumstances leading to the increased costs resulting in the higher costs. All waiver requests must be submitted in writing at least 30 days prior to the full application deadline. Applicants seeking a waiver must submit a written request at least 30 days prior to submission of the full application. This requirement also applies to historic adaptive re-use projects.

- ~~(e) The Agency will review proposed costs for historic adaptive re-use projects and approve the amount during the full application review process.~~

See Section VI(B) for other cost restrictions.

## 2. RESTRICTIONS ON RPP AWARDS

- (a) Projects requesting RPP funds must submit the Agency's "Notice of Real Property Acquisition" or "Notice of Real Property Ground Lease" form, along with all Build America Buy America (BABA) documentation required under Appendix G with the preliminary application and may not:
- (i) request RPP funds in excess of the following amounts per unit: \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties,
  - (ii) include market-rate units,
  - (iii) request less than \$150,000 or more than \$1,600,000 per project,
  - (iv) have a commitment of funds from a local government under terms that will result in more repayment than determined under subsection (C)(2)(b) below,
  - (v) have a federally insured loan or one which would require the RPP loan to have a term of more than 20 years or limits repayment, ~~or~~
  - (vi) have a Principal or General Contractor listed on SAM.gov as being ineligible to receive federal funds, or.

(vii) Commercial or bank loans requesting RPP loan funds must be structured to require both principal and interest payments.

The maximum award of RPP funds to any one Principal will be a total of \$3,200,000. Requesting an RPP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds.

- (b) Projects may only request an RPP loan if the principal and interest payments for RPP ~~and any local government financing~~ will be equal to the anticipated net operating income divided by 1.15, less conventional debt service:

Repayment of RPP ~~and local government~~ loans = (NOI / 1.15) – conventional debt service.

If a project is funded by local government loans requiring payment from hard debt service, ~~The~~ amount of repayment will be split between the RPP loan and local government lenders based on their relative percentage of loan amounts. For example:

RPP Loan =\$400,000

Local government loan = \$200,000

|                                            | Year 1   | Year 2  | Year 3  | Year 4  |
|--------------------------------------------|----------|---------|---------|---------|
| Anticipated amount available for repayment | \$10,000 | \$8,000 | \$6,000 | \$4,000 |
| RPP principal and interest payments        | \$6,667  | \$5,333 | \$4,000 | \$2,667 |
| Local government P&I payments              | \$3,333  | \$2,667 | \$2,000 | \$1,333 |

Lien position will be determined by loan amount: the larger loan will have the higher lien position. For equal loan amounts, the local government will have the higher lien position.

- (c) Loan payments made to the Applicant, any Principal, member or partner of the ownership entity, or any affiliate thereof, will be taken out of cash flow remaining after RPP payments.
- (d) An application may be ineligible for RPP funds due to one or more of the listed parties (including but not limited to members/partners, general contractor, and management agent) having failed to comply with the Agency's requirements on a prior loan.

3. WORKFORCE HOUSING LOAN PROGRAM (Subject to appropriation)

- (a) Projects with 9% Tax Credits which meet the Agency's loan criteria are eligible for WHLP. As required under the legislation, these criteria support the financing of projects similar to those created under G.S. 105-129.42.
- (b) A loan will not be closed until the outstanding balance on the first-tier construction financing exceeds the principal amount and the entire loan must be used to pay down a portion of the then existing construction debt.
- (c) The terms will be zero percent (0%) interest, thirty year balloon (no payments). The Agency will take all eligible sources into consideration in setting the amount. – In no event will the loan amount exceed the statutory maximum.

|                             |  |                      |
|-----------------------------|--|----------------------|
| CountyIncome<br>Designation |  | Statutory<br>Maximum |
|-----------------------------|--|----------------------|

|          |  |             |
|----------|--|-------------|
| High     |  | \$500,000   |
| Moderate |  | \$2,000,000 |
| Low      |  | \$3,000,000 |

Requesting a WHLP loan may result in an application being ineligible under Section VI(B)(6)(c) if the Agency has inadequate funds. The maximum award of WHLP funds to any one Principal will be a total of \$3,000,000.

**4. ~~GOLDEN LEAF AFFORDABLE WORKFORCE HOUSING INITIATIVE~~**

~~The Golden LEAF (Long term Economic Advancement Foundation), Inc., a 501(c)(3) organization, promotes the social welfare and lessens the burdens of government by providing economic impact assistance to economically affected or tobacco-dependent regions of North Carolina. In collaboration with the Agency, Golden LEAF has created the Affordable Workforce Housing Initiative and will provide \$2,000,000 in financing the development of federal low-income housing tax credit projects. Only applications located in counties identified as "Golden LEAF Eligible" in Appendix L are eligible for these funds.~~

~~Any 9% new construction family application in these designated counties may be awarded under the Initiative, subject to funding availability. The terms will be zero percent (0%) interest, up to 30 years, payment deferred, until the end of the loan term. Applicants will not request these funds as part of their application. Loan amounts will be determined by the Agency and may be used to reduce tax credit, RPP and/or WHLP requests (if applicable).~~

**D. CAPABILITY OF THE PROJECT TEAM**

**1. DEVELOPMENT EXPERIENCE**

- (a) To be eligible for an award of 9% Tax Credits, at least one Principal must have successfully developed, operated and maintained in compliance either one (1) 9% Tax Credit project in North Carolina or six (6) separate 9% Tax Credit projects totaling in excess of 200 units. The project(s) must have been placed in service between January 1, ~~2018~~<sup>2017</sup> and January 1, ~~2026~~<sup>2025</sup>.

Such Principal must:

- (i) be identified in the preliminary application as the Applicant under Section III(C)(7),
  - (ii) become a general partner or managing member of the ownership entity, and
  - (iii) remain responsible for overseeing the project and operation of the project for a period of at least two (2) years after placed in service. The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.
- (b) All owners and Principals must disclose all previous participation in the low-income housing tax credit program. Additionally, owners and Principals that have participated in an out of state tax credit allocation may be required to complete an Authorization for Release of Information form.
- (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) due to differences between its prior work

and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).

## 2. MANAGEMENT EXPERIENCE

The management agent must be eligible to be on the Approved Management Company List. To be Approved, the management agent must:

- (a) have at least one similar tax credit project in their current portfolio,
- (b) be registered with the North Carolina Secretary of State as of the full application deadline (excluding public housing authorities),
- (c) be requesting Key assistance timely and accurately (if applicable),
- (d) be reporting in the Agency's Rental Compliance Reporting System (RCRS) timely and accurately (if applicable),
- (e) have at least one staff person in a supervisory capacity with regard to the project who has attended at least three Agency sponsored trainings within the past 12 months (currently named Compliance 101, Advanced Compliance and DHHS Targeting and Key) as of the full application. This requirement will only be reviewed at the end of the calendar year and
- (f) have at least one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist.

Such certification must be from an organization approved by the Agency (see **Appendix C**).

None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected noncompliance beyond the cure period unless there is a plan of action to address the issue(s). Any management agent found to have implemented a rent increase on an existing tax credit property without the required Agency approval may be prohibited from serving as management agent for an application. Should a management agent be removed from the Approved Management Company list for failure to comply with the above requirements, and the issue is not resolved following an opportunity to cure, the management agent will remain off of the Approved Management list for a period of no less than one year. The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the Agency approves a change.

## 3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

- (a) has been debarred or received a limited denial of participation in the past ten years by any federal or state agency from participating in any development program;
- (b) within the past ten years has been in a bankruptcy; an adverse fair housing settlement, judgment or administrative determination; an adverse civil rights settlement, judgment or administrative determination; or an adverse federal, state or local government proceeding and settlement, judgment or administrative determination;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on any publicly subsidized project;
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits;

- (e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;
- (f) interferes with a tax credit application for which it is not an owner or Principal at a public hearing or other official meeting;
- (g) has outstanding flags in HUD's national 2530 National Participation system;
- (h) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;
- (i) would be removed from the ownership of a project that is the subject of an application under the rehabilitation set-aside in the current cycle;
- (j) requested a qualified contract for a North Carolina tax credit property; or
- (k) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the ~~2026~~2027 cycle and removing from consideration any application where they are identified.

**E. UNIT MIX AND PROJECT SIZE**

1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where either:
  - the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 80% AMI and the market study indicates that such rents are feasible, or
  - there is a commitment for a grant or no-payment financing equal to at least the amount of foregone federal tax credit equity.
2. New construction 9% Tax Credit projects may not exceed the following:
  - Metro Region - one hundred and twenty (120) units
  - Central, East, and West Regions - eighty-four (84) units.
3. New construction tax-exempt bond projects may not exceed two hundred (200) units unless approved by the Agency prior to the preliminary application submission.
4. All new construction projects must have at least twenty-four (24) qualified low-income units.
5. All new construction projects must contain one-bedroom units totaling a minimum 15% of total units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, including public housing projects, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines or adaptive re-use projects where made necessary by the building(s) physical structure.

**F. SPECIAL CRITERIA AND TIEBREAKERS**

**1. ENERGY STAR CERTIFICATION**

New construction residential buildings must achieve ENERGY STAR Multifamily New Construction Program certification and comply with all energy efficiency standards as defined in **Appendix B** (incorporated herein by reference). Adaptive re-use and rehabilitation projects must

comply to the extent doing so is economically feasible and as allowed by historic preservation rules.

**2. APPLICANT BONUS POINTS (MAXIMUM 2 POINTS)**

An Applicant is entitled to two bonus points as part of the full application submission. No application can receive more than one bonus point. No Principal or Applicant is entitled to more than two bonus points for all applications in which they may be involved. Should an Applicant or Principal use more than 2 bonus points, the Agency will determine which application, if any, receives the bonus point(s).

**3. TARGETING PROGRAM**

All projects will be required to target ten percent (10%) of the total units to persons with disabilities and persons who are homeless. Projects with federal project-based rental assistance must target at least five (5) units regardless of size. Projects that have targeted units under this subsection are not required to provide onsite supportive services or a service coordinator.

Owners must submit the following documents, all of which are fully described in **Appendix D** (incorporated herein by reference).

- (a) Targeting Unit Agreement
- (b) Owner Agreement to Participate (if applicable)
- (c) Section 811 PRA Rental Assistance Contract (if applicable)
- (d) Property Profile
- (e) Tenant Selection Plan
- (f) Affirmative Fair Housing Marketing Plan
- (g) Language Access Plan (if applicable)

These documents must be submitted to the Agency no later than the times specified in **Appendix D** but in no case later than six months prior to the project's placed in service date. The Agency may set additional requirements, as needed. The requirements of this subsection (F)(34) may be fully or partially waived to the extent the Agency determines they are not feasible.

**4.5. OLMSTEAD SETTLEMENT INITIATIVE (MAXIMUM 4 POINTS)**

- (a) Projects proposing 1 bedroom units as a percentage of the total project units will be awarded points based on the following:

|                     |          |
|---------------------|----------|
| 7.5% of total units | 1 point  |
| 10% of total units  | 2 points |
| 15% of total units  | 3 points |

Tax exempt bond projects must contain 1 bedroom units totaling a minimum of 10% of total project units.

- (b) Projects proposed in the following DHHS priority counties will be awarded 1 point.

|             |              |         |
|-------------|--------------|---------|
| Alamance    | Gaston       | Orange  |
| Buncombe    | Guilford*    | Pitt    |
| Burke       | Henderson    | Robeson |
| Cabarrus    | Iredell      | Wake*   |
| Cumberland* | Mecklenburg* | Wayne   |

|          |             |        |
|----------|-------------|--------|
| Durham*  | New Hanover | Wilson |
| Forsyth* |             |        |

\*These counties will no longer be listed as DHHS priority counties after the 2026 QAP cycle.

**6. SECTION 1602 EXCHANGE PROJECTS (NEGATIVE 40 POINTS)**

The Agency may deduct up to forty (-40) points from any application if the Applicant, any owner, Principal or affiliate thereof is also involved in a Section 1602 Exchange project with uncorrected material noncompliance.

**7. TIEBREAKER CRITERIA**

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

- (a) First Tiebreaker: The county with the highest cost burden low income renters per 9% tax credit unit funded over the last 5 years (see **Appendix L**).
- (b) Second Tiebreaker: The project with the highest number of total units at time of full application submission.
- (c) Third Tiebreaker: The project with the lowest average income targeting at time of preliminary application submission. Overall targeting may not increase more than five percent (5%) as of the full application.
- (d) Fourth Tiebreaker: **Tenants with Children**: Projects that can serve tenant populations with children. Projects will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand for this population (as determined by the Agency).
- (e) Fifth Tiebreaker: **Tenant Ownership**: Projects that are intended for eventual tenant ownership. Such projects must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

**G. DESIGN STANDARDS**

All proposed measures must be shown in the application to receive points.

**1. THRESHOLD REQUIREMENTS**

The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding.

**2. CRITERIA FOR SCORE EVALUATION (MAXIMUM 30 POINTS)**

The Agency will determine points based on the following criteria as applied to the site drawings submitted with the full application.

- (a) Site Layout

The Agency will award up to 5 points based on its evaluation of the site layout. The following characteristics will be considered.

- (i) The location of residential buildings in relation to parking, site amenities, community building, postal facilities and trash collection areas.
- (ii) The degree to which site layout ensures a low, controlled traffic speed through the project.

(b) Quality of Design and Construction

(The points in this subsection are mutually exclusive with Section IV(G)(2)(c) below.)

The Agency will award up to 25 points for new construction projects based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

- (i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.
- (ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.
- (iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.
- (iv) Use of brick veneer or masonry products on building exteriors.

(c) Adaptive Re-Use

(The points in this subsection are mutually exclusive with Section IV(G)(2)(b) above.)

The Agency will award up to 25 points based on the following characteristics:

- (i) The extent to which the building(s) fit with surrounding streetscape after adaptation or have problems with orientation, sightlines, bulk and scale.
- (ii) Aesthetics after adaptation.
- (iii) Presence of special design elements or architectural features that may not be physically or financially available if new construction was introduced on the same site.

**H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS**

**1. GENERAL THRESHOLD REQUIREMENTS**

To be eligible for an allocation under Section II(A), a project must:

- (a) have either (i) received a tax credit allocation and be in the extended use period or (ii) federal project-based rental assistance for at least thirty percent (30%) of the total units,
- (b) have been placed in service on or before December 31, ~~2011~~2010,
- (c) require rehabilitation expenses in excess of \$ 50,000 per unit (as supported by a physical needs assessment conducted or approved by the Agency),
- (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
- (e) not be feasible using tax-exempt bonds (as determined by the Agency),
- (f) not have received an Agency loan in the last five years,
- (g) not be deteriorated to the point of requiring demolition,
- (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and

- (i) have total replacement costs of less than \$190,000 per unit, including all Agency-required rehabilitation work.

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the PDC description.

## 2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of **Appendix B** (incorporated herein by reference), the Agency will require owners to complete the following as appropriate for their project.

- (a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.
- (b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, and adding new architectural features to improve appearance.
- (c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- (d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- (e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.
- (f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

## 3. EVALUATION CRITERIA

The Agency will evaluate applications under Section II(A) based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not consider subsections (d) through (f) below if the outcome is determined by the criteria in subsections (a) through (c).

- (a) The Agency will give the highest priority to applications proposing to rehabilitate the most distressed housing with a tax credit allocation, particularly buildings with accessibility or life, health and safety problems.
- (b) Applications will have a reduced likelihood of receiving an award of tax credits if the Agency determines the property has not been properly maintained and any current owner will remain part of the new ownership.
- (c) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.
- (d) Shortcomings in the above criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).
- (e) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.

- (f) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.
- (g) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).
- (h) While the rehabilitation set-aside is not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

## V. ALLOCATION OF BOND CAP

### A. ORDER OF PRIORITY

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

1. Projects that serve as a component of an overall public housing revitalization effort.
2. Rehabilitation of existing rent restricted housing.
3. Rehabilitation of projects consisting of entirely market-rate units.
4. Adaptive re-use projects.
5. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, applications seeking the least amount of authority per low-income unit will have priority.

### B. ELIGIBILITY FOR AWARD

Except as otherwise indicated, owners of projects with tax-exempt bonds and 4% Tax Credits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

1. All projects must meet the requirements under Section IV(F)(4).
2. Rehabilitation applications must:
  - (a) have been placed in service on or before December 31, ~~2011~~2010,
  - (b) require rehabilitation expenses in excess of \$30,000 per unit,
  - (c) not have an acquisition cost in excess of seventy percent (70%) of the total replacement costs,
  - (d) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
  - (e) not be deteriorated to the point of requiring demolition.
3. The inducement resolution must be submitted with the full application.
4. To be eligible for an award of tax-exempt bond volume, at least one Principal must have successfully developed, operated and maintained in compliance either one 9% Tax Credit project in North Carolina or one tax-exempt bond project in any state. The project must have been placed in service between January 1, ~~2018~~2017 and January 1, ~~2026~~2025. Such Principal must:
  - be identified in the preliminary application as the Applicant under Section III(C)(7),
  - become a general partner or managing member of the ownership entity, and

- remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.

The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

C. IMPLEMENTATION OF THE 25 PERCENT TEST

Guidance for transitioning from the 50 percent test to the 25 percent test for Private Activity Bond financing in conjunction with the 4% Low-Income Housing Tax Credit program is detailed in Appendix M.

VI. GENERAL REQUIREMENTS

A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS

1. PROJECTS WITH HISTORIC TAX CREDITS

Buildings either must be on the National Register of Historic Places or approved for the State Historic Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.

2. NONPROFIT SET-ASIDE

For purposes of being considered as a nonprofit sponsored application under Section II(D)(1)(a), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must:

- (a) be qualified under Section 501(c)(3) or (4) of the Code,
- (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,
- (c) have as one of its exempt purposes the fostering of low-income housing,
- (d) be a managing member or general partner of the ownership entity.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

3. REQUIRED REPORTS

All projects involving use of existing structures must submit the following:

- (a) For projects built prior to 1978, a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
- (b) A report assessing the structural integrity of the building(s) being renovated from an architect or engineer. Report must be dated no more than six (6) months from the full application deadline.

- (c) A current termite inspection report. Report must be dated no more than six (6) months from the full application deadline.

**4. APPRAISALS**

The Agency will not allow the project budget to include more for land or lease costs than the lesser of its appraised market value or the purchase or lease price. Applicants must submit with the full application a real estate “as is” appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The appraisal must encompass all parcels that comprise the project. Comparable properties used in the appraisal must be in reasonable proximity to the project. The Agency may order an additional appraisal with costs to be paid by the Applicant. Appraisals for rehabilitation and adaptive re-use projects must break out the land and building values from the total value.

**5. CONCENTRATION**

Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site’s census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.

**6. DISPLACEMENT**

For rehabilitation projects and in every other instance of tenant displacement, including temporary, the Applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The owner is responsible for all relocation expenses, which must be included in the project’s development budget. Owners must also comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.

**7. FEASIBILITY**

The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an equity investment or a Principal that has inadequate capacity to successfully carry out the development process.

**8. SMOKE-FREE HOUSING**

Owners must prohibit smoking in all indoor common areas, individual living areas (including patios and balconies), and within 25 feet of building entries or ventilation intakes. A non-smoking clause must be included in the lease for each household.

**B. UNDERWRITING THRESHOLD REQUIREMENTS**

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding. Any documentation required as part of the application must be dated and be within 6 months of the application deadline, unless otherwise stated.

**1. LOAN UNDERWRITING STANDARDS**

- (a) Projects applying for tax credits only will be underwritten with rents escalating at two percent (2%) and operating expenses escalating at three percent (3%).

- (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for twenty (20) years.
- (c) Applications requesting RPP funds must use current Low HOME rents for fifteen percent (15%) of the total units (spread proportionally through all bedroom types) and may be required to comply with HOME program requirements, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92 and all relevant administrative guidance. Projects awarded RPP funds must also comply with the RPP Guidelines in **Appendix G** (incorporated herein by reference).
- (d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.

**2. OPERATING EXPENSES**

- (a) New construction (excluding adaptive re-use): minimum of \$4,200 per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes rehabilitation and adaptive re-use): minimum of \$4,400 per unit per year not including taxes, reserves and resident support services. For projects with RD loans, the operating expenses will be based upon the current RD approved operating budget.

**3. EQUITY PRICING**

- (a) Projects will be underwritten using Applicants proposed equity pricing. Pricing above \$0.~~7883~~ will require a commitment letter from a syndicator or investor with as much detail as is possible. At a minimum, the letter should include the equity pricing, total capital contribution amount, estimated pay-in schedule and any reserve requirements. Should an Applicant receive an allocation of tax credits and fail to receive equity pricing at least equal to the pricing used in the awarded application, any equity shortfall will be the responsibility of the Applicant. The Agency will not approve an increase of the rents stated in the awarded application to support additional debt to cover the equity shortfall.
- (b) Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

**4. RESERVES**

- (a) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and operating expenses (four months for tax-exempt bond projects), and must be maintained for the duration of the extended use period.

The operating reserve can be funded by deferring the developer fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency. This reserve must stay with the project at the time of investor exit.

- (b) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Rehabilitation and adaptive re-use projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually. This reserve must stay with the project at the time of investor exit.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD.

**5. DEFERRED DEVELOPER FEES**

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within fifteen years and meets the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

**6. FINANCING COMMITMENT**

- (a) For all projects proposing private permanent financing, a letter of intent is required (see **Appendix E**). This letter must be on lender's letterhead, must clearly state the term of the permanent loan is at least fifteen (15) years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property, and lien position. The interest rate must be fixed and no balloon payments may be due for fifteen years.
- (b) For all projects proposing public permanent financing, binding commitments on lender's letterhead are required to be submitted by the full application deadline (see **Appendix E**). Local governments also must identify the source of funding (e.g. HOME, trust fund). All loans must have a fixed interest rate and no balloon payments for at least fifteen (15) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.
- (c) The Agency may request a letter from a construction lender documenting the loan amount, interest rate, and any origination fees.
- (d) Any Owner Investment listed as a source cannot exceed \$10,000.
- (e) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility. Project cash flow may not be used as a source of funds.

**7. DEVELOPER FEES**

- (a) Developer fees shall be up to ~~\$26,000~~ ~~\$24,000~~ per unit for new construction projects and twenty-eight point five percent (28.5%) of PDC line item 4 for rehabilitation projects, both being set at award.
- (b) Contractor general requirements shall be limited to six percent (6%) of hard costs.

- (c) Contractor profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.
- (d) Where an identity of interest exists between the owner and contractor, the contractor profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).

8. CONSULTING FEES

The total amount of any consulting fees and developer fees shall be no more than the maximum developer fee allowed to that project.

9. ARCHITECTS' FEES

The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the PDC description). This amount does not include engineering costs.

10. INVESTOR SERVICES FEES

Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.

11. PROJECT CONTINGENCY FUNDING

All new construction projects shall have a hard cost contingency line item of five percent (5%) of total hard costs, including general requirements, contractor profit and overhead. Rehabilitation and adaptive re-use projects shall include a hard cost contingency line item of ten percent (10%) of total hard costs.

12. PROJECT OWNERSHIP

There must be common ownership between all units and buildings within a single project for the duration of the compliance period.

13. SECTION 8 PROJECT-BASED RENTAL ASSISTANCE

For all new construction projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits, unless the Applicant can provide the HUD approved contract or a letter of commitment outlining payment standards and terms for the project set forth by the governing body of the issuing agent. These limits are based on data published annually by HUD

14. WATER, SEWER, AND TAP FEES

Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the PDC description. Applications must provide letters from local provider(s) documenting either the amounts or if no fees will be charged.

**VII. POST-AWARD PROCESSES AND REQUIREMENTS**

**A. ALLOCATION TERMS AND REVOCATION**

- 1. At any time between award and issuance of IRS Form 8609, owners must have approval from the Agency prior to:
  - (a) changing the anticipated or final sources (amount, terms, or provider), including equity;
  - (b) increasing the anticipated or final uses by more than two percent (2%);

- (c) altering the designs approved by the Agency at full application, or local building code office, including amenities, site layout, floor plans and elevations (Approved Design);
- (d) starting construction, including sitework;
- (e) increasing rents for new construction units;
- (f) increasing rents for rehabilitation units above existing rents at time of award (rents shown in the approved application can be instituted once rehabilitation is complete);
- (g) occupying units;
- (h) any other change to the awarded application.

At its discretion, the Agency can request any documentation related to project costs. If an increase in uses or design alteration is due to a local government requirement, owners do not need prior approval but rather must provide the Agency with prompt written notice. Failure to comply with a requirement of this subsection may result in a fine of up to \$25,000, revocation of the reservation or allocation, future disqualification under Section IV(D)(3) of any Principal involved, or other recourse available to the Agency.

2. Ownership entities must submit a completed carryover agreement and expend at least ten percent (10%) of the project's reasonably expected basis, both by dates to be determined by the Agency.
3. IRS Form 8609 will not be issued until:
  - (a) submission of a Final Cost Certification by an independent auditor that complies with the Agency's requirements;
  - (b) the Agency determines the Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits has been recorded prior to all permanent financing in the Office of the Register of Deeds for the county where the project is located;
  - (c) the owner documents attendance at an Agency sponsored or approved tax credit compliance seminar sponsored within the previous 12 months (see **Appendix C** for list of approved seminars); the management agent documents attendance at an Agency sponsored tax credit compliance seminar within the previous 12 months;
  - (d) monitoring fees have been paid;
  - (e) the project has been built according to the Approved Design;
  - (f) the Agency determines the project has adhered to all representations made in the approved application and will meet all relevant Plan requirements;
  - (g) documentation of the ownership entity having paid all applicable state and local taxes for the most recent year due; and
  - (h) submission of a listing of the name and address for all contractors and subcontractors indicating if there exists an identity of interest with the Owner and a statement from each representing the entity will comply with all applicable employment rules and regulations.
4. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code. Projects will be required to elect a project-based allocation. An allocation does not constitute a representation or warranty by the Agency or Committee that the ownership entity or its owners will qualify for

the tax credits. The Agency's interpretation of the Code, regulations, notices, or other guidance is not binding on the federal government.

5. Owners must record, prior to all other liens against the property in the registry of deeds in the county where the project is located, a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating the owner will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code and will comply with other requirements under the Code, Plan, other relevant statutes and regulations, and all representations made in the approved application. The Extended Use Agreement also may contain other provisions as determined by the Agency. The owner must have good and marketable title and obtain the consent of any prior recorded lienholder (other than for construction financing) to be bound by the Extended Use Agreement terms. Owners may not claim tax credits in any taxable year unless the Extended Use Agreement is in effect and appropriately recorded.
6. The Agency may revoke an allocation if the owner fails to implement all representations in the approved application. In addition to the terms of Section VII(A)(1), owners will acknowledge that the following constitute conditions to their allocation:
  - (a) accuracy of all representations made to the Agency, including application uploads,
  - (b) adherence to the Plan and all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act,
  - (c) provision and maintenance of amenities for the benefit of the tenants, and
  - (d) not incurring a penalty under N.C.G.S. § 105-236 for failure to file a return, failure to pay taxes, or having a large tax deficiency (as defined under N.C.G.S. § 105-236). The Agency may request documentation demonstrating all project related taxes have been paid.

An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual consent. After any such cancellation, the owner will acknowledge that neither it nor the project will have any right to claim tax credits pursuant to the allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

#### B. COMPLIANCE MONITORING

1. Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, the Fair Housing Act, state laws, local codes, Agency loan documents, **Appendix F** (incorporated herein by reference), and any other legal requirements. The Agency may treat any failure to do so as a violation of the Plan.
2. The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and online reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**. The Agency will have access to any project information, including physical access to the property, all financial records and tenant information.
3. The Agency must approve all rent increases throughout the extended use period for properties receiving Agency funding and/or tax credits (see **Appendix F** for more information on rents and rent increases). In no event may rents exceed the published federal guidelines.

#### VIII. DEFINITIONS

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

4% Tax Credit: Low-income housing tax credits available pursuant to Section 42(h)(4) of the Code.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity considered under Section III(C)(7).

Choice-Limiting Activity: Includes leasing or disposition of real property and any activity that will result in a physical change to the property, including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction.

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the project, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Person who is Homeless: An adult who is living in places not meant for habitation (such as streets, cars, parks), emergency shelter, or in transitional or temporary housing but originally came from a place not meant for habitation or emergency shelter.

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from

the development fee of such project, and such amount earned exceeds the lesser of twenty-five percent (25%) of the development fee for such project or \$100,000, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the lesser of twenty-five percent 25% of the development fee for such project or \$100,000. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

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: Winnebago Industries Inc  
Applicant's Address: 605 W Crystal Lake Rd  
Forest City, IA 50436  
Application Date: September 23, 2026

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

Michael Happe, CEO  
Stacy Bogart, CLO  
Bryan Hughes, CFO

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: Joseph Co of NC LLC dba GreenGo Buggies  
Applicant's Address: 2370 US Hwy 220  
Stokesdale NC 27357  
Application Date: September 23, 2026

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

Joseph T White Jr, Managing Member

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

## TITLE 11 – DEPARTMENT OF INSURANCE

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rules cited as 11 NCAC 14 .0507, .0508, amend the rules cited as 11 NCAC 06A .0808, .0811, and repeal the rules cited as 11 NCAC 06A .0701-.0705.

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

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
[www.ncdoi.gov/insurance-industry/rules-rules-review-and-legislative-reports/rules](http://www.ncdoi.gov/insurance-industry/rules-rules-review-and-legislative-reports/rules)

**Proposed Effective Date:** March 1, 2027

### Public Hearing:

**Date:** November 9, 2026

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

**Location:** 3200 Beechleaf Ct. Hearing Room 211 Raleigh, NC 27604

**Reason for Proposed Action:** Session Law 2026-48, Part III, Section 66 recently amended G.S. 58-16-5, revising the conditions under which a foreign or alien insurance company may become licensed to do business in North Carolina and further directed the Department to adopt rules for implementation. The proposed adoptions of 11 NCAC 14 .0507-.0508 intend to establish consistent standards by which prospective applicants may demonstrate "successful conduct of business" and provides the agency with a uniform framework for evaluating foreign insurers' operating history and financial condition for licensing purposes.

Session Law 2025-46, Part 1, eliminated prelicensing education course requirements for insurance producer applicants to be eligible for licensure in North Carolina. The proposed repeals of 11 NCAC 06A .0701-.0705 and amendments to .0808 and .0811 remove such prelicensing requirements and preserve continuing education requirements for insurance producers licensed in the state.

**Comments may be submitted to:** Alisha Benjamin, 1201 Mail Service Center, Raleigh, NC 27699-1201; email [NCDOI.Rulemaking@ncdoi.gov](mailto:NCDOI.Rulemaking@ncdoi.gov)

**Comment period ends:** December 14, 2026

**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](mailto: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 ( $\geq$  \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

## CHAPTER 06 - AGENT SERVICES DIVISION

### SUBCHAPTER 06A - AGENT SERVICES DIVISION

#### SECTION .0700 - PRELICENSING EDUCATION

|                   |                        |
|-------------------|------------------------|
| 11 NCAC 06A .0701 | GENERAL REQUIREMENTS   |
| 11 NCAC 06A .0702 | PRELICENSING EDUCATION |
|                   | SCHOOLS                |
| 11 NCAC 06A .0703 | PROGRAM DIRECTORS      |
| 11 NCAC 06A .0704 | COURSES                |
| 11 NCAC 06A .0705 | INSTRUCTORS            |

Authority G.S. 58-2-40; 58-33-30(d); 58-33-35; 58-33-132.

#### SECTION .0800 - CONTINUING EDUCATION

**11 NCAC 06A .0808 INSTRUCTOR QUALIFICATION**  
(a) Continuing education providers shall certify that continuing education instructors meet the qualification requirement, which are the same as those for instructors as provided in 11 NCAC 06A .0705, except that the requirements as provided in Paragraph (b) of this Rule. The Commissioner may approve instructors, not meeting the qualifications as provided in Paragraph (b) of this Rule, who possessing possess specific areas of expertise to instruct courses comprising those areas of expertise.

(b) Each instructor must meet one of the following qualifications which shall be verified by the instructor's continuing education provider:

- (1) Accident and health or sickness; Medicare supplement insurance and long-term care insurance:
  - (A) Registered Health Underwriter (RHU);
  - (B) Certified Employee Benefits Specialist (CEBS);
  - (C) Registered Employee Benefits Consultant (REBC);
  - (D) Health Insurance Associate (HIA);
  - (E) Five years of full-time experience as an employee, agent, or broker interpreting or explaining policies covering accident and health or sickness insurance, Medicare supplement insurance, or long term care insurance; or
  - (F) Has an associate or bachelor's degree in insurance, or possesses education and experience determined by the Commissioner to be equivalent to either: (i) a baccalaureate or higher degree and at least two years of experience as an insurance instructor or as an educational administrator; or (ii) a baccalaureate degree or higher and at least six years of experience in the insurance industry with a minimum of two years of experience in insurance management.
- (2) Life insurance and annuities:
  - (A) Chartered Life Underwriter (CLU);
  - (B) Chartered Financial Consultant (ChFC);
  - (C) Fellow Life Management Institute (FLMI);
  - (D) Life Underwriter Training Council Fellow (LUTCF);
  - (E) Certified Employee Benefits Specialist (CEBS);
  - (F) Certified Financial Planner (CFP);
  - (G) Five years of full-time experience as an employee, agent, or broker interpreting or explaining life insurance policies, or annuities; or
  - (H) Has an associate or bachelor's degree in insurance, or possesses education and experience determined by the Commissioner to be equivalent to either: (i) a baccalaureate or higher degree and at least two years of experience as an insurance instructor or as an educational administrator; or (ii) a baccalaureate degree or higher and at least six years of experience in the insurance industry with a

minimum of two years of experience in insurance management.

- (3) Property insurance, casualty insurance, and personal lines:
  - (A) Chartered Property and Casualty Underwriter (CPCU);
  - (B) Accredited Advisor in Insurance (AAI);
  - (C) Associate in Risk Management (ARM);
  - (D) Certified Insurance Counselor (CIC);
  - (E) Five years of full-time experience as an employee, agent, or broker interpreting or explaining property insurance, casualty insurance, or personal lines policies; or
  - (F) Has an associate or bachelor's degree in insurance, or possesses education and experience determined by the Commissioner to be equivalent to either: (i) a baccalaureate or higher degree and at least two years of experience as an insurance instructor or as an educational administrator; or (ii) a baccalaureate degree or higher and at least six years of experience in the insurance industry with a minimum of two years of experience in insurance management.

~~(b)(c)~~ Insurance company trainers as instructors shall be full time salaried employees of the insurance company sponsoring the course and shall have as part of their full time responsibilities the duty to ~~provider~~ provide insurance company training.

~~(e)(d)~~ College and university instructors may be full time or adjunct faculty of the college or university, and shall be teaching a curriculum course in his or her field of expertise.

~~(d)(e)~~ The Commissioner shall require applicants and current instructors to ~~submit to~~ participate in a personal interview, provide a video or audio ~~tape~~, tape demonstrating course instruction, and submit a written history of courses taught or any other documentation that will verify the applicant's qualifications to instruct approved insurance courses.

~~(e)(f)~~ Temporary instructor authority shall be given to each qualified applicant. The instructor authority shall become permanent after six months unless otherwise denied, suspended, ~~terminated~~ terminated, or revoked by the Commissioner.

~~(f)(g)~~ As a condition to continued instructor qualification, providers shall ~~insure~~ ensure that each instructor teaches at least one prelicensing or continuing education course each calendar year.

~~(h)~~ The Commissioner shall deny, revoke, suspend, or terminate the approval of an instructor upon finding that:

- (1) The instructor fails to meet the criteria for approval provided by this Rule;
- (2) The instructor has failed to comply with statutes or rules regarding continuing education courses or providers;

- (3) The instructor's employment has been terminated by any approved provider on the grounds of incompetence or failure to comply with institutional policies and procedures;
- (4) The instructor provided false information to the Commissioner;
- (5) The instructor has, at any time, had an insurance license denied, suspended, revoked, or terminated by the Commissioner, or any other state insurance regulator, or has ever been required to return a license while under investigation;
- (6) The instructor has obtained or used, or attempted to obtain or use, in any manner or form, licensing examination questions under G.S. 58-33-30.

(i) In all proceedings to deny, revoke, suspend, or terminate approval of an instructor, the provisions of Chapter 150B of the General Statutes shall be applied.

(j) When an instructor's approval is discontinued, the procedure for reinstatement shall be to apply as a new instructor, with a statement of reasons that the applicant is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

*Authority G.S. 58-2-40; 58-33-130; 58-33-132.*

#### **11 NCAC 06A .0811      SANCTIONS      FOR NONCOMPLIANCE**

(a) If the license of any person lapses under G.S. 58-33-130(c), the license shall be reinstated when the person has completed the continuing education requirements and paid an administrative fee of seventy-five dollars (\$75.00) within four months after the end of the person's previous compliance year. If the person does not satisfy the requirements for licensure reinstatement within four months after the end of the person's previous compliance year, the person shall ~~complete the appropriate prelicensing education requirement and~~ pass the appropriate licensing examination, at which time the Commissioner shall reinstate the person's license.

(b) The Commissioner may suspend, revoke, or refuse to renew a license for any of the following causes:

- (1) Failing to respond to Department inquiries, including continuing education audit requests, within seven calendar days after the receipt of the inquiry or request.
- (2) Requesting an extension or waiver under false pretenses.
- (3) Refusing to cooperate with Department employees in an investigation or inquiry.

(c) The Commissioner may suspend, revoke, or refuse to renew a course provider's, presenters, or instructor's authority to offer courses for any of the following causes:

- (1) Advertising that a course is approved before the Commissioner has granted such approval in writing.
- (2) Submitting a course outline with material inaccuracies, either in length, presentation time, or topic content.

- (3) Presenting or using unapproved material in providing an approved course.
- (4) Failing to conduct a course for the full time specified in the approval request submitted to the Commissioner.
- (5) Preparing and distributing certificates of attendance or completion before the course has been approved.
- (6) Issuing certificates of attendance or completion before the completion of the course.
- (7) Failing to issue certificates of attendance or completion to any licensee who satisfactorily completes a course.
- (8) Failing to notify the Commissioner in writing of suspected or known violations of the North Carolina General Statutes or Administrative Code within 30 days after suspecting or knowing about the violations.
- (9) Violating the North Carolina General Statutes or Administrative Code.
- (10) Failing to monitor attendance and attention of attendees.
- (11) Preparing and distributing fraudulent certificates of attendance or completion.
- (12) Failing to ensure that the licensee completes the course hours approved by the Commissioner.
- (13) Failing to use qualified or approved instructors.
- (14) Refusing to cooperate with Department employees in an investigation or inquiry.

(d) Course providers and presenters are responsible for the activities of persons conducting, supervising, instructing, proctoring, monitoring, moderating, facilitating, or in any way responsible for the conduct of any of the activities associated with the course.

(e) The Commissioner may require any one of the following upon a finding of a violation of this Section:

- (1) Refunding all course tuition and fees to licensees.
- (2) Providing licensees with a course to replace the course that was found in violation.
- (3) Withdrawal of approval of courses offered by the provider, presenter, or instructor.

~~(f) Each year, the Commissioner shall verify each nonresident licensee's record through the NAIC Producer Data Base to ensure that the licensee has complied with the continuing education requirements in the licensee's home state. If the license lapses under G.S. 58-33-32, the Commissioner shall cancel the license.~~

*Authority G.S. 58-2-40; 58-33-125(a); 58-33-130; 58-33-132.*

#### **SECTION .0500 - ADMISSION OF A FOREIGN OR ALIEN INSURANCE COMPANY**

#### **11 NCAC 14 .0507      FOREIGN COMPANY MUST HAVE CONDUCTED SUCCESSFUL BUSINESS**

(a) In order to be eligible to do business in North Carolina pursuant to G.S. 58-16-5(2)(a), foreign insurance companies shall have profitable operations writing the same or similar lines of business as being requested in North Carolina for three

consecutive years immediately preceding the date of application for admission and must continue to reflect profitable operations throughout the admission process.

(b) For purposes of this section, the term "profitable operations" as reflected in the statement of financial condition filed with the Commissioner pursuant to G.S. 58-16-5(1) generally corresponds to "net underwriting gain" as reported on the National Association of Insurance Commissioners (NAIC) Health and Property/Casualty Annual Statement Blank, "net operating gain" as reported on the NAIC Title Annual Statement Blank, and "net gain from operations before dividends to policyholders, refunds to members and federal income taxes" as reported on the NAIC Life Annual Statement Blank.

*Authority S.L. 2026-48, s.66.(c); G.S. 58-2-40.*

#### **11 NCAC 14 .0508 WAIVERS OF THREE YEAR PROFITABLE OPERATIONS REQUIREMENT**

(a) If a foreign insurance company meets all other requirements for admission under G.S. 58-16-5, the Commissioner may waive the requirement for three consecutive years of profitable operations after considering mitigating factors, including, but not limited to, the following:

- (1) The foreign insurance company's surplus strength in relation to the business plan and financial forecast as provided with the application for admission;
- (2) The financial strength of a parent or affiliate insurer licensed in North Carolina, including the parent or affiliate insurer's North Carolina license duration, profitable operations, volume of consumer complaints, and market conduct examination findings;
- (3) The financial strength of the insurance holding company system, as defined in G.S. 58-19-5; and
- (4) A demonstrated market need for the lines of business to be offered in North Carolina.

(b) A foreign insurance company seeking a waiver as described in Paragraph (a) of this Rule shall provide additional information as part of its application for admission, including:

- (1) An audited financial statement for the most recent fiscal year end for the ultimate controlling person, as defined in G.S. 58-19-5, and any other affiliated entities that will have an obligation to ensure continued financial support of the foreign insurance company;
- (2) A copy of any guaranty agreements or capital maintenance agreements that exist between the foreign insurance company and the ultimate controlling person and/or other affiliated entities;
- (3) A narrative detailing the North Carolina market need for the lines of business to be written by the foreign insurance company, including any documentation to support the assertions made in the narrative; and

- (4) Any other information necessary to demonstrate a favorable financial condition for the Commissioner to approve a waiver.

*History Note: Authority S.L. 2026-48, s.66.(c); G.S. 58-2-40; 58-16-5; Eff. March 1, 2027.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g that the Department of Insurance intends to amend the rules cited as 11 NCAC 10 .0313, .0603, .1102, .1107-.1109, .1113, .1201, .1202, .1207, .1303, .1403, .1601-.1604, and readopt without substantive changes the rules cited as 11 NCAC 10 .0104, .0105, .0305-.0307, .0406, .0602, .0605, .0701, .0703, .0713, .0717, .1001-.1007, .1101, .1104-.1106, .1110-.1112, .1114, .1204-.1206, .1208, .1209, .1301, .1302, .1401, .1402, .1701, and .1702.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.*

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

**Proposed Effective Date:** April 1, 2027

**Public Hearing:**

**Date:** November 9, 2026

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

**Location:** 3200 Beechleaf Ct. Hearing Room 211 Raleigh, NC 27604

**Reason for Proposed Action:** *To update and readopt rules as part of the required periodic review process pursuant to NCGS 150B-21.3A.*

**Comments may be submitted to:** Alisha Benjamin, 1201 Mail Service Center, Raleigh, NC 27699-1201; email [NCDOI.Rulemaking@ncdoi.gov](mailto:NCDOI.Rulemaking@ncdoi.gov)

**Comment period ends:** December 14, 2026

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

## CHAPTER 10 - PROPERTY AND CASUALTY DIVISION

### 11 NCAC 10 .0104 REFUSAL TO INSURE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

### 11 NCAC 10 .0105 MANUSCRIPT OR INDIVIDUAL RISK FILINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

### 11 NCAC 10 .0305 EMPLOYEES: CARS: NOT INSURED IN EMPLOYER'S FLEET POLICY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

### 11 NCAC 10 .0306 DIVIDEND PAYMENT REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

### 11 NCAC 10 .0307 NATION-WIDE MARINE DEFINITION ADOPTED (READOPTION WITHOUT SUBSTANTIVE CHANGES)

### 11 NCAC 10 .0313 ENDORSEMENTS TO BUREAU RESIDENTIAL PROGRAMS

(a) For the purposes of G.S. 58-41-10(a), a "residential risk" is a risk covered under any of the following North Carolina Rate Bureau residential programs: Homeowners Program, Dwelling Fire and Extended Coverage Program, Mobile Home Owner (C) Program, and Mobile-Homeowners (F) Program.

(b) When an insurance company, joint underwriting association, ~~advisory organization~~, or rating statistical organization files an endorsement to attach to a North Carolina Rate Bureau residential program, which endorsement provides coverage that is not subject to the jurisdiction of the Bureau and is exempt from Article 41 of Chapter 58 of the General Statutes by virtue of G.S. 58-41-10(a), the filing entity shall:

- (1) provide a copy of the filing to the North Carolina Rate Bureau;
- (2) utilize a statistical code for reporting premiums and losses and advise on what line on page 14 of the annual statement this data will be reported;
- (3) complete a forms questionnaire; and
- (4) submit the rates separately without a rate questionnaire.

*Authority G.S. 58-2-40; 58-3-150; 58-40-30.*

## SECTION .0400 - FIRE AND CASUALTY RATING ORGANIZATIONS

### 11 NCAC 10 .0406 INSURER'S REPORT ON RATING ORGANIZATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

## SECTION .0600 - CONSENT TO RATE

### 11 NCAC 10 .0602 CONSENT TO RATE PROCEDURES: RATE BUREAU COVERAGES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

### 11 NCAC 10 .0603 CONSENT TO RATE PROCEDURES: COMMERCIAL COVERAGES

(a) An initial (first time) application to effect consent to rate on a specific risk of coverage subject to Article 40 of G.S. 58, in excess of the rate promulgated by a licensed ~~rating~~ rating statistical organization or filed by a company on its own behalf shall contain the following:

- (1) a description of the insurance proposed, including primary and excess limits, the amount of coverage, the property insured, the deductible, and any other factor used for rating, where applicable;
- (2) the rate and premium that would be charged without application of consent to rate;
- (3) the proposed rate and premium;
- (4) the percent increase. The rate to be charged shall be presumed reasonable if it does not exceed 250 percent of the rate that would be charged without application of consent to rate. Any proposed rate in excess of 250 percent is subject to review and approval by the Commissioner pursuant to G.S. 58-40-30(c);
- (5) the names and addresses of the insurer, the writing agent, and the insured;
- (6) the effective date of the proposed rate;
- (7) the policy period;
- (8) the policy number; and
- (9) a letter signed by the insured acknowledging and consenting to the proposed rate. If coverage for the specific risk written on consent to rate is available through a residual market (FAIR Plan, Beach Plan, North Carolina Reinsurance Facility, North Carolina Workers Compensation Insurance Plan), a statement signed by the insured acknowledging that fact must also be executed.

(b) If a policy for which the insured had consented to pay a higher premium rate is reinstated after a lapse, the insurer shall not have to obtain a signed statement from the insured under this Rule for the reinstatement.

(c) After a signed application is obtained by an insurer under this Rule for a policy, all subsequent changes in the policy shall be endorsements for the purposes of G.S. 58-40-30(c).

(d) If a particular kind of coverage is added to a policy by endorsement during the term of the policy and the added coverage is written at a higher rate under G.S. 58-40-30(c) and under this Rule, the insurer shall obtain the signature of the insured under this Rule no later than the next renewal of the policy.

(e) If an insured consents to pay a higher premium rate under G.S. 58-40-30(c) and this Rule, consent to rate is subsequently terminated, and the insured and insurer later enter into another consent to rate agreement, the insurer shall not be required to obtain the signature of the insured unless three years have elapsed since the termination of the original consent to rate agreement.

(f) All records generated under G.S. 58-40-30(c) and this Rule shall be maintained in accordance with the requirements of 11 NCAC 19 .0100.

*Authority G.S. ~~58-2-40(1)~~; ~~58-40-30(e)~~; ~~58-2-40~~; ~~58-40-30~~.*

**11 NCAC 10 .0605      CONSENT TO RATE AUTO  
LIABILITY COVERAGE      (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0700 - INSURANCE IN UNLICENSED  
FOREIGN AND ALIEN COMPANIES**

**11 NCAC 10 .0701      GENERAL INFORMATION  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .0703      APPROVAL OF INSURANCE IN  
NON-ADMITTED INSURANCE COMPANIES  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .0713      FORM E-1 (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .0717      SURPLUS LICENSEE REPORT  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .1000 - LICENSING OF JOINT  
UNDERWRITING ORGANIZATIONS**

**11 NCAC 10 .1001      GENERAL INFORMATION  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1002      PROCEDURE FOR  
APPLICATION OF NEW LICENSE (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1003      CHANGES IN FILED  
INFORMATION (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1004      PROHIBITED PRACTICES  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1005      INSURER'S REPORT ON  
UNDERWRITING ORGANIZATIONS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1006      FORM: LICENSE CERTIFICATE  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1007      RENEWAL LICENSE FEE FOR  
LICENSED ORGANIZATIONS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .1100 - RATE FILINGS**

**11 NCAC 10 .1101      PURPOSE (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1102      APPLICABILITY**

The following Subparagraphs indicate which Rules of this Section apply to a particular filing. All rate filings must be submitted separately and under independent cover from form filings.

- (1) Rule .1111 applies to all workers' compensation insurance rate filings made by the North Carolina Rate Bureau.
- (2) Rule .1104 applies to all nonfleet private passenger automobile insurance rate filings made by the North Carolina Rate Bureau or the North Carolina Reinsurance Facility.
- (3) Rule .1105 applies to all rate filings made by the North Carolina Rate Bureau other than those involving workers' compensation insurance or nonfleet private passenger automobile insurance.
- (4) Rule .1106 applies to all filings for deviations from the rates of the North Carolina Rate Bureau.
- (5) Rule .1107 applies to all rate filings (including those filings derived from filings of licensed ~~rating~~ statistical organizations), other than those involving:
  - (a) Lines of insurance under the jurisdiction of the North Carolina Rate Bureau.
  - (b) Nonfleet private passenger automobile insurance rates for the North Carolina Reinsurance Facility.
- (6) Rule .1108 applies to all rate filings described in Subparagraph (5) of this Rule that meet either or both of the following criteria:
  - (a) A filing for a coverage that involves an increase in one year greater than ten percent or a decrease greater than 20 percent.
  - (b) A filing for a coverage by a company whose market share is greater than ten percent.
- (7) In Subparagraph (6) coverage shall mean one of the following:
  - (a) Accountants' professional liability;
  - (b) Architects' and engineers' professional liability;
  - (c) Child care liability (other than such coverage sold incidental to another

- coverage, e.g., in homeowners' or commercial multiperil policies);
- (d) Dentists' professional liability;
  - (e) Directors', officers', and trustees' liability;
  - (f) Errors and omissions liability;
  - (g) Hospital premises liability;
  - (h) Hospital professional liability;
  - (i) Lawyers' professional liability;
  - (j) Liquor law liability;
  - (k) Municipal liability;
  - (l) Nurses' professional liability;
  - (m) Owners', landlords', and tenants' liability;
  - (n) Physicians' and surgeons' professional liability;
  - (o) Police professional liability;
  - (p) Pollution and environmental impairment liability;
  - (q) Products and completed operations liability;
  - (r) Public official liability;
  - (s) Public school liability;
  - (t) Recreational liability;
  - (u) Other health care specialties' professional liability;
  - (v) If not one of Subparagraphs (7)(a) through (7)(u) of this Rule, one of the lines listed on Page 14 of the Annual Statement.
- (8) Rule .1109 applies to all licensed ~~rating~~ statistical organizations participating in a filing made by the North Carolina Rate Bureau or the North Carolina Reinsurance Facility.
- (9) Rate filings are not required for the following lines of insurance:
- (a) Aviation physical damage;
  - (b) Mortgage guaranty;
  - (c) Ocean marine.
- (10) Rate filings are not required for the following types of policies:
- (a) Those written pursuant to the Surplus Lines Act;
  - (b) Those written under the Fair Access to Insurance Requirements (FAIR) Plan that include coverages other than crime insurance;
  - (c) Those written by the North Carolina Insurance Underwriting Association (the Beach Plan) that include coverages other than windstorm and hail only or crime insurance;
  - (d) Those written in North Carolina covering multistate insureds except in respect to coverages applicable to North Carolina locations;
  - (e) Those written by a town or county farmers' mutual fire insurance association restricting its operations to
- not more than six adjacent counties in this State;
- (f) Those that contain assessment provisions and that are written by domestic insurance companies, associations, orders, or fraternal benefit societies that are not reciprocals.
- (11) All inland marine manual rates and rating plans must be filed.
- (a) This Subparagraph applies to the manual rates and rating plans of both companies and ~~rating~~ statistical organizations.
  - (b) Rates and rating plans that are not contained in or derived from a manual need not be filed.
- (12) Rate filings are required for all rates whether advisory, suggested, or manual, except for those lines, policies, and rates specifically excluded in Subparagraphs (9), (10), and (11) of this Rule.
- (a) Rates applicable to only one particular risk must be filed.
  - (b) Rates may be filed either as manual rates or as ranges of rates from which the rates for individual insureds are determined.
  - (c) Rates based on loss cost filings must be filed in accordance with all the requirements of Rules .1107 and .1108 including the one that requires a comparison of current and proposed rates.
- (13) Rules .1107 and .1108 also apply to loss cost filings. In cases where a ~~rating~~ statistical organization files prospective loss costs, the same requirements as for rate filings apply, with the exception of those dealing with expense and profit provisions.
- (14) The rates contained in all filings approved prior to January 1, 1990, other than those made by the North Carolina Rate Bureau or the North Carolina Reinsurance Facility, shall have an expiration date of January 1, 1992. Such rates may, subject to the Department's approval, be automatically renewed by a letter to the Department, specifying the Department's file number and the original approval date. Thereafter, they remain in effect until superseded, withdrawn, or modified by a subsequent filing.
- (15) Loss costs, rates, or multipliers for workers' compensation and employers' liability that are based upon prospective loss costs filings of the North Carolina Rate Bureau shall be submitted in accordance with Rule .1110 of this Section.

*Authority* G.S. 58-2-40; 58-36-15; 58-36-30; 58-36-100; 58-40-30; 58-40-40; 58-41-50; 58-45-35; 58-46-15.

**11 NCAC 10 .1104 NONFLEET PRIVATE PASSENGER AUTOMOBILE (READOPTIO**  
**WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1105 OTHER RATE BUREAU LINES (READOPTIO**  
**WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1106 DEVIATIONS FROM RATES OF THE NORTH CAROLINA RATE BUREAU (READOPTIO**  
**WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1107 COMMERCIAL LINES QUESTIONNAIRE**

The information required by G.S. 58-41-50 for those lines of business described in 11 NCAC 10 .1102 (5) shall be submitted by the completion of a Rate/Loss Cost Filing Questionnaire and the necessary supplementary exhibits to which the questionnaire refers.

- (1) The Rate/Loss Cost Filing Questionnaire may contain the following information:
  - (a) Name of company/Licensed ~~rating~~ statistical organization;
  - (b) Filer's Federal Employer's number;
  - (c) Filer's file number;
  - (d) Type of filing;
  - (e) Line(s) of insurance, as shown on Page 14 of the Annual Statement;
  - (f) Subline/Program title;
  - (g) Type of policies involved;
  - (h) Reasons for the filing;
  - (i) Proposed effective date and rules of implementation;
  - (j) Filer's approximate market share of North Carolina written premium for the line(s) involved;
  - (k) Percentage rate change proposed;
  - (l) Estimated total dollar impact of the filing upon North Carolina policyholders;
  - (m) Whether the filing will increase the premium of any North Carolina policyholder;
  - (n) Type of premium data included;
  - (o) Exposure unit used;
  - (p) Type of loss data included;
  - (q) Permissible loss ratio, permissible loss and LAE ratio, or permissible loss, LAE, and fixed expense ratio;
  - (r) Whether any expenses are treated as fixed;
  - (s) Credibility information;
  - (t) Loss development information;
  - (u) Trend information;
  - (v) Underwriting profit information;
  - (w) Changes in methodologies;
  - (x) Certification of accuracy.

- (2) Also submit supplementary exhibits containing the following information:
  - (a) The effect of the proposed filing on active filings affecting the line or subline;
  - (b) A comparison of current and proposed rates;
  - (c) Five-year rate filing history;
  - (d) Premium and loss data (North Carolina and countrywide);
  - (e) Expense data (North Carolina and countrywide);
- (3) In filings derived from a rate filing made by a licensed ~~rating~~ statistical organization and in filings that incorporate without modification loss costs that have been filed by a licensed ~~rating~~ statistical organization, substitute a supplementary exhibit for the items in the questionnaire containing the information described in Subparagraphs (1)(n) through (1)(v).
  - (a) For both these types of filings, this exhibit shall contain the following information:
    - (i) The name of the licensed ~~rating~~ statistical organization;
    - (ii) The relationship of the company to the licensed ~~rating~~ statistical organization;
    - (iii) The applicable licensed ~~rating~~ statistical organization filing;
    - (iv) The type of licensed ~~rating~~ statistical organization filing;
    - (v) Eligibility requirements and restrictions applicable to the company's filing.
  - (b) In cases where the licensed ~~rating~~ statistical organization files final rates, this exhibit shall also identify the basis for the differences between the company's proposed rates and those filed by the ~~rating~~ statistical organization.
  - (c) In cases where the licensed ~~rating~~ statistical organization files loss costs, this exhibit shall also contain the following information:
    - (i) Permissible loss ratio, permissible loss and LAE ratio, or permissible loss, LAE, and fixed expense ratio;
    - (ii) Whether any expenses are treated as fixed;
    - (iii) An explanation of the derivation of the expense

- provisions and of their incorporation into the final rates;
- (iv) Underwriting profit information.
- (4) For loss cost filings made by licensed ~~rating~~ statistical organizations, the following modifications apply to the requirements in this Rule:
- (a) Substitute percentage loss cost change proposed in Subparagraph (1)(k).
  - (b) Omit the information described in Subparagraphs (1)(j) through (1)(n), (1)(q), (1)(r), and (1)(v) and the items in Subparagraph (1)(u) relating to premium trend.
  - (c) In the exhibit described in Subparagraph (2)(b), compare current and proposed loss costs.
  - (d) In the exhibit described in Subparagraph (2)(c), provide a five-year loss cost filing history.
  - (e) In the exhibit described in Subparagraph (2)(d), omit those items relating to premium.
  - (f) Omit the exhibit described in Subparagraph (2)(e).
- (5) For installment premium payment plan filings, substitute a different questionnaire, containing the following information:
- (a) Name of Company/Licensed ~~rating~~ statistical organization;
  - (b) Filer's Federal Employer Number;
  - (c) Filer's file number;
  - (d) Type of filing;
  - (e) Line(s) of insurance;
  - (f) Reasons for the filing;
  - (g) Proposed effective date and rules of implementation;
  - (h) Filer's approximate market share of North Carolina written premium for the line(s) involved;
  - (i) Percentage rate change proposed;
  - (j) Estimated total dollar impact of the filing upon North Carolina policyholders;
  - (k) A comparison of the current and proposed installment fees;
  - (l) Filer's distribution of number of policies and premium by installment payment options;
  - (m) Certification of accuracy.

addition to the Rate Filing Questionnaire described in Rule .1107 of this Section, that all or part of the information required by G.S. 58-41-50(e) shall be presented as follows:

Note: If the data required by this Rule are not being collected or are not readily available to insurers prior to January 1, 1990, the insurers shall commence collecting such data as of July 1, 1990. Such required data as have accrued shall be included in each filing until enough data are available to fully satisfy this Rule. If in addition to the full years of data specified in any of the below requests, more recent data of less than a full year are available, that data shall also be provided. If updates to the information requested below become available before a decision is reached on the filing, they shall also be provided. Such data are for ratemaking purposes only and should be collected only by those companies to whom this regulation will apply. If any part of the data requested is inapplicable to the review of a particular filing and is therefore excluded, an explanation for the exclusion shall be given. If the filing is being made by a ~~rating~~ statistical organization using all or part of the data of its member or subscriber companies, the information provided shall be aggregate or industrywide information and the individual companies whose data is being used shall be identified. If the filing is being made by an individual company and is based on an approved filing made by a ~~rating~~ statistical organization, that approved filing shall be identified and also the aspects that the company is incorporating in its own filing. It is not necessary to reproduce the data included in the ~~rating~~ statistical organization's filing.

- (1) North Carolina premium, loss and loss adjustment experience:
  - (a) For each coverage, premium at present rates shall be calculated. Indicate how such calculations were produced and supply supporting documentation for a sample of such calculations and an explanation of any aggregate factors used.
  - (b) Information from the Annual Statement on losses and premiums shall be included. Provide such information separately from the latest five Annual Statements for the individual line(s) affected by the filing:
    - (i) North Carolina Page 14;
    - (ii) Part 2;
    - (iii) Part 2B;
    - (iv) Part 3A.
  - (c) The following information on overall rate level for individual coverages shall be calculated or estimated:
    - (i) The experience rating plan and schedule rating plan off-balance;
    - (ii) The average deviation from bureau rates;
    - (iii) The average dividend granted.

*Authority G.S. 58-2-40; 58-41-50.*

**11 NCAC 10 .1108 NONESSENTIAL LINES  
ADDITIONAL DATA**

For those filings meeting one or more of the criteria described in Rule .1102(5) of this Section, the Commissioner may request, in

If the filing involves a rate change for a particular classification or territory, rather than an overall statewide rate change, the same information shall be calculated or estimated for that class or territory.

- (d) For each coverage and each year used in setting the overall rate level, the following information on dollars of incurred losses shall be provided:
    - (i) Paid losses;
    - (ii) Case basis reserves;
    - (iii) Loss development;
    - (iv) Incurred allocated loss adjustment expense (if collected separately from losses);
    - (v) Incurred unallocated (or combined allocated and unallocated) loss adjustment expense;
    - (vi) Applied trend factor;
    - (vii) Trended total incurred losses and LAE.
  - (e) Whenever North Carolina or countrywide losses are separated into excess (catastrophe) and nonexcess (noncatastrophe) losses, a clear description and explanation of the standard used to separate such losses shall be included. In determining an excess (catastrophe) loading, supply as many years of data as possible. If the number of years used differs from the number available, provide an explanation. Also provide an explanation if the data from which the excess loading is derived differs from that on which the rate level change is based.
  - (f) Territorial and class rate calculations shall include earned premiums, incurred losses, and the number of claims for each of the years used to determine relativities.
- (2) Credibility factor development and application. All relevant information related to the derivation of credibility factors contained in the filing shall be provided. Include the following information:
  - (a) A description of all data reviewed and of all worksheets used;
  - (b) A complete description of the methodology used to derive the factors;
  - (c) A description of alternative methodologies used or considered for use in the last three years;
  - (d) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- (e) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
  - (f) Details on the application of the methodology to this filing.
- (3) Loss development factor development and application.
  - (a) All relevant information related to the derivation of the loss development factors contained in the filing shall be provided. Include the following information:
    - (i) A description of all data reviewed and of all worksheets used;
    - (ii) A complete description of the methodology used to derive the factors;
    - (iii) A description of alternative methodologies used or considered for use in the last three years;
    - (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
    - (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
    - (vi) Details on the application of the methodology to this filing.
  - (b) If accident, report, or notice year data is used in the rate filing, provide for each coverage sufficient total limits paid loss development data so that at least five loss development factors can be calculated for each interval for which there has been significant historical development. Also provide the corresponding loss development factors and five-year average factors derived from the data.
  - (c) The same information in Subparagraph (b) of this Paragraph for basic and total limits incurred losses.
  - (d) The same information in Subparagraph (b) of this Paragraph for number of paid claims.
  - (e) The same information in Subparagraph (b) of this Paragraph for number of outstanding claims.
  - (f) A statement regarding any strengthening or weakening of

- company reserves that has occurred in the last five years. (If the filing is by a ~~rating~~ statistical organization, include statements from the ten largest writers of the coverage in North Carolina whose data has been included in the filing.)
- (4) Trending factor development and application:
- (a) Available trend data (both countrywide and for North Carolina) for the latest available five years shall be provided for all coverages.
- (b) All relevant information related to the derivation of the trend factors contained in the filing should be provided. Include the following information:
- (i) A description of all data reviewed and of all worksheets used;
- (ii) A complete description of the methodology used to derive the factors;
- (iii) A description of alternative methodologies used or considered for use in the last three years;
- (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
- (vi) Details on the application of the methodology to this filing.
- (5) Changes in premium base and exposures:
- (a) Data on the mix of policies by different policy terms shall be submitted. For the latest five years, include both the number of policies and the amount of earned premium for different policy terms.
- (b) Data on changes in distribution of insureds by class and territory shall be submitted. Submit all information available on such groupings for the latest five years.
- (c) Data on changes in any inflation sensitive premium bases for the coverage during the latest five years shall also be included.
- (6) Limiting factor development and application. Information on the following items shall be provided:
- (a) Limitations on losses included in the statistical data used in the filing;
- (b) Limitations on the extent of the rate level change by coverage or subline;
- (c) Limitations on the extent of territorial and class rate changes;
- (d) Any other limitations applied.
- (7) Expenses:
- (a) All relevant information related to the derivation of the expense factors contained in the filing should be provided. Include the following information:
- (i) A description of all data reviewed and of all worksheets used;
- (ii) A complete description of the methodology used to arrive at the selected loading;
- (iii) A description of alternative methodologies used or considered for use in the last three years;
- (iv) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
- (v) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
- (vi) Details on the application of the methodology to this filing.
- (b) Earned premium and paid and incurred unallocated loss adjustment expenses for each of the latest five years shall be included. If available, provide such information by coverage.
- (c) The number of paid and incurred claims and allocated loss adjustment expenses (if such are available separately from losses) for each of the last five years shall also be included. If available, provide such information by coverage.
- (d) For all incurred (or paid) loss adjustment expense data contained in the filing, the related incurred (or paid) losses shall be shown.
- (e) A statement regarding any company expense cutting activities undertaken in the last five years shall be provided. (If the filing is by a ~~rating~~ statistical organization, include statements from the ten largest writers of the coverage in North Carolina whose data has been included in the filing.)

- (8) The percent rate change:
- (a) The overall statewide rate change shall be estimated as well as the changes from the previous filing in each of the following: experience, annual trend factors, the expense provisions, the tax provision, and the underwriting profit and contingency provision. Also identify any recent law changes that have affected the calculation of the overall rate level and estimate their impact.
  - (b) The information described in Subparagraph (a) of this Paragraph shall also be estimated by coverage or subline.
- (9) Proposed rates:
- (a) Proposed rates for each territory, classification, and coverage shall be provided. (In filings involving a large number of possible rates, information on rating factors and their application may be substituted for the actual rates.)
  - (b) An explanation of how territorial average rates and classification rates are determined shall be included. Also provide a sample calculation for each.
- (10) Investment earnings. Information on anticipated investment income is necessary to establish the provision for underwriting profit in the rates.
- (a) Information on the amount of investment income earned on loss, loss expense, and unearned premium reserves in relation to earned premium for a particular line in North Carolina shall be calculated for the latest two years and estimated for the current year and all years during which the proposed rates will be in effect. Calculations shall be provided in detail including the amount of the reserves of each type at the beginning and end of each of the specified years.
  - (b) Information on the payout pattern of North Carolina losses shall be included, including information on the estimated average length of time that elapses between the occurrence of an insured loss and the payment of a claim. The average shall be a weighted average based on size of claim payments. Indicate how the length has changed in recent years.
  - (c) To evaluate recent insurer profitability, provide the following information separately from the latest two Annual Statements: (If the filing is for more than one company, composite information shall be provided).
    - (i) Page 2 (Assets);
    - (ii) Page 3 (Liabilities, Surplus and Other Funds);
    - (iii) Page 4 (Underwriting and Investment Exhibit);
    - (iv) Exhibit I (Analysis of Assets).
- (11) Identification and Certification of Statistical Plans:
- (a) All statistical plans used or consulted in preparing this filing shall be identified. Also describe the data compiled by each plan.
  - (b) A certification that all the data utilized in the rate filing was collected in accordance with such plans and is a true and accurate representation on the company's experience to the best of its knowledge shall also be provided.
- (12) Investment Earnings on Capital and Surplus. Given the selected underwriting profit and contingencies loadings contained in the filing, indicate the resulting rate of return on equity capital, on total assets, and on assets assigned to insurance operations including consideration of investment income. Show the derivation of all factors used in producing the calculations. Provide justification that these rates of return are reasonable and fair.
- (13) Level of Capital/Surplus Needed:
- (a) Premium to surplus ratios for the latest five calendar years shall be shown.
  - (b) Estimates of comparable ratios for the years during which the rates will be in effect shall also be provided.
  - (c) Any methodology used to allocate surplus to individual lines or coverages shall be described.
- (14) Other Information. All relevant information related to the derivation of the profit and contingencies loading contained in the filing shall be provided. Include the following information:
- (a) A description of all data reviewed and of all worksheets used;
  - (b) A complete description of the methodology used to arrive at the selected loading;
  - (c) A description of alternative methodologies used or considered for use in the last three years;
  - (d) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;

- (e) Specific details regarding the application of these criteria in the selection of a methodology for this filing;
  - (f) Details on the application of the methodology to this filing.
- (15) Additional information. The Commissioner may require such other available information as he deems necessary for a proper review of the rate filing.

*Authority G.S. 58-2-40; ~~58-41-50(e); 58-41-50.~~*

**11 NCAC 10 .1109 RATING STATISTICAL ORGANIZATIONS**

All ~~rating~~ statistical organizations participating in a filing submitted by the North Carolina Rate Bureau or the North Carolina Reinsurance Facility shall provide the following items to the Department within 30 days after the filing has been made:

- (1) General information. A description of all agendas and minutes of meetings of the ~~rating~~ statistical organization affecting the filing explicitly, or implicitly through the adoption of a countrywide procedure.
- (2) Selection of methodologies. The following information regarding credibility factors, loss development factors, trending factors, overhead expenses, and profitability shall be provided whenever the ~~rating~~ statistical organization derives these factors for the Rate Bureau: (If the filing itself contains the information requested in all or some of the lettered sections, reference to the location of that information is sufficient).
  - (a) A description of all data reviewed and worksheets used;
  - (b) A complete description of the methodology used to arrive at the selected loading;
  - (c) A description of alternative methodologies used or explicitly considered for use by the ~~rating~~ statistical organization in other states in the last three years;
  - (d) A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;
  - (e) Specific details regarding the application of these criteria in the selection of a methodology for this filing.
  - (f) Details on the application of the methodology to this filing.
- (3) Profit and contingency loading. Information shall also be provided on the underwriting profit and contingencies loading of all filings in which the ~~rating~~ statistical organization has participated within the last five years in other states. For all such filings, list the state, the

underwriting profit and contingencies loading submitted, any explicit loading approved, and the effective date of the rates.

*Authority G.S. 58-2-40; 58-2-190.*

**11 NCAC 10 .1110 WORKERS' COMPENSATION LOSS COSTS QUESTIONNAIRE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1111 WORKERS' COMPENSATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1112 ACTUARIAL CERTIFICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1113 REFERENCE FILINGS**

With the exception of flood insurance written in accordance with Federal Emergency Management Agency requirements, or with the requirements of any successor agency, rate filings, including loss costs multipliers, by reference are not permitted. Adoption of rates and loss costs that have been promulgated by a licensed bureau, licensed ~~rating~~ statistical organization, ~~licensed advisory organization~~, licensed joint underwriting association, or licensed reinsurance organization, of which the insurer is a member, subscriber, or service purchaser, are not deemed to be reference filings.

*Authority G.S. 58-2-40; 58-36-15; 58-36-65; 58-36-70; 58-36-100; 58-40-30; 58-41-50.*

**11 NCAC 10 .1114 TRANSMITTAL HEADER (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .1200 - FORMS FILINGS**

**11 NCAC 10 .1201 GENERAL REQUIREMENTS**

- (a) Insurers, ~~licensed advisory~~ statistical organizations, joint underwriting associations, and reinsurance organizations shall submit form filings under independent cover separate from rate and rule filings, which shall be made under 11 NCAC 10 .1100. Forms intended for use in this state shall be filed with the Commissioner for approval prior to their use.
- (b) Each insurer, ~~licensed advisory~~ statistical organization, joint underwriting organization and reinsurance organization shall display a unique identifier on each form filed that differentiates that form from all other forms filed with the Commissioner by that insurer, ~~licensed advisory~~ statistical organization, joint underwriting association, or reinsurance organization.
- (c) Applications or declarations pages that are used with policy forms shall be submitted to and approved by the Commissioner.

*Authority G.S. 58-2-40; 58-3-150; 58-6-5; 58-36-55; 58-37-35; 58-41-50; 58-44-15; 58-45-45; 58-46-55.*

**11 NCAC 10 .1202 REFERENCE FILINGS**

With the exception of Flood Insurance written in accordance with Federal Emergency Management Agency (FEMA) requirements, form filings by reference are not permitted. If an insurer adopts a

form that has been promulgated by a licensed bureau, ~~licensed advisory statistical~~ organizations, licensed joint underwriting association, or licensed reinsurance organization of which the insurer is a member, subscriber or service purchaser, the adoption of that form is not deemed to be a reference filing.

*Authority G.S. 58-2-40; 58-3-150; 58-36-55; 58-37-35; 58-41-50; 58-44-15; 58-45-45; 58-46-55.*

**11 NCAC 10 .1204 PROHIBITED POLICY PROVISIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1205 ESSENTIAL LINES - N.C. RATE BUREAU (BUREAU) (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1206 COMMERCIAL LINES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1207 FORM(S) QUESTIONNAIRE**

All Property and Casualty Insurance Companies shall submit the following information with all forms filings on a form prescribed by the commissioner:

- (1) name of the filer;
- (2) Federal Employer's 11 Digit Number;
- (3) filer's file number;
- (4) program title;
- (5) line(s) of insurance;
- (6) how many new forms and/or revised forms are being filed;
- (7) list all old form(s) being withdrawn and department file number(s);
- (8) explain the purpose(s) of this filing;
- (9) list the states where this filing has been made;
- (10) action taken by domiciliary state if form has been filed in that state;
- (11) list the states that have approved this filing;
- (12) list the states that disapproved this filing and reason(s) for disapproval;
- (13) copies of all required modifications referred to in Paragraph (12) of this Rule;
- (14) if the filing is similar or identical to a filing made with the N.C. Department of Insurance by a licensed bureau or licensed ~~rating~~ statistical organization, complete the following:
  - (a) name of affiliated bureau or rating organization;
  - (b) name of bureau or ~~rating~~ statistical organization program;
  - (c) identification number of bureau of ~~rating~~ statistical organization program;
  - (d) are you a member, subscriber or service purchaser.
- (15) if the filing is similar or identical to a filing made with the N.C. Department of Insurance by a licensed insurance company in North Carolina, give the N.C. Insurance Department

file number and approval date. Also, describe the difference(s) if any, between your form(s) and those of the previously approved program;

- (16) computer printed declarations pages should be completed in "John Doe" fashion;
- (17) proposed effective date and rule of implementation;
- (18) a certification of the accuracy of the filing by an officer of the company or head of the filings department.

*Authority G.S. 58-2-40; 58-2-190; 58-3-150; 58-41-50.*

**11 NCAC 10 .1208 HEALTH CARE PROVIDER DEFINED; CGL POLICIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1209 TRANSMITTAL HEADER (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .1300 - NORTH CAROLINA JOINT UNDERWRITING ASSOCIATION**

**11 NCAC 10 .1301 RATES: RATING PLANS: RATING RULES AND FORMS APPLICABLE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1302 CHANGE TO RATES: RATING PLANS: RATING RULES: FORMS APPLICABLE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1303 LOSS COST RATE FILINGS**  
 If the North Carolina Rate Bureau or the ~~ISO Commercial Risk Services, Insurance Services Office, Inc.~~ makes a loss cost rate filing that requires the N.C. Joint Underwriting Association to make a filing in order to have final rates, the Association must make its filing within 60 days after the loss cost filing is a proper filing, as defined in G.S. 58-41-50(b) and (c), and is announced as available for use by the respective ~~rating~~ statistical organization.

*Authority G.S. 58-2-40; 58-46-55.*

**SECTION .1400 - NORTH CAROLINA INSURANCE UNDERWRITING ASSOCIATION**

**11 NCAC 10 .1401 RATES: RATING PLANS: RATING RULES AND FORMS APPLICABLE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1402 CHANGES TO RATES: RATING PLANS: RATING RULES: FORMS APPLICABLE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1403 LOSS COST RATE FILINGS**  
 If the North Carolina Rate Bureau or ~~ISO Commercial Risk Services, Insurance Services Office, Inc.~~ makes a loss cost rate filing that requires the N.C. Insurance Underwriting Association to make a filing in order to have final rates, the Association must make its filing within 60 days after the loss cost filing is a proper

filing, as defined in G.S. 58-41-50(b) and (c), and is announced as available for use by the respective ~~rating~~ statistical organization.

*Authority G.S. 58-2-40; 58-45-45.*

## **SECTION .1600 - PROSPECTIVE LOSS COSTS FILINGS**

### **11 NCAC 10 .1601 PURPOSE; SCOPE; APPLICABILITY**

(a) This Section specifies the system under which ~~rating~~ statistical organizations and their participating insurers that elect to adopt a prospective loss cost system will operate. Under this system, ~~rating~~ statistical organizations shall not develop or file advisory final rates, but shall develop and file advisory prospective loss costs and supporting actuarial and statistical data. Each insurer must independently and individually determine and file the rates it will use. Rating Statistical organizations will continue to develop and file rules, relativities, and supplementary rating information on behalf of their participating insurers.

(b) 11 NCAC 10 .1603 applies when a ~~rating~~ statistical organization files advisory prospective loss costs. 11 NCAC 10 .1604 applies when a ~~rating~~ statistical organization files supplementary rating information. 11 NCAC 10 .1603 and 11 NCAC 10 .1604 both apply when a ~~rating~~ statistical organization files both advisory prospective loss costs and supplementary rating information. Each of these submittals shall be treated separately because different procedures will apply.

(c) Nothing in this Section requires ~~rating~~ statistical organizations to cease filing advisory rates or prevents their participating insurers from adopting such rates. Rating Statistical organizations that desire to file rates shall complete a rate filing questionnaire according to 11 NCAC 10 .1107.

(d) This Section does not apply to nonfleet private passenger motor vehicle, homeowners, or dwelling fire insurance.

*Authority G.S. 58-2-40; 58-36-15; 58-37-35; 58-40-30; 58-41-50; 58-45-45; 58-46-55.*

### **11 NCAC 10 .1602 DEFINITIONS**

As used in this Section:

- (1) "Developed losses" means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss (including loss adjustment expenses) payments.
- (2) "Expenses" means that portion of a rate attributable to acquisition, field supervision, and collection expenses; general expenses; and taxes, licenses, and fees.
- (3) "Loss cost multipliers" means provisions for expenses, profit, and variations in loss experience added by an individual insurer to prospective loss costs in order to produce final rates.
- (4) "Loss trending" means any procedure for projecting developed losses to the average date

of loss for the period during which the policies are to be effective.

- (5) "Prospective loss costs" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit; and that is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.
- (6) "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with loadings for expenses, profit, and variations in loss experience; prior to any application of individual risk variations based on loss or expense considerations. "Rate" does not include minimum premiums.
- (7) "~~Rating~~ Statistical organization" includes a joint underwriting organization or a joint reinsurance organization.
- (8) "Supplementary rating information" includes any rating information other than rates by territory and by class; including but not limited to classification and territory definitions, various rating rules, increased limits factors, experience rating plans, and minimum premiums.

*Authority G.S. 58-2-40; 58-36-15; 58-37-35; 58-40-30; 58-41-50; 58-45-45; 58-46-55.*

### **11 NCAC 10 .1603 RATE AND LOSS COSTS**

(a) A ~~rating~~ statistical organization may develop and file a reference filing with the Department, which filing shall contain the advisory prospective loss costs, the underlying loss data, and other supporting statistical and actuarial information for any calculations or assumptions underlying those loss costs.

(b) After a reference filing has been made with the Department and determined by the Commissioner to be proper, the ~~rating~~ statistical organization shall provide its participating insurers with a copy of the reference filing.

(c) A ~~rating~~ statistical organization may print and distribute manuals of prospective loss costs, as well as supplementary rating information as described in 11 NCAC 10 .1604. After an initial prospective loss costs reference filing has been made by a ~~rating~~ statistical organization and has been determined by the Commissioner to be proper, that ~~rating~~ statistical organization shall no longer file any minimum premiums in this State.

(d) Each insurer must individually determine the final rates it will file and the effective date of any rate changes through an independent company decision-making process.

(e) If an insurer that is a member, subscriber, or service purchaser of a ~~rating~~ statistical organization decides to use the prospective loss costs in a proper reference filing in support of its own filing, the insurer must submit a proper rate filing in accordance with 11 NCAC 10 .1107. In that filing, the insurer shall provide justification for the loss cost multipliers used in producing the

final rates. The insurer's rates are the combination of the prospective loss costs and the insurer's loss cost multipliers.

(f) If an insurer files a modification of the prospective loss costs in a proper reference filing based on its own anticipated experience, supporting documentation shall be required.

(g) An insurer may vary expense loads by individual classification, grouping or subline of insurance. An insurer may use variable or fixed expense loadings or a combination of these to establish its expense loadings.

(h) If an insurer wishes to use a minimum premium of any type, a proper rate filing must be submitted to the Department.

(i) An insurer may file such other information that it deems to be relevant and shall provide such other information that is requested by the Department.

(j) An insurer may have its loss costs multiplier remain on file with the Department and reference all subsequent prospective loss costs reference filings. Upon receipt of subsequent ~~rating~~ statistical organization reference filings, the insurer's rates shall be the combination of the prospective loss costs and the loss cost multiplier on file with the Department, and will be effective on or after the effective date of the prospective loss costs. The insurer need not file anything further with the Department.

(k) If an insurer that has filed to have its loss costs multiplier remain on file with the Department intends to delay, modify, or not adopt a particular ~~rating~~ statistical organization's reference filing, the insurer must make a filing with the Department before the effective date of the reference filing.

(l) To the extent that an insurer's final rates are determined solely by applying its loss costs multiplier to the prospective loss costs contained in a ~~rating~~ statistical organization's reference filing and printed in the ~~rating~~ statistical organization's manual, the insurer need not develop or file its final rate pages with the Department.

(m) If an insurer has filed to have its loss cost multiplier remain on file, applicable to subsequent reference filings, and a new proper reference filing is filed:

- (1) If the insurer decides to use the prospective loss costs and effective date as filed, the insurer shall not file anything with the Department. The insurer's rates shall be the combination of the prospective loss costs and the on-file loss cost multiplier. The new rates shall become effective on the effective date of the loss costs.
- (2) If the insurer decides to use the prospective loss costs as filed, but with a different effective date, the insurer must notify the Department of its effective date before the effective date of the loss costs.
- (3) If the insurer decides to use the prospective loss costs, but wishes to change its loss cost multiplier, the insurer must make another filing in accordance with Paragraphs (d) through (f) of this Rule before the effective date of the loss costs.
- (4) If the insurer decides not to revise its rates using the prospective loss costs, the insurer must notify the Department before the effective date of the loss costs.

(n) If the insurer has not elected to have its loss cost multiplier remain on file, applicable to the future prospective loss cost reference filings, and a new proper reference filing shall be filed:

- (1) If the insurer decides to use the prospective loss costs to revise its rates, the insurer must file with the Department a rate filing in accordance with Paragraphs (d) through (f) of this Rule, including the effective date of the rates.
- (2) If an insurer decides not to use the revisions, the insurer is not required to make any filing with the Department.

*Authority* G.S. 58-2-40; 58-36-15; 58-37-35; 58-40-30; 58-41-50; 58-45-45; 58-46-55.

## **11 NCAC 10 .1604 SUPPLEMENTARY RATING INFORMATION**

(a) A ~~rating~~ statistical organization may submit a proper rate filing to the Department containing a revision of rules, relativities, or other supplementary rating information, on behalf of those insurers that have authorized the ~~rating~~ statistical organization to make such submittal on their behalves. A ~~rating~~ statistical organization may print and distribute manuals of rules, relativities, and other supplementary rating information, excluding minimum premiums.

(b) When an insurer has authorized a ~~rating~~ statistical organization to file on its behalf, and a new filing of rules, relativities, and other supplementary rating information is filed and determined to be proper:

- (1) If the insurer decides to use the revisions and effective date as filed, the insurer is not required to make a filing with the Department.
- (2) If the insurer decides to use the revisions as filed but with a different effective date, the insurer must notify the Department before the ~~rating~~ statistical organization's effective date.
- (3) If the insurer decides to use the revisions with modifications, the insurer must file supporting data for the changes with the Department for review and specify the basis for the modifications. This must be done before the ~~rating~~ statistical organization's effective date.
- (4) If the insurer decides not to use the revisions, the insurer must notify the Department before the ~~rating~~ statistical organization's effective date.

*Authority* G.S. 58-2-40; 58-36-15; 58-37-35; 58-40-30; 58-40-40; 58-41-50; 58-45-45.

## **SECTION .1700 - LICENSING OF STATISTICAL ORGANIZATIONS**

### **11 NCAC 10 .1701 GENERAL REQUIREMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 10 .1702      PROCEDURE FOR  
APPLICATION OF NEW LICENSE (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL  
QUALITY**

*Notice* is hereby given in accordance with G.S. 150B-21.3A(c)(2)g that the Environmental Management Commission intends to readopt with substantive changes the rule cited as 15A NCAC 02D .0101, and readopt without substantive changes the rules cited as 15A NCAC 02D .0103-.0105, .0201, .0202, .0301-.0307, .2001-.2005, and .2201-.2205.

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.deq.nc.gov/about/divisions/water-resources/water-resources-commissions/environmental-management-commission/emc-proposed-rules>

**Proposed Effective Date:** March 1, 2027

**Public Hearing:**

**Date:** December 1, 2026\*

**Time:** 6:00 p.m.

**Location:** 1st Floor Training Room (#1210), DEQ Green Square Office Building, 217 West Jones Street, Raleigh, NC 27603, or virtually using Cisco WebEx, Digital Hearing Link: <https://tinyurl.com/Group0and1>

\*This public hearing will be held at the same time and location as the public hearing for the NAAQS Petition and Group 0 rules, which are also published in this Register. The two hearings will occur consecutively."

Meeting Password: NCDAQ

Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code. US TOLL +1-415-655-0003, Access code: 2422 476 9276

If you wish to speak at the digital public hearing, you must register, provide the required information, and follow instructions on ways to join the public hearing. Registration must be completed by 4:00 PM on December 1, 2026. To register, please click the following link:

<https://forms.cloud.microsoft/g/PHASD5mXNx>

\*For instructions on ways to join the public hearing, please refer to the following link: <https://www.deq.nc.gov/about/boards-and-commissions/how-attend-webex-meeting-0>

\*If you have technical difficulties, the following automated voicemail has been set up to receive your verbal comments: 919-707-8430

**Reason for Proposed Action:** To receive comments on the proposed readoption of air quality rules in 15A NCAC 02D Sections .0100, .0200, .0300, .2000, and .2200 (Group 1), pursuant to the requirements of Session Law (S.L.) 2013-413 and North Carolina General Statute (N.C.G.S.) 150B-21.3A, and the associated regulatory impact analysis. In Group 1, a total of 22 rules are proposed for readoption without any change or without substantive changes, and 1 rule is proposed for readoption with

substantive changes. On September 10, 2026, the Environmental Management Commission approved proceeding to public comment on the proposed amendments. The text of the rules and regulatory impact analysis are available on the DAQ website: <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>.

**Comments may be submitted to:** Katherine Quinlan, 217 West Jones St., 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8702; email [daq.publiccomments@deq.nc.gov](mailto:daq.publiccomments@deq.nc.gov) (Please type "Group 1" in subject line)

**Comment period ends:** December 14, 2026

**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](mailto: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 ( $\geq$  \$1,000,000)
- ☒ Approved by OSBM
- ☒ No fiscal note required

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02D - AIR POLLUTION CONTROL  
REQUIREMENTS**

**SECTION .0100 - DEFINITIONS AND REFERENCES**

**15A NCAC 02D .0101      DEFINITIONS**

The definition of any word or phrase used in Rules of this Subchapter is the same as given in Article 21, G.S. 143, as amended. The following words and phrases, which are not defined in the article, have the following meaning:

- (1) "Act" means Article 21, G.S. 143, entitled "Water and Air Resources."
- (2) "Administrator" means, when it appears in any Code of Federal Regulation incorporated by reference in this Subchapter, the Director of the Division of Air Quality unless:

- (a) a specific rule in this Subchapter specifies otherwise; or
- (b) the U.S. Environmental Protection Agency, in a delegation or approval, states that a specific authority of the Administrator of the Environmental Protection Agency is not included in such a delegation or approval.
- (3) "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive substance or matter emitted into or otherwise entering the ambient air.
- (4) "Ambient air" means that portion of the atmosphere outside buildings or other enclosed structures, stacks, or ducts and that surrounds human, animal, or plant life or property.
- (5) "Approved" means approved by the Director of the Division of Air Quality according to these Rules.
- (6) "Capture system" means the equipment including hoods, ducts, and fans, used to contain, capture, or transport a pollutant to a control device.
- (7) "CFR" means the Code of Federal Regulations.
- (8) "Combustible material" means any substance that, when ignited, will burn in air.
- (9) "Commission" means the North Carolina Environmental Management Commission as defined in G.S. 143B-282.
- ~~(9)~~(10) "Construction" means change in method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance ~~of a facility status. The following activities shall not be considered construction:~~
  - ~~(a) clearing and grading~~
  - ~~(b) building access roads, driveways, and parking lots;~~
  - ~~(c) building and installing underground pipe work, including water, sewer, electric, and telecommunications utilities; or~~
  - ~~(d) building ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required pursuant to G.S. 143-215.108.~~
- ~~(10)~~(11) "Control device" means equipment, including fume incinerator, adsorber, absorber, scrubber, filter media, cyclone, and electrostatic precipitator, used to destroy or remove an air pollutant before discharge to the ambient air.
- ~~(11)~~(12) "Day" means a 24-hour period beginning at midnight.
- ~~(12)~~(13) "Director" means the Director of the Division of Air Quality, unless otherwise specified.
- ~~(13)~~(14) "Division" means Division of Air Quality.
- ~~(14)~~ "Dustfall" ~~means particulate matter that settles out of the air. Dustfall shall be expressed in units of grams per square meter per 30 day period.~~
- (15) "Emission" means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.
- (16) "Facility" means all of the pollutant-emitting activities, ~~except transportation facilities, complex sources as defined in G.S. 143-213,~~ that are located on one or more adjacent properties under common control.
- (17) "FR" means the Federal Register.
- (18) "Fugitive emission" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (19) "Fuel burning equipment" means equipment whose primary purpose is the production of energy or power from the combustion of any fuel. Uses of the equipment include heating water, generating or circulating steam, heating air as in a warm air furnace, or furnishing process heat by transferring energy by fluids or through process vessel walls.
- (20) "Garbage" means any animal or vegetable waste resulting from the handling, preparation, cooking, or serving of food.
- (21) "Incinerator" means a device designed to burn solid, liquid, or gaseous waste material.
- (22) "Opacity" means that property of a substance tending to obscure vision and is measured as percent obscuration.
- (23) "Open burning" means any fire whose products of combustion are emitted directly into the outdoor atmosphere without passing through a stack or chimney, approved incinerator, or other similar device.
- (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (25) "Particulate matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid at standard conditions.
- (26) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.
- (27) "Permitted" means any source subject to a permit under this Subchapter or 15A NCAC 02Q.
- (28) "Person" as defined in G.S. 143-212 includes any individual, partnership, co-partnership, firm, company, corporation, association, joint

- stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent, or assigns.
- (29) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by methods specified in this Subchapter.
- (30) "PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by methods specified in this Subchapter.
- (31) "PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by methods specified in this Subchapter.
- (32) "Refuse" means any garbage, rubbish, or trade waste.
- (33) "Rubbish" means solid or liquid wastes from residences, commercial establishments, or institutions.
- (34) ~~"Rural area" means an area that is devoted to the following uses: agriculture, recreation, wildlife management, state park, or any area of natural cover.~~
- (35)(34) "Salvage operation" means any business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material, including metal, chemicals, motor vehicles, shipping containers, or drums.
- (36)(35) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash, and other burned or unburned residue of combustible materials that form a visible plume.
- (37)(36) "Source" means any stationary article, machine, process equipment, or other contrivance, singly or in combination, or any tank-truck, trailer, or railroad tank car, from which air pollutants emanate or are emitted, either directly or indirectly.
- (38)(37) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids, and the salts of their acids.
- (39) ~~"Transportation facility" means a complex source as defined in G.S. 143-213(22).~~
- (40)(38) "Total suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne as measured by methods specified in this Subchapter.
- (41)(39) "Trade ~~wastes~~ waste " means ~~all~~ any solid, liquid, or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the operation of any business, trade, or industry including plastic products, paper, wood, glass, metal, paint,

grease, oil and other petroleum products, chemicals, and ashes.

(42)(40) "ug" or "µg" means micrograms.

*Authority G.S. 143-213; 143-215.3(a)(1).*

#### **15A NCAC 02D .0103 COPIES OF REFERENCED FEDERAL REGULATIONS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

Copies of the Code of Federal Regulations sections referred to in this Subchapter may be obtained free of charge online at <https://www.govinfo.gov/app/collection/cfr/>. <https://www.ecfr.gov>. Copies of referenced rules are also available for public inspection at Department of Environmental Quality regional offices upon ~~request~~ request and free of charge. The contact information for the regional offices is provided on the Division of Air Quality website at <https://deq.nc.gov/about/divisions/air-quality/regional-offices> <https://www.deq.nc.gov/about/divisions/air-quality/about-air-quality/daq-organizational-structure/air-quality-regional-offices>.

*Authority G.S. 143-215.3; 150B-21.6.*

#### **15A NCAC 02D .0104 INCORPORATION BY REFERENCE (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

(a) If referred to in this Subchapter, the following materials shall be incorporated in this Subchapter by reference:

- (1) a regulation codified in the Code of Federal Regulations (CFR); and
- (2) a method established by the American Society for Testing and Materials (ASTM).

(b) The Code of Federal Regulations and American Society for Testing and Materials methods incorporated by reference in this Subchapter shall include subsequent amendments and editions unless a rule specifies otherwise.

(c) The Code of Federal Regulations is available in electronic form free of charge at <https://www.gpo.gov/fdsys/search/home.action>. <https://www.ecfr.gov>.

(d) The American Society for Testing and Materials methods may be purchased from <https://www.astm.org/>. Purchase price varies according to the particular test method and format chosen, and the cost of the materials are set forth at <https://www.astm.org/>.

*Authority G.S. 150B-21.6.*

#### **15A NCAC 02D .0105 MAILING LIST (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

(a) The Division shall develop and maintain a mailing list of persons who have requested notification of rule-making as required by G.S. ~~150B-21.2(d)~~ 150B-21.2(d). Such persons shall receive a copy of the complete notice as filed with the Office of Administrative Hearings.

(b) Any person requesting to be on a mailing list established under Paragraph (a) of this Rule shall submit a written request to the Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina, 27699-1641. Payment of fees required under this

Rule may be by check or money order for thirty dollars (\$30.00) made payable to the Department of Environmental Quality. Payment shall be submitted with each request and received by June 1 of each year. The fee covers from July 1 to June 30 of the following year. A person requesting to be on the list for notification of rule-making may opt to receive notification via email free of charge by contacting Division staff as shown at <https://deq.nc.gov/about/divisions/air-quality/air-quality-planning>.

*Authority G.S. 143-215.3(a)(1); 150B 21.2(d).*

## **SECTION .0200 - AIR POLLUTION SOURCES**

### **15A NCAC 02D .0201 CLASSIFICATION OF AIR POLLUTION SOURCES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

(a) Purpose. This Rule establishes a system for classifying air pollution sources. The Commission shall use the system for classifying air pollution sources set forth in this Rule to classify air pollution sources governed by this Subchapter.

(b) Scope. This Rule shall apply to all air pollution sources, both combustion and non-combustion. The following system for classifying air pollution sources shall be used:

- (1) "Class I-C" includes all sources of air pollution using fuel-burning equipment for the production of heat to generate electricity for public use.
- (2) "Class II-C" includes all sources of air pollution using fuel-burning equipment for the production of steam, and for other process uses at commercial and industrial establishments.
- (3) "Class III-C" includes all sources of air pollution using fuel-burning equipment for comfort heating at institutional, commercial, or industrial establishments, or at apartment houses having a central heating system serving more than four apartments.
- (4) "Class IV-C" includes all sources of air pollution that burn trash, rubbish, refuse, or similar materials in incinerators, teepee burners, or similar devices.
- (5) "Class V-C" includes all sources of air pollution using fuel-burning equipment for comfort heating that are not included in Class III-C.
- (6) "Class VI-C" includes all sources of air pollution using internal combustion engines.
- (7) "Class I-I" includes all sources of air pollution resulting from industrial plants engaged in the manufacture of chemicals or allied products whose processes depend on the chemical reaction of two or more elements or compounds, and includes plants producing acids, fertilizer materials, dyestuff, synthetic fibers, and industrial gases.
- (8) "Class II-I" includes all sources of air pollution resulting from industrial plants engaged in the production of pulp and paper.

- (9) "Class III-I" includes all sources of air pollution resulting from the mining and processing of minerals, stone, clay, and cement products, and includes phosphate ore, mica and feldspar operations, stone quarries and crushers, cement plants, concrete mixing plants, and masonry block plants.
- (10) "Class IV-I" includes all sources of air pollution resulting from industrial operations using petroleum products, and includes asphalt mix plants, roofing felt plants, and petroleum products storage areas.
- (11) "Class V-I" includes all sources of air pollution resulting from furniture, lumber, or wood product plants.
- (12) "Class VI-I" includes all sources of air pollution resulting from textile manufacturing, textile dyeing, or finishing plants.
- (13) "Class VII-I" includes all sources of air pollution resulting from the shelling, drying, storage, ginning, and processing of tobacco, corn, soybeans, peanuts, cotton, fruits, vegetables, or other agricultural products.
- (14) "Class VIII-I" includes all sources of air pollution resulting from industries engaged in the processing of metals, and includes smelting, casting foundries, metal working, and other similar operations.
- (15) "Class IX-I" includes all sources of air pollution resulting from slaughtering and processing of meat, poultry, fish, and similar products and from rendering or the recovering of by-products of these operations.
- (16) "Class X-I" includes all sources of air pollution resulting from industries which do not fall within the classifications described in Subparagraphs (b)(7) through (b)(15) of this Rule.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4).*

### **15A NCAC 02D .0202 REGISTRATION OF AIR POLLUTION SOURCES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

(a) The Director may require the owner or operator of a source of air pollution to register that source, pursuant to G.S. ~~143-215.107(a)(4)~~. 143-215.107(a)(4).

(b) Any person required to register a source of air pollution with the Division shall register the source on forms provided by the Division and shall provide the following information:

- (1) the name of the person, company, or corporation operating the sources;
- (2) the address, location, and county;
- (3) principal officer of the company;
- (4) quantities and kinds of raw materials used;
- (5) process flow sheets;
- (6) operating schedules;
- (7) total weights and kinds of air pollution released;
- (8) types and quantities of fuels used;

- (9) stack heights; and
- (10) other information considered essential in evaluating the potential of the source to cause air pollution.

The forms shall be completed and returned to the Division within 60 days following their receipt.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4).*

## **SECTION .0300 - AIR POLLUTION EMERGENCIES**

### **15A NCAC 02D .0301 PURPOSE (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

Notwithstanding any other provisions of air pollution control regulations or standards, this Section is designed to prevent the excessive buildup of air contaminants during air pollution episodes thereby preventing the occurrence of an emergency due to the effects of these contaminants on the public health.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

### **15A NCAC 02D .0302 EPISODE CRITERIA (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

The Director may issue a proclamation of an air pollution alert, air pollution warning, or air pollution emergency if the Director determines that the accumulation of air contaminants in any place is attaining or has attained levels that could, if such levels are sustained or exceeded, lead to a threat to the health of the public. In deciding whether to issue such a proclamation, the Director shall be guided by the following criteria:

- (1) ~~Alert.~~ The air pollution alert level is that concentration of pollutants at which first stage control actions are to begin. The Secretary of the Department of Environmental Quality with the concurrence of the Governor shall proclaim an air pollution alert when any of the following levels is reached at any monitoring site and meteorological conditions are such that pollutant concentrations can be expected to remain at or exceed above levels for 12 or more hours or, in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken:
  - (a) sulfur dioxide -- 800  $\mu\text{g}/\text{m}^3$  (0.3 ppm), 24-hour average;
  - (b) carbon monoxide -- 17  $\mu\text{g}/\text{m}^3$  (15 ppm), eight-hour average;
  - (c) ozone -- 400  $\mu\text{g}/\text{m}^3$  (0.2 ppm), one-hour average;
  - (d) nitrogen dioxide -- 1130  $\mu\text{g}/\text{m}^3$  (0.6 ppm), one-hour average; 282  $\mu\text{g}/\text{m}^3$  (0.15 ppm), 24-hour average; or
  - (e) ~~PM10 -- 350  $\mu\text{g}/\text{m}^3$~~  PM10 -- 350  $\mu\text{g}/\text{m}^3$ , 24-hour average.
- (2) ~~Warning.~~ The air pollution warning level indicates that air quality is continuing to degrade and that additional abatement actions are necessary. The Secretary of the Department of Environmental Quality with the concurrence

of the Governor shall proclaim ~~a~~ an air pollution warning when any one of the following levels is reached at any monitoring site and meteorological conditions are such that pollutant concentrations can be expected to remain at or exceed above levels for 12 or more hours or, in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken:

- (a) sulfur dioxide -- 1600  $\mu\text{g}/\text{m}^3$  ~~(0.6 ppm), 24-hour average~~ (0.6 ppm), 24-hour average;
  - (b) carbon monoxide -- 34  $\mu\text{g}/\text{m}^3$  (30 ppm), eight-hour average;
  - (c) ozone -- 800  $\mu\text{g}/\text{m}^3$  (0.4 ppm), one-hour average;
  - (d) nitrogen dioxide -- 2260  $\mu\text{g}/\text{m}^3$  (1.2 ppm), one-hour average; 565  $\mu\text{g}/\text{m}^3$  (0.3 ppm), 24-hour average; or
  - (e) ~~PM10 -- 420  $\mu\text{g}/\text{m}^3$~~  PM10 -- 420  $\mu\text{g}/\text{m}^3$ , 24-hour average.
- (3) ~~Emergency.~~ The air pollution emergency level indicates that air quality is continuing to degrade to a level that the most stringent control actions are necessary. The Secretary of the Department of Environmental Quality with the concurrence of the Governor shall declare an air pollution emergency when any one of the following levels is reached at any monitoring site and meteorological conditions are such that pollutant concentrations can be expected to remain at or exceed above levels for 12 or more hours or, in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken:
- (a) sulfur dioxide -- 2100  $\mu\text{g}/\text{m}^3$  ~~(0.8 ppm)~~ (0.8 ppm), 24-hour average;
  - (b) carbon monoxide -- 46  $\mu\text{g}/\text{m}^3$  (40 ppm), eight-hour average;
  - (c) ozone -- 1000  $\mu\text{g}/\text{m}^3$  (0.5 ppm), one-hour average;
  - (d) nitrogen dioxide -- 3000  $\mu\text{g}/\text{m}^3$  (1.6 ppm), one-hour average; 750  $\mu\text{g}/\text{m}^3$  ~~(0.4 ppm), p.p.m.)~~, 24-hour average; or
  - (e) ~~PM10 -- 500  $\mu\text{g}/\text{m}^3$~~  PM10 -- 500  $\mu\text{g}/\text{m}^3$ , 24-hour average.
- (4) ~~Termination.~~ After a proclamation has been issued, any level reached by application of these criteria shall remain in effect until the criteria for that level are no longer met. At that time the next lower level shall remain in effect until the criteria for that level are no longer met.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

### **15A NCAC 02D .0303 EMISSION REDUCTION PLANS (READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

- (a) ~~Air Pollution Alert.~~ Any When an air pollution alert is proclaimed pursuant to 15A NCAC 02D .0302, any person

responsible for the operation of a source of air pollution described in 15A NCAC 02D .0305 shall take all air pollution alert actions required for that source and shall put into effect the preplanned abatement program that is required by 15A NCAC 02D .0304 for an air pollution alert.

~~(b) Air Pollution Warning. Any~~ When an air pollution warning is proclaimed pursuant to 15A NCAC 02D .0302, any person responsible for the operation of a source of air pollution described in 15A NCAC 02D .0306 shall take all air pollution warning actions required for that source and shall put into effect the preplanned abatement program that is required by 15A NCAC 02D .0304 for an air pollution warning.

~~(c) Air Pollution Emergency. Any~~ When an air pollution emergency is proclaimed pursuant to 15A NCAC 02D .0302, any person responsible for the operation of a source of air pollution described in 15A NCAC 02D .0307 shall take all air pollution emergency actions required for that source and shall put into effect the preplanned abatement program that is required by 15A NCAC 02D .0304 for an air pollution emergency.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

**15A NCAC 02D .0304 PREPLANNED ABATEMENT PROGRAM (READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

(a) Any person who is responsible for the operation of a source of air pollution that is described in 15A NCAC 02D .0305, .0306, or .0307 or that emits 100 tons per year or more of any one pollutant shall prepare an abatement program plan to reduce the emissions of air pollutants into the outdoor atmosphere during periods of an air pollution episode as described in 15A NCAC 02D .0302. The plan shall be consistent with good industrial practices and safe operating procedures. When the Director requests that the plan be submitted for review, the owner or operator of the source shall submit the plan within 30 days of the Director's request.

(b) When requested by the Commission in writing, any person responsible for the operation of a source not described in 15A NCAC 02D .0305, .0306, or .0307 shall prepare a plan to reduce the emissions of air pollutants into the outdoor atmosphere during periods of air pollution alert, air pollution warning, and air pollution emergency as described in 15A NCAC 02D .0302. The plan shall be consistent with good industrial practices and safe operating procedures.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

**15A NCAC 02D .0305 EMISSION REDUCTION PLAN: ALERT LEVEL (READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

~~(a) General. During an air pollution alert proclaimed pursuant to 15A NCAC 02D .0302, the following provisions shall apply:~~

- (1) There shall be no open burning of any material otherwise allowed under 15A NCAC 02D .1900.
- (2) The use of incinerators for the disposal of any form of solid waste shall be limited to the hours between noon and 4:00 p.m.

- (3) Persons operating fuel burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of noon and 4:00 p.m.

- (4) Persons operating motor vehicles should eliminate all unnecessary operations.

~~(b) Source Curtailment. Any~~ During an air pollution alert proclaimed pursuant to 15A NCAC 02D .0302, any person responsible for the operation of a source of air pollution shall take all required control actions for the alert level that are listed below:

- (1) Operators of coal or oil fired electric power generating facilities shall:
  - (A) use fuels having low ash and sulfur content,
  - (B) perform boiler lancing and soot blowing between noon and 4:00 p.m., and
  - (C) divert electric power generation to facilities outside of the alert area;
- (2) Operators of coal or oil fired process steam generating facilities shall:
  - (A) use fuels having low ash and sulfur content,
  - (B) perform boiler lancing and soot blowing between noon and 4:00 p.m., and
  - (C) reduce steam load demands consistent with continuing plant operation;
- (3) Operators of manufacturing industries of the following classifications: primary metals industry; petroleum refining and related industries; chemical and allied products industries; paper and allied products industries; glass, clay, and concrete products industries shall:
  - (A) reduce air pollutants from manufacturing operations by curtailing, postponing, or deferring production and related operations;
  - (B) defer trade waste disposal operations that emit particles, gases, vapors, or malodorous substances;
  - (C) reduce heat-load demands for processing; and
  - (D) perform boiler lancing or soot blowing between noon ~~to~~ and 4:00 p.m. ~~p.m.;~~ and
- (4) Other persons requested by the Commission to prepare a preplanned abatement program shall take all required control actions for the alert level contained in their program plan.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

**15A NCAC 02D .0306 EMISSION REDUCTION PLAN: WARNING LEVEL (READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

~~(a) General. During an air pollution warning proclaimed pursuant to 15A NCAC 02D .0302, the following provisions shall apply:~~

- (1) There shall be no open burning of any material otherwise allowed under 15A NCAC 02D .1900.
- (2) The use of incinerators for the disposal of solid waste or liquid waste shall be prohibited.
- (3) Persons operating fuel-burning equipment which requires boiler lancing or soot blowing shall perform such operations only between noon and 4:00 p.m..
- (4) Persons operating motor vehicles should minimize their use through car pools and increased use of public transportation.

- (4) Other persons requested by the Commission to prepare a preplanned abatement program shall take all required control actions for the warning level contained in their program plan.

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

**15A NCAC 02D .0307 EMISSION REDUCTION PLAN:  
EMERGENCY LEVEL (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

(a) ~~General~~ During an air pollution emergency proclaimed pursuant to 15A NCAC 02D .0302, the following provisions shall apply:

- (1) There shall be no open burning of any material otherwise allowed under 15A NCAC 02D .1900.
- (2) The use of incinerators for the disposal of any form of solid or liquid waste shall be prohibited.
- (3) All places of employment described below shall cease operations:
  - (A) mining and quarrying of nonmetallic minerals;
  - (B) all manufacturing establishments except those required to have in force a preplanned abatement program for an air pollution emergency;
  - (C) all construction work involving grading or other operations that generate dust;
  - (D) all wholesale and retail establishments except pharmacies and stores primarily engaged in the sale of food;
  - (E) all commercial and manufacturing establishments, automobile repair services and garages, laundries, barbershops, beauty shops, and motion picture theaters; and
  - (F) elementary and secondary schools, colleges, universities, and professional schools.
- (4) The use of motor vehicles is prohibited except in emergencies with the approval of local or state police.

(b) ~~Source Curtailment. Any~~ During an air pollution emergency proclaimed pursuant to 15A NCAC 02D .0302, any person responsible for the operation of a source of air pollution shall take all required control actions for the emergency level that are listed below: in Subparagraphs (1) through (4) of this Paragraph.

- (1) Operators of coal- or oil-fired electric power generating facilities shall:
  - (A) use fuels having lowest ash and sulfur content;
  - (B) perform boiler lancing or soot blowing between noon ~~to~~ and 4:00 p.m.; and
  - (C) divert electric power generation to facilities outside of emergency ~~area~~; area.
- (2) Operators of coal- or oil-fired process steam generating facilities shall:

(b) ~~Source Curtailment. Any~~ During an air pollution warning proclaimed pursuant to 15A NCAC 02D .0302, any person responsible for the operation of a source of air pollution shall take all required control actions for the warning level that are listed below:

- (1) Operators of coal or oil fired electric power generating facilities shall:
  - (A) use fuels having the lowest ash and sulfur content;
  - (B) perform boiler lancing and soot blowing between noon ~~to~~ and 4:00 p.m.; and
  - (C) divert electric power generating to facilities outside of the warning area;
- (2) Operators of coal or oil fired process steam generating facilities shall:
  - (A) use fuels having the lowest ash and sulfur content;
  - (B) perform boiler lancing and soot blowing between noon ~~to~~ and 4:00 p.m.;
  - (C) reduce steam load demands consistent with continuing plant operations; and
  - (D) prepare to use the preplanned abatement program for emergency level;
- (3) Operators of manufacturing industries of the following classifications: primary metal industries; petroleum refining and related industries; chemical and allied products industries; paper and allied products industries; glass, clay, and concrete products industries shall:
  - (A) reduce air pollutants from manufacturing operations by, if necessary, assuming reasonable economic hardship by postponing production and related operations;
  - (B) defer trade waste disposal operations that emit particles, gases, vapors, or malodorous substances;
  - (C) reduce heat-load demands for processing consistent with continuing plant operations; and
  - (D) perform boiler lancing or soot blowing between noon ~~to~~ and 4:00 p.m.; and

- (A) reduce heat and steam demands to that necessary to prevent equipment damage;
  - (B) perform boiler lancing and soot blowing between noon and 4:00 p.m.; and
  - (C) take the action called for in the preplanned abatement ~~program~~; program.
- (3) Operators of manufacturing industries of the following classifications: primary metals industries; petroleum refining and related industries; chemical and allied products industries; paper and allied products industries; glass, clay, and concrete products industries shall:
- (A) eliminate air pollutants from manufacturing operations by ceasing, curtailing, postponing, or deferring production and related operations to the extent possible without causing injury to persons or damage to equipment;
  - (B) eliminate air pollution from trade waste disposal processes which emit particles, gases, vapors, or malodorous substances;
  - (C) reduce heat-load demands for processing to the minimum; and
  - (D) perform boiler lancing or soot blowing between 12:00 p.m. ~~to~~ and 4:00 p.m. ~~p.m.; and~~
- (4) Other persons requested by the Commission to prepare a preplanned abatement program shall take all required control actions for the emergency level contained in their program plan.
- (2) Mount Pleasant, New Gilead, Odell, Poplar Tent, and Rimertown in Cabarrus County;
  - (3) townships of Crowders Mountain, Dallas, Gastonia, Riverbend, and South Point in Gaston County;
  - (4) townships of Davidson and Coddle Creek in Iredell County;
  - (5) townships of Catawba Springs, Lincolnton, and Ironton in Lincoln County;
  - (6) all townships in Mecklenburg County;
  - (7) townships of Atwell, China Grove, Franklin, Gold Hill, Litaker, Locke, Providence, Salisbury, Steele, and Unity in Rowan County; and
  - (8) townships of Goose Creek, Marshville, Monroe, Sandy Ridge, and Vance in Union County.
- (c) This Section shall apply to the emissions of:
- (1) particulate matter in areas identified in 40 CFR 81.334 as nonattainment or that have been redesignated attainment and are current maintenance areas for fine particulate (PM<sub>2.5</sub>); ~~or~~ and
  - (2) volatile organic compounds or nitrogen oxides in areas identified in 40 CFR 81.334 as nonattainment or that have been redesignated attainment and are current maintenance areas for ozone.
- (d) For Federal Highway Administration/Federal Transit Administration (FHWA/FTA) projects or regionally-significant State or local projects that meet the standards set forth in Paragraphs (b) and or (c) of this Rule, this Section shall apply to:
- (1) the adoption, acceptance, approval, or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation;
  - (2) the adoption, acceptance, approval, or support of transportation improvement programs or amendments to transportation improvement programs pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation; ~~or~~ and
  - (3) the approval, funding, or implementation of FHWA/FTA projects.

Conformity determinations are not required under this Section for individual projects that are not FHWA/FTA projects. However, 40 CFR 93.121 shall apply to these projects if they are ~~regionally significant~~ regionally-significant projects.

(e) This Section applies to maintenance areas for 20 years from the date the Environmental Protection Agency approves the area's request under Section 107(d) of the Clean Air Act for redesignation to attainment or until the effective date of revocation of the conformity requirements for the ~~NAAQS~~ national ambient air quality standard by EPA.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).*

*Authority G.S. 143-215.3(a)(1); 143-215.3(a)(12).*

## SECTION .2000 - TRANSPORTATION CONFORMITY

### 15A NCAC 02D .2001 PURPOSE, SCOPE AND APPLICABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

(a) ~~The purpose of this~~ This Section ~~is~~ establishes procedures to assure the conformity of transportation plans, programs, and projects that are developed, funded, or approved by the United States Department of Transportation and by metropolitan planning organizations or other recipients of funds under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.), or State or Local only sources of funds, with all plans required of areas designated as nonattainment or maintenance under 40 CFR 81.334 for the pollutants specified therein or listed in Paragraph (c) of this Rule.

(b) This Section shall apply to the emissions of volatile organic compounds and nitrogen oxides in the following areas:

- (1) townships of Central Cabarrus, Concord, Georgeville, Harrisburg, Kannapolis, Midland,

**15A NCAC 02D .2002 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

For the purposes of this Section, the definitions contained in 40 CFR 93.101 and the following definitions apply:

- (1) "Regionally-significant project" means a ~~transportation project (other project, other than an exempt project under 40 CFR—93.126) 93.126,~~ that is on a facility that serves regional transportation ~~needs (such needs, such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls and sports complexes, or transportation terminals as well as most terminals themselves) themselves,~~ and would be included in the modeling of a metropolitan area's transportation network, including all principal arterial highways and all fixed guide-way transit facilities that offer an alternative to regional highway travel.
- (2) "Regionally-significant State or local project" means any highway or transit project that is a ~~regionally—significant regionally-significant~~ project and that is proposed to receive only non-federal funding assistance or approval through the State or any local program.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).*

**15A NCAC 02D .2003 TRANSPORTATION CONFORMITY DETERMINATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

(a) Conformity analyses, determinations, and redeterminations for transportation plans, transportation improvement programs, FHWA/FTA projects, and regionally-significant State or local ~~regionally-significant~~ projects shall be made according to the requirements of 40 CFR 93.104 and shall comply with the applicable requirements of 40 CFR 93.119, 93.120, 93.124, 93.125, and 93.126. For the purposes of this Rule, regionally-significant State or local projects shall be subject to the same requirements under 40 CFR Part 93 as FHWA/FTA projects except that State Environmental Policy Act procedures and requirements shall be substituted for National Environmental Policy Act procedures and requirements. Regionally-significant State or local projects subject to this Section for which the State Environmental Policy Act process and a conformity determination have been completed may proceed toward implementation without further conformity determination unless more than three years have elapsed since the most recent major ~~step (State step occurred. Major steps include State Environmental Policy Act process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications, and estimates) occurred. estimates.~~ All phases of these projects considered in the conformity determination shall also be included if these phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

(b) Before making a conformity determination, the metropolitan planning organizations, local transportation departments, North Carolina Department of Transportation, United States Department

of Transportation, Division of Air Quality, local air pollution control agencies, and United States Environmental Protection Agency shall consult with each other on matters described in 15A NCAC 02D .2005. Consultation shall begin as early as possible in the development of the emissions analysis used to support a conformity determination. The agency that performs the emissions analysis shall make the analysis available to the Division of Air Quality and at least 21 days shall be allowed for review and comment on the emissions analysis. The 21-day review period shall begin upon receipt of the analysis by the Director of the Division of Air Quality. After review by the Division of Air Quality, the approving agency shall seek public comments in accordance with its public participation policy. The agency making the conformity determination shall address all written comments received prior to close of the public comment period, and these comments and responses thereto shall be included in the final document. If the Division of Air Quality disagrees with the resolution of its comments, the conflict may be escalated to the Governor within 14 days and shall be resolved in accordance with 40 CFR 93.105(d). The 14-day appeal period shall begin upon receipt by the Director of the Division of Air Quality of the metropolitan planning organization's resolution that determines conformity.

(c) The agency that performs the conformity analysis shall notify the Division of Air Quality of:

- (1) changes in planning or analysis assumptions, including land use and vehicle miles traveled (VMT) forecasts; and
- (2) revisions to transportation plans or transportation improvement plans that add, delete, or change projects that require a new emissions analysis including, design scope and dates that change the transportation network existing in a horizon year.

Comments made by the Division of Air Quality and responses thereto made by the agency shall become part of the final planning document.

(d) Transportation plans shall satisfy the requirements of 40 CFR 93.106. Transportation plans and transportation improvement programs shall satisfy the fiscal constraints specified in 40 CFR 93.108. Transportation plans, programs, and FHWA/FTA projects shall satisfy the applicable requirements of 40 CFR 93.109 through 93.119.

(e) Written commitments to implement control measures that are not included in the transportation plan or transportation improvement program (TIP) shall be obtained before a conformity determination, and these commitments shall be fulfilled. Written commitments to implement mitigation measures shall be obtained before a positive conformity determination, and project sponsors shall comply with these commitments.

(f) A recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall not adopt or approve a regionally-significant highway or transit project, regardless of funding source, unless the requirements of 40 CFR Part 93 are met.

(g) The degree of specificity required in a transportation plan and the specific travel network assumed for air quality modeling shall not preclude the consideration of alternatives in the National Environmental Policy Act of 1969 process, in accordance with 40 CFR 93.107.

(h) When assisting or approving any action with air quality-related consequence, the Federal Highway Administration and the Federal Transit Administration of the Department of Transportation shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the national ambient air quality standards, as provided under 40 CFR 93.103. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).*

**15A NCAC 02D .2004 DETERMINING TRANSPORTATION-RELATED EMISSIONS (READOPTIO**

- WITHOUT SUBSTANTIVE CHANGES)**  
 (a) The procedures in 40 CFR 93.122 shall be used to determine regional transportation-related emissions.  
 (b) The procedures in 40 CFR 93.123 shall be used to determine localized carbon monoxide concentrations ~~(hot-spot analysis)~~ in hot-spot analyses.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).*

**15A NCAC 02D .2005 MEMORANDUM OF AGREEMENT (READOPTIO**

- WITHOUT SUBSTANTIVE CHANGES)**  
 (a) The Division of Air Quality shall develop and maintain a ~~memorandum~~ Memorandum of Agreement with the North Carolina Department of Transportation, the metropolitan planning organizations of the areas identified in 15A NCAC 02D .2001, and the United States Department of Transportation to describe the participation and responsibilities of each of these agencies in implementing the requirements of this Section and 40 CFR Part 93. For those areas identified in 15A NCAC 02D .2001 for which there is no metropolitan planning organization, the North Carolina Department of Transportation shall represent those areas for the purposes of the ~~memorandum~~ Memorandum of Agreement. The ~~memorandum~~ Memorandum of Agreement shall include:

- (1) consultation procedures described in 40 CFR 93.105;
- (2) the projected time allotted for each agency to review and comment on or to respond to comments on transportation improvement programs, transportation plans, and transportation projects; and
- (3) consultation procedures for the development of State Implementation Plans that relate to transportation.

The contents of the Memorandum of Agreement shall comply with the criteria and procedures in the federal Clean Air Act Section 176(c) [42 U.S.C. 7401-7671q] and 40 CFR Part 51, Subpart T, 40 CFR Part 93, Subpart A, and 15A NCAC 02D .2001 through .2004.

- (b) No recipient of federal funds, defined in 40 CFR 93.101, designated under Title 23 U.S.C. or the Federal Transit Act shall adopt or approve or take any action to develop or implement a regionally-significant highway or transit project unless such recipient has signed the Memorandum of Agreement established

under this Rule. This Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

(c) No agency shall adopt or approve or take any action to implement or develop any transportation plan, transportation improvement program, or federally funded or approved FHWA/FTA highway or transit project unless the agency has signed the Memorandum of Agreement established under this Rule. This Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

(d) Each federal agency that participates in determinations of conformity to state and federal implementation plans shall sign the Memorandum of Agreement established under this Rule. This Memorandum of Agreement shall bind the recipient to adhere to the conformity criteria and procedures of this Section.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).*

**SECTION .2200 – SPECIAL ORDERS**

**15A NCAC 02D .2201 PURPOSE (READOPTIO**

**WITHOUT SUBSTANTIVE CHANGES)**  
~~The purpose of this~~ This Section is to implement implements the provisions pertaining to the issuance of air quality Special Orders by the Environmental Management Commission.

*Authority G.S. 143-215.3(a)(1); 143-215.110.*

**15A NCAC 02D .2202 DEFINITIONS (READOPTIO**

**WITHOUT SUBSTANTIVE CHANGES)**  
 For the purposes of this Section, the following definitions apply:

- (1) "Special Order" means a directive of the Commission to any person whom it finds responsible for causing or contributing to any air pollution in the State. The term includes all orders or instruments issued by the Commission pursuant to G.S. 143-215.110.
- (2) "Consent Order" means a Special Order into which the Commission enters with the consent of the person who is subject to the order.

*Authority G.S. 143-212; 143-213; 143-215.3(a)(1); 143-215.110.*

**15A NCAC 02D .2203 PUBLIC NOTICE (READOPTIO**

**WITHOUT SUBSTANTIVE CHANGES)**  
 (a) The requirements of this Rule for public notice and public hearing shall apply to Consent Orders. The Commission may specify other conditions for Special Orders issued without consent if the conditions are needed to achieve or demonstrate compliance with a requirement under this Subchapter or 15A NCAC 02Q.

(b) Notice of a proposed Consent Order. Order shall be provided in accordance with this Paragraph.

- (1) The Director shall give notice pursuant to G.S. 143-215.110(a1).
- (2) The Director shall give notice of a proposed Consent Order 30 days prior to final action regarding the Consent Order.
- (3) The notice shall be posted on the North Carolina Division of Air Quality ~~web site~~

website at  
~~http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent~~  
<https://www.deq.nc.gov/about/division/s/air-quality/air-quality-compliance/daq-special-orders-consent-socs> and provided to those persons specified in G.S. 143-215.110(a1)(1) for air quality special orders.

- (4) The notice shall include the following:
- (A) name, address, and telephone number of the Division;
  - (B) name and address of the person to whom the proposed order is directed;
  - (C) a brief summary of the conditions of the proposed order, including the period of time during which action must be taken to achieve compliance and the major permit conditions or emission standards that the source will be allowed to exceed ~~during the pendency of the order; while the order is pending;~~
  - (D) a brief description of the procedures to be followed by the Commission or Director in reaching a final decision on the proposed order, which shall include descriptions of the process for submitting comments and requesting a public hearing. The description shall specify that comments and requests for a public hearing are to be received by the Division within 30 days following the date of public notice; and
  - (E) a description of the information available for public review, where it can be found, and procedures for obtaining copies of pertinent documents.

(c) Notice of public hearing for ~~a proposed Consent Order.~~ Order shall be provided in accordance with this Paragraph.

- (1) The Director shall consider requests for a public hearing, and if significant public interest for a public hearing exists, then he or she shall hold a public hearing.
- (2) The Director shall give notice of the public hearing not less than 30 days before the hearing.
- (3) The notice shall be posted on the North Carolina Division of Air Quality ~~web site~~ website at  
~~http://deq.nc.gov/about/divisions/air-quality/air-quality-enforcement/special-orders-by-consent~~  
<https://www.deq.nc.gov/about/division/s/air-quality/air-quality-compliance/daq-special-orders-consent-socs> and provided to those persons specified in G.S.

143-215.110(a1)(2) for air quality special orders.

(4) The notice shall include the information specified in Subparagraph (b)(4) of this Rule. It shall also state the time and location for the hearing and the procedures for providing comment.

(5) The Chairman of the Commission or the Director shall appoint one or more hearing officers to preside over the public hearing and to receive written and oral comments. The hearing officer shall provide the Commission a written report of the hearing, which shall include:

- (A) a copy of the public notice;
- (B) a copy of the written comments and supporting documentation received;
- (C) a summary of the oral comments received;
- (D) recommendations of the hearing officer to the Commission; and
- (E) a proposed Consent Order for the Commission's consideration.

(d) A person may request to receive copies of notices required by this Rule, and the Director shall provide copies of notices to those who have submitted a request.

(e) A Consent Order may be modified by the Director to incorporate minor modifications, including modification of standard conditions to reflect updated versions of federal or state regulations, correction of typographical errors, or interim date extensions, without public notice provided that the modifications do not extend the final compliance date by more than four months.

*Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.110.*

#### **15A NCAC 02D .2204 FINAL ACTION ON CONSENT ORDERS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

(a) The Director shall take final action for the Commission on Consent Orders for which a public hearing has not been held as provided in 15A NCAC 02D .2203. The final action on the proposed order shall be taken no later than 60 days following publication of the notice.

(b) The Commission shall take final action on Consent Orders for which a public hearing has been held as provided in 15A NCAC 02D .2203. The final action on the proposed order shall be taken no later than 90 days following the hearing.

*Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110.*

#### **15A NCAC 02D .2205 NOTIFICATION OF RIGHT TO CONTEST SPECIAL ORDERS ISSUED WITHOUT CONSENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

For any Special Orders other than Consent Orders, the Commission shall notify the person subject to the order of the procedure set out in G.S. 150B-23 to contest the Special Order.

Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b).

\*\*\*\*\*

**Notice** is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02D .0401, readopt the rule cited as 15A NCAC 02D .0401 and repeal through readoption the rules cited as 15A NCAC 02D .0402-.0405, .0407, .0408, .0410.

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

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://www.deq.nc.gov/about/divisions/water-resources/water-resources-commissions/environmental-management-commission/emc-proposed-rules>

**Proposed Effective Date:** March 1, 2027

**Public Hearing:**

**Date:** December 1, 2026

**Time:** 6:00 p.m.

**Location:** 1st Floor Training Room (#1210), DEQ Green Square Office Building, 217 West Jones Street, Raleigh, NC 27603, or virtually using Cisco WebEx, Digital Hearing Link: <https://tinyurl.com/Group0and1>

\*This public hearing will be held at the same time and location as the public hearing for the Group 1 rules, which are also published in this Register. The two hearings will occur consecutively. Meeting Password: NCDQAQ

Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code. US TOLL +1-415-655-0003, Access code: 2422 476 9276

If you wish to speak at the digital public hearing, you must register, provide the required information, and follow instructions on ways to join the public hearing. Registration must be completed by 4:00 PM on December 1, 2026. To register, please click the following link: <https://forms.cloud.microsoft/g/tAVEnYjruW>

\*For instructions on ways to join the public hearing, please refer to the following link: <https://www.deq.nc.gov/about/boards-and-commissions/how-attend-webex-meeting-0>

\*If you have technical difficulties, the following automated voicemail has been set up to receive your verbal comments: 919-707-8430

**Reason for Proposed Action:** To receive comments on the proposed rule revisions to 15A NCAC 02D .0401 pursuant to the Petition for Rulemaking and separately the proposed readoption of 15A NCAC 02D .0401 and the repeal through readoption of Rules .0402 through .0410 (Group 0), as well as the regulatory impact analysis (RIA) for both. On April 13, 2026, the Environmental Management Commission (EMC) and Division of Air Quality (DAQ) received a Petition for Rulemaking from Earth

& Water Law, LLC. The petition requested that the EMC revise Section 02D .0400 to incorporate the National Ambient Air Quality Standards (NAAQS) in Title 40 of the Code of Federal Regulations (40 CFR) Part 50 by reference rather than listing each numerical standard directly in the rule text. The rulemaking petition was determined to satisfy the completeness criteria of 15A NCAC 02I .0501(b), and the EMC subsequently considered and voted to grant the petition during its May 14, 2026, meeting, which initiated rulemaking proceedings in accordance with G.S. 150B-20. Since the rules in 15A NCAC 02D .0400 were already poised for rule readoption on a similar timeline as the petition for rulemaking, the DAQ and EMC are also proposing readoption of Rule 02D .0401, and repeal through readoption of Rules 02D .0402 through .0410 (collectively referred to as “Group 0” of readoption), alongside the proposed amendments to Rule 02D .0401 pursuant to the granted petition for rulemaking.

On September 10, 2026, the Environmental Management Commission approved proceeding to public comment on the proposed amendments and readoptions. Please note there are two versions of Rule 02D .0401 shown in this NC Register notice. The first version of Rule 02D .0401 appearing in this notice is the version that the EMC has approved for publication and is the exact text submitted by the petitioner, consistent with North Carolina General Statute (N.C.G.S.) 150B-20(c). This draft rule text is also shown in the attachment labeled as “Group 0 Draft Rules – Petitioner’s Text” as published on the Agency’s webpage. As discussed during the May 14, 2026, EMC meeting, some adjustments to the petitioner’s rule text are needed to accomplish the stated purpose of incorporating the federal NAAQS by reference and repealing North Carolina’s individual ambient standard rules in 02D .0402 through .0410. Therefore, the DAQ intends to seek adjustment of the rule text after the public comment process so that it successfully achieves the stated intent of the rulemaking petition and complies with the Administrative Rulemaking Style Guide. While the specific language of Rule 02D .0401 would be changed, the objective of the rulemaking would remain the same as stated by the petitioner, and these modifications would not affect the expected outcomes or impacts of the rulemaking and are not anticipated to constitute a substantial change under G.S. 150B-21.2(g). Following the comment period, the EMC is ultimately seeking to adopt rule text similar to that shown in the second version of Rule 02D .0401 appearing in this Register notice and is also reflected in the attachment labeled as “Group 0 Draft Rules – Alternate Text” on the Agency’s webpage. The Petitioner’s Text, Alternate Text, and the RIA are available on the DAQ website: <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>.

**Comments may be submitted to:** Katherine Quinlan, 217 West Jones St., 1641 Mail Service Center, Raleigh, NC 27699-1641, Raleigh, NC 27699-1641; phone (919) 707-8702; email [daq.publiccomments@deq.nc.gov](mailto:daq.publiccomments@deq.nc.gov) (Please type “NAAQS Petition and Group 0” in subject line)

**Comment period ends:** December 14, 2026

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

## CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

#### SECTION .0400 - AMBIENT AIR QUALITY STANDARDS

##### 15A NCAC 02D .0401 PURPOSE

(a) The purpose of the ambient air quality standards set out in this Section is to adopt by reference the National Ambient Air Quality Standards in 40 CFR Part 50, including subsequent amendments and editions, establish certain maximum limits on parameters of air quality considered desirable for the preservation and enhancement of the quality of the State's air resources. Furthermore, the objective of the Commission, consistent with the North Carolina Air Pollution Control Law, shall be to prevent significant deterioration in ambient air quality in any substantial portion of the State where existing air quality is better than the standards. An atmosphere in which these standards are not exceeded should provide for the protection of the public health, plant and animal life, and property.

(b) Ground-level concentrations of pollutants shall be determined by sampling at fixed locations in areas beyond the premises on which a source is located. The standards shall be applicable at each such sampling location in the State.

(c) No facility or source of air pollution shall cause any ambient air quality standard in this Section to be exceeded or contribute to a violation of any ambient air quality standard in this Section except as allowed by 15A NCAC 02D .0531 or .0532.

(b) 15A NCAC 02D .0402 through and including 15A NCAC 02D .0410 are hereby repealed as of the date of adoption of this rule amendment.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).*

*The following text is an alternative for potential consideration by the EMC for adoption after the comment period, in lieu of the petition's proposed text for this Rule.*

##### 15A NCAC 02D .0401 **PURPOSE AMBIENT AIR QUALITY STANDARDS**

(a) ~~The purpose of the ambient air quality standards set out in this Section is to establish certain maximum limits on parameters of air quality considered desirable for the preservation and enhancement of the quality of the State's air resources. The national primary and secondary ambient air quality standards and accompanying appendices in 40 CFR Part 50 are incorporated by reference and shall include subsequent amendments and editions. The ambient air monitoring reference and equivalent methods and accompanying appendices in 40 CFR Part 53 are also incorporated by reference and shall include subsequent amendments and editions.~~ Furthermore, the objective of the Commission, consistent with the North Carolina Air Pollution Control Law, shall be to prevent significant deterioration in ambient air quality in any substantial portion of the State where existing air quality is better than the standards. An atmosphere in which these standards are not exceeded should provide for the protection of the public health, plant and animal life, and property.

(b) Ground-level concentrations of pollutants shall be determined by sampling at fixed locations in areas beyond the premises on which a source is located. The standards shall be applicable at each such sampling location in the State.

(c) No facility or source of air pollution shall cause any ambient air quality standard in this Section to be exceeded or contribute to a violation of any ambient air quality standard in this Section except as allowed by 15A NCAC 02D .0531 or .0532.

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).*

|                           |                                     |
|---------------------------|-------------------------------------|
| <b>15A NCAC 02D .0402</b> | <b>SULFUR OXIDES</b>                |
| <b>15A NCAC 02D .0403</b> | <b>TOTAL SUSPENDED PARTICULATES</b> |
| <b>15A NCAC 02D .0404</b> | <b>CARBON MONOXIDE</b>              |
| <b>15A NCAC 02D .0405</b> | <b>OZONE</b>                        |
| <b>15A NCAC 02D .0407</b> | <b>NITROGEN DIOXIDE</b>             |
| <b>15A NCAC 02D .0408</b> | <b>LEAD</b>                         |
| <b>15A NCAC 02D .0409</b> | <b>PM10 PARTICULATE MATTER</b>      |
| <b>15A NCAC 02D .0410</b> | <b>PM2.5 PARTICULATE MATTER</b>     |

*Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to readopt without substantive changes the rules cited as 15A NCAC 02R .0102, .0202, .0203, .0301, .0302, .0402, .0403, .0601, and .0602.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.deq.nc.gov/about/divisions/water-resources/water->

*resources-commissions/environmental-management-commission/emc-proposed-rules*

**Proposed Effective Date:** *May 1, 2027*

**Public Hearing:**

**Date:** *November 24, 2026*

**Time:** *4:30 p.m.*

**Location:** *NCDEQ Green Square Training Room 1210 217 W. Jones Street Raleigh NC 27603*

**Reason for Proposed Action:** *Pursuant to G.S. 150B-21.3A(d)(2), 15A NCAC 02R rules shall be readopted by August 1, 2027. Proposed amendments for the readoption include minor updates to rule language for clarity and updates to references to URLs and rules in other subchapters.*

**Comments may be submitted to:** *Kelly Williams, NCDEQ Division of Mitigation Services 1652 Mail Service Center, Raleigh, NC 27699-1652; email DMS.ILF@deq.nc.gov*

**Comment period ends:** *December 14, 2026*

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

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02R – DIVISION OF MITIGATION SERVICES**

**SECTION .0100 - PURPOSE AND DEFINITIONS**

**15A NCAC 02R .0102 DEFINITIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

The definition of any word or phrase used in this Subchapter shall be the same as given in G.S. 143, Article 21. The following words and phrases shall mean:

- (1) "Aquatic resources" means wetlands, streams, lakes, rivers, springs, seeps, reservoirs, ponds, groundwater, riparian areas, and the fauna that reside within them. Aquatic resources include permanent, seasonal, flowing, standing, natural, or man-made water bodies.
- (2) "Commission" means the North Carolina Environmental Management Commission.
- (3) "Department" means the Department of Environmental Quality (DEQ).
- (4) "Division" means the Division of Mitigation Services (DMS).
- (2)(5) "Non-riparian wetlands" means Class WL wetlands as defined in ~~15A NCAC 02B .0101(e)(8)~~ 15A NCAC 02B .0231 whose major source of water is precipitation. Examples of non-riparian wetlands include wet flats, pocosins, and ephemeral wetlands.
- (3)(6) "Riparian area" means an area that does not meet the definition of wetlands found at 15A NCAC 02B .0202 and that is located within 300 feet of any perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographic map (available at no cost at <http://viewer.nationalmap.gov> ~~https://apps.nationalmap.gov/viewer/~~) or other site-specific data.
- (4)(7) "Riparian wetlands" means Class WL wetlands as defined in ~~15A NCAC 02B .0101(e)(8)~~ 15A NCAC 02B .0231 whose primary source of water is ground water or surface water. Examples of riparian wetlands include freshwater marshes, swamp forests, bottomland hardwood forests, headwater forests, bog forests, mountain bogs, and seeps.
- (8) "Secretary" means the Secretary of the Department of Environmental Quality.

*Authority G.S. 143-214.8; 143-214.9; 143-214.11; 143-215.3.*

**SECTION .0200 - BASINWIDE RESTORATION PLANS**

**15A NCAC 02R .0202 COMPONENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

Each Basinwide Restoration Plan shall consist of the following components conducted by ~~DMS~~ Division staff and contractors:

- (1) an assessment of the baseline aquatic resource functions within each 8-digit cataloging unit;
- (2) an assessment of the potential functional improvement of aquatic resources within each 8-digit cataloging unit;
- (3) an identification of aquatic resource areas that have the potential, if restored or enhanced, to

- contribute to the functional goals identified in the Basinwide Restoration ~~Plans Plan~~;
- (4) an identification of aquatic resource areas that have the potential, if preserved, to contribute to the functional goals identified in the Basinwide Restoration ~~Plans Plan~~;
- (5) a summary of the 8-digit cataloging unit characteristics, identification of priority ecosystem functions that have been degraded or lost, and opportunities for functional improvement; and
- (6) an outline of the specific goals to be accomplished through implementation of the Basinwide Restoration Plan.

*Authority G.S. 143-214.10; 143-215.3; 143-214.9.*

**15A NCAC 02R .0203 PUBLIC INVOLVEMENT; AVAILABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

- (a) The Secretary or the Secretary's designee shall provide interested parties an opportunity to review and comment on ~~the~~ any proposed Basinwide Restoration ~~Plans Plan~~.
- (b) ~~The~~ Basinwide Restoration Plans shall be available for review through the Division of Mitigation Services' website at <http://deq.nc.gov/about/divisions/mitigation-services>.

*Authority G.S. 143-214.10; 143-215.3.*

**15A NCAC 02R .0301 GENERAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

All projects implemented for the purpose of satisfying compensatory mitigation requirements of certifications issued by the Department under 33 U.S.C. Section 1341 and permits or authorizations issued by the United States Army Corps of Engineers ~~(Corps)~~ (USACE) under 33 U.S.C. Section 1344 shall be consistent with the Basinwide Restoration Plan for the appropriate river basin. A project shall be consistent with the Basinwide Restoration Plan if the project demonstrates that it advances the functional improvement goals identified in the Basinwide Restoration Plan or is determined to be consistent by the ~~United States Army Corps of Engineers~~ USACE.

*Authority G.S. 143-214.11; 143-214.12; 143-215.3.*

**15A NCAC 02R .0302 MITIGATION BANKS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

All sponsors of mitigation banks that submit a prospectus to the ~~United States Army Corps of Engineers~~ USACE after the effective date of this Rule shall provide the Secretary or the Secretary's designee documentation that the proposed mitigation bank is consistent with the approved Basinwide Restoration Plan for the appropriate river basin and meets the requirements of G.S. 143-214.11(f). A mitigation bank is consistent with the Basinwide Restoration ~~Plans Plan~~ if the mitigation bank demonstrates that it advances the functional improvement goals identified in the Basinwide Restoration Plan, is located at a site that is otherwise consistent with the goals outlined in the Basinwide Restoration Plan for the appropriate river basin, or is approved by the ~~United~~

~~States Army Corps of Engineers~~ USACE. The Secretary or the Secretary's designee shall provide comments concerning this documentation through participation on the Interagency Review Team in accordance with 33 CFR Part 332 Compensatory Mitigation for Losses of Aquatic Resources. The signature of the Secretary or the Secretary's designee on the Mitigation Banking Instrument, described in 33 CFR Part 332, shall be considered as a finding by the Department that the mitigation bank is consistent with the Basinwide Restoration Plan.

*Authority G.S. 143-214.11; 143-214.12; 143-215.3.*

**SECTION .0400 - ECOSYSTEM RESTORATION FUND**

**15A NCAC 02R .0402 RATE SCHEDULE - STREAM AND WETLAND RATES FOR THE NC DIVISION OF MITIGATION SERVICES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

(a) For the purposes of this Rule:

- (1) "cost" or "costs" shall mean the costs of ~~the NC Division of Mitigation Services~~ DMS Stream and Wetland In-Lieu Fee Mitigation Program's Program, hereinafter in this Rule the "Program," costs associated with stream or wetland projects in a given rate area, as described in this Rule; and
- (2) "credit" or "credits" shall mean the number of credits of stream or wetland compensatory mitigation that have been:
- (A) requested by the applicant; and
- (B) specified in the approved certifications issued by the Department and in the permits or authorizations issued by the ~~United States Army Corps of Engineers~~ USACE pursuant to 33 U.S.C. Section 1344.

(b) The in-lieu fee shall be calculated by multiplying the rate, as established in this Rule, by the total number of credits.

(c) ~~The Program Division~~ shall calculate and publish general statewide stream and wetland payment rates and premium stream and wetland rates for watersheds as identified in ~~Paragraph Paragraphs~~ (d) and (e) of this Rule. Rates shall be published on the Division's website (<https://deq.nc.gov/about/divisions/mitigation-services>).

(d) Payment rates shall be developed for stream, freshwater wetland, and coastal wetland credits:

- (1) Streams shall consist of classified surface waters other than wetlands as defined in 15A NCAC 02B .0202.
- (2) Freshwater wetlands shall consist of Class WL wetlands as defined in ~~15A NCAC 02B .0101(e)(8)~~ 15A NCAC 02B .0231 and shall include riparian and non-riparian wetlands.
- (3) Coastal wetlands shall consist of Class SWL wetlands as defined in 15A NCAC 07H .0205.

(e) Premium Watershed Rate. ~~The Program shall apply premium Premium~~ watershed rates for shall apply to the following areas:

- (1) Any 8-digit cataloging unit (as defined by the United States Geological Survey), mitigation

service area, or smaller watershed where costs are 33 percent greater than the general statewide rate shall have a surcharge equal to the difference between the general statewide rate and the actual cost of mitigation in that mitigation service area.

- (2) ~~The initial coastal wetland rate shall be five hundred sixty thousand dollars (\$560,000) per credit.~~ The coastal wetland premium rate is adjusted as identified in Paragraph (f).

(f) Rate Adjustment Frequency. ~~Initial rates shall be effective as of the readoption effective date of this Rule. They~~ Rates shall be calculated and adjusted on July 1 of each year and shall become effective on those dates. Rate adjustments shall be published on the ~~Program's~~ Division's website two weeks prior to the effective date. The rate shall be adjusted within two business days if the ~~Program~~ Division suspends acceptance of payments at the current rate.

(g) Payment rates for streams and wetlands shall be determined for a rate area using the following equation and presented in per-credit values:

$$ActualCostRate = 1.43 \frac{ActualProjectCosts_{PresentDay}}{ActualCredits_{PresentDay}}$$

Where:

- (1) "Actual Project Costs<sub>PresentDay</sub>" means the sum of all full delivery project and mitigation bank credit purchase costs, adjusted for inflation, as described in this Paragraph. Only the costs of full delivery and mitigation bank credit purchase projects that were contracted within the last three years, including completed projects, terminated projects, and projects in process, shall be included in the calculation of Actual Project Costs. At the time the rate is calculated, all contracts and expenditures shall be adjusted to present-day values using the annual composite USACE Civil Works Construction Cost Index, incorporated by reference including subsequent amendments and editions. A copy of this document may be obtained at no cost at [http://www.publications.usace.army.mil/Portal/s/76/Publications/EngineerManuals/EM\\_1110-2-1304.pdf](http://www.publications.usace.army.mil/Portal/s/76/Publications/EngineerManuals/EM_1110-2-1304.pdf). <https://www.nww.usace.army.mil/missions/cost-engineering/cwccis-indices/>. If the USACE Civil Works Construction Cost Index is not available, the adjustment to present-day values shall be calculated using the average annual composite USACE Civil Works Construction Cost values from the previous three years;
- (2) "Project costs" means the total costs associated with development of stream or wetland compensatory mitigation projects including identification, land acquisition, project design, project construction, monitoring, maintenance, and long-term stewardship;

- (3) The "cost for projects in process" means the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill ~~the Program~~ Program's mitigation obligations in the rate area;

- (4) "Actual Credits<sub>PresentDay</sub>" means the total number of credits from Actual Project Costs<sub>PresentDay</sub> at the time of calculation. If the Actual Credits<sub>PresentDay</sub> for an existing or completed project is reduced, the Actual Costs<sub>PresentDay</sub> for that existing or completed project shall be proportionally adjusted.

*Authority G.S. 143-214.11; 143-214.12; 143-215.3.*

#### **15A NCAC 02R .0403 DONATION OF PROPERTY (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

(a) If approved by the Council of State, donations or dedications of interests in real property for the purposes of restoration, enhancement, or preservation may be accepted by the Secretary or the Secretary's designee if the property is consistent with the Basinwide Restoration Plan for the appropriate river basin subject to the factors listed in Paragraphs (b) and (c) of this Rule, or if the property interest is being donated to satisfy a condition of a certification issued by the Department pursuant to 33 U.S.C. Section 1341.

(b) The factors that shall be considered by the Secretary or the Secretary's designee in determining whether to accept donations or dedications of interests in real property for the purposes of wetland or riparian area restoration or enhancement include the following:

- (1) whether the property is:
- (A) adjacent to, or will become a part of, a Department compensatory mitigation project;
  - (B) adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan;
  - (C) adjacent to or includes property on which rare aquatic species, as identified by the North Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina," is known to have been found; or
  - (D) is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program at <https://ncnhde.natureserve.org>. These documents are hereby incorporated by reference, including subsequent amendments and editions. Copies of these documents may be obtained at

- ~~no cost from the Department of Natural and Cultural Resources Division of Land and Water Stewardship at <http://www.ncnhp.org/references/publications/rare-animal-list> and <https://www.ncnhp.org/publications/natural-heritage-program-publications>;~~
- (2) whether the size of the property is at least five contiguous acres;
  - (3) the likelihood that the site can be successfully restored or enhanced, based on hydrology, soils, and vegetation;
  - (4) the intensity of activities required to successfully restore or enhance the site. Sites requiring extreme measures for successful restoration, such as removal of structures or infrastructure, shall not be accepted;
  - (5) the absence of cultural and historic resources;
  - (6) the prior, current, and future land use of the donated property and adjacent properties;
  - (7) the existence of federally or state-listed sensitive, endangered, or threatened species, or their critical habitat;
  - (8) the potential for enhancement of natural resource values of public lands;
  - (9) the absence of hazardous substance and solid waste;
  - (10) whether the property is adjacent to non-supporting, partially supporting, or support-threatened waters as designated by the Division of Water Resources pursuant to 40 CFR 131.10(a) through (g). This material is available ~~at no cost from the Department of Environmental Quality DEQ, Division of Water Resources,~~ at <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/surface-water-standards>;
  - (11) the absence of encumbrances and conditions on the transfer of the property interests; and
  - (12) whether provisions have been made by the landowner for the long-term maintenance and management of the property.
- (c) The factors that shall be considered by the Secretary or the Secretary's designee in determining whether to accept donations or dedications of interests in real property for the purpose of preservation of existing wetland and riparian areas include the following:
- (1) whether the property has clearly identifiable unique wetland or riparian area functions or values, such as federally or state-listed sensitive, endangered, or threatened species, or their critical habitat;
  - (2) the potential for enhancement of natural resource values of public lands;
  - (3) whether the property is:
    - (A) adjacent to, or will become a part of, a Department-approved restoration or preservation project;
    - (B) adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan;
    - (C) adjacent to or includes property on which rare aquatic species, as identified by the North Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina," is known to have been found; or
    - (D) is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program at <https://ncnhde.natureserve.org/>. These documents are hereby incorporated by reference, including subsequent amendments and editions. Copies of these documents may be obtained at no cost from the Department of Natural and Cultural Resources Division of Land and Water Stewardship at 1651 Mail Service Center Raleigh, NC 27603 or at ~~<http://www.ncnhp.org/references/publications/rare-animal-list> and <http://www.ncnhp.org/references/publications/rare-plant-list>;~~ <https://www.ncnhp.org/publications/natural-heritage-program-publications>;
  - (4) whether the size of the property is at least five contiguous acres;
  - (5) whether the property is under imminent threat of degradation;
  - (6) the prior, current, and future land use of the donated property and adjacent properties;
  - (7) the absence of extensive structures and infrastructure;
  - (8) the absence of hazardous substance and solid waste;
  - (9) the absence of cultural and historic resources;
  - (10) whether the property is adjacent to non-supporting, partially supporting, or support-threatened waters as designated by the Division of Water Resources pursuant to 40 CFR 131.10(a) through (g);
  - (11) the absence of encumbrances and conditions on the transfer of the property interests; and
  - (12) whether provisions have been made by the landowner for the long-term maintenance and management of the property.

(d) At the expense of the applicant or donor, the following information shall be submitted with any proposal for donations or dedications of interest in real property:

- (1) documentation that the property meets the criteria in Paragraph (b) and (c) of this Rule;
- (2) US Geologic Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, ~~USDA~~United States Department of Agriculture Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, and the presence of existing structures and easements;
- (3) a current property survey performed in accordance with the requirements of the North Carolina Department of Administration, State Property Office as identified by the North Carolina Board of Examiners for Engineers and Surveyors in "Standards of Practice for Land Surveying in North Carolina," incorporated by reference including subsequent amendments and editions. Copies may be obtained at no charge from the North Carolina State Board of Examiners for Engineers and Surveyors, [www.ncbels.org](http://www.ncbels.org);
- (4) a current appraisal of the value of the property performed in accordance with the requirements of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional Appraisal Practice," incorporated by reference including subsequent amendments and editions. Copies may be obtained at no cost from the Appraisal Foundation, <http://www.appraisalfoundation.org>;
- (5) a title certificate; and
- (6) a Phase 1 Environmental Site Assessment documenting that the property does not contain structures that present health or safety problems to the general public. If wells, septic systems, water treatment systems, or water or sewer connections exist, they shall be filled, remediated, or closed at owner's expense and in accordance with State and local health and safety regulations.

(e) In addition to the factors outlined in Paragraphs (b) through (d) of this Rule, the Secretary or the Secretary's designee shall consider the following factors when determining whether to accept a donation of interest in real property to satisfy compensatory mitigation requirements:

- (1) whether restoration of the property will offset the adverse impacts of the permitted project; and
- (2) whether the adverse impacts of the permitted project are within the same 8-digit cataloging unit as the property proposed for donation.

(f) Donations of interests in real property for the purpose of satisfying compensatory mitigation requirements shall only be considered for acceptance if the proposed donation offsets an impact for which an application has already been made to the ~~United States Army Corps of Engineers~~USACE under 33 U.S.C. Section 1344 or to the Department under 33 U.S.C. Section 1341.

(g) For the purposes of satisfying compensatory mitigation requirements through the donation of interests in real property requiring restoration, enhancement, or preservation, the size of property to be donated shall equal or exceed the acreage of wetland required to be mitigated under the approved permit, and every parcel shall be a minimum of five contiguous acres in size.

(h) Donation of real property interests to satisfy compensatory mitigation requirements shall be accepted only if such property meets the requirements of Paragraphs (a) through (i) of this Rule and 15A NCAC 02H .0506(h) and if it satisfies the compensatory mitigation requirements of the approved permit.

(i) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if:

- (1) the conservation easement is granted in perpetuity and the property to be encumbered meets the requirements of Paragraphs (a) through (j) of this Rule; or
- (2) if the property interest is being donated to satisfy a condition of a certification issued by the Department pursuant to 33 U.S.C. Section 1341.

(j) Donation of interests in real property may contribute to or fulfill compensatory mitigation requirements that may be satisfied through payment of a fee according to the Rate Schedule in Rule .0402(c) of this Section. The value of the property interest shall be determined by an appraisal performed in accordance with Subparagraph (d)(4) of this Rule. The required fee as calculated in accordance with Rule .0402(c) of this Section shall be satisfied if the appraised value of the donated property interest is equal to or greater than the fee. If the appraised value of the donated property interest is less than the designated fee requirement as calculated in accordance with Rule .0402(c) of this Section, the applicant shall pay the difference between the calculated fee and the appraised value of the property interest.

*Authority G.S. 143-214.11; 143-214.12; 143-215.3.*

## **SECTION .0600 – RIPARIAN BUFFER RESTORATION FUND**

### **15A NCAC 02R .0601 RIPARIAN BUFFER MITIGATION FEES TO THE NC DIVISION OF MITIGATION SERVICES (READoption WITHOUT SUBSTANTIVE CHANGES)**

(a) For the purposes of this Rule:

- (1) "cost" or "costs" shall mean the ~~costs of the NC Division of Mitigation Services~~DMS Riparian Buffer In-Lieu Fee Mitigation Program's Program, costs associated with riparian buffer mitigation projects in a given rate area, as described in this Rule; hereinafter in this Rule the "Program," associated with riparian buffer

projects in a given rate area, as described in this Rule. and

- (2) "credit" or "credits" shall mean the number of credits of riparian buffer compensatory mitigation that have been:

- (A) requested by the applicant; and
- (B) specified in the approved certifications issued by the Department.

(b) The ~~Program Division~~ shall calculate and publish one general riparian buffer mitigation payment rate applicable to all river basins where Commission rules allow riparian buffer mitigation payments and premium rates for specific watersheds, as identified in Paragraph (c) of this Rule. Rates shall be published on the Division's website (<https://deq.nc.gov/about/divisions/mitigation-services>). All rates shall be based on the costs incurred by the ~~program~~ Program in those watersheds.

(c) Premium Watershed Rates. ~~The Program shall apply premium~~ Premium watershed rates shall apply to:

- (1) The Randleman Lake Watershed;
- (2) The Jordan Lower New Hope Watershed; and
- (3) Any 8-digit cataloging unit, mitigation service area, or smaller watershed where costs are 33 percent greater than the general ~~statewide~~ rate shall have a surcharge equal to the difference between the general ~~statewide~~ rate and the actual cost of mitigation in that mitigation service area.

The initial rate for a premium watershed with fewer than two riparian buffer mitigation projects that have reached the design stage shall be the highest riparian buffer rate in effect under the Program. The initial rate shall be revised for a premium watershed in the quarter following a quarter in which at least two riparian buffer mitigation projects in that watershed have reached design stage.

(d) Rate Adjustment Frequency. ~~Initial rates shall be effective as of the readoption effective date of this Rule. They~~ Rates shall be adjusted quarterly whenever the rate calculation set forth in Paragraph (c) of this Rule exceeds the existing rate by at least 10 percent. The rates shall also be adjusted annually. Annual calculations and adjusted rates shall be published by June 15 on the ~~Program's~~ Division's website, <http://deq.nc.gov/about/divisions/mitigation-services>, and shall become effective July 1. Any quarterly rate adjustments shall become effective on the first day of October, January, or April, as applicable, and shall be published on the same website two weeks prior to that date. The rate shall be adjusted within two business days if the ~~Program~~ Division suspends acceptance of payments at the current rate

(e) Payment rates shall be determined for a rate area using the following equation and presented in per-credit values:

$$ActualCostRate = \frac{ActualCosts_{PresentDay}}{TotalRiparianBufferCredits_{PresentDay}} + AdjustmentFactor$$

Where:

- (1) Actual Costs<sub>PresentDay</sub> means the sum of all costs, adjusted for inflation, as described in this Subparagraph. Costs shall mean project costs

and administrative costs and shall include the costs of completed projects, terminated projects, and projects in process. At the time the rate is set, all completed land acquisition contracts and expenditures shall be adjusted to present-day values using the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values, incorporated by reference including subsequent amendments and editions. All other completed contracts and expenditures shall be adjusted to present day values using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for projects in process shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the current composite USACE Civil Works Construction Cost Index. For projects in process where the contract type has not been determined, the cost of the project shall be calculated using the Program's average per credit cost adjusted to the future inflated value when the project will be initiated. Future year annual inflation rates shall be drawn from the USACE Civil Works Construction Cost Index. If not available from either source, future year annual inflation rates shall be calculated using the average annual percentage change over the last three-year period;

(2)

As used in this Rule:

- (A) "Project Costs" means the total costs associated with development of riparian buffer mitigation projects including identification, land acquisition, project design, project construction, monitoring, maintenance, and long-term stewardship.
- (B) "Administrative Costs" means costs associated with administration of the Program including staffing, supplies and rent.
- (C) The "cost for projects in process" means the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program

riparian buffer mitigation obligations in the rate area.

- (D) "Total Riparian Buffer Credits<sub>PresentDay</sub>" means the total amount of credits provided by projects in the rate area at the time of calculation. If the Total Riparian Buffer Credits<sub>PresentDay</sub> for an existing or completed project is reduced, the Actual Costs<sub>PresentDay</sub> for that existing or completed project shall be proportionally adjusted;
- (3) The Adjustment Factor shall be applied only in those calculation periods where actual costs are calculated to be greater than actual receipts.
- $$\text{Adjustment Factor} = \frac{(\text{Actual Costs} - \text{Actual Receipts})}{\text{Number of Riparian Buffer Credits Paid During Adjustment Period}}$$
- The Adjustment Factor shall not comprise more than 60 percent of the overall rate;
- (A) "Actual Costs" shall be the same as Actual Costs<sub>PresentDay</sub> as defined in Subparagraph (1) of this Paragraph, except that the existing contracts and completed land acquisitions shall not be adjusted for inflation.
- (B) "Actual Receipts" means the sum of all riparian buffer mitigation payments made to the Program in the rate area at the time of calculation.
- (C) "Number of Riparian Buffer Credits Paid During Adjustment Period" means the average number of riparian buffer mitigation credits paid to the Program over the last three years in the rate area, multiplied by the adjustment period. If no payments have been made to the Program in a rate area the number of credits paid shall be 435,600 riparian buffer credits until greater than 435,600 riparian buffer credits have been purchased in that rate area.
- (4) Adjustment Period shall be one to four years determined as follows for a rate area.
- (A) One year if Actual Costs exceed Actual Receipts by less than five percent.
- (B) Two years if Actual Costs exceed Actual Receipts by 5 percent or more but less than 15 percent.
- (C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25 percent.
- (D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.

*Authority G.S. 143-214.1; 143-214.5; 143-214.5(i); 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d).*

#### 15A NCAC 02R .0602 NUTRIENT OFFSET PAYMENT RATES FOR THE NC DIVISION OF MITIGATION SERVICES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

(a) For the purposes of this Rule, the term "cost" or "costs" means the costs of the ~~NC Division of Mitigation Services~~ DMS Nutrient Offset In-Lieu Fee Program, hereinafter in this Rule the "Program," associated with nutrient offset projects in a given rate area, as described in this Rule.

(b) The ~~Program~~ Division shall calculate and publish general offset payment rates applicable to each river basin where Commission rules allow such nutrient offsets and premium watershed rates for specific watersheds as identified in Paragraph (d) of this Rule. All rates shall be based on the per-pound nutrient reduction costs incurred by the Program in those watersheds.

(c) Payment rates shall be developed for nitrogen, phosphorus, or other nutrients as dictated by Commission rules for each river basin. Rates shall be published on the Division's website (<https://deq.nc.gov/about/divisions/mitigation-services>).

(d) Premium Watershed Rates. ~~The Program shall apply premium~~ Premium watershed rates shall apply to:

- (1) The Neuse 03020201 cataloging unit below the Falls watershed, the Jordan Lake watershed, and the Falls Lake watershed; and
- (2) Any eight-digit cataloging unit or smaller watershed that is subject to nutrient management rules where costs are 33 percent greater than costs in the larger watershed or river basin where that cataloging unit is located.

The initial rate for a premium watershed with fewer than two nutrient reduction projects that have reached the design stage shall be the highest rate in effect under the Program for the applicable nutrient. The initial rate shall be revised for a premium watershed in the quarter following a quarter in which at least two nutrient reduction projects in that watershed have reached design stage.

(e) Once an area has been established as an area with premium watershed rates, it shall remain a premium watershed rate area.

(f) Rate Adjustment Frequency. Rates shall be adjusted quarterly whenever the rate calculation set forth in Paragraph (g) of this Rule exceeds the existing rate by at least 10 percent. The rates shall also be adjusted annually. Annual calculations and adjusted rates shall be published by June 15 on the ~~Program's Division's~~ website <http://deq.nc.gov/about/divisions/mitigation-services>, and shall become effective July 1. Any quarterly rate adjustments shall become effective on the first day of October, January, or April, as applicable, and shall be published on the same website two weeks prior to that date. The rate shall be adjusted within two business days if the ~~Program~~ Division suspends acceptance of payments at the current rate pursuant to ~~15A NCAC 02B .0240(e)(2)~~ 15A NCAC 02B .0703 (i) (1).

(g) Payment rates for each nutrient shall be determined for a rate area using the following equation and presented in per-pound values:

$$ActualCostRate = \frac{ActualCosts_{PresentDay}}{TotalPoundsOffset_{PresentDay}} + AdjustmentFactor$$

Where:

- (1) "Actual Costs<sub>PresentDay</sub>" means the sum of all costs adjusted for inflation as described in this Subparagraph. Costs shall mean project costs and administrative costs and shall include the costs of completed projects, terminated projects, and projects in process. At the time the rate is set, all completed land acquisition contracts and expenditures shall be adjusted to present-day values using the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other completed contracts and expenditures shall be adjusted to present-day values using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for projects in process shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the current composite USACE Civil Works Construction Cost Index. For projects in process where the contract type has not been determined, the cost of the project shall be calculated using the Program's average per pound cost adjusted to the future inflated value at the time the project will be initiated. Future year annual inflation rates shall be drawn from the USACE Civil Works Construction Cost Index. If not available from either source, they shall be calculated using the average annual percentage change over the last three-year period;

(2) As used in this Rule:

- (A) "Project Costs" means the total costs associated with development of nutrient reduction projects including identification, land acquisition, project design, project construction, monitoring, maintenance, and long-term stewardship;
- (B) "Administrative Costs" means costs associated with administration of the Program including staffing, supplies, and rent; and
- (C) The "costs for projects in process" means the sum of expenditures of project contracts to date, contracted

cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program nutrient reduction obligations in the rate area;

- (3) "Total Pounds Offset<sub>PresentDay</sub>" means the total number of pounds of a nutrient reduced by the Program's projects in the rate area at the time of calculation. If the Total Pounds Offset<sub>PresentDay</sub> for an existing or completed project is reduced, the Actual Costs<sub>PresentDay</sub> for that existing or completed project shall be proportionally adjusted:

- (A) The Adjustment Factor shall be calculated using the following formula:

$$AdjustmentFactor = \frac{(ActualCosts - ActualReceipts)}{NumberofPoundsPaidDuringAdjustmentPeriod}$$

The Adjustment Factor shall be applied only in those calculation periods where actual costs are calculated to be greater than actual receipts. The Adjustment Factor shall not comprise more than 60 percent of the overall rate;

- (B) "Actual Costs" shall be the same as Actual Costs<sub>PresentDay</sub> as defined in Subparagraph (1) of this Paragraph, except that the existing contracts and completed land acquisitions are not adjusted for inflation;
- (C) "Actual Receipts" means the sum of all offset payments made to the Program in the rate area at the time of calculation; and
- (D) "Number of Pounds Paid during Adjustment Period" means the average number of pounds of a nutrient paid to the Program over the last three years in the rate area multiplied by the adjustment period. If no payments have been made to the Program in a rate area, the number of pounds paid shall be 1,000 pounds until greater than 1,000 pounds have been purchased in that rate area.

- (4) Adjustment Period shall be one to four years, determined as follows for a rate area:

- (A) One year if Actual Costs exceed Actual Receipts by less than five percent;
- (B) Two years if Actual Costs exceed Actual Receipts by five percent or more but less than 15 percent;
- (C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25 percent; and

- (D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.

(h) If individual projects produce more than one type of nutrient reduction, the project costs shall be ~~pro-rated~~ apportioned for each nutrient being offset by the project.

(i) If an applicant is required to reduce more than one nutrient type and chooses to use the Program to offset nutrients, the applicant shall make a payment for each nutrient type pursuant to ~~15A NCAC 02B .0240(e)(3)~~ 15A NCAC 02B .0703 (j) (2). ~~for each nutrient type.~~

*Authority G.S. 143-214.1; 143-214.20; 143-214.21; S.L. 1995-572; S.L. 2006-215; S.L. 2007-438; S.L. 2009-337; S.L. 2009-484; S.L. 2009-486.*

## **TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 25 - INTERPRETER AND TRANSLITERATOR BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Interpreter and Transliterator Licensing Board intends to adopt the rule cited as 21 NCAC 25 .0801.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://ncitlb.org/>

**Proposed Effective Date:** February 1, 2027

**Public Hearing:**

**Date:** November 18, 2026

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

**Location:** Zoom:

<https://us02web.zoom.us/j/89073657626?pwd=vPZb9aZTHFpgy42h4lBelSjZbj4WrU.1>

**Reason for Proposed Action:** *The proposed rule would require anyone providing video remote interpreting in North Carolina to a Deaf or Hard-of-Hearing person to be licensed. This would ensure the person providing the interpreting has met the minimum standard required by the Board to hold a license to interpret for Deaf and Hard-of-Hearing individuals.*

**Comments may be submitted to:** Caitlin Schwab, NCITLB, 701 Exposition Place, Ste 206, Raleigh, NC 27615; phone (919) 779-5709; email [ncitlb@caphill.com](mailto:ncitlb@caphill.com)

**Comment period ends:** December 14, 2026

**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](mailto: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 ( $\geq$  \$1,000,000)  
☐ Approved by OSBM  
☒ No fiscal note required

### **SECTION .0800 – VIDEO REMOTE INTERPRETING**

#### **21 NCAC 25 .0801 VIDEO REMOTE INTERPRETER LICENSE REQUIREMENT**

(a) Video Remote Interpreting (VRI) is defined as a fee-based interpreting service conveyed via videoconferencing where either the interpreter or consumer is in a separate location.

(b) Unless an exception applies under N.C. Gen. Stat. 90D-4(b), an interpreter shall not provide VRI for an individual physically located in North Carolina before being licensed under 21 NCAC 25 .0202.

*Authority G.S. 90D-2; 90D-6; S.L. 2002-182, s. 7, as amended by S.L. 2003-56.*

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### **CHAPTER 32 - NORTH CAROLINA MEDICAL BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Medical Board intends to readopt with substantive changes the rule cited as 21 NCAC 32T .0101.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncmedboard.org/about-the-board/latest-board-activity/rule-change-tracker>

**Proposed Effective Date:** April 1, 2027

**Public Hearing:**

**Date:** November 10, 2026

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

**Location:** Proximity Hotel, 704 Green Valley Road, Greensboro, NC 27408 (Teams: <https://tinyurl.com/3fyb6fu6>)

**Reason for Proposed Action:** *Session Law 2025-37 implemented changes to the practice of clinical pharmacist practitioners (“CPPs”), most notably (a) to expand the ability of CPPs to provide health care services that are delegated by a supervising physician, and (b) to allow CPPs to enter*

*collaborative practice agreements with multi-provider institutional or group practices. As directed by G.S. 90-18(c)(3a), the Board of Pharmacy and the Medical Board have reviewed and proposed amendments to their respective CPP rules in order to remove inconsistent provisions and accommodate collaborative practice agreements. In addition, a working group proposed streamlining CPP qualifications and making the annual continuing education requirements for CPPs analogous to those for physician assistants and nurse practitioners. The boards further propose to reorganize and clean up the rules to be more logical and clear.*

**Comments may be submitted to:** Leigh Anne Satterwhite, 3127 Smoketree Court, Raleigh, NC 27604; phone (919) 326-1109; email rules@ncmedboard.org

**Comment period ends:** December 14, 2026

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

**SECTION .0100 – CLINICAL PHARMACIST PRACTITIONER**

**21 NCAC 32T .0101 CLINICAL PHARMACIST PRACTITIONER**

(a) Definitions as used in the Rule: A pharmacist may serve as a clinical pharmacist practitioner (or "CPP") pursuant to G.S. 90-18(c)(3a) and 90-18.4 as set forth in this Rule.

- (1) ~~"Medical Board" means the North Carolina Medical Board.~~
- (2) ~~"Pharmacy Board" means the North Carolina Board of Pharmacy.~~
- (3) ~~"Clinical Pharmacist Practitioner" or "CPP" means a licensed pharmacist who is approved to provide drug therapy management, including controlled substances, under the direction or~~

~~supervision of a Supervising Physician pursuant to a CPP Agreement. Only a pharmacist approved by the Pharmacy Board and the Medical Board may legally identify himself as a CPP.~~

- (4) ~~"Supervising Physician" means a licensed physician who, by signing the CPP Agreement, is held accountable for the on going supervision and evaluation of the drug therapy management performed by the CPP as defined in written CPP Agreement. This term includes both Primary Supervising Physician and Back up Supervising Physician.~~
- (5) ~~"Primary Supervising Physician" means the Supervising Physician who shall provide on-going supervision, collaboration, consultation, and evaluation of the drug therapy management performed by the CPP as defined in the CPP Agreement.~~
- (6) ~~"Back up Supervising Physician" means a Supervising Physician who shall provide supervision, collaboration, consultation, and evaluation of the drug therapy management performed by the CPP as defined in the CPP Agreement when the Primary Supervising Physician is not available.~~
- (7) ~~"Approval" means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.~~
- (8) ~~"Continuing Education or CE" is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.~~
- (9) ~~"Clinical Experience approved by the Boards" means work in a pharmacy practice setting which includes experience consistent with the following components as listed in Parts (b)(2)(A), (B), (C), (D), (E), (H), (I), (J), (N), (O), and (P) of this Rule. Clinical experience requirements must be met only through activities separate from the certificate programs referred to in Parts (b)(1)(B) of this Rule.~~
- (10) ~~"CPP Agreement" means a written agreement between the CPP, Primary Supervising Physician and any Back Up Supervising Physician by which the Supervising Physician(s) have provided written instructions to the CPP for patient specific and disease-specific drug therapy, which may include ordering, changing, or substituting therapies or ordering tests.~~

(b) CPP application for approval: A pharmacist may serve as a CPP only after the Medical Board and the Board of Pharmacy (collectively, "the Boards") approve a pharmacist who meets each of the following requirements:

- (1) ~~The requirements for application for CPP approval include that the pharmacist: The pharmacist has an unrestricted and current~~

- license to practice as a pharmacist in North Carolina;
- (2)(A) ~~has an unrestricted and current license to practice as a pharmacist in North Carolina; The pharmacist meets one of the following qualifications:~~
- ~~(B)(A) meets one of the following qualifications: has earned Board Certification from the Board of Pharmaceutical Specialties;~~
- ~~(B) has completed a residency program accredited by the American Society of Health System Pharmacists; or~~
- ~~(C) holds an undergraduate professional degree in pharmacy as defined in Rule .1317 of this Section and has acquired two years of full-time practice of pharmacy in a clinical pharmacy practice setting that includes experience consistent with the health care services to be provided under the collaborative practice agreement. This clinical experience must be acquired following graduation with an undergraduate professional degree in pharmacy.~~
- ~~(i) has earned Certification from the Board of Pharmaceutical Specialties, is a Certified Geriatric Pharmacist as certified by the Commission for Certification in Geriatric Pharmacy, or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program with two years of Clinical Experience approved by the Boards; or~~
- ~~(ii) holds the academic degree of Doctor of Pharmacy, has three years of Clinical Experience approved by the Boards, and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical Education (ACPE) approved certificate program in the area of practice covered by the CPP Agreement; or~~
- ~~(iii) holds the academic degree of Bachelor of Science in Pharmacy, has five years of Clinical Experience approved by the Boards, and has completed two NCCPC or ACPE approved certificate~~
- ~~programs with at least one program in the area of practice covered by the CPP Agreement;~~
- ~~(C) submits the required application and fee to the Pharmacy Board;~~
- ~~(D) submits any information deemed necessary by the Pharmacy Board in order to evaluate the application; and~~
- ~~(E) has a signed CPP Agreement.~~
- ~~(3) The pharmacist certifies that he or she is a party to a signed collaborative practice agreement that meets the requirements of G.S. 90-8(c)(3a) and 90-18.4 and this Rule, and identifies the supervising physician and (if applicable) the institution or group practice that is a party to the agreement.~~
- ~~(4) The pharmacist submits any information required by the Boards in order to evaluate whether the requirements of the Rule have been met.~~
- ~~(5) The pharmacist pays the required fee. The fee provided in G.S. 90-8.2(b) as the maximum fee that the Boards are entitled to charge and collect for a request for approval is hereby established as the fee. No portion of that fee is refundable.~~
- If for any reason a CPP discontinues working under an approved CPP Agreement, the clinical pharmacist practitioner shall notify the Pharmacy Board in writing within 10 days, and the CPP's approval shall automatically terminate or be placed on inactive status until such time as a new application is approved in accordance with this Subchapter.
- ~~(2) All certificate programs referred to in Subpart (b)(1)(B)(i) of this Rule must contain a core curriculum, including the following components:~~
- ~~(A) communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;~~
- ~~(B) designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;~~
- ~~(C) identifying, assessing, and solving medication related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;~~
- ~~(D) conducting physical assessments, evaluating patient problems, and ordering and monitoring medications and laboratory tests;~~
- ~~(E) referring patients to other health professionals as appropriate;~~
- ~~(F) administering medications;~~

- ~~(G) monitoring patients and patient populations regarding the purposes, uses, effects, and pharmacoeconomics of their medication and related therapy;~~
- ~~(H) counseling patients regarding the purposes, uses, and effects of their medication and related therapy;~~
- ~~(I) integrating relevant diet, nutritional, and non drug therapy with pharmaceutical care;~~
- ~~(J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies, and alternative medicine practices;~~
- ~~(K) ordering of and educating patients regarding proper usage of devices and durable medical equipment;~~
- ~~(L) providing emergency first care;~~
- ~~(M) retrieving, evaluating, utilizing, and managing data and professional resources;~~
- ~~(N) using clinical data to optimize therapeutic drug regimens;~~
- ~~(O) collaborating with other health professionals;~~
- ~~(P) documenting interventions and evaluating pharmaceutical care outcomes;~~
- ~~(Q) integrating pharmacy practice within healthcare environments;~~
- ~~(R) integrating national standards for the quality of healthcare; and~~
- ~~(S) conducting outcomes and other research.~~
- ~~(3) The completed application for approval to practice as a CPP shall be reviewed by the Pharmacy Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina. The Pharmacy Board shall:~~
  - ~~(A) approve the application and, at the time of approval, issue a number which shall be printed on each prescription written by the CPP;~~
  - ~~(B) deny the application; or~~
  - ~~(C) approve the application with restrictions, in the event that restrictions are appropriate in order to protect the public health, safety, and welfare in light of information received and reviewed in the CPP application in Subparagraph (b)(1) of this Rule.~~

(c) Annual Renewal: The Boards may deny CPP approval for failure to comply with G.S. 90-18(c)(3a) or 90-18.4 or this Rule, or for any grounds stated in Paragraph (h) of this Rule. In the alternative to either granting or denying CPP approval, the Boards may approve CPP status with restrictions, in the event that restrictions are appropriate in order to protect the public health,

safety, and welfare in light of the information received and reviewed by the Boards.

- ~~(1) Each CPP shall register annually on or before December 31 by:~~
  - ~~(A) verifying that the CPP holds a current Pharmacist license;~~
  - ~~(B) submitting the renewal fee as specified in Subparagraph (j)(2) of this Rule;~~
  - ~~(C) completing the Pharmacy Board's renewal form; and~~
  - ~~(D) reporting continuing education credits as required by subsection (d) of this Rule.~~
- ~~(2) If the CPP has not renewed the CPP's annual registration pursuant to Subparagraph (c)(1) of this Rule, within 60 days of December 31, the approval to practice as a CPP shall lapse.~~

(d) Continuing Education: The CPP may provide health care services pursuant to a collaborative practice agreement so long as both the agreement and the operation of the agreement meet the requirements of G.S. 90-18(c)(3a) and 90-18.4 and this Rule:

- ~~(1) Each CPP shall earn 35 hours of practice-relevant CE each year, approved by the Pharmacy Board. The agreement must specify the health care services that the CPP is authorized to provide.~~
- ~~(2) Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board. The agreement must be approved and signed by the CPP and either the supervising physician or the institutional or group practice through which the CPP provides health care services, and a copy shall be maintained in each practice site for inspection by agents of either Board upon request.~~
- ~~(3) Any practice site must be within the State of North Carolina.~~
- ~~(4) The agreement must have a supervising physician who:~~
  - ~~(A) Agrees to perform on-going supervision and evaluation of the health care services performed by the CPP under the agreement and to be held accountable for doing so. The agreement must be in writing, by the supervising physician either signing the agreement or signing a separate acknowledgement of having reviewed the agreement and agreeing to serve as supervising physician. Any acknowledgement must be maintained in the same location as the agreement and must be renewed upon any amendments to the agreement;~~
  - ~~(B) Has an unrestricted and current license to practice medicine in North Carolina and spends the majority of the~~

- physician's time in practice located physically within the State;
- (C) Is engaged in clinical practice;
- (D) Is not serving in a postgraduate medical training program;
- (E) Specifies the site or sites to which the collaborative practice agreement applies, and is readily available for consultation with the CPP;
- (F) Possesses a registration for a schedule or schedules of controlled substances equal to or greater than the CPP's DEA registration; and
- (G) If not identified to the Board at the time of any approval or renewal, is identified within 10 days after the physician becomes a supervising physician.
- (5) The agreement must include a pre-determined plan for emergency services.
- (6) The agreement must incorporate a policy for oversight and evaluation of the CPP by the supervising physician, including a periodic review and evaluation of the health care services provided by the CPP. For the first six months, the CPP and supervising physician must meet at least monthly to review the operation of the collaborative practice agreement, the health care services provided by the CPP, and measures to improve the health care services provided by the CPP. Thereafter, the CPP and supervising physician must meet to perform these tasks at least once every six months. Documentation of the meetings between the CPP and the supervising physician shall:
- (e) ~~A Supervising Physician who has a CPP Agreement with a CPP shall be readily available for consultation with the CPP and, at the meetings required by Subparagraph (f)(6) of this Rule, shall review each order written by the CPP.~~
- (f) ~~The CPP Agreement shall:~~
- (1) ~~be approved and signed by the Primary Supervising Physician, and Back Up Supervising Physician, and the CPP, and a copy shall be maintained in each practice site for inspection by agents of either Board upon request;~~
  - (2) ~~be specific in regards to the physician, the pharmacist, the patient, and the disease;~~
  - (3) ~~specify the predetermined drug therapy, which shall include the diagnosis and product selection by the patient's physician and any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;~~
  - (4) ~~prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician;~~
  - (5) ~~include a pre-determined plan for emergency services;~~
  - (6) ~~for the first six months of the CPP Agreement include a plan and schedule for monthly meetings to discuss the operation of the CPP Agreement and quality improvement measures between the Primary Supervising Physician and CPP, and thereafter include a plan and schedule for meetings between the Primary Supervising Physician and CPP at least once every six months to discuss the operation of the CPP Agreement and quality improvement measures. Documentation of the meetings between the CPP and the Primary Supervising Physician shall:~~
    - (A) ~~identify clinical issues discussed and actions taken;~~
    - (B) ~~be signed and dated by those who attended; and~~
    - (C) ~~be retained by both the CPP and Primary Supervising Physician and be available for review by members or agents of either Board for five calendar years;~~
  - (7) ~~require that the patient be notified of the collaborative relationship under the CPP Agreement; and The agreement must require that the evaluation and supervision of the CPP remain with the supervising physician, regardless of whether other physicians or advanced practice providers are parties to the collaborative practice agreement.~~
  - (8) ~~be terminated when patient care is transferred to another physician and new orders will be written by the succeeding physician.~~
- (g)(c) The Supervising Physician of the CPP shall: The CPP shall wear a nametag spelling out the words "Clinical Pharmacist Practitioner" at all times that the CPP provides health care services pursuant to this Rule.
- (1) ~~be fully licensed with the Medical Board and engaged in clinical practice;~~
  - (2) ~~not be serving in a postgraduate medical training program;~~
  - (3) ~~be approved in accordance with this Subchapter before the CPP supervision occurs; and~~
  - (4) ~~supervise no more than three pharmacists.~~
- (h)(f) The CPP shall wear a nametag spelling out the words "Clinical Pharmacist Practitioner". A CPP may be registered only when actively providing services pursuant to a collaborative practice agreement. If for any reason a CPP discontinues practicing under the agreement or the supervising physician no longer serves under the agreement (and no replacement agrees to serve), the CPP shall notify the Board of Pharmacy in writing within 10 days, and the CPP's approval shall automatically be placed on inactive status until such time as a new approval is issued in accordance with this Rule.
- (g) A CPP must renew CPP status on annual basis by December 31 as follows:

- (1) The CPP shall earn 25 hours of practice-relevant continuing education each calendar year that has been approved for credit by the American Council on Pharmaceutical Education or the Accreditation Council for Continuing Medical Education. The hours earned for the continuing education required by Rule .2201 may also count toward these hours, if they also qualify under this Rule. A CPP who prescribes controlled substances shall complete at least one hour of continuing education designed specifically to address controlled substances prescribing practices. Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of either Board.
- (2) The CPP shall update the information set out in Paragraph (b) of this Rule, certify the required continuing education hours, and submit any information required by the Boards in order to evaluate whether the requirements of the Rule have been met.
- (3) The CPP shall pay the required fee. The fee provided in G.S. 90-8.2(b) as the maximum fee that the Boards are entitled to charge and collect for renewal is hereby established as the fee. No portion of that fee is refundable.
- (4) Any CPP registration that is not renewed by March 1 of the succeeding year lapses, and it is unlawful to practice as a CPP following that date.

~~(i)(h)~~ The A CPP may be censured or reprimanded reprimanded, and his or her or the CPP's CPP approval may be restricted, suspended, revoked, annulled, denied, or terminated by the Medical Board or the Pharmacy Board. Or denied by either of the Boards. In addition or in the alternative, the pharmacist may be censured or reprimanded or reprimanded, the pharmacist's license may be restricted, suspended, revoked, annulled, or denied, or terminated or the pharmacist may be required to successfully complete remedial education by the Pharmacy Board, Board of Pharmacy, in accordance with provisions of G.S. 150B- G.S. 90-85.38. The Pharmacy Board or the Medical Board Boards may take the actions set forth in this Paragraph with respect to the pharmacist, the CPP approval, or the pharmacist's license, if either Board finds one or more of the following:

- (1) ~~the~~ The CPP has held himself or herself out as, or permitted another to represent that the CPP is, a licensed physician; physician or other health care provider that the CPP is not.
- (2) ~~the CPP has engaged or attempted to engage in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's Supervising Physician;~~
- ~~(3)(2)~~ the The CPP has provided or attempted to provide medical management health care services outside the approved CPP Agreement collaborative practice agreement or for which

- ~~the CPP is not qualified by education and training to provide; provide.~~
- (3) The CPP has not satisfied the terms of the collaborative practice agreement.
- (4) The CPP commits any act prohibited by any provision of G.S. 90-85.38 as determined by the Pharmacy Board Board of Pharmacy or G.S. 90-14(a)(1), (a)(3) through (a)(14) and (c) as determined by the Medical Board; or Board.
- (5) The CPP or anyone else operating under the collaborative practice agreement has modified the CPP's provision of health care services for financial gain.
- ~~(5)(6)~~ the The CPP has failed to comply with any of the provisions of this Rule: G.S. 90-18(c)(3a) or 90-18.4 or this Rule.

This does not limit the grounds upon which the Board can discipline a pharmacist serving as a CPP on the same basis as it could any other pharmacist.

Any modification of treatment for financial gain on the part of the Supervising Physician or CPP shall be grounds for denial of Board approval of the CPP Agreement.

~~(j)~~ Fees:

- (1) ~~An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice as a CPP.~~
- (2) ~~The fee for annual renewal of approval, due at the time of annual renewal pursuant to Paragraph (c) of this Rule, is fifty dollars (\$50.00).~~
- (3) ~~No portion of any fee in this Rule is refundable.~~

*Authority G.S. 90-8.2(b); 90-18(c)3a; 90-18.4.*

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## CHAPTER 42 - OPTOMETRY

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g that the Board of Examiners in Optometry intends to readopt with substantive changes the rule cited as 21 NCAC 42B .0201, and readopt without substantive changes the rules cited as 21 NCAC 42B .0202, .0203, .0303, and .0304.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://www.ncoptometry.org/proposed-rules>

**Proposed Effective Date:** February 1, 2027

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): If no public hearing is scheduled, provide instructions on how to demand a*

*public hearing: Mail request to 521 Yopp Road, Suite 214 #444, Jacksonville, NC 28540, or via email to [janice@ncoptometry.org](mailto:janice@ncoptometry.org)*

**Reason for Proposed Action:**

21 NCAC 42B .0201- *Readoption; clarification*  
 21 NCAC 42B .0202- *Readoption*  
 21 NCAC 42B .0203- *Readoption*  
 21 NCAC 42B .0303- *Readoption*  
 21 NCAC 42B .0304- *Readoption*

**Comments may be submitted to:** *Janice Peterson, N.C. State Board of Examiners in Optometry 521 Yopp Road, Suite 214 #444, Jacksonville, NC 28540; phone (910) 285-3160; fax (910) 285-4546; email [janice@ncoptometry.org](mailto:janice@ncoptometry.org)*

**Comment period ends:** *December 14, 2026*

**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](mailto: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 ( $\geq$  \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

**SUBCHAPTER 42B - LICENSE TO PRACTICE  
OPTOMETRY**

**SECTION .0200 - RESPONSIBILITY TO SUPPLY  
INFORMATION**

**21 NCAC 42B .0201      REQUIRED INFORMATION  
BEGINNING PRACTICE; RELOCATING PRACTICE**

**(a)** Prior to beginning practice, a licensee shall notify the Board in writing as to the full and complete mailing address, including the street address, of his or her main office and any branch office and the telephone number of such office.

**(b)** Prior to relocating an office, the licensee involved shall notify the Board in writing of his or her new main office and any branch office address and telephone number. The address so identified shall constitute his or her primary practice address and the address

to which all information pertaining to his or her licensure shall be addressed.

(c) Within five business days, a licensee must notify the Board of any change in his or her office address, office telephone number, primary email address, or cellular phone number.

*Authority G.S. 90-117.5.*

**21 NCAC 42B .0202      BRANCH OFFICE  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 42B .0203      TEMPORARY OR RELIEF  
OPTOMETRIST (READOPTION WITHOUT  
SUBSTANTIVE CHANGES)**

**SECTION .0300 - ANNUAL LICENSE RENEWAL**

**21 NCAC 42B .0303      FAILURE TO MEET  
CONTINUING EDUCATION REQUIREMENT  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**21 NCAC 42B .0304      APPLICATION FOR LICENSE  
RENEWAL (READOPTION WITHOUT SUBSTANTIVE  
CHANGES)**

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**CHAPTER 46 - PHARMACY**

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to amend the rule cited as 21 NCAC 46 .3101.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncbop.org/rulemakings.htm>

**Proposed Effective Date:** *April 1, 2027*

**Public Hearing:**

**Date:** *November 10, 2026*

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

**Location:** *Proximity Hotel, 704 Green Valley Road, Greensboro, NC 27408 (Teams: <https://tinyurl.com/3fjb6fu6>)*

**Reason for Proposed Action:** *Session Law 2025-37 implemented changes to the practice of clinical pharmacist practitioners ("CPPs"), most notably (a) to expand the ability of CPPs to provide health care services that are delegated by a supervising physician, and (b) to allow CPPs to enter collaborative practice agreements with multi-provider institutional or group practices. As directed by G.S. 90-18(c)(3a), the Board of Pharmacy and the Medical Board have reviewed and proposed amendments to their respective CPP rules in order to remove inconsistent provisions and accommodate collaborative practice agreements. In addition, a working group proposed streamlining CPP and making the annual continuing education requirements for CPPs analogous to those for physician assistants and nurse practitioners. The boards further propose to reorganize and clean up the rules to be more logical and clear.*

Furthermore, because this is the only rule in Section .3100, the Board proposes this rule as the readoption of that section, to the extent permitted.

**Comments may be submitted to:** Jay Campbell, North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517; email [ncboprulmaking@ncbop.org](mailto:ncboprulmaking@ncbop.org)

**Comment period ends:** December 14, 2026

**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](mailto: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 ( $\geq$  \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

## SECTION .3100 – CLINICAL PHARMACIST PRACTITIONERS

### 21 NCAC 46 .3101 CLINICAL PHARMACIST PRACTITIONER

(a) A pharmacist may serve as a clinical pharmacist practitioner (or "CPP") pursuant to G.S. 90-18(c)(3a) and 90-18.4 as set forth in this Rule.

Definitions. As used in this Rule:

- (1) ~~"Medical Board" means the North Carolina Medical Board.~~
- (2) ~~"Pharmacy Board" means the North Carolina Board of Pharmacy.~~
- (3) ~~"Clinical Pharmacist Practitioner" or "CPP" means a licensed pharmacist who is approved to provide drug therapy management, including controlled substances, under the direction or supervision of a Supervising Physician pursuant to a CPP Agreement. Only a pharmacist approved by the Pharmacy Board and the Medical Board may legally identify himself as a CPP.~~

(4) ~~"Supervising Physician" means a licensed physician who, by signing the CPP Agreement, is held accountable for the on-going supervision and evaluation of the drug therapy management performed by the CPP as defined in the CPP Agreement. This term includes both the Primary Supervising Physician and any Back-Up Supervising Physician.~~

(5) ~~"Primary Supervising Physician" means the Supervising Physician who shall provide on-going supervision, collaboration, consultation, and evaluation of the drug therapy management performed by the CPP as defined in the CPP Agreement.~~

(6) ~~"Back Up Supervising Physician" means a Supervising Physician who shall provide supervision, collaboration, consultation, and evaluation of the drug therapy management performed by the CPP as defined in the CPP Agreement when the Primary Supervising Physician is not available.~~

(7) ~~"Approval" means authorization by the Medical Board and the Pharmacy Board for a pharmacist to practice as a CPP in accordance with this Rule.~~

(8) ~~"Continuing Education or CE" is defined as courses or materials which have been approved for credit by the American Council on Pharmaceutical Education.~~

(9) ~~"Clinical Experience approved by the Boards" means work in a clinical pharmacy practice setting which includes experience consistent with the components listed in Parts (b)(2)(A), (B), (C), (D), (E), (H), (I), (J), (N), (O), and (P) of this Rule. Clinical experience requirements must be met only through activities separate from the certificate programs referred to in Parts (b)(1)(B) of this Rule.~~

(10) ~~"CPP Agreement" means a written agreement between the CPP, Primary Supervising Physician and any Back Up Supervising Physician by which the Supervising Physician(s) have provided written instructions to the CPP for patient specific and disease-specific drug therapy, which may include ordering, changing, or substituting therapies or ordering tests.~~

(b) CPP application for approval.

(1) ~~The requirements for application for CPP approval include that the pharmacist: A pharmacist may serve as a CPP only after the Medical Board and the Board of Pharmacy (collectively, "the Boards") approve a pharmacist who meets each of the following requirements:~~

(A)(1) ~~The pharmacist has an unrestricted and current license to practice as a pharmacist in North Carolina.~~ Carolina;

- ~~(B)(2)~~ The pharmacist meets one of the following qualifications:
- ~~(i)(A)~~ has earned Board Certification from the Board of Pharmaceutical Specialties; Specialties, is a Certified Geriatric Pharmacist as certified by the Commission for Certification in Geriatric Pharmacy, or has completed an American Society of Health System Pharmacists (ASHP) accredited residency program with two years of Clinical Experience approved by the Boards; or
  - (B) has completed a residency program accredited by the American Society of Health System Pharmacists; or
  - (C) holds an undergraduate professional degree in pharmacy as defined in Rule .1317 of this Section and has acquired two years of full-time practice of pharmacy in a clinical pharmacy practice setting that includes experience consistent with the health care services to be provided under the collaborative practice agreement. This clinical experience must be acquired following graduation with an undergraduate professional degree in pharmacy.
    - ~~(ii)~~ holds the academic degree of Doctor of Pharmacy, has three years of Clinical Experience approved by the Boards, and has completed a North Carolina Center for Pharmaceutical Care (NCCPC) or American Council on Pharmaceutical Education (ACPE) approved certificate program in the area of practice covered by the CPP Agreement; or
    - ~~(iii)~~ holds the academic degree of Bachelor of Science in Pharmacy, has five years of Clinical Experience approved by the Boards, and has completed two NCCPC or ACPE approved certificate programs with at least one program in the area of practice covered by the CPP Agreement;
  - (C) submits the required application and fee to the Pharmacy Board;
  - (D) submits any information deemed necessary by the Pharmacy Board in order to evaluate the application; and
  - (E) has a signed CPP Agreement.

- (3) The pharmacist certifies that he or she is a party to a signed collaborative practice agreement that meets the requirements of G.S. 90-18(c)(3a) and 90-18.4 and this Rule, and identifies the supervising physician and (if applicable) the institution or group practice that is a party to the agreement.
- (4) The pharmacist submits any information required by the Boards in order to evaluate whether the requirements of the Rule have been met.
- (5) The pharmacist pays the required fee. The fee provided in G.S. 90-8.2(b) as the maximum fee that the Boards are entitled to charge and collect for a request for approval is hereby established as the fee. No portion of that fee is refundable.

If for any reason a CPP discontinues working under an approved CPP Agreement, the CPP shall notify the Pharmacy Board in writing within 10 days, and the CPP's approval shall automatically terminate or be placed on inactive status until such time as a new application is approved in accordance with this Subchapter.

- ~~(2)~~ All certificate programs referred to in Subpart (b)(1)(B)(i) of this Rule must contain a core curriculum, including the following components:
  - ~~(A)~~ communicating with healthcare professionals and patients regarding drug therapy, wellness, and health promotion;
  - ~~(B)~~ designing, implementing, monitoring, evaluating, and modifying or recommending modifications in drug therapy to insure effective, safe, and economical patient care;
  - ~~(C)~~ identifying, assessing, and solving medication related problems and providing a clinical judgment as to the continuing effectiveness of individualized therapeutic plans and intended therapeutic outcomes;
  - ~~(D)~~ conducting physical assessments, evaluating patient problems, and ordering and monitoring medications and laboratory tests;
  - ~~(E)~~ referring patients to other health professionals as appropriate;
  - ~~(F)~~ administering medications;
  - ~~(G)~~ monitoring patients and patient populations regarding the purposes, uses, effects, and pharmacoeconomics of their medication and related therapy;
  - ~~(H)~~ counseling patients regarding the purposes, uses, and effects of their medication and related therapy;
  - ~~(I)~~ integrating relevant diet, nutritional, and non drug therapy with pharmaceutical care;

- (J) recommending, counseling, and monitoring patient use of non-prescription drugs, herbal remedies, and alternative medicine practices;
- (K) using, ordering, and instructing on the use of devices and durable medical equipment;
- (L) providing emergency first care;
- (M) retrieving, evaluating, utilizing, and managing data and professional resources;
- (N) using clinical data to optimize therapeutic drug regimens;
- (O) collaborating with other health professionals;
- (P) documenting interventions and evaluating pharmaceutical care outcomes;
- (Q) integrating pharmacy practice within healthcare environments;
- (R) integrating national standards for the quality of healthcare; and
- (S) conducting outcomes and other research.

(3) ~~The completed application for approval to practice as a CPP shall be reviewed by the Pharmacy Board upon verification of a full and unrestricted license to practice as a pharmacist in North Carolina. The Pharmacy Board shall:~~

- (A) ~~approve the application and, at the time of approval, issue a number which shall be printed on each prescription written by the CPP;~~
- (B) ~~deny the application; or~~

(c) The Boards may deny CPP approval for failure to comply with G.S. 90-18(c)(3a) or 90-18.4 or this Rule, or for any grounds stated in Paragraph (h) of this Rule. In the alternative to either granting or denying CPP approval, the Boards may approve CPP status the application with restrictions, in the event that restrictions are appropriate in order to protect the public health, safety, and welfare in light of the information received and reviewed by the Boards, as part of the CPP application.

~~(e) Annual Renewal.~~

- (1) ~~Each CPP shall register annually on or before December 31 by:~~
  - (A) ~~verifying that the CPP holds a current Pharmacist license;~~
  - (B) ~~submitting the renewal fee as specified in Subparagraph (j)(2) of this Rule;~~
  - (C) ~~completing the Pharmacy Board's renewal form; and~~
  - (D) ~~reporting continuing education credits as required by Paragraph (d) of this Rule.~~
- (2) ~~If the CPP has not renewed the CPP's annual registration pursuant to Subparagraph (e)(1) of this Rule within 60 days of December 31, the approval to practice as a CPP shall lapse.~~

~~(d) Continuing Education.~~

(1) ~~Each CPP shall earn 35 hours of practice-relevant CE each year, approved by the Pharmacy Board.~~

(2) ~~Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of the Medical Board or Pharmacy Board.~~

~~(e) A Supervising Physician who has a CPP Agreement with a CPP shall be readily available for consultation with the CPP and, at the meetings required by Subparagraph (f)(6) of this Rule, shall review each order written by the CPP.~~

~~(f) The CPP Agreement shall:~~

(d) The CPP may provide health care services pursuant to a collaborative practice agreement so long as both the agreement and the operation of the agreement meet the requirements of G.S. 90-18(c)(3a) and 90-18.4 and this Rule:

(1) The agreement must specify the health care services that the CPP is authorized to provide.

(1)(2) The agreement must be approved and signed by the CPP and either the supervising physician or the institutional or group practice through which the CPP provides health care services. Primary Supervising Physician, any Back Up Supervising Physician, and the CPP, and a copy shall be maintained in each practice site for inspection by agents of either Board upon request.

(2) be specific in regard to the physician, the pharmacist, the patient, and the disease;

(3) Any practice site must be within the State of North Carolina, specify the predetermined drug therapy, which shall include the diagnosis and product selection by the patient's physician and any modifications which may be permitted, dosage forms, dosage schedules and tests which may be ordered;

(4) prohibit the substitution of a chemically dissimilar drug product by the CPP for the product prescribed by the physician without first obtaining written consent of the physician; The agreement must have a supervising physician who:

(A) Agrees to perform on-going supervision and evaluation of the health care services performed by the CPP under the agreement and to be held accountable for doing so. The agreement must be in writing, by the supervising physician either signing the agreement or signing a separate acknowledgement of having reviewed the agreement and agreeing to serve as supervising physician. Any acknowledgement must be maintained in the same location as the agreement and must be renewed upon any amendments to the agreement.

(B) Has an unrestricted and current license to practice medicine in North Carolina

- and spends the majority of the physician's time in practice located physically within the State;
- (C) Is engaged in clinical practice;
- (D) Is not serving in a postgraduate medical training program;
- (E) Specifies the site or sites to which the collaborative practice agreement applies, and is readily available for consultation with the CPP;
- (F) Possesses a registration for a schedule or schedules of controlled substances equal to or greater than the CPP's DEA registration; and
- (G) If not identified to the Board at the time of any approval or renewal, is identified within 10 days after the physician becomes a supervising physician.
- (5) The agreement must include a pre-determined plan for emergency services, services;
- (6) The agreement must incorporate a policy for oversight and evaluation of the CPP by the supervising physician, including a periodic review and evaluation of the health care services provided by the CPP. For for the first six months, months of the CPP Agreement include a plan and schedule for monthly meetings to discuss the CPP and supervising physician must meet at least monthly to review the operation of the CPP Agreement collaborative practice agreement, the health care services provided by the CPP, and measures to improve the health care services provided by the CPP, and quality improvement measures between the Primary Supervising Physician and CPP, and thereafter include a plan and schedule for meetings between the Primary Supervising Physician and Thereafter, the CPP and supervising physician must meet to perform these tasks at least once every six months, months to discuss the operation of the CPP Agreement and quality improvement measures. Documentation of the meetings between the CPP and the supervising physician Primary Supervising Physician shall:
- (A) identify clinical issues discussed and actions taken;
- (B) be signed and dated by those who attended; and
- (C) be retained by both the CPP and supervising physician Primary Supervising Physician and be available for review by agents of either Board for five calendar years, years;
- (7) The agreement must require that the evaluation and supervision of the CPP remain with the supervising physician, regardless of whether other physicians or advanced practice providers
- are parties to the collaborative practice agreement, require that the patient be notified of the collaborative relationship under the CPP Agreement; and
- (8) be terminated when patient care is transferred to another physician and new orders will be written by the succeeding physician.
- (g) A Supervising Physician shall:
- (1) be fully licensed with the Medical Board and engaged in clinical practice;
- (2) not be serving in a postgraduate medical training program;
- (3) be approved in accordance with this Subchapter before the CPP supervision occurs; and
- (4) supervise no more than three pharmacists.
- (h)(c) The CPP shall wear a nametag spelling out the words "Clinical Pharmacist Practitioner", "Practitioner" at all times that the CPP provides health care services pursuant to this Rule.
- (f) A CPP may be registered only when actively providing services pursuant to a collaborative practice agreement. If for any reason a CPP discontinues practicing under the agreement or the supervising physician no longer serves under the agreement (and no replacement agrees to serve), the CPP shall notify the Board of Pharmacy in writing within 10 days, and the CPP's approval shall automatically be placed on inactive status until such time as a new approval is issued in accordance with this Rule.
- (g) A CPP must renew CPP status on annual basis by December 31 as follows:
- (1) The CPP shall earn 25 hours of practice-relevant continuing education each calendar year that has been approved for credit by the American Council on Pharmaceutical Education or the Accreditation Council for Continuing Medical Education. The hours earned for the continuing education required by Rule .2201 may also count toward these hours, if they also qualify under this Rule. A CPP who prescribes controlled substances shall complete at least one hour of continuing education designed specifically to address controlled substance prescribing practices. Documentation of these hours shall be kept at the CPP practice site and made available for inspection by agents of either Board.
- (2) The CPP shall update the information set out in Paragraph (b) of this Rule, certify the required continuing education hours, and submit any information required by the Boards in order to evaluate whether the requirements of the Rule have been met.
- (3) The CPP shall pay the required fee. The fee provided in G.S. 90-8.2(b) as the maximum fee that the Boards are entitled to charge and collect for a request for renewal is hereby established as the fee. No portion of that fee is refundable.
- (4) Any CPP registration that is not renewed by March 1 of the succeeding year lapses, and it is unlawful to practice as a CPP following that date.

~~(i)(h)~~ A CPP may be ~~censured or~~ reprimanded, and his or her CPP approval may be restricted, suspended, revoked, ~~annulled, denied, or terminated~~ or denied by ~~either of the Boards, the Medical Board or the Pharmacy Board~~. In addition or in the alternative, the pharmacist may be ~~censured or~~ reprimanded, and the pharmacist's license may be restricted, suspended, revoked, ~~annulled, or denied, or terminated~~ or the pharmacist may be required to successfully complete remedial education by the Board of Pharmacy, ~~Pharmacy Board~~, in accordance with provisions of ~~G.S. 90-85.38, G.S. 150B~~. The ~~Boards Pharmacy Board or the Medical Board~~ may take the actions set forth in this Paragraph with respect to the pharmacist, the CPP approval, or the pharmacist's license, if either Board finds one or more of the following:

- (1) ~~The the~~ CPP has held himself or herself out as, or permitted another to represent that the CPP is, a licensed ~~physician; physician or other health care provider~~ that the CPP is not.
- (2) ~~the CPP has engaged, or attempted to engage, in the provision of drug therapy management other than at the direction of, or under the supervision of, a physician licensed and approved by the Medical Board to be that CPP's Supervising Physician;~~
- ~~(3)~~ ~~The the~~ CPP has provided, or attempted to provide, health care services medical management outside the collaborative practice agreement approved CPP Agreement or for which the CPP is not qualified by education and training to ~~provide; provide;~~
- (3) The CPP has not satisfied the terms of the collaborative practice agreement.
- (4) ~~The the~~ CPP commits any act prohibited by G.S. 90-85.38 as determined by the Board of Pharmacy Pharmacy Board or G.S. 90-14(a)(1), (a)(3) through (a)(14) and (c) as determined by the Medical Board, Board;
- (5) The CPP or anyone else operating under the collaborative practice agreement has modified the CPP's provision of health care services for financial gain.
- ~~(5)(6)~~ ~~The the~~ CPP has failed to comply with any of the provisions of G.S. 90-18(c)(3a) or 90-18.4 or this Rule.

This does not limit the grounds upon which the Board can discipline a pharmacist serving as a CPP on the same basis as it could any other pharmacist.

Any modification of treatment for financial gain on the part of the Supervising Physician or CPP shall be grounds for denial of Board approval of the CPP Agreement.

~~(j)~~ Fees:

- ~~(1) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice as a CPP.~~
- (2) The fee for annual renewal of approval, due at the time of annual renewal pursuant to Paragraph (e) of this Rule, is fifty dollars (\$50.00).

~~(3) No portion of any fee in this Rule is refundable.~~

Authority *G.S. 90-8.2; 90-18; 90-18.4; 90-85.3; 90-85.18; 90-85.26A.*

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## CHAPTER 63 - SOCIAL WORK CERTIFICATION

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Work Certification and Licensure Board intends to adopt the rules cited as 21 NCAC 63 .1001-.1009, and amend the rules cited as 21 NCAC 63 .0102, .0202, .0207, .0210, .0211, .0403-.0405, .0901, and .0903.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncswboard.gov/>

**Proposed Effective Date:** *March 1, 2027*

**Public Hearing:**

**Date:** *November 13, 2026*

**Time:** *9:30 a.m.*

**Location:** *1207 S. Cox Street, Suite F, Asheboro NC, 27203*

**Reason for Proposed Action:** *.0102 – To update the definitions used throughout the rules related to clinical supervision*

*.0202 – To update the manner in which applications for certification or licensure are submitted to the Board*

*.0207 – To update the application process for applicants seeking a credential by substantial equivalency*

*.0210 – To clarify the process by which clinical supervisors must submit six-month review of their supervisee's clinical social work experience to the Board*

*.0211 – To update the process by which clinical supervisors may provide clinical supervision through the use of technology*

*.0403 – To update the manner in which credential holders must submit renewal affidavits to the Board*

*.0404 – To update the process by which a credential holder may apply for nonpracticing status*

*.0405 – To update the process by which credential holders notify the Board of name and address changes, as well as disciplinary action*

*.0901 – To remove notarization requirements from applications for certificate of registration for professional corporations and professional limited liability companies*

*.0903 – To update the manner in which professional entities must notify the Board of dissolution*

*.1001 – To codify eligibility requirements for clinical supervisors*

*.1002 – To codify supervision requirements for clinical supervisors*

*.1003 – To codify process by which clinical supervisors who are listed on the voluntary supervisor roster may provide clinical supervision through telepresence*

*.1004 – To codify requirements that clinical supervisors and clinical supervisees execute a written supervision contract*

*.1005 – To codify record retention period for records of supervisions sessions between clinical supervisors and clinical supervisees*

.1006 – To codify a prohibition of a clinical supervisory relationship with a personal or financial dual relationship  
 .1007 – To codify minimum ethical standards for the clinical supervisory relationship  
 .1008 – To establish a voluntary supervision roster of board approved clinical supervisors  
 .1009 – To set parameters of Board-ordered supervision as a possible condition of disciplinary sanctions

**Comments may be submitted to:** Elizabeth Pope, PO Box 1043, Asheboro, NC 27204; phone (336) 625-1679; email [epope@ncswboard.gov](mailto:epope@ncswboard.gov)

**Comment period ends:** December 15, 2026

**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](mailto: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 ( $\geq$  \$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

## SECTION .0100-GENERAL

### 21 NCAC 63 .0102 DEFINITIONS

Whenever used in this Chapter, the definitions set forth in G.S. 90B-3 are herein incorporated by reference. The following definitions apply in this Chapter:

- (1) CMSW - this designation represents the certified master social worker level of certification.
- (2) CSW - this designation represents the certified social worker level of certification.
- (3) CSWM - this designation represents the certified social work manager level of certification.
- (4) LCSW - this designation represents the licensed clinical social worker level of certification.

- (5) LCSWA - this designation represents the licensed clinical social worker associate level of certification.
- (6) NCSWCLB - this designation represents the North Carolina Social Work Certification and Licensure Board.
- (7) Board Approved Supervisor. A Board Approved Supervisor is a Licensed Clinical Social Worker who is listed on the Board's Supervisor Roster set forth in Rule .1008.
- ~~(7)~~(8) Censure. Censure is an act involving severe condemnation and a sanction by the Board for practice misconduct. Censuring is typically for severe offenses and may require specific follow-up actions by the social worker.
- ~~(8)~~(9) Client. Client means the individual, couple, family, group, organization, or community that seeks or receives social work services. Client status is not dependent on billing or payment of fees for such services. A power of attorney, legal guardian or person who is responsible for making decisions relative to the provision of social work services for a minor or adult is also deemed a recipient of social work services as part of the client system.
- ~~(9)~~(10) Client system. Client system means the client and those in the client's environment who are potentially influential in contributing to a resolution of the client's issues.
- ~~(10)~~(11) Clinical Case Management. A comprehensive approach to care integrating a broad array of interventions to include planning, implementation and management of care for clients with one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions. Interventions by the clinical case manager shall involve face-to-face contact with the client on a regular basis, shall be grounded in clinical social work theory, and shall be guided by the client's treatment plan or personal care plan.
- ~~(11)~~(12) Clinical Social Work Experience. As it relates to the work experience required for LCSW licensure, two years of clinical social work experience in direct practice means the professional application of master or doctoral social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial function. Clinical social work experience requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment, including the use of psychotherapy, to treat one or more of the following disorders or conditions: mental, emotional, addictive, behavioral, or developmental disorders and conditions. In addition, the clinical social work experience

may also include clinical case management, information and referral, mediation, client education, clinical supervision and clinical consultation that is directly related to the treatment plan or personal care plan of a client or consumer.

- (13) Clinical Supervision. Clinical Supervision is supervision as defined in GS 90B-3(9) that meets the requirements set forth in Rule .0211(a)(2) and (3).
- (14) Clinical Supervisor. A Clinical Supervisor is an individual who provides Clinical Supervision to an individual holding a LCSWA credential.
- ~~(12)~~(15) Diagnosis. In the context of licensed clinical social work practice diagnosis is the process of distinguishing, beyond the general social work assessment, among one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions within a psychosocial framework on the basis of their similar and unique characteristics consistent with American Psychiatric Association or World Health Organization classification systems.
- ~~(13)~~(16) Probation. Probation is a period of time in which a license or certification is subject to specific practice conditions determined by the Board. The individual is permitted to continue practice subject to compliance with the conditions set forth in the order determining the probation status. A violation of the conditions of probation can result in additional disciplinary action taken by the Board.
- ~~(14)~~(17) Reprimand. Reprimand is a public rebuke and sanction by the Board for practice misconduct. A reprimand typically is given for less severe offenses and may require specific follow-up actions by the social worker.
- ~~(15)~~(18) Revocation. Revocation is the withdrawal of privilege to practice as a certified or licensed social worker in the State of North Carolina.
- ~~(16)~~(19) Surrender. Surrender is the voluntary relinquishment of a certification or license by its holder. The surrender of a certification or license shall be accepted only by Consent Order with the Board.
- ~~(17)~~(20) Suspension. Suspension is the withdrawal of privilege to practice for a specific period of time.
- ~~(18)~~(21) Treatment. Clinical social work intervention, including individual, couples, family, or group psychotherapy, that is empirically grounded and used to help resolve symptoms of one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions.

## SECTION .0200 - CERTIFICATION

### 21 NCAC 63 .0202 APPLICATION PROCESS

(a) Pursuant to G.S. 90B-7, any person desiring to obtain a certificate or license from the Board shall make application to the Board. Applications not completed within two years of submission to the Board shall be denied. ~~Application forms and instructions may be found on Applicants shall complete and submit applications electronically through the Board's website at https://www.ncswboard.org. In the event that the applicant cannot access the Board's website, applicant may submit a paper application to the Board office.~~

(b) All applications for certification or licensure shall contain the following:

- (1) the applicant's contact information;
- (2) the social security number of the applicant;
- (3) the requested designation of licensure or certification type;
- (4) educational history and degree attainment;
- (5) the names and contact information of three persons supplying professional reference forms in support of the applicant's application, as well as the length of time that the persons have known the applicant;
- (6) employment history;
- (7) whether the applicant has ever been certified, licensed, or registered to practice social work by the Board, by another occupational Board, or in another state/jurisdiction and, if so:
  - (A) what credential was held;
  - (B) in what state/jurisdiction;
  - (C) the issuance date and expiration date; and
  - (D) what examinations were taken to obtain said certification, licensure, or registration;
- (8) whether the applicant has ever had a credential denied, limited, reprimanded, suspended, or revoked;
- (9) whether the applicant has ever been convicted of a felony or misdemeanor under any laws;
- (10) whether any criminal charges are pending against the applicant;
- (11) whether any court, board, agency, or professional organization has found the applicant guilty of misconduct, unprofessional conduct, dishonest or fraudulent practice, or incompetent practice;
- (12) whether any charges are pending against the applicant before any court, board, agency, or professional organization for unprofessional conduct, dishonest or fraudulent practice, or incompetent practice;
- (13) three professional references, as prescribed in 21 NCAC 63 .0204, ~~provided in a sealed envelope with the signature of the reference over the sealed closure; as follows:~~
  - (A) by electronic submission through the Board's website by the individual or

Authority G.S. 90B-3; 90B-6.

- entity completing the professional reference; or
- (B) if electronic submission is not possible, in a sealed envelope with the signature of the reference over the sealed closure.
- (14) official score reports showing passage of the required examination, as prescribed herein and in 21 NCAC 63 .0301, provided from the examination testing provider;
- (15) official transcripts, as prescribed in 21 NCAC 63 .0203, provided either from the institution directly to the Board or from the applicant to the Board in an envelope that is sealed by the institution;
- (16) the applicant's affirmation that:
- (A) the applicant has read the North Carolina General Statute 90B Social Work Certification and Licensure Act, including the Board's rules, ethical guidelines, and disciplinary procedures, which are available on the Board's website at <https://www.ncswboard.org>;
- (B) the information provided by the applicant in the application is true;
- (C) the applicant consents to a criminal history record check; and
- (D) the applicant has read and understands the public notice statement on employee misclassification that is set forth in the application and has disclosed any investigations for employee misclassification, and its results, over the preceding 12-month period, as prescribed by G.S. 143-789; ~~and~~
- (17) ~~the application fee, as prescribed in 21 NCAC 63 .0208. a copy of the applicant's federal or State government-issued picture identification; and~~
- (18) the application fee, as prescribed in 21 NCAC 63 .0208.

(c) In addition to the items set forth in Paragraph (b) of this Rule, applicants for certification as a certified social work manager shall provide a completed CSWM Administrative Supervision Form, as prescribed in Paragraph (e) of this Rule, and an Employment Verification Form, as prescribed in Paragraph (f) of this Rule, to demonstrate supervised administrative experience attained in the preceding six years.

(d) Applicants for licensure as a licensed clinical social worker who are licensed by the Board as licensed clinical social worker associates at the time of application shall provide to the Board the LCSW Short-Form Application, which contains the following:

- (1) the applicant's name, the number of the applicant's licensed clinical social worker associate license, and contact information;
- (2) the signature of the applicant and the applicant's LCSW supervisor;

- (3) whether the LCSW supervisor recommends that the applicant continue supervised clinical practice at the LCSWA level or recommends the applicant for LCSW licensure;
- (4) the applicant's certification that:
- (A) the applicant has completed the requirements to obtain licensure in North Carolina as a LCSW as set forth in G.S. 90B-7(d);
- (B) the applicant has read the North Carolina General Statute 90B Social Work Certification and Licensure Act, and the Board's rules, ethical guidelines, and disciplinary procedures, which are available on the Board's website at <https://www.ncswboard.org>, and agrees to comply with them;
- (C) the information provided by the applicant in the application is true;
- (D) the applicant has not violated any of the Board's governing statutes or rules; and
- (E) the applicant has not been convicted of a misdemeanor or felony crime since submitting his or her initial application for associate licensure;
- (5) the application fee, as prescribed in 21 NCAC 63 .0208; and
- (6) a list of all continuing education hours taken since the applicant was licensed as a LCSWA or since renewal of LCSWA licensure that provides the name of the course taken, the date on which the course was taken, the length of the course taken, and whether the course taken was distance learning or for ethics.
- (e) A CSWM Administrative Supervision Form shall contain the following:
- (1) the name of the applicant and his or her supervisor;
- (2) the applicant's position;
- (3) a description of the applicant's administrative duties and responsibilities for the employer;
- (4) where the applicant worked during the time that supervision was provided to the applicant;
- (5) dates during which the applicant was employed;
- (6) total number of hours during which the applicant was employed;
- (7) dates during which the supervisor provided administrative supervision;
- (8) total number of hours during which the supervisor provided individual administrative supervision to the applicant;
- (9) total number of hours during which the supervisor provided group administrative supervision to the applicant;
- (10) total combined hours of individual and group hours provided to the applicant; and

- (11) the supervisor's certification that the information set forth in the CSWM Administrative Supervision Form is correct and that the supervisor is certified with the Board on at least one level and has a minimum of two years of administrative experience in a social work or mental health setting.
- (f) An Employment Verification Form shall be completed for each place of employment where the applicant has worked over the preceding six years and shall contain the following:
- (1) the applicant's name and contact information;
  - (2) the applicant's license number, if a license is held;
  - (3) the name and contact information of the applicant's place of employment;
  - (4) the title of the applicant's position;
  - (5) whether the applicant is authorized to provide clinical services on behalf of the employer;
  - (6) the applicant's duties for the employer, as documented in a job description on the employer's letterhead;
  - (7) the name and license number of the applicant's clinical supervisor;
  - (8) whether the applicant's supervisor provided supervision to the applicant in person or remotely;
  - (9) the date of the applicant's employment;
  - (10) whether the applicant was employed full-time, part-time, or pro re nata;
  - (11) whether the applicant is paid a fee or salary for services performed; and
  - (12) the employer's signature, contact information, and the date completed.

On the Employment Verification Form, the applicant shall provide the information requested in Subparagraphs (f)(1)-(2) of this Rule and the applicant's employer shall provide the information requested in Subparagraphs (f)(3)-(12) of this Rule.

*Authority G.S. 90B-6; 90B-7; 93B-8.1(c).*

**21 NCAC 63 .0207 SUBSTANTIAL EQUIVALENCY**

- (a) In addition to the items set forth in 21 NCAC 63 .0202(b), applicants for certification as a certified social worker pursuant to G.S. 90B-8 shall ~~provide verification of~~ attest to their current certification, license, or registration in good standing to practice social work in another jurisdiction and certified proof of having passed the ASWB Bachelors Level Examination.
- (b) In addition to the items set in 21 NCAC 63 .0202(b), applicants for certification as a certified master social worker pursuant to G.S. 90B-8 shall provide ~~verification~~ attestation of current their certification, license, or registration and shall provide certified proof of having passed the ASWB Masters Level Examination or ACSW exam.
- (c) In addition to the items set forth in 21 NCAC 63 .0202(b), applicants for certification as a certified social work manager pursuant to G.S. 90B-8 shall provide:
- (1) ~~verification~~ attestation of current licensure in good standing to practice social work in another jurisdiction;

- (2) a copy of the state or jurisdiction law determining the qualifications under which the applicant was certified in the other state or jurisdiction; and
  - (3) certified proof that the applicant has passed the ASWB Advanced Generalist Exam.
- (d) In addition to the items set forth in 21 NCAC 63 .0202(b), applicants for licensure as a licensed clinical social worker pursuant to G.S. 90B-8 shall provide ~~verification of~~ attestation that they hold a current and active license in good standing to practice social work in another jurisdiction and shall provide certified proof of having passed the ASWB Clinical Level Examination. If the applicant has not passed the ASWB Clinical Level Examination at the time of application, the applicant must provide a copy of the state/jurisdiction law determining the qualifications under which the applicant was licensed to practice social work in the other state or jurisdiction so that the Board can determine the applicant's eligibility to take the ASWB Clinical Examination.
- (e) In addition to the items set forth in 21 NCAC 63 .0202(b), applicants for licensure as a licensed clinical social worker associate pursuant to G.S. 90B-8 shall provide:
- (1) ~~verification~~ attestation of their current and active licensure in good standing to practice social work in another jurisdiction;
  - (2) an Employment Verification Form, as prescribed in 21 NCAC 63 .0202(f), that sets forth the total number of hours and dates of paid supervised post-MSW practice in a clinical setting from each employer for which the applicant has practiced clinical social work in the preceding six years, provided ~~in a sealed envelope with the employer's signature on the envelope's sealed closure; and~~ as follows:
    - (A) by electronic submission through the Board's website by the individual or entity completing the Employment Verification Form; or
    - (B) if electronic submission is not possible, in a sealed envelope with the employer's signature over the envelope's sealed closure.
  - (3) a Clinical Social Work Supervision Form, as described in Paragraph (f) of this Rule, from each person who previously has provided clinical supervision to the applicant during the four years preceding the application, provided ~~in a sealed envelope with the signature of the applicant's clinical supervisor on the envelope's sealed closure; and~~ as follows:
    - (A) by electronic submission through the Board's website by the individual or entity completing the Employment Verification Form; or
    - (B) if electronic submission is not possible, in a sealed envelope with the employer's signature over the envelope's sealed closure.

(f) A Clinical Social Work Supervision Form shall be on a form prescribed by the Board, which is available on the Board's website at [ncswboard.org](http://ncswboard.org), and shall contain the following:

- (1) the name of the applicant and his or her clinical supervisor;
- (2) the applicant's position;
- (3) a description of the applicant's clinical social work duties and responsibilities with information about the population served by applicant, problems addressed, assessment, and treatment modalities used for treatment and diagnosis of mental and emotional disorders;
- (4) where the applicant worked;
- (5) dates during which the applicant was employed;
- (6) total number of hours during which the applicant was employed;
- (7) dates during which the clinical supervisor provided supervision to the applicant;
- (8) total number of hours during which the clinical supervisor provided individual supervision to the applicant;
- (9) total number of hours during which the clinical supervisor provided group supervision to the applicant;
- (10) total combined hours of individual and group supervision that clinical supervisor provided to the applicant; and
- (11) the clinical supervisor's certification that the information set forth in the Clinical Social Work Supervision Form is correct; that the clinical supervisor is certified, licensed, or registered as a clinical social worker with a graduate degree in social work from a program accredited by the Council on Social Work Education and has at least two years of clinical social work experience post-licensure.

*Authority G.S. 90B-6; 90B-7; 90B-8.*

## **21 NCAC 63 .0210 ASSOCIATE LICENSES**

(a) Applicants for licensure as a LCSWA shall provide an application to the Board, as set forth in 21 NCAC 63 .0202(b), and shall comply with the requirements of this Rule.

(b) Prior to practicing clinical social work, associates must demonstrate in writing through an emergency crisis plan that, in the event of a clinical emergency, they have immediate access to at least one licensed mental health professional who has agreed to provide to them emergency clinical consultation to assure that compliance with the North Carolina statutes and rules governing clinical social work practice are maintained. For purposes of this Rule, "immediate" shall mean within one hour. The emergency crisis plan shall be submitted on a form prescribed by the Board that is available on the Board's website. The emergency crisis plan outline must be submitted for each location where the associate practices and shall provide the following:

- (1) the name, address, and contact information for the LCSWA practice;
- (2) a description of the practice setting that provides whether the practice is in a home, an

office setting, and whether the LCSWA practices with other practitioners;

- (3) a hierarchy of initial contact persons, if more than one contact person is identified; where each person is located; and his or her estimated response time;
- (4) a plan for follow-up consultations with the LCSWA's clinical supervisor if an alternate emergency contact was consulted at the time of need; and
- (5) signatures and license numbers of the LCSWA, the LCSW supervisor, and the emergency consultant back-up provider.

Each licensed clinical social worker associate shall notify the Board in writing within seven days of any change in such access by resubmission of an emergency crisis plan outline form.

(c) Prior to practicing clinical social work, associates shall provide to the Board an Employment Verification for LCSWA form that contains the following:

- (1) the associate's name, address, contact information, license number, and license issuance and expiration dates;
- (2) the name and address of the agency for which the associate intends to work;
- (3) the associate's current position title and a copy of the job description;
- (4) whether the associate is authorized by the employer to provide clinical services;
- (5) the name of the associate's LCSW clinical supervisor and whether the supervisor is located on-site or off-site;
- (6) whether the associate is being paid a fee or salary;
- (7) dates during which the associate is working full-time, part-time, or as needed; and
- (8) the name and signature of the person completing the form on behalf of the employer.

(d) Each associate licensee must be supervised as set forth in G.S. 90B-7(f) and receive on-going appropriate supervision as defined in Rule .0211(a)(2) of this Chapter until the qualifying examination has been passed and the Licensed Clinical Social Worker license is issued.

(e) All ~~associate licensees~~ Clinical Supervisors shall submit reports of their ~~supervisee's~~ supervision clinical social work experience and ~~supervision~~ Clinical Supervision on a form prescribed by the Board and made available on the Board's website every six months for review and evaluation by the Board. Clinical Supervisors shall submit this six-month review form to the supervisee and the Board within 30 days following the end of the six-month period. This six-month review form shall contain the following:

- (1) the associate's name, LCSWA license number, and contact information for the associate;
- (2) the associate's place of employment and an employment verification form, as prescribed in 21 NCAC 63 .0202(f), if not previously provided to the Board;
- (3) the associate's signature and date submitted;

- (4) an acknowledgment from the associate's LCSW supervisor as to whether:
    - (A) a position statement on clinical supervision, available on the Board's website at <https://www.ncswboard.org>, has been signed and submitted to the Board;
    - (B) an emergency crisis plan, as set forth in Paragraph (b) of this Rule, has been submitted to the Board;
    - (C) a supervisory log has been maintained and is available upon request to verify documented supervision; and
    - (D) a case narrative summarizing one case treated during this review period has been prepared, reviewed, and is on file and available for Board review, if needed;
  - (5) a rating of the associate by the associate's LCSW supervisor in all the following categories:
    - (A) ethical standards of social work practice;
    - (B) effective use of supervision;
    - (C) competence in social work practice;
    - (D) professional growth and development;
    - (E) consistency of performance effort;
    - (F) knowledge of social work principles and practices;
    - (G) ability to formulate a treatment plan appropriate to the clients' needs;
    - (H) ability to implement interventions consistent with the treatment plan;
    - (I) supervisee's ability to assess his or her own capacities and skills;
    - (J) ability to correctly diagnose mental and emotional disorders in accordance with professional judgment and training; and
    - (K) ability to plan treatment and carry out clinical interventions related to mental and emotional disorders;
  - (6) a narrative summary regarding the associate's growth as a clinical practitioner and participation in clinical supervision;
  - (7) a supervision log that contains the following information for each calendar day:
    - ~~(7)~~(A) the period during which the associate received supervision from the LCSW supervisor;
    - ~~(8)~~(B) the number of in-person hours of individual supervision that the associate received;
    - ~~(9)~~(C) the number of in-person hours of group supervision that the associate received;
    - ~~(10)~~(D) the number of hours provided through technology that the associate received in a group setting;
    - ~~(11)~~(E) the number of hours provided through technology that the associate received in an individual setting;
    - ~~(12)~~(F) the number of clinical practice hours that the associate attained during the review period; and
    - ~~(13)~~(8) the name, phone number, signature, and license number with expiration date of the associate's LCSW supervisor.
- (f) To prevent a lapse in licensure, associate licensees who desire to become Licensed Clinical Social Workers shall renew the LCSWA or complete the application process for the Licensed Clinical Social Worker classification and submit the application fee as set in Rule .0208 of this Chapter at least 30 days prior to the expiration of the associate's license.
- (g) No credit shall be given for the supervisee's clinical social work that is unsupervised or performed under the supervision of a person not registered with the Board as the Clinical Supervisor. If the Clinical Supervisor does not provide Clinical Supervision to the supervisee for a continuous period of more than two weeks, supervisee shall cease clinical practice of social work until such time that supervisee's new Clinical Supervisor has been registered with the Board. To register a new Clinical Supervisor to the Board, the supervisee must submit a verification form to the Board that contains the following:
- (1) The supervisee's name and license number;
  - (2) The new Clinical Supervisor's name and license number;
  - (3) The new Clinical Supervisor's mailing address, place of employment, and telephone number; and
  - (4) The new Clinical Supervisor's dated signature attesting that he or she has read and agrees to comply with the statutes and rules governing the provision of Clinical Supervision.

*Authority G.S. 90B-6; 90B-7.*

#### **21 NCAC 63 .0211 WORK EXPERIENCE**

(a) Qualifications as required by G.S. 90B-7(d)(2) for the Licensed Clinical Social Worker (LCSW) credential:

- (1) Two years of post-MSW clinical social work experience shall mean 3,000 clock hours of work or employment for a fee or salary while engaged in the practice of clinical social work as defined in G.S. 90B-3(6). The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six consecutive years. Practicum or internship experience gained as part of any educational program shall not be included. Pursuant to G.S. 93B-15.1(a), military applicants may receive credit for military occupational specialty experience obtained post MSW degree and deemed substantially equivalent to clinical social work practice as defined in this Chapter.
- (2) Appropriate supervision shall mean ~~supervision~~ Clinical Supervision by a MSW who is also a

Licensed Clinical Social Worker and who is in good standing with the Board. A supervisor disciplined by any professional credentialing body or professional organization by legal order, or who has been found by legal order to have violated the provisions of an occupational licensing Board may not provide supervision to an associate licensee without the written permission of the Board. The Licensed Clinical Social Worker Associate's (LCSWA) clinical social work supervisor shall have an additional two years of clinical social work experience post LCSW licensure.

- (3) Appropriate supervision shall be Clinical Supervision that ~~which~~ is provided on a regular basis, conducted no less than once every two weeks, with at least one hour of supervision during every 30 hours of experience. A minimum of 100 hours of supervision is required. All work experience must be clinical social work as defined by G.S. 90B-3(6) to qualify as work experience for purposes of G.S. 90B-7(d)(2). Appropriate supervision may be individual or group supervision. Individual supervision shall mean one on one, face-to-face supervision by a MSW who is also a LCSW where the supervisor reviews and discusses clinical social work cases, reviews documentation, and provides evaluative comments and direction to the LCSWA. Group supervision shall mean face-to-face supervision provided by a MSW who is also a LCSW in a group setting, during which the supervisor reviews and discusses clinical social work cases, reviews documentation, and provides feedback and direction to each LCSWA in the group. A maximum of 25 hours of group supervision may be applied toward meeting the supervision requirements for the LCSW.

- (4) ~~Unless otherwise preapproved by the Board, no more than 50 hours of supervision may be provided through the use of technology. The clinical supervisor may seek approval by providing a written request to the Board. The request shall include the parties' information, including name, license number, and business address; and the circumstances for which the additional hours are needed. Approval of the request shall be determined on a case-by-case basis, based upon the circumstances provided in the request. Unless a Board Approved Supervisor, a Clinical Supervisor shall not provide more than 50 hours of Clinical Supervision through the use of technology. All supervision provided through the use of technology shall be synchronous, involve visual and audio interactions throughout the entire session, and shall take place in such a~~

manner as to maintain the confidentiality of the communication.

- (b) Qualifications as required by G.S. 90B-7(e)(2) for the Certified Social Work Manager (CSWM) credential:

- (1) Two years of post social work degree experience shall mean 3,000 clock hours of employment for a salary while engaged in administrative social work duties including, policy and budgetary development and implementation, supervision and management, program evaluation, planning, and staff development. Such duties shall be carried out in an administrative setting where social work or other mental health services are delivered. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six consecutive years. Practicum or internship experience gained as part of any educational program shall not be included.
- (2) Appropriate supervision shall mean face-to-face supervision by a social work administrator certified or licensed by the Board who has a minimum of two years of administrative experience in a social work or mental health setting. Appropriate supervision shall be that which is provided on a regular basis, conducted no less than once every two weeks throughout the applicant's two years of administrative social work experience. A minimum of 100 hours of supervision is required. A maximum of 50 hours of group supervision may be applied toward meeting the supervision requirements for the CSWM. No more than 50 hours of supervision may be provided through the use of technology. All supervision provided through the use of technology shall be synchronous, involve visual and audio interaction throughout the entire session, and shall take place in such a manner as to maintain the confidentiality of the communication.

*Authority G.S. 90B-6; 90B-7.*

## **SECTION .0400 - RENEWAL OF CERTIFICATION**

### **21 NCAC 63 .0403          RENEWAL APPLICATION AND FEES**

- (a) To renew a certificate or license, a person must submit the following to the Board on or before the expiration of his or her certification or licensure:

- (1) all fees as required in Paragraphs (b) and (c) of this Rule; and
- (2) a Renewal Affidavit, as described in Paragraph (d) of this Rule.

- (b) Fees for renewal of certificates or licenses are as follows:

- (1) for Certified Social Workers (CSWs), the renewal fee is seventy dollars (\$70.00).
- (2) for Certified Master Social Workers (CMSWs), the renewal fee is ninety dollars (\$90.00).

- (3) for Licensed Clinical Social Workers (LCSWs), the renewal fee is one hundred and fifty dollars (\$150.00).
- (4) for Licensed Clinical Social Worker Associates (LCSWAs), the renewal fee is one hundred and forty dollars (\$140.00).
- (5) for Certified Social Work Managers (CSWMs), the renewal fee is one hundred and fifty dollars (\$150.00).

(c) Persons whose applications for renewal are received by the Board after the renewal date of their certificate or license, but no later than 60 days after the renewal date, shall pay a late renewal fee of fifty dollars (\$50.00) in addition to any other applicable fees. Renewal fees are nonrefundable.

(d) A Renewal Affidavit shall contain the following:

- (1) the person's printed name, signature, and date;
- (2) the person's contact information;
- (3) the last four digits of the person's social security number and license number;
- (4) whether the person's contact information has changed since the previous renewal;
- ~~(5) whether the person is requesting a duplicate license;~~
- ~~(6)~~(5) a list of all continuing education hours taken since the last renewal application that provides the name of the course taken, the date on which the course was taken, the length of the course taken, and whether the course taken was distance learning or for ethics;

~~(7)~~(6) the person's affirmation or certification that:

- (A) he or she has engaged in at least 40 hours of continuing education activities, as described in 21 NCAC 63 .0401, in the preceding 24 months or in at least 30 hours of continuing education activities if the renewal term is less than 2 years;
- (B) he or she has engaged in at least four hours of continuing education focused on ethics related to social work practice and ethical decision making in the preceding certificate or license cycle;
- (C) his or her ability to perform his or her professional responsibilities is not impaired in any way or by the use of alcohol, prescription or non-prescription drugs, or other controlled substances;
- (D) he or she has not been convicted of a misdemeanor or felony crime since his or her last renewal or, if he or she has, an explanation of the conviction is provided, and that the person consents to a criminal background check by the Board;
- (E) he or she has reviewed and agree to comply with the Social Work Certification and Licensure Act and

- (F) Title 21, Chapter 63 of the North Carolina Administrative Code; he or she has not violated Section .0500 of this Chapter of the North Carolina Administrative Code;
- (G) he or she understands that renewal of his or her certification or license is subject to a Continuing Education audit and he or she agree to comply with an audit request from the Board;
- (H) the information in the Renewal Affidavit is accurate, that the Board may verify and investigate such information, and that any material omission or misrepresentation is grounds for the Board's refusal to renew a license or certification; and
- (I) he or she has read and understands the public notice statement on employee misclassification that is set forth in the Renewal Affidavit and has disclosed any investigations for employee misclassification, and its results, over the preceding 12-month period, as prescribed by G.S. 143-789.

*Authority G.S. 90B-6; 90B-6.2; 90B-9(b); 90B-11.*

#### **21 NCAC 63 .0404 REINSTATEMENT**

(a) A person who desires to retire temporarily from the practice of social work shall provide the following information to the Board:

- (1) the person's name and credential number;
- (2) the requested effective date of nonpracticing status;
- (3) the reason for requesting nonpracticing status, if any; and
- (4) the date on which the request is submitted to the Board.

~~(a)(b) Persons~~ A person who apply applies for reinstatement after their certificate or license was suspended for failure to renew shall submit the following to the Board:

- (1) a reinstatement fee of one hundred and fifty-five dollars (\$155.00) in addition to any renewal fee or late renewal fee owed pursuant to G.S. 90B-6.2;
- (2) a Renewal Affidavit, as described in 21 NCAC 63 .0403(d);
- (3) a current application for certification or licensure, as described in 21 NCAC 63 .0202; and
- (4) three professional reference forms, as described in 21 NCAC 63 .0204.

~~(b)(c) Persons~~ A person who apply applies for reinstatement after temporary retirement from the practice of social work pursuant to G.S. 90B-9.1 shall submit the following to the Board:

- (1) the person's name and credential number;
- (2) the credential's expiration date and the desired reactivation date;

- (3) the person's dated attestation that:  
 (A) the information submitted is true and complete; and  
 (B) any false or misleading information may result in the denial of reinstatement or in suspension or revocation of the person's credential;  
 (1)(4) a renewal fee pursuant to G.S. 90B-6.2; and  
 (2)(5) a Renewal Affidavit, as described in 21 NCAC 63 .0403(d).

~~(e)(d)~~ ~~Applicants~~ An applicant desiring to reinstate LCSWA shall comply with G.S. 90B-7(f) by completing all requirements for full licensure as LCSW within six years, inclusive of any time spent on nonpracticing status pursuant to G.S. 90B-9.1 or suspension for failure to renew.

*Authority G.S. 90B-6; 90B-6.2; 90B-9; 90B-9.1.*

**21 NCAC 63 .0405 REQUIRED REPORTING BY LICENSEE OR CERTIFICATE HOLDER OF CHANGES TO BOARD**

(a) Each licensee or certificate holder shall notify the Board ~~in writing by electronic submission through the Board's website~~ of any of the following changes within 30 days of the effective date of the change:

- (1) change of the licensee's or certificate holder's name, which shall be accompanied by documentation such as a certified marriage certificate or driver's license;
- (2) change in the licensee's or certificate holder's residence or business address, including street and mailing address;
- (3) change in the licensee's or certificate holder's residence or business telephone number; and
- (4) any adverse action or disciplinary action against a licensee or certificate holder from a licensing board, professional certifying body, or professional organization for any conduct described in G.S. 90B-11(a).

(b) Within 30 days of the effective date of a disposition in a criminal matter in which the licensee or certificate holder is a defendant, including driving under the influence, each licensee or certificate holder shall send to the Board a certified copy of any plea of guilty, finding of guilty, plea of nolo contendere, or deferred judgment.

(c) The licensee's or certificate holder's failure to report to the Board the dispositions addressed by Subparagraph (a)(4) or Paragraph (b) of this Rule shall be considered a violation of the Ethical Guidelines as set forth in Section .0500 of this Chapter.

*Authority G.S. 90B-6; 90B-11.*

**SECTION .0900 - PROFESSIONAL CORPORATION OR LIMITED LIABILITY COMPANY**

**21 NCAC 63 .0901 APPLICATIONS FOR A CERTIFICATE OF REGISTRATION**

(a) Licensed clinical social workers who wish to form a Professional Corporation or Professional Limited Liability Company must apply to the Board for a Certificate of Registration

in accordance with this Rule, pursuant to Chapter 55B of the North Carolina General Statutes.

(b) All applications for a Certificate of Registration for Professional Corporation shall include the fee described in Paragraph (d) of this Rule and provide the following:

- (1) the name and address of the proposed business;
- (2) the purpose of the proposed business;
- (3) the name, address, profession, and license number of each proposed stock owner;
- (4) the percentage of shares to be owned by each proposed stock owner;
- (5) the name, address, profession, and license number of each proposed director;
- (6) the name, address, profession, and license number of each proposed corporate officer;
- (7) the name, address, profession, and license number of each proposed professional employee;
- (8) the contact information of the person completing the application; and
- (9) notarized signatures from the business's incorporators and an attestation that:
  - (A) they have read the Board's governing statutes and rules;
  - (B) there are no disciplinary actions pending against any of the business's incorporators, officers, directors, stockholders, or employees;
  - (C) the business is being incorporated under the provisions of Chapter 55B of the North Carolina General Statutes; and
  - (D) the business will be conducted in compliance with the Professional Corporation Act and the laws governing licensees of the Board.

(c) All applications for a Certificate of Registration for Professional Limited Liability Company shall include the fee described in Paragraph (d) of this Rule and provide the following:

- (1) the name and address of the proposed business;
- (2) the purpose of the proposed business;
- (3) the name, address, profession, and license number of each proposed shareholder;
- (4) the percentage of shares to be owned by each proposed shareholder;
- (5) the name, address, profession, and license number of each proposed director;
- (6) the name, address, profession, and license number of each proposed member;
- (7) the name, address, profession, and license number of each proposed professional employee;
- (8) the contact information of the person completing the application; and
- (9) ~~notarized~~ signatures from the business's organizers and an attestation that:
  - (A) they have read the Board's governing statutes and rules;

- (B) there are no disciplinary actions pending against any of the business's organizers, members, managers, or employees;
- (C) the business is being organized under the provisions of Chapter 57D of the North Carolina General Statutes; and
- (D) the business will be conducted in compliance with Chapter 57D of the North Carolina General Statutes and the laws governing licensees of the Board.

(d) The following non-refundable fees apply:

- (1) fifty dollars (\$50.00) – application fee for a certificate of registration for a professional corporation or limited liability company; and
- (2) twenty-five dollars (\$25.00) – annual renewal fee for the certificate of registration for a professional corporation or limited liability company.

*Authority G.S. 55B-10; 55B-11; 55B-12; 57D-2-02; 90B-6; 90B-11.*

#### **21 NCAC 63 .0903      DISOLVING THE PROFESSIONAL ENTITY**

Professional entities registered with the Board and who ~~dissolve~~, dissolve shall provide written notice to the Board within 30 days of the effective date the entity dissolved. The written notice must provide the following:

- (1) the name, phone number, email address, and license number of the licensee notifying the Board of the dissolution;
- (2) the name and registration number of the professional entity that has dissolved;
- (3) whether the dissolving professional entity is a professional limited liability company or professional corporation;
- (4) the effective date of the dissolution;
- (5) a copy of the Articles of Dissolution filed with the North Carolina Secretary of State;
- (6) the dated affirmation of the licensee notifying the Board of the dissolution that:
  - (a) the information provided is true and complete; and
  - (b) submission of false or misleading information may result in disciplinary action.

*Authority G.S. 55B-10; 57C-2-01(c); 90B-6; 90B-11.*

#### **SECTION .1000 – CLINICAL SUPERVISION OF LICENSED CLINICAL SOCIAL WORK ASSOCIATES**

#### **21 NCAC 63 .1001      CLINICAL SUPERVISOR ELIGIBILITY**

(a) An individual may serve as a Clinical Supervisor if the individual:

- (1) has held an active Board-issued license as a Licensed Clinical Social Worker for at least two years and the license currently is not under disciplinary action by the Board;
- (2) the Board has not taken any disciplinary action against any credential held by the individual pursuant to G.S. 90B-11 within the two years immediately preceding the intended supervision; and
- (3) the individual meets the qualifications set forth in Rule .0211(a)(2).

(b) All individuals serving as Clinical Supervisor shall comply with the supervision requirements set forth in this Section.

*Authority G.S. 90B-6(h); 90B-7(f); 90B-8; 90B-11(b)(4).*

#### **21 NCAC 63 .1002      GENERAL CLINICAL SUPERVISION REQUIREMENTS**

(a) A Clinical Supervisor shall be responsible for the manner in which he or she conducts Clinical Supervision and for ensuring Clinical Supervision complies with Board rules.

(b) Supervision arrangements shall be documented in a written supervision contract prior to the commencement of supervision as set forth in Rule .1004.

*Authority G.S. 90B-6(h); 90B-7(f); 90B-8; 90B-11(b)(4).*

#### **21 NCAC 63 .1003      CLINICAL SUPERVISION THROUGH THE USE OF TECHNOLOGY**

(a) Clinical Supervisors who are listed on the voluntary Supervisor Roster described in Rule .1009 may provide all Clinical Supervision through telepresence supervision.

(b) Telepresence supervision shall be conducted using secure, synchronous audiovisual technology.

(c) Clinical Supervisors shall ensure confidentiality of protected health information as defined by 45 C.F.R. § 160.103.

*Authority G.S. 90B-6(h); 90B-7(f); 90B-8; 90B-11(b)(4).*

#### **21 NCAC 63 .1004      CLINICAL SUPERVISION CONTRACTS AND FEE AGREEMENTS**

(a) Prior to beginning Clinical Supervision, the Clinical Supervisor and supervisee shall execute a written supervision contract that includes:

- (1) frequency, duration, and format of supervision;
- (2) Clinical Supervisor responsibilities;
- (3) supervisee responsibilities;
- (4) procedures for resolving disputes; and
- (5) conditions for termination of supervision.

(b) If supervision fees are charged, the Clinical Supervisor and supervisee shall execute a written supervision fee agreement that discloses the amount, payment terms, and any refund or cancellation policies.

(c) If no supervision fee is charged, the supervision contract shall provide in writing that no supervision fee is required.

(d) A Clinical Supervisor shall not charge or collect a supervision fee from a supervisee when the Clinical Supervisor also is the supervisee's direct clinical or administrative supervisor within the supervisee's place of employment.

*Authority G.S. 90B-6(h); 90B-7(f); 90B-8; 90B-11(b)(4).*

**21 NCAC 63 .1005 DOCUMENTATION AND REPORTING REQUIREMENTS**

Clinical Supervisors shall maintain accurate and contemporaneous records of supervision sessions for a period of 10 years following the Clinical Supervisor's cessation of Clinical Supervision to the supervisee.

*Authority G.S. 90B-6(h); 90B-7(f); 90B-8; 90B-11(b)(4).*

**21 NCAC 63 .1006 PROHIBITED SUPERVISORY RELATIONSHIPS**

(a) A Clinical Supervisor shall not provide Clinical Supervision to a supervisee if the Clinical Supervisor:

- (1) is employed by the supervisee;
- (2) has provided psychotherapy, counseling, or other clinical mental health services to the supervisee at any time; or
- (3) is a member of the supervisee's immediate or extended family.

(b) For purposes of this Rule, family member includes, but is not limited to, a spouse, domestic partner, parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, cousin, or any individual related by blood, marriage, or legal adoption.

(c) Clinical supervision conducted in violation of this Rule shall not be accepted by the Board as a basis for the supervisee's eligibility for licensure as a LCSW by the Board.

*Authority G.S. 90B-6(h); 90B-7(f); 90B-8; 90B-11(b)(4).*

**21 NCAC 63 .1007 STANDARDS OF CLINICAL SUPERVISION**

(a) Clinical Supervisors shall provide Clinical Supervision that is:

- (1) in accordance with the frequency requirements set forth in 21 NCAC 63 .0211(a)(3); and
- (2) conducted in a manner that promotes accountability for client care within the ethical standards of the social work profession set forth in Section .0500 of this Chapter through reviewing the supervisee's assessment, diagnosis, status, and continuity of care for each of the supervisee's clients.

(b) Clinical Supervisors shall:

- (1) ensure that all information submitted to the Board in connection with Clinical Supervision, including but not limited to six-month supervision reviews, is accurate, complete, and truthful;
- (2) shall report a supervisee's acts or omissions to the Board when required by 21 NCAC 63 .0505(5);
- (3) engage in supervision only in accordance with their training and experience. Clinical Supervisors shall represent to supervisees their abilities, education, training, credentials, and experience as it relates to the supervisee's scope of practice and clinical methods;

(4) maintain a professional supervisory relationship that assesses and supports the supervisee's development of responsibility, knowledge, skill, and ethical practice through review of clinical work and provision of feedback;

(5) include oversight of the supervisee's clinical assessment and treatment planning, including review of clinical decision-making; and

(6) ensure that supervisees inform clients that clinical social work services are being provided under Clinical Supervision; that clients' confidential information will be revealed to the Clinical Supervisor; and that written consent is obtained from clients, or their legally authorized representative, before Clinical Supervision is provided.

*Authority G.S. 90B-6(h); 90B-7(f); 90B-8; 90B-11(b)(4).*

**21 NCAC 63 .1008 BOARD APPROVED SUPERVISOR ROSTER**

(a) The Board shall maintain a voluntary Supervisor Roster of Board Approved Supervisors.

(b) To be listed on the Supervisor Roster as a Board Approved Supervisor, an individual shall:

- (1) complete a Board-approved Clinical Supervision training program of at least 15 hours; and
- (2) complete four hours of Board-approved continuing education related to Clinical Supervision during each renewal cycle.

(c) Supervisors listed on the Supervisor Roster may provide all Clinical Supervision through the use of technology in accordance with Rule .1003.

(d) Supervisors not listed on the Supervisor Roster shall conduct Clinical Supervision only in accordance with 21 NCAC 63 .0211(a)(4).

(e) The Board may remove a supervisor from the Supervisor Roster for failure to comply with this Section or applicable Board policies.

*Authority G.S. 90B-6(h); 90B-7(f); 90B-8; 90B-11(b)(4).*

**21 NCAC 63 .1009 BOARD-ORDERED SUPERVISION**

(a) When adjudicating a disciplinary matter pursuant to GS 90B-11, the Board may require supervision as a condition of:

- (1) licensure approval;
- (2) licensure renewal;
- (3) reinstatement; or
- (4) resolution of a disciplinary matter, including a consent order.

(b) When supervision is required by Board order, the supervisor shall be a Board-Approved Supervisor listed on the voluntary Supervisor Roster described in Rule .1008.

(c) In the Order rendered pursuant to G.S. 90B-11, the Board may specify additional requirements for Board-ordered supervision, including:

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***PROPOSED RULES***

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- (1) frequency and duration of supervision;
- (2) reporting requirements;
- (3) scope or focus of supervision; and
- (4) duration of the supervision requirement.

*Authority G.S. 90B-6(h); 90B-7(f); 90B-8; 90B-11(b)(4).*

*This Section contains information for the meeting of the Rules Review Commission on October 29, 2026 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comments on any proposed permanent rule before the Commission should submit those comments pursuant to 26 NCAC 05 .0103. Anyone wishing to submit written comments on any proposed permanent rule before the Commission should submit those comments pursuant to 26 NCAC 05 .0104. Anyone wishing to address the Commission should comply with 26 NCAC 05 .0105 and .0106.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Bill Nelson (2<sup>nd</sup> Vice-Chair)  
Jeanette Doran  
John Hahn  
Jeff Hyde  
Wyatt Dixon, III

**Appointed by House**

Jake Parker (Chair)  
Paul Powell (1st Vice-Chair)  
Wayne R. Boyles, III  
Randy Overton  
Wesley B. Jones

**COMMISSION COUNSEL**

|                       |              |
|-----------------------|--------------|
| Seth M. Ascher        | 984-236-1934 |
| Travis Wiggs          | 984-236-1929 |
| Christopher S. Miller | 984-236-1935 |
| Meghan E. Barney      | 984-236-1925 |

**RULES REVIEW COMMISSION MEETING DATES**

|                   |                   |
|-------------------|-------------------|
| October 29, 2026  | December 17, 2026 |
| November 24, 2026 | January 28, 2026  |

**AGENDA****RULES REVIEW COMMISSION**

***Thursday, October 29, 2026, 10:00 A.M.  
1711 New Hope Church Rd., Raleigh, NC 27609***

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
  1. Child Care Commission -10A NCAC 09 .2102(Miller)
  2. Board of Licensed Clinical Mental Health Counselors - 21 NCAC 53 .0312 (Barney)
- IV. Review of Log of Filings (Permanent Rules) for rules filed August 21, 2026 through September 20, 2026
  1. Sheriffs' Education and Training Standards Commission (Ascher)
  2. Department of Labor (Wiggs)
  3. State Board of Education (Barney)
  4. Board of Funeral Service (Barney)
  5. Board of Examiners in Optometry (Miller)
  6. Board of Examiners for Engineers and Surveyors (Barney)
- V. Log of Filings (Temporary Rules) for any rule filed within 15 business days before the RRC Meeting
- VI. Existing Rules Review
  - Review of Reports
    1. 02 NCAC 52J, 61 – Board of Agriculture (Barney)
    2. 10A NCAC 13F, 13G - Medical Care Commission (Barney)
    3. 10A NCAC 15 .1101- .1106, and .1423 - Department of Health and Human Services (Ascher)
    4. 17 NCAC 07 - Department of Revenue (Ascher)
    5. 21 NCAC 16 - Board of Dental Examiners (Ascher)
    6. 21 NCAC 25 - Interpreter and Transliterator Licensing Board (Barney)
- VII. Commission Business
  - Closed session, to consult with attorneys regarding CRC v. RRC and CJETS v. RRC

- Next meeting: Tuesday, November 24, 2026
- 

**Commission Review**  
**Log of Permanent Rule Filings**  
**August 21, 2026 through September 20, 2026**

**SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

The rules in Subchapter 10B govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); firearms in-service training and re-qualification (.2100); and forms (.2200).

|                                                           |    |      |     |       |
|-----------------------------------------------------------|----|------|-----|-------|
| <u>Suspension: Revocation: or Denial of Certification</u> | 12 | NCAC | 10B | .0204 |
| Amend*                                                    |    |      |     |       |
| <u>Period of Suspension: Revocation: or Denial</u>        | 12 | NCAC | 10B | .0205 |
| Amend*                                                    |    |      |     |       |
| <u>Medical Examination</u>                                | 12 | NCAC | 10B | .0304 |
| Amend*                                                    |    |      |     |       |
| <u>Verification of Records to the Division</u>            | 12 | NCAC | 10B | .0408 |
| Amend*                                                    |    |      |     |       |
| <u>In-Service Firearms Requalification Specifications</u> | 12 | NCAC | 10B | .2104 |
| Amend*                                                    |    |      |     |       |

**LABOR, DEPARTMENT OF**

The rules in chapter include general provisions (.0100), definitions (.0200), initiation of complaints (.0300), conduct of investigations (.0400), right-to-sue letters (.0500), closing of cases (.0600), settlements and litigation (.0700)

|                                                     |    |      |    |       |
|-----------------------------------------------------|----|------|----|-------|
| <u>Retaliatory Employment Discrimination Bureau</u> | 13 | NCAC | 19 | .0101 |
| Repeal*                                             |    |      |    |       |
| <u>Forms</u>                                        | 13 | NCAC | 19 | .0102 |
| Repeal*                                             |    |      |    |       |
| <u>Definitions</u>                                  | 13 | NCAC | 19 | .0201 |
| Repeal*                                             |    |      |    |       |
| <u>Contents of Complaint</u>                        | 13 | NCAC | 19 | .0301 |
| Repeal*                                             |    |      |    |       |
| <u>Filing of Complaints</u>                         | 13 | NCAC | 19 | .0302 |
| Repeal*                                             |    |      |    |       |
| <u>Investigation</u>                                | 13 | NCAC | 19 | .0401 |
| Repeal*                                             |    |      |    |       |
| <u>Interviews</u>                                   | 13 | NCAC | 19 | .0402 |
| Repeal*                                             |    |      |    |       |
| <u>Right-to-Sue Letters</u>                         | 13 | NCAC | 19 | .0501 |
| Repeal*                                             |    |      |    |       |
| <u>Requests for Right-to-Sue Letters</u>            | 13 | NCAC | 19 | .0502 |
| Repeal*                                             |    |      |    |       |
| <u>Administrative Closings</u>                      | 13 | NCAC | 19 | .0601 |
| Repeal*                                             |    |      |    |       |
| <u>Withdrawals</u>                                  | 13 | NCAC | 19 | .0602 |
| Repeal*                                             |    |      |    |       |

|                                |    |      |    |       |
|--------------------------------|----|------|----|-------|
| <u>Right-to-Sue Dismissals</u> | 13 | NCAC | 19 | .0603 |
| Repeal*                        |    |      |    |       |
| <u>Right-to-Sue Closure</u>    | 13 | NCAC | 19 | .0604 |
| Repeal*                        |    |      |    |       |
| <u>Settlements</u>             | 13 | NCAC | 19 | .0605 |
| Repeal*                        |    |      |    |       |
| <u>Settlement</u>              | 13 | NCAC | 19 | .0701 |
| Repeal*                        |    |      |    |       |
| <u>Litigation</u>              | 13 | NCAC | 19 | .0702 |
| Repeal*                        |    |      |    |       |

## EDUCATION, STATE BOARD OF

The rules in Chapter 6 concern elementary and secondary education. The rules in Subchapter 6C concern personnel including general provisions (.0100); teacher education (.0200); licensure and educator Preparation Programs (EPPS) (.0300); annuities and pensions (.0400); performance appraisal system (.0500); standards of professional conduct and educator discipline (.0600); and educator employment (.0700).

|                               |    |      |     |       |
|-------------------------------|----|------|-----|-------|
| <u>Voluntary Shared Leave</u> | 16 | NCAC | 06C | .0410 |
| Adopt*                        |    |      |     |       |

## FUNERAL SERVICE, BOARD OF

The rules in Subchapter 34C concern crematories including general provisions (.0100); equipment and processing (.0200); and authorizations, reports, records (.0300).

|                                                             |    |      |     |       |
|-------------------------------------------------------------|----|------|-----|-------|
| <u>Application Form for Crematory or Hydrolysis License</u> | 21 | NCAC | 34C | .0103 |
| Amend*                                                      |    |      |     |       |

## OPTOMETRY, BOARD OF EXAMINERS IN

The rules in Subchapter 42A concern the organization of the board.

|                             |    |      |     |       |
|-----------------------------|----|------|-----|-------|
| <u>Contacting the Board</u> | 21 | NCAC | 42A | .0101 |
| Readopt without Changes*    |    |      |     |       |
| <u>Definitions</u>          | 21 | NCAC | 42A | .0105 |
| Readopt without Changes*    |    |      |     |       |

The rules in Subchapter 42B concern license to practice optometry including license by examination (.0100); responsibility to supply information (.0200); and professional corporations and limited liability companies (.0300).

|                                                |    |      |     |       |
|------------------------------------------------|----|------|-----|-------|
| <u>Clinical Practicum Examinations</u>         | 21 | NCAC | 42B | .0108 |
| Readopt without Changes*                       |    |      |     |       |
| <u>Passing Score</u>                           | 21 | NCAC | 42B | .0110 |
| Readopt without Changes*                       |    |      |     |       |
| <u>Time and Location</u>                       | 21 | NCAC | 42B | .0112 |
| Readopt without Changes*                       |    |      |     |       |
| <u>Suspension of Authority to Expend Funds</u> | 21 | NCAC | 42B | .0305 |
| Readopt without Changes*                       |    |      |     |       |

The rules in Subchapter 42C concern professional corporations and limited liability companies

|                          |    |      |     |       |
|--------------------------|----|------|-----|-------|
| <u>Annual Renewal</u>    | 21 | NCAC | 42C | .0105 |
| Readopt without Changes* |    |      |     |       |

**ENGINEERS AND SURVEYORS, BOARD OF EXAMINERS FOR**

The rules in Chapter 56 concern the organization of the board (.0100); instructional programs (.0300); records and reports of the board, retention and dispositions (.0400); professional engineer (.0500); professional land surveyor (.0600); rules of professional conduct (.0700); firm registration (.0800); general business entities (.0900); temporary permit (.1000); seal (.1100); rulemaking proceedings (.1200); board disciplinary procedures (.1300); contested cases (.1400); fees (.1500); standards of practice for land surveying in North Carolina (.1600); and continuing professional competency (.1700).

|                                            |    |      |    |       |
|--------------------------------------------|----|------|----|-------|
| <u>Offices</u>                             | 21 | NCAC | 56 | .0901 |
| Amend*                                     |    |      |    |       |
| <u>Standard Certification Requirements</u> | 21 | NCAC | 56 | .1103 |
| Amend*                                     |    |      |    |       |