

## SUBCHAPTER 20B - ADMINISTRATIVE PROVISIONS

### SECTION .0100 - DESIGNATION OF SERVICE DELIVERY AREAS

#### 04 NCAC 20B .0101 DESIGNATION OF SERVICE DELIVERY AREAS

- (a) The Governor, after recommendations from the State Job Training Coordinating Council, designates service delivery areas, including the Rural Service Delivery Area, to promote the efficient delivery of job training services throughout the state, consistent with the requirements of Section 101 of JTPA.
- (b) The Rural Service Delivery Area includes units of government that did not individually or in combination with any other units of government seek or qualify for designation as a service delivery area other than as a unit of government within the Rural Service Delivery Area. The Rural Service Delivery Area was designated to facilitate the provision of employment and training services to citizens of those units of government.
- (c) Requests or petitions for designation as a service delivery area must be timely received by the Director, according to schedules published by the Director. Requests or petitions must be approved by the State Job Training Coordinating Council, where necessary, in compliance with Section 101 of JTPA.
- (d) The right to designation as a service delivery area under Section 101 of JTPA may be forfeited in the event that subgrant funds are grossly or abusively misappropriated, or the activities are grossly or abusively maladministered. The Governor reserves the right, after procedures required herein, to determine that the designation of a particular service area would not serve the best interests of the residents of the area and would not protect the integrity of funds that the state may be liable to recoup to USDOL in the event of misexpenditure.

*History Note: Authority G.S. 143B-430(b); 20 C.F.R. 628.1; Ex. O. No. 93, June 8, 1983; Eff. February 1, 1976; Transferred from T01: 18 Eff. September 15, 1981; Amended Eff. October 1, 1984; August 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

#### 04 NCAC 20B .0102 REDESIGNATION OF SERVICE DELIVERY AREAS

- (a) Service delivery areas may be redesignated from time to time, as permitted in JTPA and by this Chapter 20. Redesignations may be initiated by a voluntary petition for redesignation, by a notice of failure to agree on a job training plan or by involuntary redesignation.
- (b) Voluntary petitions for redesignation.
- (1) A unit of government or a consortium of units of government may seek redesignation by the filing of a petition for redesignation. The petition will request the realignment of the service delivery area(s) that the unit(s) of government currently fall within and the designation of either a new service delivery area or the inclusion of the petitioning unit(s) of government in an existing service delivery area.
  - (2) A redesignation petition must state the basis on which the unit(s) of government qualify as a service delivery area, a statement of reasons for the redesignation request, a copy of the proposed consortium agreement, if any, a summary of the steps to be taken to procure public comment on the redesignation, including a schedule on which the steps should be taken, the effect, if any, on the current service delivery area(s) of the unit(s) of government and the effect of redesignation on the provision of services within the current service delivery area(s).
  - (3) The redesignation petition must be filed with the Director, with a copy to the chairperson(s) of the private industry council(s) in the present service delivery area(s), at a time sufficiently in advance of the proposed designation to permit publication, comment and approval of the redesignation at least four months prior to the beginning of the program year with which the redesignation would be effective.
  - (4) Voluntary redesignation of a service delivery area may not occur any more often than once every two years, provided that inclusion of additional units in or removal of units from the Rural Service Delivery Area shall not be subject to this restriction.
  - (5) Petitions for redesignation may be filed by unit(s) of government in a service delivery area that is subject to a reorganization plan under Section 106(h) of JTPA, at any time, which petition the Governor will endeavor to accommodate.
- (c) Redesignation After Notice of Failure to Agree.

- (1) A unit of government that serves as a service delivery area or any unit or units of government in a consortium that serves as a service delivery area must notify the Director when it is clear to the appropriate chief elected official(s) that the private industry council and the chief elected official will not agree on a service delivery area job training plan. The Director may endeavor to negotiate a mutually agreeable job training plan, but will not be required to do so if he or she reasonably believes that negotiation would be unproductive.
  - (2) The notice of failure to agree must be accompanied by a request for redesignation containing the information required in Paragraph (b)(2) of this Rule and attaching a copy of the resolution of the governing board or statement of the chief elected official that agreement on the job training plan will not be reached.
- (d) Involuntary Redesignation.
- (1) If the Governor determines that, because of shifts in population or changes in originally designated service delivery areas, the existing service delivery areas do not satisfy the intent of JTPA, the Governor may request that the State Job Training Coordinating Council propose appropriate service delivery areas as described in Section 101 of JTPA. Units of government and consortia of units of government may request designation as a service delivery area.
  - (2) If the Governor determines that an existing service delivery area has grossly or abusively misappropriated funds or grossly or abusively maladministered activities, and if corrective action has not been taken, the Governor may condition the receipt of future subgrant funds on the filing of a petition for redesignation under Paragraph (b) of this Rule, provided that his sanction shall only be used where the existing designation does not serve the best interests of the residents of the service delivery area and would not protect the integrity of funds, for which the state may be liable.
- (e) Redesignations will be accompanied by a reconstitution of the affected private industry councils.
- (f) The redesignation of the service delivery area for any unit(s) of government shall not affect the right of the Division to proceed against the unit(s) of government for disallowed costs incurred by the service delivery area grant recipient during the period in which the unit(s) of government belonged to the service delivery area.
- (g) Determinations under this Section are reviewable pursuant to 4 NCAC 20C .0002 or by the Secretary of USDOL if JTPA Section 101 (A)(4)(c) applies.

*History Note:* Authority G.S. 143B-430(b); 20 C.F.R. 628.1; Ex. O. No. 93, June 8, 1983; Eff. February 1, 1976; Transferred from T01: 18 Eff. September 15, 1981; Amended Eff. August 1, 1988; July 1, 1988; October 1, 1984; August 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

**04 NCAC 20B .0103      RESERVED**  
**04 NCAC 20B .0104      LOCATION**  
**04 NCAC 20B .0105      REQUESTS FOR INFORMATION BY THE PUBLIC**  
**04 NCAC 20B .0106      FUNCTIONS**  
**04 NCAC 20B .0107      ADMINISTRATIVE PROCEDURES: COMPLAINTS AND SANCTIONS**  
**04 NCAC 20B .0108      GENERAL HEARING AND APPEAL PROCEDURES**

*History Note:* Legislative Objection Lodged Eff. March 9, 1983; Statutory Authority G.S. 132-1; 132-6; 143B-430(b); 150B-2(2); 150B-11; 150B-23; Eff. February 1, 1976; Transferred from T01: 18 Eff. September 15, 1981; Amended Eff. March 1, 1983; August 1, 1982; Repealed Eff. October 1, 1984.

**04 NCAC 20B .0109      COMPLAINTS: DEMONSTRATED EFFECTIVENESS: CONTRACT BIDS**

*History Note:* Legislative Objection Lodged Eff. March 9, 1983; Statutory Authority G.S. 143B-430(b); 150B-2(2); 150B-11; 150B-23; Eff. March 1, 1983;

*Repealed Eff. October 1, 1984.*

## **SECTION .0200 - PLANNING AND CONTRACTING**

### **04 NCAC 20B .0201 JOB TRAINING PLANS FOR SERVICE DELIVERY AREAS**

(a) An acceptable and approved job training plan is a prerequisite to the receipt of subgrant funds from the Division. Except for the grant period that expires June 30, 1984, the job training plan shall cover two program years.

(b) The job training plan must be developed as described in the written agreement between the private industry council and the chief elected official(s) and in a manner consistent with federal law. The proposed plan or a summary thereof must be published and made available for review and comment to groups designated in the JTPA, any specific groups required by the Division and the public, at least 120 days before the beginning of the first of the two program years covered by the job training plan. The final plan must be published not less than 80 days before the beginning of the first of the two program years. The final plan must be submitted in writing not less than 80 days before the beginning of the first of the two program years.

(c) The job training plan shall be submitted in a format required by the Division. It must have received the approval of the private industry council, and bear the signature of that chairperson, and the chief elected official(s), and bear the signature(s) of the official(s). It shall address all the requirements in Section 104 of the JTPA.

(d) Modifications shall be treated in the same manner as plans, except that publication 120 days in advance of the first of the two program years is not required. Modifications must be published and submitted at least 80 days before their effective date. Amendments of a minor matter not effecting a material change in the job training plan may be deemed by the Division to constitute clarifications rather than modifications.

(e) The Governor, upon recommendation of the State Job Training Coordinating Council, will approve job training plans and modifications unless he finds that a condition identified in Section 105(b) of the JTPA is present or that the plan or modification violates state law. Approval or disapproval will occur within 30 days of submission of the plan or modification, except as described in Paragraphs (f) or (g) of this Rule.

(f) Individuals who represent a substantial client interest and took appropriate steps to present his or her views and seek resolution prior to submission of the plan to the Governor may, upon demonstration of such qualification, petition the Director, as delegate of the Governor, to disapprove a plan or modification, provided that the petition must be in writing received within 15 days of submission of the plan or modification or within 10 days of submission of a resubmitted plan or resubmitted modification and that the petition must specify that the request is based on a violation of statutory requirements in the plan itself. Petitions that fail to comply with the requirements of this Paragraph will not be considered. If the Governor approves the plan, the Director, as delegate of the Governor, will notify the petitioner of the approval and the reasons thereof. If a petition is filed, the time for approval or disapproval of an original plan or modification shall be extended an additional 15 days.

(g) In the event of disapproval of a job training plan or modification, the Director will notify the chairperson of the private industry council and the chief elected official(s), who shall have 20 days from receipt of that notice to file with the Director a correction of the deficiencies in plan or modification. The Governor shall review and approve or disapprove the resubmitted plan or modification within 15 days, which 15 days may not be extended by a petition under Paragraph (e) of this Rule, although a petition that satisfies the requirements of Paragraph (e) of this Rule will be considered.

(h) In the event of disapproval of a plan or modification or a resubmitted plan or modification, the chairperson of the private industry council, jointly and in writing, may appeal the disapproval to the Secretary of Labor, as set forth in 20 C.F.R. 628.5(c) provided such appeal is received within 30 days of receipt of the disapproval, that a copy of the appeal is simultaneously provided to the Secretary of Labor, and that federal requirements are met.

(i) In the event that approval or disapproval is not made within the time required by these Rules, the existing job training plan shall continue to control the operation of activities by the service delivery area administrative entity until approval or disapproval.

(j) In the event of disapproval of a job training plan and expiration of the prior approved job training plan, the Director may elect to continue operation under the prior approved job training plan until correction of deficiencies, resubmission and approval or until resolution of an appeal by the service delivery area private industry council and chief elected official(s) of the disapproval, or the Director may elect to take appropriate measures to assure the operation of job training activities in the service delivery area consistent with state law and policy and federal law during resolution of the appeal of disapproval, provided that such measures may not be punitive and shall be consistent with the job training plans approval for other service delivery areas.

(k) In the event of further administrative or civil action by a petitioner under Paragraph (e) of this Rule after the Governor has approved a job training plan or modification, the plan or modification shall not be delayed by the

further action unless ordered by a tribunal of competent jurisdiction, by the Secretary of Labor or by the Governor in his discretion, which discretion shall not be exercised unless there is a likelihood of substantial injury to the petitioner's client interest and unless there is insubstantial harm from delay.

(l) The Rural Service Delivery area is not the state, under Section 105(d) of the JTPA, and shall submit its job training plan and any modification to the Governor.

*History Note: Authority G.S. 143B-430(b); 20 C.F.R. 628.4; Ex. O. No. 93, June 8, 1983; Eff. February 1, 1976; Transferred from T01: 18 Eff. September 15, 1981; Amended Eff. August 1, 1988; October 1, 1984; August 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

#### **04 NCAC 20B .0202 JOB TRAINING CONTRACTS BY THE DIVISION**

(a) The Division may enter into written contracts for the operation or administration of job training activities, or any part of them, with contractors. Bidders, in the case of requests for proposals, or prospective contractors, when there is no formal request for proposals, must submit an application in a form required by the Division, which must be accurately completed, signed by an authorized signatory and received by the Division in accordance with the schedule established by the Division.

(b) Only entities that fulfill the following criteria will be eligible to receive a contract:

- (1) As to units of government, including state agencies, the entity must be in compliance with all applicable federal and state statutes dealing with accounting and budgeting, must be cooperating in the resolution and collection of previously disallowed costs, if any, in a previously funded employment and training program (provided that the pursuit of appeals shall not constitute failure to cooperate), and must be willing to accept responsibility for contract funds, including any potential future liability that may arise out of the use of the contract funds.
- (2) As to non-governmental bidders and prospective contractors, including profit and non-profit organizations, the entity must have an accounting system including a designated finance officer and internal fiscal controls, that are compatible with the reporting systems required by USDOL and the Division and that satisfy the Division of the fiscal integrity of contract funds. The entity must be capable of providing the Division with assurances, through past performance or otherwise, that it will comply fully with federal and state regulations, and the entity must be willing to accept responsibility for the contract funds, including any potential future liability that may arise out of the use of the contract funds.

(c) Contracts may be entered into for a period that does not extend beyond one fiscal year. Contracts for a period of one year or less that are part of a proposal to conduct an activity over more than one year may be extended by the Division if the performance under the original contract is satisfactory. In such an event, the extension shall be accomplished by the execution of a new contract document, but, in the event that a request for proposals would otherwise be required, it may not be required for the extension.

(d) The selection of service providers by the Division shall be guided by the following criteria: the effectiveness of the agency or organization in developing comparable or related services based on demonstrated performance goals, cost, quality of training, and characteristics of participants; the ability of the service provider to provide linkages required by the Governor's Coordination and Special Services Plan; the record of the service provider as a contractor under previous employment and training grants or other federal grants, including the monitoring and audit history of the contractor and the compatibility of the service provider and the program or projects offered with job training services and service providers throughout the area and the state. The Division shall not be required to contract with any service provider about whom the Division has a verifiable reason to doubt its fiscal or programmatic integrity.

(e) In the event that the Division determines to accept applications for the operation of a program or project where the program or project could not reasonably be operated by more than three specific contractors, such as residential programs for institutionalized individuals, the Division will not advertise generally for proposals or applications. Entities that have specifically requested, by writing to the Director, that they wish to receive and have the opportunity to submit proposals for applications for the specific type of job training activities sought under this Paragraph must be considered viable prospective contractors unless they fail to meet the qualification set out in Paragraph (b) of this Rule. This procedure is limited to instances in which a total of three potential contractors or less are identified, and this procedure does not affect the availability of sole source contracting, when such is appropriate.

*History Note: Authority G.S. 143B-430(b); 143B-277; 20 C.F.R. 627.21; 20 C.F.R. 629.34; Ex. O. No. 93, June 8, 1983;  
Eff. February 1, 1976;  
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#### **04 NCAC 20B .0203 CONTRACT STANDARDS**

- (a) In consideration for receiving JTPA funds from the Division, the subrecipient shall enter into an agreement with the Division. Agreements may be subgrant agreements, contracts for job training services or contracts for services or goods. All agreements are subject to existing purchase and contract regulations, except as specifically exempted.
- (b) Contracts for the purchase of services, other than job training services, and goods are governed solely by the purchase and contract regulations, except to the extent the procurement falls under the federal regulations. Contracts for small purchases, that is contracts for services or goods that do not exceed ten thousand dollars (\$10,000) in the aggregate from a single contractor in a single billing period, shall be construed by the Division to be exempt from the federal regulations as to content and provisions for services and goods contracts.
- (c) Contracts for job training services are subagreements for carrying out the substantive parts of the project for the purposes of the federal regulations.
- (d) Subgrants and contracts for job training services must contain the following minimum requirements:
- (1) A plan of work, such as a job training plan or a proposal or application;
  - (2) A budget;
  - (3) A period of services, with a stipulation that the agreement shall not be considered completed for statute of limitation purposes until final federal action on any disallowed costs incurred under the agreement;
  - (4) Agreement to comply with applicable federal and state laws and procedures;
  - (5) A recognition of the Division's right to modify the terms to comply with changes in federal law or state statutes, provided that except where such changes are permitted to have retroactive effect, such unilateral modification may only have prospective effect;
  - (6) Reasonable constraints on subcontracting and subcontract terms;
  - (7) Budgeting, invoicing, payment and closeout provisions, including provisions requiring the subgrantee or contractor to return unexpended funds to the Division, to waive claims to reimbursement for costs not submitted with the closeout period and to acknowledge the Division's right to offset, withholding and other appropriate recoupment procedures, including repayment;
  - (8) Recordkeeping, reporting and accounting provisions, consistent with federal law and state policies;
  - (9) Provisions relative to property procurement and management;
  - (10) Civil rights assurances, including provisions for a grievance procedure as required and identification of an equal employment opportunity officer;
  - (11) Provisions permitting monitoring, oversight and investigation by division and federal personnel;
  - (12) Prior approval of the governing board or authorized official, if such is required;
  - (13) The hearings procedure applicable to the agreement and disputes thereunder;
  - (14) Provisions relating the amendment of the agreement, acknowledging the Division's right to amend the agreement unilaterally in those instances in which the Division is permitted by law to amend unilaterally, such as when the Division relieves the subgrantees or contractor of an obligation under the agreement, and in those instances when a change in federal or state law or a clarification in state policy requires an amendment, provided that such amendments, unless otherwise permitted to have retroactive effect, will have prospective effect only; and
  - (15) The signatures of the authorized signatories for the Division and for the subgrantee or contractor, although the signatures may occur on identical counterparts of the same agreement.
- (d) The goals and obligations of the subgrantee or contractor must be clearly addressed in the job training plan or application or proposal and must be stated in unambiguous terms. The approval of a subgrant or a contract and its execution by the Division does not constitute agreement by the Division that the requirements of this Paragraph have been satisfied.

(e) To the extent that any language in the job training plan or contract application or proposal or any term of the contract or subgrant conflicts with federal law, it shall be construed, if possible, in a manner that shall not cause a conflict with federal law, and if such is not possible, it shall be construed as void ab initio but shall not effect the remainder of the subgrant or contract.

*History Note:* Authority G.S. 143-277; 143B-430(b); 20 C.F.R. 629.34; 41 C.F.R. 29-70; Ex. O. 93, June 8, 1983;  
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**04 NCAC 20B .0204 DIVISION RESPONSIBILITIES**  
**04 NCAC 20B .0205 TECHNICAL ASSISTANCE AND MONITORING**

*History Note:* Authority G.S. 143B-430(b) through 279; 20 C.F.R. 676.51 through 54;  
Eff. February 1, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
Amended Eff. August 1, 1982;  
Repealed Eff. October 1, 1984.

**04 NCAC 20B .0206 REQUIRED REPORTING**  
**04 NCAC 20B .0207 REPORT TO THE GOVERNOR ON EQUAL EMPLOYMENT OPPORTUNITY**  
**04 NCAC 20B .0208 DISTRIBUTION OF REPORTS**

*History Note:* Authority Title VI of the Civil Rights Act of 1964; Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972; Federal Executive Order 11246, as amended by Executive Order 113.75; Comprehensive Employment and Training Act of 1973, as amended by Public Law 93-567; 143B-430(b);  
Eff. February 1, 1976;  
Transferred From T01: 18 Eff. September 15, 1981;  
Repealed Eff. August 1, 1982.

**SECTION .0300 - FISCAL STANDARDS**

**04 NCAC 20B .0301 BUDGETING**

(a) Subgrantees and contractors shall prepare estimated budgets as described in division instructions, consistent with federal regulations and shall submit the budgets as part of their job training plans or contract applications. Amendments to or deviations from the budget shall be governed by the subgrant agreement or the contract document.

(b) Each subgrantee and contractor shall maintain its budget in accordance with the provisions of the applicable budget and fiscal control acts in the General Statutes, the subgrant or contract and the federal law.

*History Note:* Authority G.S. 143B-430(b); 159-7; Ex. O. No. 93, June 8, 1983; OMB Circular A-102, January, 1981;  
Eff. February 1, 1976;  
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

**04 NCAC 20B .0302 ACCOUNTING STANDARDS**

Accounting systems of subgrantees and contractors must be created and maintained to provide fiscal integrity, cash management as required by the United States Department of the Treasury, access to fiscal information for monitoring and as required for federal and state reporting and the creation of auditable books and records. The Division may develop specific accounting procedures to effectuate those goals, which, when developed and formally

issued as required by the contract and subgrant agreements, shall become terms of the contract and subgrant agreements.

*History Note: Authority G.S. 143B-430(b); 159-7; OMB Circular A-102, January, 1981; Ex. O. 93, June 8, 1983;  
Eff. February 1, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

#### **04 NCAC 20B .0303 COST STANDARDS**

(a) For cost reimbursement contracts and subgrants, the subrecipient may elect to receive its costs by advance or by reimbursement, unless the Division determines to condition funding by requiring reimbursement, which shall usually be limited to interruptions in federal funding or the absence of assurance of the fiscal integrity of the subrecipient.

(b) Subrecipients shall include in expenditure or reimbursement reports all allowable costs actually incurred during the report period. Allowable costs or expenditures and the frequency and format of financial reporting will be determined by the Division and by federal law and reporting requirements.

(c) Cost standards may vary according to the type of contract or subgrant agreement executed between the Division and the subrecipient.

(d) Any subgrantee or division contractor that intends to recover, by advance or reimbursement, must have an approved indirect cost rate negotiated with its cognizant agency or, if it has no federal cognizant agency, with the Division. A subgrantee or division contractor that reimburses or advances payment for indirect costs to its contractors and a contractor that reimburses or advances payments for indirect costs to its subcontractors are responsible for ascertaining the existence of, or negotiating those indirect cost rates.

(e) Income derived from activities that have been funded by JTPA funds, with the exception of on-the-job training and tryout employment, is program income and is subject to division instructions on program income. Any such income shall increase the funds for that program and shall be used for program purposes (without regard, however, to cost categories) unless otherwise specifically prohibited. Program income received by state agencies, local education agencies and quasi-public non-profit organizations, such as private non-profit hospitals, may be exempted from all or some of the program income instructions on a showing to the Division of good cause for the exemption.

(f) In-kind contributions of services and donations of property are generally allowable only to offset disallowed costs, except that in-kind contributions and donations may be used for matching fund purposes. Offset is only permissible with the prior written approval of the Division.

(g) The matching contribution required for some employment and training activities may, without limitation, consist of:

- (1) Charges incurred by a subrecipient as project costs including charges not requiring cash outlays during the subgrant or contract period;
- (2) Federal funds, only to the extent the authorizing legislation specifically permits their use as matching funds;
- (3) Project costs financed with cash contributed or donated to the subrecipient by non-federal third parties;
- (4) Employer's on-the-job training contributions;
- (5) Full time equivalency accruals in the community college system earned by Title III participants (available for Title III only);
- (6) Unemployment benefits paid from state funds to participants (limited to 50 percent of the matching funds contribution);
- (7) Employers' expenditures on behalf of Title III participants, such as the cost associated with outplacement centers, retraining programs, resume services and the like, during the period of the subgrant or contract and to the extent that the activities conducted are allowable activities within the contract or subgrant;
- (8) Education costs, which may be based on a proportion of actual costs relative to the participation of participants in the education services, plus extraordinary costs of education services, provided to JTPA participants;

- (9) In-kind services, to the extent approved, that provide services that are reasonable and necessary for the proper and efficient operation and accomplishment of program or project objectives;
- (10) Donated property that is necessary and reasonable for the proper and efficient operation and accomplishment of program or project objectives, which may be considered as part of the matching share on approval of the Division; and
- (11) Such other property, services, expenditures or costs as the Director may determine contributes to program or project objectives.

*History Note: Authority G.S. 143B-430(b); 20 C.F.R. 629.31; 20 C.F.R. 629.46; 41 C.F.R. 29.70; OMB Circular A-102, January 1981; Ex. O. 93, June 8, 1983; Eff. February 1, 1976; Transferred from T01: 18 Eff. September 15, 1981; Amended Eff. October 1, 1984; August 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

#### **04 NCAC 20B .0304 PROCUREMENT AND PROPERTY STANDARDS**

(a) In order to insure that the maximum benefit is derived from subgrant and contract funds, subrecipients must adhere to all federal, state, local and internal procurement guidelines. Non-governmental subrecipients must adopt and adhere to procurement procedures that reflect compliance with the intent of laws and regulations applicable to governmental subrecipients, specifically prohibitions on solicitation or acceptance of anything of monetary value from suppliers or potential conflict of interest for a member of the board of the subrecipient, an officer of the subrecipient, an employee or agency of the subrecipient, or a member of the immediate family of a board member, officer or employee.

(b) Cost plus a percentage of cost contracts are prohibited.

(c) Real property may not be procured or received without prior written authorization from the Division. Nonexpendable property may not be affixed to real property without the prior written authorization of the Division. The Division may condition the procurement or receipt of real property or the affixation of nonexpendable property to real property, as the Division considers is necessary to comply with federal law and to effectuate JTPA policies. Except where specific written authorization has been procured, the affixation of nonexpendable property to real property is a conversion of that property.

(d) Nonexpendable property shall be subject to the following regulations:

- (1) Title to property. Title to all nonexpendable property, except nonexpendable property to which the federal government claims title, that is purchased with federal employment and training funds received directly or indirectly through the Division, shall be in the name of the Department. To the extent possible, nonexpendable property should be procured with funds from a single grant source, to facilitate identification of nonexpendable property. Where nonexpendable property is purchased in part with JTPA funds and in part with other funds, the Department has a proportionate interest in the property and it is covered by this Paragraph.
- (2) Use. Nonexpendable property may be used by the subgrantee or contractor as long as there is a need for such property to accomplish the subgrant or contract objectives, or the objectives of subsequent contracts or subgrants from the Division, supported by JTPA funds.
- (3) Transfer. When the subgrantee or contractor no longer needs the nonexpendable property, it is the responsibility of the subgrantee or contractor to return the property to the physical control of the Division. The Division may provide transportation for the property. This Section shall not apply if the depreciated value of the property is less than one hundred dollars (\$100.00), in which case the subgrantee or contractor, after completion of any required forms, may retain the nonexpendable property, unless the federal government has a claim to the title of the property.
- (4) Constructive Transfer. The use of property for non-JTPA purposes will be deemed a constructive transfer to the subgrantee or contractor, which will be liable for the fair market value of the nonexpendable property at the time of the constructive transfer. The fair market value will be payable to the Division, or in the Division's discretion, to the subgrant or contract funds, where it will be treated in all respects as program income, except that the exemption for on-the-job training and tryout employment programs will not apply to program income generated in this manner.
- (5) Non-expendable property must be subjected to a physical inventory not less than once a year. Subgrantees must identify property officers responsible for the maintenance of an inventory. The



Division will conduct the inventory of its contractors' nonexpendable property and will conduct periodic reviews of the inventory of subgrantees' nonexpendable property. Physical inventories made other than at the close of the fiscal year must be updated effective the last day of the fiscal year.

- (6) All nonexpendable property must have property labels, as required by the state and federal regulations, affixed. The property officer for the subgrantee shall be responsible, in concert with the Division, for assuring that all subgrantee nonexpendable property bears the appropriate label(s).
  - (7) Property records shall be maintained accurately and shall provide:
    - (A) A description of the property;
    - (B) Manufacturer's serial number or other identification number;
    - (C) Acquisition date and unit acquisition cost;
    - (D) Source of the property;
    - (E) Percentage of JTPA funds used in the acquisition;
    - (F) Location, use and condition of the property;
    - (G) State and/or federal government control number from label; and
    - (H) Ultimate disposition data.
  - (8) Adequate maintenance procedures shall be implemented to insure maximum use of the property.
  - (9) Nonexpendable intangible property shall become the property of the Division when developed by or in a funded activity, as a work for hire by the Division. The intangible property shall be available, for the costs of reproduction to any subgrantee or contractor for JTPA purposes, and shall be available as otherwise required by the federal regulations. Income generated from intangible property will be payable to the Division, to the subgrant or contract funds where the intangible property was developed, where it will be treated as program income.
- (e) Nothing in Rule .0304 is meant or should be interpreted to contravene applicable federal law governing the procurement, use or disposition of property acquired by a subrecipient with federal funds.
- (f) Property donated to a subrecipient shall not be construed as donated to the grant or contract itself unless it is specifically so designated. The value of donated property may be used for matching funds purposes without donation to the grant or contract. In the event that property is donated to the grant or contract, it shall be treated as acquired property subject to applicable regulations. The unit acquisition cost upon which the property should be categorized is the fair market value at the time of donation.
- (g) Property purchased by a subrecipient with funds generated by or in a performance-based contract is not subject to Rule .0304.

*History Note:* Authority G.S. 143-277; 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 629.41; 41 C.F.R. 29-70;  
Eff. February 1, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
Amended Eff. June 1, 1985; October 1, 1984; August 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

#### **04 NCAC 20B .0305 ADMINISTRATION OF THE PLANS**

*History Note:* Authority G.S. 143B-430(b) through 279; 20 C.F.R. 676.37;  
Eff. February 1, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
Amended Eff. August 1, 1982;  
Repealed Eff. October 1, 1984.

#### **04 NCAC 20B .0306 PROGRAM ASSESSMENT**

#### **04 NCAC 20B .0307 CORRECTIVE ACTION**

*History Note:* Authority G.S. 143B-430(b); 143B-395; P.L. 93-203 as amended by P.L. 93-567;  
Eff. February 1, 1976;  
Transferred From T01: 18 Eff. September 15, 1981;

*Repealed Eff. August 1, 1982.*

## **SECTION .0400 - PERSONNEL STANDARDS FOR SUBRECIPIENTS**

### **04 NCAC 20B .0401 GENERAL PERSONNEL STANDARDS FOR SUBRECIPIENTS**

Proper and efficient administration of employment and training programs requires proper and efficient personnel administration within a subrecipient's organization and in cooperation with federal, state and local agencies involved in administering employment and training activities. Subrecipients should engage in activities to enhance efficiency such as clear organization structure, definition of job functions, recruitment and employment of qualified personnel and the development of individual employee efficiency.

*History Note: Authority G.S. 126; 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 628.3; 5 C.F.R. 900, Subpart F;  
Eff. February 1, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
Amended Eff. October 1, 1984; August 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

### **04 NCAC 20B .0402 FEDERAL PERSONNEL STANDARDS**

### **04 NCAC 20B .0403 STATE PERSONNEL STANDARDS FOR SUBRECIPIENTS**

*History Note: Authority G.S. 115C, Subchapter V (Rule .0403); 126-1 (Rule .0403); 143-16; 143-16.1; 143-341; 143B-430(b); 5 C.F.R. 900, Subpart F (Rule .0402); 20 C.F.R. 629.1 (Rule .0402);  
Eff. February 1, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
Amended Eff. October 1, 1984; August 1, 1982;  
Repealed Eff. July 1, 2012.*

### **04 NCAC 20B .0404 CERTAIN POLITICAL ACTIVITIES PROHIBITED**

(a) The federal Political Activities Act, commonly referred to as the Hatch Act, places certain restrictions on the political activity of individuals employed in federally funded activities. The Hatch Act is applicable to subrecipient employees who are covered by the definitions in the act.

(b) Technical assistance in the interpretation and application of the act is available from the Office of the Special Counsel of the United States Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C., 20419.

*History Note: Authority G.S. 143-16; 143-16.2; 143-341; 143B-430(b); 5 U.S.C. 1502(a)(3); 5 U.S.C. 1503; 20 C.F.R. 629.3;  
Eff. February 1, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
Amended Eff. October 1, 1984; August 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

### **04 NCAC 20B .0405 FISCAL REPORTING REQUIREMENT: GENERAL**

### **04 NCAC 20B .0406 METHODS OF PAYMENT**

### **04 NCAC 20B .0407 INVOICE PROCEDURES AND PENALTIES**

### **04 NCAC 20B .0408 OTHER REPORTING REQUIREMENTS**

### **04 NCAC 20B .0409 AUDITING REQUIREMENTS**

### **04 NCAC 20B .0410 PROGRAM MONITORING REQUIREMENTS**

### **04 NCAC 20B .0411 CONTRACTS ADMINISTRATION POLICIES AND PROCEDURES BULLETIN**

*History Note: Authority G.S. 143B-430(b); 143B-395; P.L. 93-203 as amended by P.L. 93-567;  
Eff. February 1, 1976;  
Transferred From T01: 18 Eff. September 15, 1981;*

*Repealed Eff. August 1, 1982.*

**04 NCAC 20B .0412 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY**

(a) Subrecipients shall not discriminate against any employee, including participants and potential beneficiaries of employment and training programs or projects because of race, color, sex, religion, handicap, political affiliation or national origin. This applies to all programs, projects or activities funded in whole or in part with federal employment and training funds received directly or indirectly through the Division.

(b) Each subgrantee and division contractor is responsible for designating an equal employment opportunity officer, who shall be responsible for assuring that discrimination does not occur in that subrecipient's programs or projects. The Division may require the equal employment opportunity officer to certify the procedures by which the officer secured that assurance. The equal employment officer for a subrecipient is also responsible for the development of a grievance procedure that provides an opportunity for hearings that USDOL designates are not the primary responsibility of USDOL. The equal employment officer is responsible for disseminating information to employees and participants concerning the subrecipient's nondiscrimination policy and the grievance procedures.

(c) Division contractors may request that the Division provide equal employment opportunity services for the contractor.

(d) All subrecipients will be subject to periodic review for compliance with Paragraph (a) of this Rule, which review will be made by division staff. Division staff may recommend corrective measures to assure nondiscrimination, and, in the event of failure to correct deficiencies, the Director may impose such sanctions as are available under the contract or subgrant for failure to comply with a term of the contract or subgrant.

*History Note: Authority G.S. 143-16; 143-16.1; 143-341; 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 629.3; Eff. October 1, 1984; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

**04 NCAC 20B .0413 NEPOTISM PROHIBITED**

(a) Subrecipients must include provisions in their personnel policies guarding against nepotism. The nepotism prohibition should apply to subrecipient staff.

(b) At a minimum the nepotism provisions should prohibit the employment of two or more members of an immediate family within the same agency if such employment will result in one member supervising another member of his or her immediate family, or where one member occupies a position that has influence over the other's employment, promotion, salary administration or other related management or personnel considerations, except where such functions are wholly ministerial.

(c) All subrecipients must ensure that the selection of program participants is protected from undue consideration being granted to immediate family of program or administrative staff members.

*History Note: Authority G.S. 14-234; 143B-430(b); Eff. October 1, 1984; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

**SECTION .0500 - REPORTING AND EVALUATION**

**04 NCAC 20B .0501 REPORTING AND RECORDS**

(a) Each subgrantee and division contractor is required to report data to the Division in a manner prescribed by the Division. The Division shall require the reporting of such data as is necessary for the administration of an effective, efficient and complying program and is necessary for preparation of reports as required by USDOL.

(b) To the extent that automated or electronic data systems can be utilized to gather, prepare and disseminate such reports, the subgrantee and contractor should endeavor to use such systems. The Division will provide guidance and technical assistance regarding standards for data formats, files and other related aspects of a system.

(c) Records relating to funded activities must be maintained for at least three years from the close of the fiscal year in which the activities were conducted. In the event that an audit has been conducted that identifies questioned costs, the records must be maintained until final resolution of the questioned costs (through recoupment or allowance) by USDOL or in a court of last resort.

(d) The Division shall endeavor to utilize available automated or electronic data systems to facilitate reporting, by developing reporting formats compatible with such systems and by permitting reporting and recordkeeping through such systems.

(e) Every subrecipient shall be obligated to notify the Division by the quickest means appropriate of all violations or reasonable suspicion of violations occurring in any funded activity or in the administration of an entity that manages or operates funded activities. The subrecipients shall inform all staff that they have an independent obligation to make such reports. It shall be a violation of these Regulations and a ground for revocation of funding to take retaliatory action in any way against any person who reports alleged misconduct under this Paragraph.

*History Note: Authority G.S. 143-16; 143-16.1; 143-341; 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 529.35; 41 C.F.R. 29-70.203; Eff. November 17, 1976; Transferred from T01: 18; Eff. September 15, 1981; Amended Eff. October 1, 1984; August 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

#### **04 NCAC 20B .0502 EVALUATION**

(a) Subrecipients shall assist the Division, USDOL, and, if applicable, the private industry council in the service delivery area and/or the State Job Training Coordinating Council, or any agent of them, in conducting evaluations, monitoring and assessment of their funded activities. This requirement includes access to local records (including the records of on-the-job training and tryout employment employers), staff and participants and, if requested, the participation of local staff on evaluation task forces and at workshops. The Division will be responsible for ensuring the subrecipients are informed as soon as possible about evaluation and monitoring needs and emphasis will be placed on minimizing disruption of subrecipient operation. Unless the regulations or policy of USDOL prohibit it, or unless the matter is referred to state or local prosecutorial or investigatory officials for review, the Division will provide results of pertinent evaluations and monitoring to the subrecipient.

(b) The Division will monitor for fiscal and programmatic compliance, for proper management, for civil rights compliance and for such other purposes as are reasonable for administration of the grants by the Division and/or are required by federal law.

(c) The Division will perform the functions of the Governor with regard to assessment of a subrecipient's compliance with its job training plan and the subrecipient's performance based on the performance standards set forth in Section 106 of the Job Training Act and any federal regulations or directives issued pursuant to that section. The Division, as delegate of the Governor, may vary the performance standards suggested by USDOL, to the extent permitted by Section 106(e), and the Division shall provide technical assistance to subgrantees that fail to meet performance criteria.

(d) The Division, as delegate of the Governor, shall impose a reorganization plan on a subgrantee that fails to meet performance standards for two consecutive years. The reorganization plan may involve restructure of the private industry council, prohibition of designated service provider contracts, selection of an alternate administrative entity and/or such other changes as are deemed necessary to improve performance. In the event an alternate administrative entity is selected, the Division and the chief elected official of the largest unit, in population, of general local government in the service delivery area shall jointly select the new administrative entity.

(e) The Division will notify the chief elected official and chairperson of the private industry council in a service delivery area of the determination under Paragraph (d) of this Rule. The subgrantee has a right to a hearing on the issue of whether the determination is contrary to Section 106 of the Job Training Partnership Act. A request to exercise the right to a hearing must be filed in accordance with Subchapter 20C .0002. During the pendency of the appeal at the state level, no reorganization plan will be carried out.

(f) A subgrantee aggrieved by the determination and decision in Paragraphs (d) and (e) of this Rule may appeal the decision to the Secretary of USDOL, which appeal must be in writing and must be received within thirty days of receipt of the final decision under Paragraph (e) of this Rule. A copy of such an appeal to USDOL must be provided simultaneously to the Division, as delegate of the Governor.

(g) The existence of sanctions in this Section for failure to meet performance standards does not prevent the Division from imposing contractually permitted sanctions, not specified in this Section, for failure to comply with the terms of subgrant agreement or contract document.

*History Note:* Authority G.S. 143-16; 143-16.1; 143-341; 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 629.46;  
Eff. November 17, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
Amended Eff. August 1, 1988; July 1, 1988; October 1, 1984; August 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

**04 NCAC 20B .0503 MEETINGS**  
**04 NCAC 20B .0504 STAFF SUPPORT**

*History Note:* Authority G.S. 143B-430(b); 143B-341; 20 C.F.R. 676.7(c);  
Eff. November 17, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
Amended Eff. August 1, 1982;  
Repealed Eff. October 1, 1984.

**SECTION .0600 - AUDIT STANDARDS**

**04 NCAC 20B .0601 ANNUAL FINANCIAL AND COMPLIANCE AUDIT**

Unless specifically permitted to conduct a financial and compliance audit every two years or unless exempted from this Section, each subrecipient shall have an annual financial and compliance audit by an independent audit organization. Audits shall be conducted in accordance with the applicable auditing standards established by the General Accounting Office, the Comptroller General (in Standards for Audit of Governmental Organizations, Programs, Activities and Functions) and the American Institute of Certified Public Accountants and any compliance supplements issued by the State Of North Carolina. Two copies of the audit and a management letter, which may be separate from the audit, shall be provided to the Division by the auditor.

*History Note:* Authority G.S. 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 629.42; OMB Circular A-102, January 1981;  
Eff. November 17, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
Amended Eff. October 1, 1984; August 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

**04 NCAC 20B .0602 AUDIT CONTRACTS**

- (a) The Division policy on JTPA audits is that each subrecipient shall have an annual single audit pursuant to Attachment "P" of the Office of Management and Budget, that is a financial and compliance audit of an entity on an organization-wide basis rather than an audit of JTPA subgrants or contracts only. Exceptions to this policy will be made only to the extent permitted by USDOL or the Division pursuant to Rule .0603 of this Section or otherwise excepted by the Division and acknowledged in writing by the Director.
- (b) The service delivery grant recipient is responsible for assuring that its contractors and subcontractors have annual financial and compliance audits, and the delegation of that responsibility to the contractors and subcontractors shall not relieve the service delivery area grant recipient of that responsibility.
- (c) The auditor should be selected and report to the governing board or commission of a subrecipient. The selection of an auditor should be made in accordance with procurement requirements. The audit contract should be in writing and shall contain all appropriate terms and conditions, including access of the Division to audit workpapers for use in audit resolution. Specific mention shall be made in the contract of the scope of the audit, completion date, financial statements to be provided, and assurance that the statements will be in a generally accepted format for such funds. Attachment "P" of the Office of Budget and Management Circular A-102 should be provided to the auditor.
- (d) The costs of such audits shall be borne by the subrecipient and are allowable administrative expenses, provided the costs are reasonable and subject to applicable limitations on administrative expenses. The Division may determine to bear the costs of all or some of such audits, but shall not be required to do so.

*History Note:* Authority G.S. Ex. O. 93, June 8, 1983; 20 C.F.R. 629.42; 143B-430(b); OMB Circular A-102, January, 1981;  
Eff. November 17, 1976;  
Transferred from T01: 18; Eff. September 15, 1981;  
Amended Eff. October 1, 1984; August 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

#### **04 NCAC 20B .0603 EXCEPTIONS TO AUDIT REQUIREMENTS**

(a) Unless otherwise directed by federal or state law or by federal directive, subrecipients who provide services, other than job training services, or who provide goods and provide no other services under the grant activities shall not be subject to audit under Rule .0601 of this Section.

(b) Subrecipients who have been specifically excluded or who are within a group that has been specifically excluded from the audit requirements by the Secretary of Labor shall not be subject to audit under Rule .0601 of this Section.

*History Note:* Authority Ex. O. 93, June 8, 1983; 20 C.F.R. 629.42; 143B-430(b); OMB Circular 102, January, 1981;  
Eff. November 17, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
Amended Eff. October 1, 1984; August 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

#### **04 NCAC 20B .0604 AUDIT RESOLUTION PROCESS**

(a) The auditor that conducts a financial and compliance audit of a subrecipient has the responsibility to identify questioned costs in funded activities. The failure of the auditor to identify questioned costs shall not prevent the Division or USDOL from identifying questioned costs. The Division may identify questioned costs at any time, including prior to audit as during monitoring, except that the Division will not identify questioned costs after acceptance of the audit and audit resolution by USDOL.

(b) The Division will make the initial determination on the allowability of questioned costs in audits. The Division will be guided in its determination by its audit resolution manual, which is updated as necessary and which is available for inspection by the public. The Division is not bound by its initial determination, as the determination may be overturned by USDOL. The subrecipient is responsible for cooperating in the gathering of information to support allowability. The Division shall not be required to resolve the questioned costs of a subrecipient who fails to cooperate in audit resolution.

(c) The subrecipient is responsible for preparing documentation in a timely fashion for the Division to submit to USDOL to support an application for a waiver of liability under Section 164 of the JTPA.

(d) USDOL makes the final decisions on the acceptability of audits and on the allowance, waiver of liability or disallowance of questioned costs in audits.

(e) A subrecipient may seek administrative review of a determination by the Division to disallow costs that were questioned in an audit or of a division order to recoup disallowed costs that have been disallowed by USDOL. The failure to seek administrative review within thirty days of receipt of such a determination may result in an order of the Secretary authorizing recoupment.

*History Note:* Authority G.S. 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 629.42; OMB Circular 102, January, 1981;  
Eff. November 17, 1976;  
Transferred from T01: 18 Eff. September 15, 1981;  
Amended Eff. October 1, 1984; August 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

### **SECTION .0700 - STATE JOB TRAINING COORDINATING COUNCIL**

#### **04 NCAC 20B .0701 MEMBERSHIP AND FUNCTIONS OF COUNCIL**

The State Job Training Coordinating Council is constituted according to Section 122 of the Job Training Partnership Act. The functions of the council shall include, but not be limited to, the functions identified in Section 122 and elsewhere in federal law. The Division provides the staff services required for the council to provide its functions.

*History Note:* Authority G.S. 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 627.4;  
Eff. August 1, 1982;  
Amended October 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

#### **04 NCAC 20B .0702 ACTIONS AGAINST THE COUNCIL OR COUNCIL MEMBERS**

- (a) All actions against the council or against a council member in his or her capacity as a council member or against a council member in his or her individual capacity alleging misfeasance, malfeasance or nonfeasance in his or her role as a council member shall be brought by filing a complaint in accordance with Subchapter 20C .0002.
- (b) Members of the council shall only be liable in the event that the complainant establishes by a preponderance of the evidence that such member(s) engaged in misconduct that constituted fraud. Complaints that fail to allege facts constituting fraud shall be dismissed.
- (c) Awards or damages shall be limited to actual losses of the complainant. Council members are not individually liable for any award against the council.
- (d) Class action complaints are not permitted, except in extraordinary circumstances.

*History Note:* Authority G.S. 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 629.51;  
Eff. August 1, 1982;  
Amended August 1, 1988; October 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

#### **04 NCAC 20B .0703 MEETINGS**

#### **04 NCAC 20B .0704 STAFF SUPPORT**

*History Note:* Authority G.S. 143B-430(b); 143B-341; 20 C.F.R. 679.3-5;  
Eff. August 1, 1982;  
Repealed Eff. October 1, 1984.

### **SECTION .0800 - MISCELLANEOUS PROVISIONS**

#### **04 NCAC 20B .0801 COOPERATIVE AGREEMENTS**

The Division is authorized to execute any cooperative agreement, including interstate agreements, that the governor is permitted to execute under the Job Training Partnership Act or in furtherance of employment and training activities, but only to the extent such agreements are permitted by state law.

*History Note:* Authority G.S. 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 627.5;  
Eff. October 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

#### **04 NCAC 20B .0802 STATE LABOR MARKET INFORMATION SYSTEM DESIGNATION**

The Governor shall designate a state agency as responsible for oversight and management of a statewide comprehensive labor market and occupational supply and demand information system under Section 125 of the JTPA.

*History Note:* Authority G.S. 143B-430(b); Ex. O. 93, June 8, 1983; P.L. 97-300, Section 125;  
Eff. October 1, 1984;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.

#### **04 NCAC 20B .0803 WAIVER UNDER SECTION 108(C) OF JTPA**

Waiver requests under Section 108(c) of the JTPA must be filed by subrecipients with the Division when a waiver is sought. The request must meet the requirements of the Act and will be reviewed by the Division on a case by case basis. The burden of proof to support the terms "disproportionately high" and "substantial portion" of participants shall be with the subrecipient.

*History Note: Authority G.S. 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 629.21; Eff. October 1, 1984; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

#### **04 NCAC 20B .0804 DIVISION DIRECTIVES**

(a) SDA Issuances include information that represents an official communication of a policy or issue interpretation. The SDA issuances become, under the terms of the subgrant agreement, a part of that agreement. An issuance will be printed on department letterhead, will be numbered sequentially for each calendar year and will be signed by the Director. Issuances may be provided in draft form to subgrantees and contractors for their assistance in finalizing policy or developing interpretations. An issuance will not, however, represent the official position of the Division until such time as the elements in this Rule are present. Subgrantees and contractors should retain the directives.

(b) Technical Assistance Packages represent advice on technical issues, examples of compliance methodology, sample documents for subrecipient consideration in their activities and other data such as program/project sharing information. These packages are printed on department letterhead, number sequentially and initialled by the Planning and Program Management Coordinator.

(c) JTPA Bulletins include information of a general or public nature. The bulletins may include items submitted by subgrantees or contractors. Bulletins are printed on a special heading, numbered sequentially by calendar year and signed by the Director.

*History Note: Authority G.S. 143B-430(b); Ex. O. 93, June 8, 1983; Eff. October 1, 1984; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

#### **04 NCAC 20B .0805 SECTARIAN ACTIVITIES PROHIBITED**

(a) Participants may not be placed in prohibited sectarian activities.

(b) Sectarian activities prohibited under JTPA are:

(1) Any activity involved in the construction, including remodeling, of a facility that is used or is intended to be used as a place of sectarian instruction or as a place of religious worship, except as such activities may be a minimal or incidental activity with relation to the primary use of the facility, such as the construction of a community center that would permit use or rental of rooms by any community group, including sectarian organizations.

(2) Any activity involved in the operation or maintenance of those portions of a facility that are used as places of sectarian instruction or worship, except where such activities are minimal or incidental with relation to the primary use of those portions of the facility.

(c) Participants may be employed at religiously affiliated elementary or secondary schools or day care facilities or at elementary or secondary schools or day facilities used for religious worship if:

(1) Attendance at the school or facility if open to the community at large without regard to religious affiliation; and

(2) The participant is not leading or instructing in religious or sectarian activities.

(d) The Division will endeavor to evaluate the functions of the participants rather than the scope of the activities conducted in a facility, to the extent the Division is permitted to do so under federal law.

*History Note: Authority G.S. 143B-430(b); Ex. O. 93, June 8, 1983; 20 C.F.R. 629.3; Eff. October 1, 1984; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019.*

### **SECTION .0900 - EMPLOYMENT AND TRAINING GRANT PROGRAM**



**04 NCAC 20B .0901      PURPOSE**  
**04 NCAC 20B .0902      GRANT APPLICATIONS**

*History Note:*      Authority G.S. 143B-438.6;  
Filed as a Temporary Adoption Eff. July 25, 1991 for a period of 180 days to expire on January 21, 1992;  
Eff. December 1, 1991;  
Repealed Eff. July 1, 2012.

**04 NCAC 20B .0903      ALLOCATION OF GRANTS**

*History Note:*      Filed as a Temporary Adoption Eff. July 25, 1991 for a period of 180 days to expire on January 21, 1992;  
Statutory Authority G.S. 143B-438.6;  
ARRC Objection Lodged August 22, 1991;  
Repealed Eff. December 1, 1991.

*Editor's Note:* Agency repealed rule to satisfy objection to permanent rule.

**04 NCAC 20B .0904      COORDINATION WITH OTHER EMPLOYMENT AND TRAINING FUNDS**

*History Note:*      Authority G.S. 143B-438.6;  
Temporary Adoption Eff. July 25, 1991 for a period of 180 days to expire on January 21, 1992;  
Eff. December 1, 1991;  
Repealed Eff. July 1, 2012.

**04 NCAC 20B .0905      ELIGIBILITY**

*History Note:*      Filed as a Temporary Adoption Eff. July 25, 1991 for a period of 180 days to expire on January 21, 1992;  
Statutory Authority 143B-438.6;  
ARRC Objection Lodged August 22, 1991;  
Repealed Eff. December 1, 1991.

*Editor's Note:* Agency repealed rule to satisfy objection to permanent rule.

**04 NCAC 20B .0906      USE OF FUNDS**  
**04 NCAC 20B .0907      COST LIMITATIONS/CATEGORIES**

*History Note:*      Authority G.S. 143B-438.6;  
Temporary Adoption Eff. July 25, 1991 for a period of 180 days to expire on January 21, 1992;  
ARRC Objection Lodged August 22, 1991 (Rule .0907);  
Eff. December 1, 1991;  
Repealed Eff. July 1, 2012.

**04 NCAC 20B .0908      REPORTING**

*History Note:*      Filed as a Temporary Adoption Eff. July 25, 1991 for a period of 180 days to expire on January 21, 1992;  
Statutory Authority G.S. 143B-438.6;  
ARRC Objection Lodged August 22, 1991;  
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*Editor's Note:* Agency repealed rule to satisfy objection to permanent rule.

**04 NCAC 20B .0909      PERFORMANCE STANDARDS**  
**04 NCAC 20B .0910      MONITORING/OVERSIGHT**  
**04 NCAC 20B .0911      FUND AVAILABILITY/REDISTRIBUTION**

*History Note:      Authority G.S. 143B-438.6;*  
*Temporary Adoption Eff. July 25, 1991 for a period of 180 days to expire on January 21, 1992;*  
*ARRC Objection Lodged August 22, 1991 (Rule .0909, .0911);*  
*Eff. December 1, 1991;*  
*Repealed Eff. July 1, 2012.*