

NORTH CAROLINA REGISTER

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January 2, 2019

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PUBLISHED BY

*The Office of Administrative Hearings
Rules Division
6714 Mail Service Center
Raleigh, NC 27699-6714
Telephone (919) 431-3000
Fax (919) 431-3104*

*Julian Mann III, Director
Molly Masich, Codifier of Rules
Dana McGhee, Publications Coordinator
Lindsay Woy, Editorial Assistant
Cathy Matthews-Thayer, Editorial 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

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules	molly.masich@oah.nc.gov	(919) 431-3071
Dana McGhee, Publications Coordinator	dana.mcghee@oah.nc.gov	(919) 431-3075
Lindsay Woy, Editorial Assistant	lindsay.woy@oah.nc.gov	(919) 431-3078
Cathy Matthews-Thayer, Editorial Assistant	cathy.thayer@oah.nc.gov	(919) 431-3006

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Amber Cronk May, Commission Counsel	amber.may@oah.nc.gov	(919) 431-3074
Amanda Reeder, Commission Counsel	amanda.reeder@oah.nc.gov	(919) 431-3079
Jason Thomas, Commission Counsel	jason.thomas@oah.nc.gov	(919) 431-3081
Alexander Burgos, Paralegal	alexander.burgos@oah.nc.gov	(919) 431-3080
Julie Brincefield, Administrative Assistant	julie.brincefield@oah.nc.gov	(919) 431-3073

Fiscal Notes & Economic Analysis

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Carrie Hollis, Economic Analyst

osbmruleanalysis@osbm.nc.gov (919) 807-4757

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

150 Fayetteville Street, Suite 300

Raleigh, North Carolina 27601

contact: Sarah Collins

scollins@nclm.org

Legislative Process Concerning Rule-making

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

Jason Moran-Bates, Staff Attorney

Jeremy Ray, Staff Attorney

NORTH CAROLINA REGISTER
Publication Schedule for January 2019 – December 2019

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
33:13	01/02/19	12/06/18	01/17/19	03/04/19	03/20/19	04/18/19	05/01/19	09/29/19
33:14	01/15/19	12/19/18	01/30/19	03/18/19	03/20/19	04/18/19	05/01/19	10/12/19
33:15	02/01/19	01/10/19	02/16/19	04/02/19	04/22/19	05/16/19	06/01/19	10/29/19
33:16	02/15/19	01/25/19	03/02/19	04/16/19	04/22/19	05/16/19	06/01/19	11/12/19
33:17	03/01/19	02/08/19	03/16/19	04/30/19	05/20/19	06/20/19	07/01/19	11/26/19
33:18	03/15/19	02/22/19	03/30/19	05/14/19	05/20/19	06/20/19	07/01/19	12/10/19
33:19	04/01/19	03/11/19	04/16/19	05/31/19	06/20/19	07/18/19	08/01/19	12/27/19
33:20	04/15/19	03/25/19	04/30/19	06/14/19	06/20/19	07/18/19	08/01/19	01/10/20
33:21	05/01/19	04/09/19	05/16/19	07/01/19	07/22/19	08/15/19	09/01/19	01/26/20
33:22	05/15/19	04/24/19	05/30/19	07/15/19	07/22/19	08/15/19	09/01/19	02/09/20
33:23	06/03/19	05/10/19	06/18/19	08/02/19	08/20/19	09/19/19	10/01/19	02/28/20
33:24	06/17/19	05/24/19	07/02/19	08/16/19	08/20/19	09/19/19	10/01/19	03/13/20
34:01	07/01/19	06/10/19	07/16/19	08/30/19	09/20/19	10/17/19	11/01/19	03/27/20
34:02	07/15/19	06/21/19	07/30/19	09/13/19	09/20/19	10/17/19	11/01/19	04/10/20
34:03	08/01/19	07/11/19	08/16/19	09/30/19	10/21/19	11/21/19	12/01/19	04/27/20
34:04	08/15/19	07/25/19	08/30/19	10/14/19	10/21/19	11/21/19	12/01/19	05/11/20
34:05	09/03/19	08/12/19	09/18/19	11/04/19	11/20/19	12/19/19	01/01/20	05/30/20
34:06	09/16/19	08/23/19	10/01/19	11/15/19	11/20/19	12/19/19	01/01/20	06/12/20
34:07	10/01/19	09/10/19	10/16/19	12/02/19	12/20/19	01/16/20	02/01/20	06/27/20
34:08	10/15/19	09/24/19	10/30/19	12/16/19	12/20/19	01/16/20	02/01/20	07/11/20
34:09	11/01/19	10/11/19	11/16/19	12/31/19	01/21/20	02/20/20	03/01/20	07/28/20
34:10	11/15/19	10/24/19	11/30/19	01/14/20	01/21/20	02/20/20	03/01/20	08/11/20
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34:12	12/16/19	11/21/19	12/31/19	02/14/20	02/20/20	03/19/20	04/01/20	09/11/20

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

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making Proceedings *is hereby given by NC Building Code Council in accordance with G.S. 150B-21.5(d).*

Citation to Existing Rule Affected by this Rule-Making: *North Carolina Building, Energy Conservation, Existing Building, Fire, Plumbing and Residential Code amendments.*

Authority for Rule-making: *G.S. 143-136; 143-138.*

Reason for Proposed Action: *To incorporate changes in the NC State Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.*

Public Hearing: *Monday, January 28, 2019, 9:00AM, Albemarle Building, 325 North Salisbury Street, Raleigh, NC 27603, 2nd Floor Training Room 240. Comments on both the proposed rule and any fiscal impact will be accepted.*

Comment Procedures: *Written comments may be sent to Barry Gupton, Secretary, NC Building Code Council, NC Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202. Comments on both the proposed rule and any fiscal impact will be accepted. Comment period expires on March 4, 2019.*

Statement of Subject Matter:

1. Request by Eurilynn Caraballo representing Mecklenburg County Code Enforcement to amend the 2018 NC Building Code, Section 1009.7.2 as follows:

Exceptions:

1. Areas for assisted rescue that are located 10 feet (3048 mm) or more from the exterior face of a building are not required to be separated from the building by fire-resistance rated walls or protected openings.
2. The fire-resistance rating and opening protectives are not required in the exterior wall where the building is equipped throughout with an automatic sprinkler system installed in accordance with section 903.3.1.1 or 903.3.1.2.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to allow the exception included in the 2018 IBC.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with minor decrease in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

2. Request by Ryan Miller representing the NC Building Performance Association to amend the 2018 NC Energy Conservation Code, Section R406.6.2 Compliance Report as follows:

5. The RESNET Registry number (or equivalent) for the ERI.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to assure the use of an ERI for code compliance that is certified and registered with an oversight organization (RESNET).

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

3. Request by Ryan Miller representing the NC Building Performance Association to amend the 2018 NC Residential Code, Section N1106.6.2 (R406.6.2) Compliance Report as follows:

5. The RESNET Registry number (or equivalent) for the ERI.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to assure the use of an ERI for code compliance that is certified and registered with an oversight organization (RESNET).

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

4. Request by Ryan Miller representing the NC Building Performance Association to amend the 2018 NC Residential Code, Section N1106.6.1 (R406.6.1) Compliance Software Tools as follows:

N1106.6.1 (R406.6.1) Compliance software tools. Compliance software tools for this section shall be in compliance with ANSI/RESNET/ICC 301-2014 (Including Addenda A & B).

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to provide a reference to a readily available ERI calculation method.

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

5. Request by Ryan Miller representing the NC Building Performance Association to amend the 2018 NC Residential Code, Section N1106.2 (R406.2) Mandatory Requirements as follows:

N1106.2 (R406.2) Mandatory requirements. Compliance with this section requires that the provisions identified in Sections N1101.14 through N1104 labeled as “mandatory” be met. The building thermal envelope shall be greater than or equal to levels of efficiency and Solar Heat Gain Coefficient in Table 402.1.1 or Table 402.1.3 of the 2012 North Carolina Energy Conservation Code. Minimum standards associated with compliance shall be the ANSI/RESNET/ICC 301-2014 Standard (Including Addenda A and B) for the Calculation and Labeling of the Energy Performance of Low-Rise Residential Buildings using Energy Rating Index. A North Carolina registered design professional or certified HERS rater is required to perform the analysis if required by North Carolina licensure laws.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to provide a reference to a readily available ERI calculation method.

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

6. Request by Ryan Miller representing the NC Building Performance Association to amend the 2018 NC Energy Conservation Code, Section R406.2 as follows:

N1106.2 (R406.2) Mandatory requirements. Compliance with this section requires that the provisions identified in Sections R401 through R404 labeled as “mandatory” be met. The building thermal envelope shall be greater than or equal to levels of efficiency and Solar Heat Gain Coefficient in Table 402.1.1 or Table 402.1.3 of the 2012 North Carolina Energy Conservation Code. Minimum standards associated with compliance shall be the ANSI/RESNET/ICC 301 – 2014 Standard (Including Addenda A and B) for the Calculation and Labeling of the Energy Performance of Low-Rise Residential Buildings using an Energy Rating Index. A North Carolina registered design professional or certified HERS rater is required to perform the analysis if required by North Carolina licensure laws.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to provide a reference to a readily available ERI calculation method.

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

7. Request by Ryan Miller representing the NC Building Performance Association to amend the 2018 NC Residential Code, Section N1106.7.1 (R406.7.1) Minimum Capabilities as follows:

N1106.7.1 (R406.7.1) Minimum capabilities. Calculation procedures used to comply with this section shall be software tools capable of calculating the ERI as described in Section N1106.3 and shall be in compliance with ANSI/RESNET/ICC 301 (Including Addenda A and B), and the software shall include the following capabilities:

1. Computer generation...

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to provide a reference to a readily available ERI calculation method.

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

8. Request by Ryan Miller representing the NC Building Performance Association to amend the 2018 NC Energy Conservation Code, Section R406.6.1 Compliance Software Tools as follows:

R406.6.1 Compliance software tools. Compliance software tools for this section shall be in compliance with the ANSI/RESNET/ICC 301-2014 (Including Addenda A & B).

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to provide a reference to a readily available ERI calculation method.

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

9. Request by Ryan Miller representing the NC Building Performance Association to amend the 2018 NC Energy Conservation Code, Section R406.7.1 Minimum Capabilities as follows:

N1106.7.1 (R406.7.1) Minimum capabilities. Calculation procedures used to comply with this section shall be software tools capable of calculating the ERI as described in Section N1106.3 and shall be in compliance with ANSI/RESNET/ICC 301 (Including Addenda A and B), and the software shall include the following capabilities:

1. Computer generation...

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to provide a reference to a readily available ERI calculation method.

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

10. Request by Ryan Miller representing the NC Building Performance Association to amend the 2018 NC Residential Code, Section Part IX Referenced Standards / ICC as follows:

ANSI/RESNET/ICC 301-14 (Including Addenda A & B) Standard for the Calculation and Labeling of the Energy Performance of Low-Rise Residential Buildings using an Energy Rating IndexN1106.2, N1106.6.1, N1106.7.1

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to provide a reference to a readily available ERI calculation method.

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

11. Request by Ryan Miller representing the NC Building Performance Association to amend the 2018 NC Energy Conservation Code, Section NC Residential Provisions, Chapter 6 Referenced Standards, ICC as follows:

ANSI/RESNET/ICC 301-14 (Including Addenda A & B) Standard for the Calculation and Labeling of the Energy Performance of Low-Rise Residential Buildings using an Energy Rating Index.....R406.2, R406.6.1, R406.7.1

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to provide a reference to a readily available ERI calculation method.

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

12. Request by Barry Siegal representing BSC Holdings, Inc. to amend the 2018 NC Building Code, Section 903.2.8 and Table 602 and 2018 NC Fire Prevention Code, Section 903.2.8 as follows:

903.2.8 Group R. An *automatic sprinkler system* installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R *fire area*.

Exceptions:

1. An *automatic sprinkler system* is not required in new adult and child day care facilities located in existing Group R-3 and R-4 occupancies.

2. *temporary overflow shelters*.

3. An *automatic sprinkler system* is not required in camping units located within a campground where all of the following conditions exist.

- 3.1. The camping unit is limited to one story in height,
- 3.2. The camping unit is less than 400 square feet (37 m²) in area.
- 3.3. The camping unit does not have a kitchen.

4. An automatic sprinkler system is not required in an *Open Air Camp Cabin* that complies with the following:

- 4.1. The open air camp cabin shall have at least two remote unimpeded exits. Lighted exit signs shall not be required.
- 4.2. The open air camp cabin shall have at least two remote unimpeded exits. Lighted exit signs shall not be required.
- 4.3. Smoke detectors and portable fire extinguishers shall be installed as required by other sections of this Code.

5. An automatic sprinkler system is not required in Group R-3 detached on-and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress.

NC BUILDING CODE

**TABLE 602
FIRE-RESISTANCE RATING REQUIREMENTS FOR EXTERIOR WALLS BASED ON FIRE
SEPARATION DISTANCE^{a, d, g}**

FIRE SEPARATION DISTANCE = X (feet)	TYPE OF CONSTRUCTION	OCCUPANCY GROUP H ^e	OCCUPANCY GROUP F-1, M, S-1 ^f	OCCUPANCY GROUP A, B, E, F-2, I, R ^h , S-2, U
$X < 5^b$	All	3	2	1
$5 \leq X < 10$	IA Others	3 2	2 1	1 1
$10 \leq X < 30$	IA, IB IIB, VB Others	2 1 1	1 0 1	1 ^c 0 1 ^c
$X \geq 30$	All	0	0	0

For SI: 1 foot = 304.8 mm.

- a. Load-bearing exterior walls shall also comply with the fire-resistance rating requirements of Table 601.
- b. See Section 706.1.1 for party walls.
- c. Open parking garages complying with Section 406 shall not be required to have a fire-resistance rating.
- d. The fire-resistance rating of an exterior wall is determined based upon the fire separation distance of the exterior wall and the story in which the wall is located.
- e. For special requirements for Group H occupancies, see Section 415.6.
- f. For special requirements for Group S aircraft hangars, see Section 412.4.1.
- g. Where Table 705.8 permits nonbearing exterior walls with unlimited area of unprotected openings, the required fire-resistance rating for the exterior walls is 0 hours.
- h. For Group R-3 detached one- and two-family dwellings and townhouses of any construction type and not more than three stories above grade plane in height with a separate means of egress a fire separation distance of 3 feet or less shall be 1-hour fire-resistant rated and shall be 0-hour fire-resistant rated for distances greater than 3 feet.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – This purpose of this amendment is to eliminate the R-3 sprinkler requirement and reduce the physical separation to match the Residential Code.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with minor decrease in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

13. Request by Colin Triming representing the NC Fire Code Revision Committee to amend the 2018 NC Existing Building Code, Sections 403.11, 804.4.3, 1104.2 as follows:

403.11 Carbon Monoxide alarms. Individual sleeping units and individual dwelling units in Group R and I occupancies and classrooms in Group E occupancies and Group A-2 occupancies that contain a fuel-burning appliance or a fuel-burning fireplace shall be provided with carbon monoxide alarms in accordance with Section 915 of the North Carolina Building Code, except that the carbon monoxide alarms shall be allowed to be solely battery operated.

804.4.3 Carbon Monoxide alarms. Individual sleeping units and individual dwelling units in Group R and I occupancies and classrooms in Group E occupancies and Group A-2 occupancies that contain a fuel-burning appliance or a fuel burning fireplace shall be provided with carbon monoxide alarms in accordance with Section 915 of the North Carolina Building Code, except that the carbon monoxide alarms shall be allowed to be solely battery operated.

1104.2 Carbon Monoxide alarms in existing portions of a building. Where an *addition* is made to a building or structure of a Group A-2, I-1, I-2, I-4 or R occupancies, or classrooms are added in Group E occupancies, the *existing building* shall be provided with carbon monoxide alarms in accordance with Section 915 of the *North Carolina Building Code* or Section R315 of the *North Carolina Residential Code*, except the carbon monoxide alarms shall be allowed to be solely battery operated.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – The purpose of this amendment is to respond to several recent Carbon Monoxide exposures in A-2 occupancies.

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

14. Request by Carl Martin representing the NC Department of Insurance to amend the 2018 NC Building Code, Sections 312.1 & H109.2 as follows:

312.1 General

Buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy shall be constructed, equipped and maintained to conform to the requirements of this code commensurate with the fire and life hazard incidental to their occupancy. Group U shall include, but not be limited to, the following:

Agricultural buildings
Aircraft hangars, accessory to a one- or two-family residence (see Section 412.5)
Barns
Carports
Fences and ground signs more than 6 feet (1829 mm) in height
Grain silos, accessory to a residential occupancy
Greenhouses
Livestock shelters
Photovoltaic panel system (mounted at grade)
Private garages
Retaining walls
Sheds
Stables
Tanks
Towers

SECTION H101 GENERAL

H101.2 Signs exempt from permits.

The following signs are exempt from the requirements to obtain a *permit* before erection:

1. Nonilluminated wall signs.
2. Temporary signs.
3. Signs erected by transportation authorities.
4. Projecting signs not exceeding 6 square feet (0.56 m²).
5. The changing of moveable parts of an approved sign that is designed for such changes, or the repainting or repositioning of display matter shall not be deemed an alteration.
6. Ground signs less than 6 feet (1829 mm) in height above finished grade.

SECTION H109 GROUND SIGNS

H109.2 Required Clearance. The bottom coping of every ground sign shall be not less than 3 feet (914 mm) above the ground or street level, which space can be filled with platform decorative trim or light wooden construction.

Exception: Signs that have a solid base of masonry, steel or similar material, commonly known as monument signs.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – This purpose of this amendment is to eliminate the ground clearance requirement for monument signs and to exempt all ground signs less than 6-feet in height.

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

15. Request by the NC Building Code Council representing the NC General Assembly to amend the 2018 NC Energy Conservation Code, Section R101.2 as follows:

R101.2 Scope.

This code applies to *residential buildings* and the buildings sites and associated systems and equipment.

Exception:

1. In accordance with N.C.G.S. 143-138 (b19), no energy conservation code provisions shall apply to detached and attached garages located on the same lot as a dwelling.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – This purpose of this amendment is to provide an exception to energy conservation code requirements for garages as directed by SL 2018-65.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with minor decrease in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

16. Request by the NC Building Code Council representing the NC General Assembly to amend the 2018 NC Residential Code, Section N1101.1 as follows:

N1101.1 Scope.

This chapter regulates the energy efficiency for the design and construction of buildings regulated by this code.

Exception:

1. In accordance with N.C.G.S. 143-138 (b19), no energy conservation code provisions shall apply to detached and attached garages located on the same lot as a dwelling.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – This purpose of this amendment is to provide an exception to energy conservation code requirements for garages as directed by SL 2018-65.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with minor decrease in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

17. Request by the NC Building Code Council representing the NC General Assembly to amend the 2018 Existing Building Code, Section 101.12 as follows:

101.12 Energy conservation exceptions.

The following exceptions apply to energy conservation code provisions in existing buildings in accordance with NC General Statutes:

1. In accordance with N.C.G.S. 143-138 (b18), no energy conservation code provisions shall apply to any structure for which the primary occupancy classification is Group F, S, or U. This exclusion shall apply to the entire building area.

2. In accordance with the N.C.G.S. 143-138 (b19), for residential buildings, no energy conservation code provisions shall apply to detached and attached garages located on the same lot as a dwelling.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – This purpose of this amendment is to provide an exception to energy conservation code requirements for garages as directed by SL 2018-65.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with minor decrease in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

18. Request by Daniel Priest representing Priest Architecture, PLLC to amend the 2018 NC State Building Code, Table 2902.1 and the 2018 NC State Plumbing Code, Table 403.1 as follows:

2	Business (See Sections 2902.2, 2902.3, and 2902.3.2.2)	B	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for the first 50 and 1 per 50 for the remainder exceeding 50	1 per 40 for the first 80 and 1 per 80 for the remainder exceeding 80	1 per 100 ^a	1 service ° sink
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q. For business occupant loads of 25 or fewer, drinking fountains shall not be required.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – This purpose of this amendment is to provide a drinking fountain exception for small Business Occupancy.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with minor decrease in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

19. Request by Daniel Priest representing Priest Architecture, PLLC to amend the 2018 NC State Plumbing Code, Section 410.2 as follows:

410.2 Small occupancies. *Drinking fountains shall not be required for an occupant load of 15 or fewer.*

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is June 1, 2019 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

Reason Given – This purpose of this amendment is to provide a drinking fountain exception for small Business Occupancy.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with minor decrease in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

NOTICE:

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

http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Code_Interpretations&user=Code_Enforcement_Resources

NOTICE:

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

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

NARROW THERAPEUTIC INDEX DRUGS DESIGNATED BY THE NORTH
CAROLINA SECRETARY OF HUMAN RESOURCES

Pursuant to N.C.G.S. §90-85.27(4a), this is a revised publication from the North Carolina Board of Pharmacy of narrow therapeutic index drugs designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board.

Carbamazepine: all oral dosage forms

Cyclosporine: all oral dosage forms

Digoxin: all oral dosage forms

Ethosuximide

Levothyroxine sodium tablets

Lithium (including all salts): all oral dosage forms

Phenytoin (including all salts): all oral dosage forms

Procainamide

Theophylline (including all salts): all oral dosage forms

Warfarin sodium tablets

Tacrolimus: all oral dosage forms

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

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

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 Health and Human Services/Division of Health Benefits intends to readopt with substantive changes the rules cited as 10A NCAC 23A .0103; 23C .0201; 23D .0101, .0102, .0201; 23E .0101-.0104, .0107, .0108, .0201-.0208; 23G .0101, .0204, .0303; 25K .0201; 25M .0201; 25P .0201, .0301, .0402, and readopt without substantive changes the rules cited as 10A NCAC 23E .0105, .0106, .0209-.0211; 23G .0201-.0203, .0304; 23H .0106-.0113; 25A .0201; 25H .0203; 25K .0401.

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>.

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://medicaid.ncdhhs.gov/get-involved/rules-actions>

Proposed Effective Date: May 1, 2019

Public Hearing:

Date: Friday, January 25, 2019

Time: 1:00 p.m.-3:00 p.m.

Location: Brown Building, Room 104, 801 Biggs Drive, Raleigh, NC 27603

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A (Periodic review and expiration of existing rules), each agency shall conduct a review of its existing rules at least once every 10 years. As a result of this periodic review process, the North Carolina Department of Health and Human Services, Division of Health Benefits is readopting 47 rules in 10A NCAC Chapters 23 and 25, Subchapters 23A, 23C, 23D, 23E, 23G, 23H, 25A, 25H, 25K, 25M, and 25P to ensure these rules reflect the current law and processes.

Comments may be submitted to: Ryan Eppenberger, DHB Interim Rulemaking Coordinator, NC DHHS Division of Health Benefits, 2501 Mail Service Center, Raleigh NC 27699-2501; email MedicaidRulesComments@dhhs.nc.gov

Comment period ends: March 4, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected** (23E .0101-.0108, .0201-.0211)
- Environmental permitting of DOT affected**
- Analysis submitted to Board of Transportation**
- Local funds affected**
- Substantial economic impact (≥\$1,000,000)**
- Approved by OSBM** (Rules in subchapters 23A, 23C, 23E, and 23G)
- No fiscal note required by G.S. 150B-21.4** (Rules in subchapters 23D, 25M, 25P, 23E .0101, .0102, .0104, .0107, .0108, .0204, .0206; 23G .0101, .0303, 25K .0201)
- No fiscal note required by G.S. 150B-21.3A(d)(2)** (23H .0106-.0113, 25A .0201, 25H .0203, 25K .0401)

CHAPTER 23 - MEDICAL ASSISTANCE ADMINISTRATION

SUBCHAPTER 23A - GENERAL PROGRAM ADMINISTRATION

SECTION .0100 - GENERAL

10A NCAC 23A .0103 QUALITY ASSURANCE

(a) Active and negative eligibility case actions, as defined by 42 C.F.R. 431.804, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>, Case actions taken by the county department of social services are subject to review under by State and federal quality control (QC) procedures by the Division's Office of Compliance and Program Integrity (OCPI) procedures. A statistical sample is shall be selected from both active and negative case actions.

(b) The purpose of the QC review is to identify client eligibility errors and erroneous payments resulting from:

- (1) Ineligibility;
 - (2) Recipient liability understated or overstated by the client or county; ~~overstated~~;
 - (3) Third-party liability; and
 - (4) Claims processing errors.
- (c) A report of an error discovered in a QC case shall be sent to the ~~appropriate~~ county agency for corrective action.
- (d) If the county agency has verification, as defined by Rule .0102 of this Subchapter, ~~verification~~ that disputes a QC finding of error, it may submit the verification to OCPI ~~the Recipient Services Section~~ for review. ~~The Recipient Services Section cannot overturn a listed error, but~~ OCPI shall determine whether the error shall be coded client-responsible, county-responsible, ~~agency-responsible~~, or State-responsible, ~~state-responsible~~. Upon its review, OCPI ~~the Recipient Services Section~~ shall notify the county agency of its decision regarding responsibility for the error.

Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 431, Subpart P; 431.800.

SUBCHAPTER 23C – APPLICATION FOR MEDICAID BENEFITS

SECTION .0200 – APPLICATION PROCESSING, MONITORING AND CORRECTIVE ACTION

10A NCAC 23C .0201 APPLICATION PROCESSING STANDARDS

(a) The county department of social services shall comply with the following standards in processing applications:

- (1) A decision ~~shall be made within the timeframes set out in G.S. 108A-70.37, on an individual's eligibility for Medicaid shall be made within 45 calendar days from the date of application for Medicaid except for applications in which a disability determination has already been made or is needed. For those applications, a decision on an individual's eligibility shall be made within 90 days from the date of application.~~ These timeframes shall apply in accordance with 42 CFR 435.912, 435.911.
- (2) Only require information or verification ~~necessary~~ to establish eligibility for assistance;
- (3) Make a minimum of at least two requests for all ~~necessary~~ information from the applicant or third party;
- (4) Allow a minimum of at least 12 calendar days between the initial request and a follow-up request and at least 12 calendar days between the follow-up request and denial of the application;
- (5) Inform the client in writing ~~writing, and verbally when possible~~, of the right to request help in obtaining information requested from the client. The county department of social services shall not discourage any client from requesting such help;

- (6) An application may pend up to six months for verification that the deductible, as defined in 10A NCAC 23A .0201, ~~deductible~~ has been met or disability established.
- (7) When a hearing decision reverses the decision of the county department of social services ~~County Department of Social Services~~ on an application, pursuant to 10A NCAC 21A .0303, the application shall be reopened within five business working days from the date the final appeal decision is received by the county department of social services ~~County Department of Social Services~~. If the county department of social services has all of the information needed to process the application, ~~no additional information is needed~~, the application shall must be processed within five additional business working days. If additional information is needed pursuant to the final decision, the county shall make such requests in accordance with this Rule, ~~rules for all applications~~. The first request for the additional information shall be made within five business working days of receipt of the final appeal decision. The application shall be processed within five business working days of receipt of the last piece of required information.

(b) The county department of social services shall obtain verification, as defined by 10A NCAC 23A .0102, ~~verification~~ other than the applicant's statement for the following:

- (1) Any element requiring medical verification. This includes verification of disability, ~~pregnancy~~, incapacity, emergency dates for aliens referenced in the Medicaid State Plan, 10A NCAC 23E .0102(e), incompetence, and approval of institutional care;
- (2) Proof a deductible has been met;
- (3) Legal alien status;
- (4) Proof of the rebuttal value for resources and of the rebuttal of intent to transfer resources to become eligible for Medicaid. When a client an applicant or recipient disagrees with the determination of the county department of social services on the value of an asset, then the client applicant/recipient must provide proof of what the value of the asset is;
- (5) Proof of designation of liquid assets for burial;
- (6) Proof of legally binding agreement limiting resource availability;
- (7) Proof of valid social security number or application for a social security number;
- (8) Proof of reserve reduction when resources exceed the allowable reserve limit for Medicaid;
- (9) Proof of earned and unearned income, including deductions, exclusions, and operational expenses when the applicant or caseworker ~~Income Maintenance Caseworker~~ has or can obtain the verification; and

- (10) Any other information for which the applicant does not know or cannot give an estimate.

(c) The county department of social services shall be responsible for verifying or obtaining ~~verify or obtain~~ an item of information when:

- (1) A fee must be paid to obtain the verification;
- (2) It is available within the agency;
- (3) The county department of social services is required by federal law to assist or to use interagency or intra-agency verification aids;
- (4) The applicant requests assistance; or
- (5) A representative does not accept responsibility for obtaining the information and the applicant is:

- (A) ~~The applicant is physically, mentally, or otherwise physically or mentally incapable of obtaining the information; information; or is~~
- (B) ~~unable to speak English or read and write in English; write; or is~~
- (C) ~~housebound, hospitalized, or institutionalized. institutionalized, and a representative does not accept responsibility for obtaining the information.~~

Authority G.S. 108A-54; 108A-54.1B; 108A-70.37; 42 C.F.R. 435.911; 435.912; 435.952; Alexander v. Flaherty, V.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order Filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002.

SUBCHAPTER 23D – MEDICAID ELIGIBILITY GROUPS AND CLASSIFICATION

SECTION .0100 – COVERAGE GROUPS

10A NCAC 23D .0101 MANDATORY GROUPS

Authority G.S. 108A-54; 42 U.S.C. 1396a(a)(10); 42 U.S.C. 1396a(e)(4); 42 U.S.C. 1396a(f); 42 C.F.R. 435.110; 42 C.F.R. 435.112; 42 C.F.R. 435.113; 42 C.F.R. 435.114; 42 C.F.R. 435.115; 42 C.F.R. 435.116; 42 C.F.R. 435.117; 42 C.F.R. 435.118; 42 C.F.R. 435.121; 42 C.F.R. 435.131; 42 C.F.R. 435.132; 42 C.F.R. 435.133.

10A NCAC 23D .0102 OPTIONAL GROUPS

Authority G.S. 108A-54; 42 C.F.R. 435.210; 42 C.F.R. 435.222; 42 C.F.R. 435.230; 42 C.F.R. 435.301; 42 C.F.R. 435.308; 42 C.F.R. 435.322; 42 C.F.R. 435.330; 42 U.S.C. 1396(a)(10)(A)(ii); 42 U.S.C. 1396a(a)(10)(C); S.L. 1983, c. 1034, s. 62.2; S.L. 1987, c. 738, s. 69 and 70; S.L. 1989, c. 752, s. 133.

SECTION .0200 - CLASSIFICATION

10A NCAC 23D .0201 CLASSIFICATION

Authority G.S. 108A-54; 42 C.F.R. 435.2; 42 C.F.R. 435.4.

SUBCHAPTER 23E – MEDICAID ELIGIBILITY REQUIREMENTS

SECTION .0100 – NON-FINANCIAL REQUIREMENTS

10A NCAC 23E .0101 AGE

Authority G.S. 108A-54; 42 C.F.R. 435.520; Alexander v. Flaherty Consent Order filed.

10A NCAC 23E .0102 UNITED STATES CITIZEN

Authority G.S. 108A-54; 42 C.F.R. 435.402; 8 U.S.C. 1161; 8 U.S.C. 1255a; 42 U.S.C. 1396b(v).

10A NCAC 23E .0103 RESIDENCE

(a) The requirements stated in 42 CFR 435.403 shall apply to determine residence in the State ~~state~~ except for provisions in Paragraph (b) of this Rule.

(b) Residents of the state of Georgia who enter a long term care facility in N.C. within 40 miles of the resident state's border shall retain residence in the prior state. Residents of N.C. who enter a long term care facility in Georgia within 40 miles of the N.C. border retain N.C. residency.

(c) An individual visiting ~~in the state~~ without intent to reside remain in the State shall be ineligible for Medicaid.

(d) An individual who moves to another state and intends to reside remain living in that state shall not be eligible for N.C. Medicaid.

(e) County residence:

- (1) Any client who moves from one county to another North Carolina county shall continue to receive assistance so long as eligibility continues, if eligible.

- (2) An individual ~~ordinarily~~ has residence in the county in which he or she resides. However, if he or she is in a hospital, mental institution, intermediate care facility, skilled nursing home, boarding home, confinement center, center or similar facility, the county in which the facility is located shall not be his or her legal residence. Except for (e)(3) in this Rule, the county of legal residence shall be the county where in ~~which~~ the individual lived in a private living arrangement prior to entering a facility.

- (3) If an individual who became disabled prior to age 18 has remained in a facility, he or she remains a resident of the county and state where in ~~which~~ his or her parent(s) had residence immediately prior to his or her reaching age 18. If, as an adult, he or she is applying for assistance and it is not possible for the individual to trace his or her county of residence as a minor, he or she shall establish residence based on where he or she intends his intent to

~~reside, remain~~ regardless of his or her parent's current legal residence.

~~(f) The client's statement shall be accepted as verification unless there is reason to doubt it. If there is doubt, evaluation of the statement shall be substantiated for:~~

- ~~(1) Temporary absence by determination of the reason for absence, expected duration of the absence, and continued maintenance of home in county of residence;~~
- ~~(2) Entering the state for employment purposes by verified employment, contacts with prospective employers, health department records, Employment Security Commission or Rural Manpower office registration, home in another state with lease or other legal agreement for rental or purchase, or documents proving separation from dependents in another state;~~
- ~~(3) Intent to remain by documents proving disposition of home in prior state, auto registration and drivers license changed to N.C. within 30 days, change in address with former post office or other sources from which income is received and change in voter registration, tax listing;~~
- ~~(4) Incapability of stating intent by verification of representative payee for benefit payments, receipt of benefits on basis of mental illness or retardation, care is provided in a mental retardation facility or power of attorney or guardian has been appointed for him.~~

~~Authority G.S. 108A-54; 108A-54.1B; 108A-55.3; G.S. 150B-14(e); 42 C.F.R. 435.403.~~

10A NCAC 23E .0104 DEPRIVATION

~~Authority G.S. 108A-28; 108A-54; 42 C.F.R. 435.510; 89 CVS 922.~~

10A NCAC 23E .0105 DISABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23E .0106 BLINDNESS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23E .0107 CARETAKER RELATIVE

~~Authority G.S. 108A-54; 42 C.F.R. 435.310.~~

10A NCAC 23E .0108 INMATE OF PUBLIC INSTITUTION OR PRIVATE PSYCHIATRIC HOSPITAL

~~Authority G.S. 108A-54; 42 C.F.R. 435.1008; 42 C.F.R. 435.1009; S.L. 1987, c. 758, s. 69.~~

SECTION .0200 – FINANCIAL REQUIREMENTS

10A NCAC 23E .0201 APPLYING FOR ALL BENEFITS AND ANNUITIES

(a) Clients shall take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which they are entitled, pursuant to 42 CFR 435.608, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>, unless they have good cause for not doing ~~so~~ as determined by the county department of social services.

~~(b) For purposes of this Rule, good cause shall be~~ good cause shall be limited to physical or mental incapability to make such effort.

~~(c) If a client fails to comply with Paragraph (a) of this Rule and does not show good cause, The amount of any verifiable benefits is counted as income to the client if the amount can be determined. If the amount cannot be determined, but the availability is verified, the client's eligibility benefits ease shall be terminated, denied or terminated for client's failure to cooperate.~~

~~Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.608, 435.603.~~

10A NCAC 23E .0202 WHAT RESOURCES ARE COUNTED RESERVE

(a) North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security Act to provide Medicaid to all SSI recipients. Resource eligibility The resources that are counted for Medicaid eligibility for individuals under any aged, blind, and disabled Aged, Blind, and Disabled coverage group shall be determined based on standards and methodologies in Title XVI of the Social Security Act, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <http://uscode.house.gov/>, Aet except as specified in Paragraphs ~~(j)(k)~~ and ~~(k)(4)~~ of this Rule. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available.

(b) The value of resources currently available to any ~~budget unit~~ member of a budget unit, as defined in 10A NCAC 23A .0102, shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and ~~he, he or she,~~ or someone acting in his or her behalf, can take any necessary action to make it available.

(c) Resources shall be excluded in determining financial eligibility when the budget unit member with having a legal interest in the resources is declared incompetent, incompetent unless:

- (1) A guardian of the estate, a general guardian, guardian or an interim guardian has been lawfully appointed in accordance with the law and is able to act on behalf of his or her ward in North Carolina and in any state ~~in which where~~ in which where such resources are located; or
- (2) A durable power of attorney, valid in North Carolina and in any state ~~in which where~~ in which where such resource is located, has been granted to a person who is authorized and able to exercise such power.

(d) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act within a reasonable amount of time promptly to make the resources ~~actually~~ available to meet the needs of the budget unit member, a referral shall be made to the services unit of the county department of social services for a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, the county department of social services shall contact the clerk of court for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.

(e) When a Medicaid application is filed on behalf of an individual who:

- (1) is alleged to be mentally incompetent,
- (2) has or may have a legal interest in a resource that affects the individual's eligibility, and
- (3) does not have a representative with legal authority to use or dispose of the individual's resources, the individual's representative or family member shall be instructed by the county department of social services to file within 30 calendar days a judicial proceeding under G.S. 35A to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to ~~timely~~ conclude the proceeding within a reasonable amount of time, proceeding, a referral shall be made to the protective services unit of the county department of social services for guardianship services. ~~If the allegation of incompetence that has lasted, or is expected to last 30 consecutive days or more, or until the individual's death, is supported by competent evidence, as specified in Paragraph (h) of this Rule, If an allegation of incompetence is supported by competent evidence as defined in Paragraph (h) of this Rule, and the incompetence has lasted, or is expected to last, at least 30 consecutive days or until the individual's death, the resources shall be excluded beginning with the date that such evidence indicates that he or she became incompetent, except as provided in Paragraphs (f) or (g) of this Rule.~~

(f) The budget unit member's resources shall be counted in determining his or her eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general guardian, guardian or interim guardian is appointed, provided that after the appointment, property that cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in G.S. 1 or G.S. 35A.

(g) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery from incompetence of the member, his or her resources shall be counted except for periods of time for which it can be established by ~~competent evidence~~ "competent evidence" ~~specified~~ defined in

Paragraph (h) of this Rule, that the member was in fact incompetent for at least 30 consecutive days, or until his or her death. Any such showing of incompetence is subject to rebuttal by competent evidence as specified in Paragraph (h) of this Rule.

(h) For purposes of this Rule, ~~competent evidence~~ "competent evidence" is ~~limited to~~ defined as the written statement or testimony at a competency hearing of a physician, psychologist, nurse, or social worker with knowledge of the physical and mental condition of the individual, that contains information on the individual's condition, the basis of that information, individual, the basis of that knowledge, the beginning date of incompetence, the reason the individual is incompetent, and, and if no longer incompetent, when the individual recovered competence.

~~(i) The limitation of resources held for reserve for the budget unit shall be as follows:~~

- ~~(1) for Family and Children's related categorically and medically needy cases, three thousand dollars (\$3,000.00) per budget unit;~~
- ~~(2) for aged, blind, and disabled cases, two thousand dollars (\$2000.00) for a budget unit of one and three thousand dollars (\$3000.00) for a budget unit of two.~~

~~(i)(j)~~ If the value of countable resources of the budget unit exceeds the reserve allowance for the unit as set out in the Medicaid State Plan, unit, the case shall be ~~ineligible;~~ ineligible unless one of the following is met:

- (1) For Family and Children's medically needy ~~related~~ cases and aged, blind, blind or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;
- (2) For categorically needy aged, blind, blind or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of 11:59pm on the first moment of the first last day of the previous month.

~~(j)(k)~~ Resources counted in the determination of financial eligibility for categorically needy aged, blind, blind and disabled cases, and Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualifying Individual and Qualified Disabled Working Individual cases shall be based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (1) The value of personal effects and household goods shall be not counted.
- (2) The value ~~Value~~ of tenancy in common interest in real property shall be not counted.
- (3) The value ~~Value~~ of life estate interest in real property shall be not counted.
- (4) The value ~~Value~~ of burial plots shall be not counted.
- (5) The cash value of life insurance when the total face value of all cash value bearing life

insurance policies does not exceed ten thousand dollars (\$10,000.00) shall be not counted.

~~(k)(4)~~ Resources counted in the determination of financial eligibility for medically needy aged, blind, ~~blind~~ and disabled cases is shall be based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (1) The value of personal effects and household goods shall be not counted.
- (2) ~~The value~~ Value of tenancy in common interest in real property shall be not counted.
- (3) ~~The value~~ Value of life estate interest in real property is not counted.
- (4) Individuals with resources in excess of the resource limit at 11:59 pm on the last day of the previous month, the first moment of the month may become eligible during the current month at the point that resources are reduced to the allowable limit.
- (5) ~~The value~~ Value of burial plots shall be not counted.
- (6) The cash value of life insurance when the total face value of all cash value bearing life insurance polities does not exceed ten thousand dollars (\$10,000.00) shall be not counted.

~~(m) Resources counted in the determination of financial eligibility for categorically needy Family and Children's related cases shall be:~~

- ~~(1) Cash on hand;~~
- ~~(2) The balance of savings accounts, including savings of a student saving his earnings for school expenses;~~
- ~~(3) The balance of checking accounts less the current monthly income that had been deposited to meet the budget unit's monthly needs when reserve was verified;~~
- ~~(4) The portion of lump sum payments remaining after the month of receipt;~~
- ~~(5) Cash value of life insurance policies owned by the budget unit;~~
- ~~(6) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;~~
- ~~(7) Patient accounts in long term care facilities;~~
- ~~(8) Equity in non essential personal property limited to:~~
 - ~~(A) Mobile homes not used as home;~~
 - ~~(B) Boats, boat trailers and boat motors;~~
 - ~~(C) Campers;~~
 - ~~(D) Farm and business equipment;~~
 - ~~(E) Equity in vehicles in excess of one motor vehicle per adult;~~

~~(l)(4)~~ Resources counted in the determination of financial eligibility for medically needy Family and Children's ~~related~~ cases are:

- (1) Cash on hand;
- (2) The balance of savings accounts, including savings of a student saving his or her earnings for school expenses;

- (3) The balance of checking accounts, ~~accounts~~ less the current monthly income at this time, ~~that had been~~ deposited to meet the budget unit's monthly needs when reserve was verified by the county department of social services or lump sum income from self-employment deposited to pay annual expenses;
- (4) The cash ~~Cash~~ value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500.00);
- (5) Stocks, bonds, mutual fund shares, certificates of deposit, ~~deposit~~ and other liquid assets;
- (6) Assets held in patient ~~Patient~~ accounts in long term care facilities;
- (7) Equity in ~~non-essential~~, non-income producing personal property limited to:
 - (A) Mobile home not used as ~~home~~, home;
 - (B) Boats, boat trailers and boat ~~motors~~, motors;
 - (C) ~~Campers~~, Campers;
 - (D) Farm and business ~~equipment~~, equipment; and
 - (E) Equity in motor vehicles in excess of one vehicle per adult if not income-producing.

(m) Real property shall be excluded from countable resources for Family and Children's medically needy cases.

(n) One motor vehicle per adult shall be excluded for Family and Children's medically needy cases.

(o) For medically needy Family and Children's cases, income-producing vehicles and personal property shall be excluded from countable resources.

(p) For family and children's medically needy cases, the value of non-excluded motor vehicles is the Current Market Value as determined by the assessed county tax value, less encumbrances. If the client disagrees with the assigned value, he or she has the right to rebut the value by producing independent evidence of value.

(q) There is no resource limit for Family and Children's categorically needy cases pursuant to 42 C.F.R. 435.603.

Authority G.S. 108A-54; 108A-54.1B; 108A-55; 108A-58; 42 U.S.C. 703; 42 U.S.C. 704; 703, 704 42 U.S.C. 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.603; 4 2 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435.843; 42 C.F.R. 435.845; 435-845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20. 45 C.F.R. 233.51; S.L. 2002-126.

10A NCAC 23E .0203 COUNTABLE INCOME

(a) For Family and Children's family and children's medically needy cases, income from the following sources shall be counted in the calculation of financial eligibility:

- (1) Unearned.
 - (A) ~~RSDI~~ RSDI, as defined in 10A NCAC 23A .0102;

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- (B) Veteran's ~~Administration,~~ Administration;
 - (C) Railroad ~~Retirement,~~ Retirement;
 - (D) Pensions or retirement ~~benefits,~~ benefits;
 - (E) ~~Workmen's~~ Worker's Compensation, Compensation;
 - (F) Unemployment ~~Compensation,~~ Compensation;
 - (G) All support payments, including child and spousal support; ~~Support Payments;~~
 - (H) ~~Contributions,~~ Contributions;
 - (I) Dividends or interest from stocks, bonds, and other ~~investments,~~ investments;
 - (J) Trust fund ~~income,~~ income;
 - (K) Private disability or employment ~~compensation,~~ compensation;
 - (L) ~~That~~ The portion of educational loans, grants, and scholarships for ~~maintenance,~~ maintenance;
 - (M) Work ~~release,~~ release;
 - (N) Lump sum ~~payments,~~ payments;
 - (O) Military ~~allotments,~~ allotments;
 - (P) Brown Lung ~~Benefits,~~ Benefits;
 - (Q) Black Lung ~~Benefits,~~ Benefits;
 - (R) Trade Adjustment ~~benefits,~~ benefits;
 - (S) SSI when the client is in ~~long-term care,~~ long-term care;
 - (T) VA Aid and Attendance when the client is in ~~long-term care,~~ long-term care;
 - (U) Foster Care Board payments in excess of ~~State~~ state maximum rates for M-AF clients who serve as foster ~~parents,~~ parents;
 - (V) Income allocated from an institutionalized spouse to the client who is the community spouse as stated in 42 U.S.C. ~~1396r-5(d),~~ 1396r-5(d);
 - (W) Income allowed from an institutionalized spouse to the client who is a dependent family member as stated in 42 U.S.C. ~~1396r-5(d),~~ 1396r-5(d);
 - (X) Sheltered Workshop ~~Income,~~ Income;
 - (Y) ~~Loans~~ Loans, if repayment of a loan and not counted in ~~reserve,~~ reserve; and
 - (Z) Income deemed to Family and Children's clients.
- (2) Earned Income.
- (A) Income from wages, salaries, and ~~commissions,~~ commissions;
 - (B) Farm ~~Income,~~ Income;
 - (C) Small business income including ~~self-employment,~~ self-employment;
 - (D) Rental ~~income,~~ income;
 - (E) Income from roomers and ~~boarders,~~ boarders;
 - (F) Earned income of a child client who is a part-time student and a full-time ~~employee,~~ employee;
 - (G) Supplemental payments in excess of state maximum rates for Foster Care Board payments paid by the county to Family and Children's clients who serve as foster ~~parents,~~ parents; and
 - (H) VA Aid and Attendance paid to a budget unit member who provides the aid and attendance.
- (3) Additional sources of income not listed in Subparagraphs (a)(1) or (2) of this Rule shall be considered available unless specifically excluded by Paragraph (b) of this Rule, or by State or federal regulation or statute.
- (b) For family and children's medically needy cases, income from the following sources shall not be counted in the calculation of financial eligibility:
- (1) Earned income of a child who is a part-time student but is not a full-time employee;
 - (2) Earned income of a child who is a full-time student;
 - (3) Incentive payments and training allowances made to Work Incentives Network (WIN) ~~WIN~~ training participants;
 - (4) Payments for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as VISTA volunteers, foster grandparents, senior health aides, senior companions, Service Corps of Retired Executives, Active Corps of Executives, Retired Senior Volunteer Programs, Action Cooperative Volunteer Program, University Year for Action Program, and other programs under Titles I, II, and III of Public Law 93-113;
 - (5) Foster Care Board payments equal to or below the state maximum rates for Family and Children's clients who serve as foster parents;
 - (6) Income that is unpredictable, i.e., unplanned and arising only from time to time. Examples include occasional yard work and sporadic babysitting;
 - (7) Relocation payments;
 - (8) Value of the coupon allotment under the Food and Nutrition Program (FNS); ~~Food Stamp Program;~~
 - (9) Food (vegetables, dairy products, and meat) grown by or given to a member of the household. The amount received from the sale of home grown produce is earned income;
 - (10) Benefits received from the Nutrition Program for the Elderly;
 - (11) Food Assistance under the Child Nutrition Act and National School Lunch Act;
 - (12) Assistance provided in cash or in kind under any governmental, civic, or charitable

- organization whose purpose is to provide social services or vocational rehabilitation. This includes V.R. incentive payments for training, education, ~~education~~ and allowance for dependents, grants for tuition, chore services under Title XX of the Social Security Act, and VA aid and attendance or aid to the home bound if the individual is in a private living arrangement;
- (13) Loans or grants such as the GI Bill, civic, honorary and fraternal club scholarships, loans, or scholarships granted from private donations to the college, ~~etc.~~, except for any portion used or designated for maintenance;
- (14) Loans, grants, or scholarships to undergraduates for educational purposes made or insured under any program administered by the U.S. Department of Education;
- (15) Benefits received under Title VII of the Older Americans Act of 1965;
- (16) Payments received under the Housing Choice Voucher (HCV) Program, formerly known as the Experimental Housing Allowance Program (EHAP);
- (17) In-kind shelter and utility contributions paid directly to the supplier. For Family and Children's cases, shelter, utilities, or household furnishings made available to the client at no cost;
- (18) Food/clothing contributions in Family and Children's cases (except for food allowance for persons temporarily absent in medical facilities up to 12 months);
- (19) Income of a child under 21 in the budget unit who is participating in the Job Training Partnership Act JTPA and is receiving Medicaid as a child;
- (20) Housing Improvement Grants approved by the N.C. Commission of Indian Affairs or funds distributed per capital or held in trust for Indian tribe members under P.L. 92-254, P.L. 93-134 or P.L. 94-540;
- (21) Payments to Indian tribe members as permitted under P.L. 94-114;
- (22) Payments made by Medicare to a home renal dialysis patient as medical benefits;
- (23) ~~SSI SSI~~, except for individuals in ~~long-term~~ long-term care;
- (24) HUD Section 8 benefits when paid directly to the supplier or jointly to the supplier and client;
- (25) Benefits received by a client who is a representative payee for another individual who is incompetent or incapable of handling his or her affairs. Such benefits ~~must~~ shall be accounted for by the county department of social services separate from the payee's own income and resources;
- (26) Special one time payments such as energy, weatherization assistance, or disaster assistance that is not designated as medical;
- (27) The value of the U.S. Department of Agriculture donated foods (surplus commodities);
- (28) Payments under the Alaska Native Claims Settlement Act, Public Law 92-203;
- (29) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (30) HUD Community Development Block Grant funds received to finance the renovation of a privately owned residence;
- (31) Reimbursement for transportation expenses incurred as a result of participation in the Community Work Experience Program or for use of client's own vehicle to obtain medical care or treatment;
- (32) Adoption assistance;
- (33) Incentive payments made to a client participating in a vocational rehabilitation program;
- (34) Title XX funds received to pay for services rendered by another individual or agency;
- (35) Any amount received as a refund of taxes paid;
- (36) The first fifty-dollars (\$50) of each child support/spousal obligation or military allotment paid monthly to the budget unit in a private living ~~arrangement.~~ arrangement; and
- (37) Income from an Achieving a Better Life Experience (ABLE) program account, pursuant to Chapter 147, Article 67 of the North Carolina General Statutes.
- (c) For aged, blind, and disabled cases, income counted in the determination of financial eligibility ~~is shall be~~ based on standards and methodologies in Title XVI of the Social Security Act.
- (d) For aged, blind, and disabled cases, income from the following sources shall not be counted:
- (1) Any Cost of Living Allowance (COLA) increase or receipt of RSDI benefit, as defined in 10A NCAC 23A .0102, benefit which that resulted in the loss of SSI for those qualified disabled and working individuals described at 42 U.S.C. 1396d(s); individuals described in 10A NCAC 23D .0101(17).
- (2) Earnings for those individuals who have a plan for achieving self-support (PASS) that is approved by the Social Security Administration; and Administration.
- (3) Income from an Achieving a Better Life Experience (ABLE) program account, pursuant to Chapter 147, Article 67 of the North Carolina General Statutes.
- (e) Income levels for purposes of establishing eligibility are those amounts approved by the N.C. General Assembly and stated in the Appropriations Act for categorically needy and medically needy classifications, except for the following:

- (1) The income level shall be reduced by one-third when an aged, blind, ~~blind~~ or disabled individual lives in the household of another person and does not pay his or her proportionate share of household expenses. The one-third reduction shall not apply to children under nineteen years of age who live in the home of their parents;
- (2) An individual living in a long term care facility or other medical institution shall be allowed as income level deduction for personal needs described under the Medicaid State Plan; Rule .0204 (Personal Needs Allowance) of this Section; and
- (3) ~~The categorically needy income level for an aged, blind, and disabled individual or couple is 100% of the Federal Poverty Level;~~
- (3)(4) The income level to be applied for Qualified Medicare Beneficiaries described in 42 U.S.C. 1396d and individuals described in 42 U.S.C. 1396e is based on the income level for one; or two for a married couple who live together and both receive Medicare.

(f) Income for Family and Children's categorically needy cases is determined pursuant to 42 C.F.R. 435.603.

Authority G.S. 108A-25(b); 108A-54; 108A-54.1B; 108A-61; 42 C.F.R. 435.135; 42 C.F.R. 435.603; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.811; 42 C.F.R. 435-812; 42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 C.F. R. 435.1007; 45 C.F.R. 233.20; 42 U.S.C 1383c(b); 42 U.S.C 1383c(d); P.L. 99-272, 99-272; Section 12202; Alexander v. Flaherty Consent Order filed February 14, 1992.

10A NCAC 23E .0204 PERSONAL NEEDS ALLOWANCE

Authority G.S. 108A-25(b); 42 C.F.R. 435.135; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.831; 42 U.S.C. 1383c(b); 42 U.S.C. 1383c(d).

10A NCAC 23E .0205 BUDGET UNIT MEMBERSHIP

In aged, blind, and disabled cases and medically needy cases, the budget unit shall include individuals ~~Individuals~~ who are required by federal and state law to be financially responsible for the support of each other or other dependents. ~~dependents shall be included in the budget unit.~~ In all other categorically needy cases, the budget unit is determined pursuant to 42 C.F.R. 435.603, which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.

Authority G.S. 108A-54; 108A-54.1B; 108A-80; 42 C.F.R. 435.602; 42 C.F.R. 435.603; 45 C.F.R. 233.51.

10A NCAC 23E .0206 FINANCIAL RESPONSIBILITY AND DEEMING

Authority G.S. 108A-54; 143-127.1; S.L. 1983, c. 761, s. 60(6); S.L. 1983, c. 1034; S.L. 1983, c. 1116; 42 C.F.R. 435.602; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.823.

10A NCAC 23E .0207 WHOSE RESOURCES ARE COUNTED RESERVE

(a) The value of resources held by the client or by a financially responsible person shall be considered by the county department of social services to be available to the client in determining countable reserve for the budget unit.

(b) Jointly owned resources shall be counted as follows:

(1) The value of resources owned jointly with a person who is not a member of the client's budget unit ~~non-financially responsible person~~ who is a recipient of another public assistance budget unit shall be divided in parts of equal value equally between the budget units;

(2) The value of liquid assets and personal property owned jointly with a person who is not a member of the client's budget unit ~~non-financially responsible person~~ who is also not a client of another public assistance budget unit shall be available to the client budget unit member if he or she can dispose of the resource without the consent and participation of the joint-owner or the joint-owner ~~other owner or the other owner~~ consents to and, if necessary, participates in the disposal of the resource;

(3) The client's share of the value of real property owned jointly with a person who is not a member of the client's budget unit ~~non-financially responsible person~~ who is also not a member of another public assistance budget unit shall be available to the client budget unit member if he or she can dispose of his or her share of the resource without the consent and participation of the joint-owner or the joint-owner ~~other owner or the other owner~~ consents to and, if necessary, participates in the disposal of the resource.

(c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or legally binding order shall take precedence over ownership of resources as stated in (a) and (b) of this Rule, except as provided in Paragraph ~~(k)~~(g) of this Rule.

(d) For all aged, blind, and disabled cases, the resource limit, financial responsibility, and countable and non-countable assets ~~are~~ shall be based on standards and methodology in Title XVI of the Social Security Act except as specified in ~~Items (4) and (5) in~~ Rule .0202 of this Section.

(e) Countable resources for Family and Children's medically needy ~~related~~ cases shall be determined as follows:

(1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve allowance if: if

- (A) the spouses live ~~together; together~~ or
- (B) one spouse is temporarily absent ~~for 12 months or less in long-term long term~~ care and the spouse is not a member of another public assistance budget unit;

(2) The resources of a client and a financially responsible parent or parents shall be counted in the budget unit's reserve limit if: if

- (A) the parents live ~~together; together~~ or
- (B) one parent is temporarily absent ~~for 12 months or less in long-term long term~~ care and the parent is not a member of another public assistance budget unit;

(3) The resources of the parent or parents shall not be considered if a child under age 21 requires care and treatment in a medical institution and his or her physician certifies that the care and treatment are expected to exceed 12 months.

~~(f) Real property shall be excluded from countable resources for Family and Children's related cases.~~

~~(g) One motor vehicle per adult shall be excluded for Family and Children's related cases.~~

~~(h) For medically needy family and children's related cases, income producing vehicles and personal property shall be excluded from countable resources.~~

~~(i) For family and children's related cases the value of non-excluded motor vehicles is the Current Market Value, less encumbrances. If the applicant/recipient disagrees with the assigned value, he has the right to rebut the value.~~

~~(f)(j)~~ For a married individual:

(1) Resources available to the individual are available to his or her spouse who is a noninstitutionalized applicant or recipient and who is either living with the individual or temporarily absent for twelve months or less from the home, irrespective of the terms of any will, deed, contract, antenuptial agreement, or other agreement, and irrespective of whether or not the individual actually contributed the resources to the applicant or recipient. All resources available to an applicant or recipient under the rules of this Section must be considered by the county department of social services when determining his or her countable reserve.

(2) For an institutionalized spouse as defined in 42 U.S.C. 1396r-5(h), available resources shall be determined in accordance with 42 U.S.C. 1396r-5(c), except as specified in Paragraph ~~(g)(m)~~ of this Rule.

~~(g)(k)~~ For an institutionalized individual, the availability of resources are determined in accordance with 42 U.S.C. 1396r-5. Resources of the community spouse ~~are~~ shall not be counted for the institutionalized spouse when:

(1) Resources of the community spouse cannot be determined or cannot be made available to the institutionalized spouse because the community spouse cannot be located; or

(2) The couple has been continuously separated for 12 months at the time the institutionalized spouse enters the institution.

Authority G.S. 108A-54; ~~108A-54.1B~~; 108A-55; S.L. 1983, e. 1116; 42 U.S.C. 1396r-5; 42 U.S.C. 1396a(a)(17); 42 U.S.C. 1396a(a)(51); 42 C.F.R. 435.602; ~~42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.723; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.822; 42 C.F.R. 435.823; 42 C.F.R. 435.724; 42 C.F.R. 435.726; 42 C.F.R. 435.733; 42 C.F.R. 435.735; 42 C.F.R. 435.840; 42 C.F.R. 435.832; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Deficit Reduction Act of 1984 (P.L. 98 369), Section 2373; Correll v. DSS/DMA/DHR, 418 S.E.2d 232 (1992); No. 406PA91 (North Carolina Supreme Court); Schweiker v. Gray Panthers, 453 U.S. 34, 101 S.Ct. 2633, 69 L. Ed.2d 460 (1981).~~

10A NCAC 23E .0208 CALCULATING INCOME

(a) Income that is actually available and ~~that which~~ the client or someone acting in his or her behalf has the legal authority to earn legally make available for support and maintenance shall be counted as income.

(b) Only income actually available or predicted by the county department of social services to be available to the budget unit for the certification period, as defined in 10A NCAC 23A .0102, ~~period~~ for which eligibility is being determined shall be counted as income.

(c) For aged, blind, and disabled cases allowable disregards from income ~~are~~ shall be based on Title XVI of the Social Security Act.

(d) Deductions subtracted after allowable disregards are:

(1) Incapacitated adult care not to exceed one hundred and seventy-five dollars (\$175.00) per adult for Family and Children's medically needy cases.

~~(2)~~ Child or incapacitated adult care not to exceed one hundred and seventy-five dollars (\$175.00) per child over two years of age or adult or two hundred dollars (\$200.00) per child under two years of age for Family and Children's medically needy related cases.

~~(3)(2)~~ A standard deduction of ninety dollars (\$90.00) from the total earned income of each budget unit member for Family and Children's medically needy related cases.

~~(4)(3)~~ For aged, blind, and disabled cases allowable deductions from income are based on Title XVI of the Social Security Act.

(e) Except for M-PW, as defined in 10A NCAC 23A .0102, ~~M-PW~~ the monthly amount of wages, income, and deductions wage deductions and work related expenses shall be calculated by converting the average amount received by frequency per pay period into a monthly amount as follows: ~~amount:~~

- (1) If received paid weekly, multiply by 4.3.
- (2) If received paid bi-weekly, multiply by 2.15.
- (3) If received paid semi-monthly, multiply by 2.
- (4) If received paid monthly, use the monthly gross.
- (5) If salaried, and contract renewed annually, divide annual income ~~etc.~~ by 12.

(f) For M-PW cases, the budget unit's actual income for the calendar month of eligibility shall be verified by the county department of social services. ~~verified.~~

Authority G.S. 108A-25(b); 108A-54; 108.54.1B; 42 C.F.R. 435.121; 42 C.F.R. 435.401; 42 C.F.R. 435.603; ~~42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.734; 42 C.F.R. 435.812; 42 C.F.R. 435.831; 45 C.F.R. 435.845; 45 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51.~~

10A NCAC 23E .0209 DEDUCTIBLE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23E .0210 PATIENT LIABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23E .0211 ALIEN SPONSOR DEEMING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 23G – MEDICAID CERTIFICATION, CORRECTION OF ELIGIBILITY AND REDETERMINATION OF ELIGIBILITY

SECTION .0100 – MEDICAID CERTIFICATION

10A NCAC 23G .0101 CERTIFICATION AND AUTHORIZATION

Authority G.S. 108A-54; 42 C.F.R. 435.112; 42 C.F.R. 435.914.

SECTION .0200 – CORRECTION OF ERRONEOUS ELIGIBILITY

10A NCAC 23G .0201 GENERAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23G .0202 CORRECTIVE ACTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23G .0203 TIME LIMITS FOR CORRECTIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23G .0204 RESPONSIBILITY FOR ERRORS

(a) The Division of Health Benefits (Division) Medical Assistance shall be financially responsible for costs resulting from the erroneous issuance of benefits and Medicaid claims payments when:

- (1) Policy guidance interpretations given by the Division of ~~Medical Assistance~~ or its agents is ~~are~~ erroneous and the Division determines that is the sole cause of any erroneous benefits or payments; ~~or~~
- (2) ~~Information Services operations staff fail to manually remove Medicaid ID cards from outgoing mail subsequent to the county DSS's timely authorization of a termination or reduction in benefits; or~~

~~(2)~~(3) A systems failure at the State state computer center occurs on the last cutoff date of the month preventing the county DSS from data entering case terminations or adverse actions; or

(3)(4) Any other failure or error the Division determines is attributable solely to the State state occurs.

(b) The county department of social services shall be financially responsible for costs resulting from the erroneous issuance of benefits and Medicaid claims payments when it:

- (1) Authorizes retroactive eligibility outside the dates permitted by regulations or Rule .0203 of this Section; ~~or~~
- (2) Fails to send required notices of patient liability or deductible balance to medical providers; ~~or~~
- (3) Fails to end-date special coverage indicators such as Community Alternatives Program (CAP) CAP, or HMO in the State state eligibility information system; ~~or~~
- (4) Enters an authorization date in the eligibility system that is earlier than the effective determined date of eligibility; ~~or~~
- (5) Fails to determine the availability of or fails to ~~data~~ enter data on third-party resource information in the State state eligibility information system; ~~or~~
- (6) Terminates a case or individual after the Medicaid ID card has been issued; ~~or~~
- ~~(7) Issues a county typed Medicaid ID card that has erroneous dates of eligibility; or~~
- ~~(7)~~(8) Fails to initiate application for Medicare Part B coverage for recipients who are eligible, but refuse or are unable to apply for themselves; or
- ~~(8)~~(9) Takes any other action that requires payment of Medicaid claims for an ineligible individual, for ineligible dates, dates or in for an amount that includes a recipient's liability and for which the State state cannot claim federal participation.

(c) The amounts to be charged back to the county department of social services for erroneous payments of claims shall be the State state and federal shares of the erroneous payment, not to exceed the lesser of the amount of actual error or claims payment.

Authority G.S. 108A-25.1A; 108A-54; 108A-54.1B; 42 C.F.R. 433.32; 42 C.F.R. 435.903, 435.904.

SECTION .0300 – REDETERMINATION OF ELIGIBILITY AND CHANGE IN SITUATION

10A NCAC 23G .0303 RECOMMENDATION

Authority G.S. 108A-54; 42 C.F.R. 435.919.

10A NCAC 23G .0304 CHANGE IN SITUATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 23H - CONFIDENTIALITY AND ACCESS TO CLIENT RECORDS

SECTION .0100 - GENERAL

10A NCAC 23H .0106 LIABILITY OF PERSONS WITH ACCESS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23H .0107 RIGHT OF ACCESS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23H .0108 WITHHOLDING INFORMATION FROM THE CLIENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23H .0109 PROCEDURE FOR REVIEW OF RECORDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23H .0110 CONSENT FOR RELEASE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23H .0111 DISCLOSURE WITHOUT CLIENT CONSENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23H .0112 DOCUMENTATION OF CONSENT OR DISCLOSURE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

10A NCAC 23H .0113 PERSONS DESIGNATED TO DISCLOSE INFORMATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

CHAPTER 25 - MEDICAL ASSISTANCE PROVIDED

SUBCHAPTER 25A -GENERAL

SECTION .0200 - MEDICAL SERVICES

10A NCAC 25A .0201 – MEDICAL SERVICES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 25H - DENTAL SERVICES

SECTION .0200 - GENERAL

10A NCAC 25H .0203 STANDARDS FOR PARTICIPATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 25K - DRUGS/PHARMACY

SECTION .0200 – PHARMACY SERVICES

10A NCAC 25K .0201 PHARMACY SERVICES

Authority G.S. 90-85.26; 108A-25(b); 108A-54; 42 C.F.R. 440.90; 42 CFR 447.331; S.L. 1985, c. 479, s. 86; 42 U.S.C. 1396r-8(d)(1)(A); S.L 2009-451.

10A NCAC 25K .0401 PATIENT COUNSELING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 25M - FACILITIES

SECTION .0200 – INPATIENT HOSPITAL SERVICES

10A NCAC 25M .0201 INPATIENT HOSPITAL SERVICES

Authority G.S. 108A-25(b); 108A-54; S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.10; 42 C.F.R. 440.230(d); 42 C.F.R.447.253; 42 C.F.R. 456.1.

SUBCHAPTER 25P - MEDICAL-SURGICAL

SECTION .0200 – INPATIENT HOSPITAL SERVICES

10A NCAC 25P .0201 INPATIENT HOSPITAL SERVICES

Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d); 42 C.F.R.447.253; 42 C.F.R. 456.1.

SECTION .0300 – OUTPATIENT HOSPITAL SERVICES

10A NCAC 25P .0301 OUTPATIENT HOSPITAL SERVICES

Authority G.S. 108A-25(b); 42 C.F.R. 440.20; 42 C.F.R. 440.230(d); 42 C.F.R. 456.1.

SECTION .0400 – OTHER SERVICES

10A NCAC 25P .0402 CLINIC SERVICES

Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.20.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to adopt the rule cited as 12 NCAC 09A .0207, and amend the rules cited as 12 NCAC 09A .0107; 09B .0301-.0303, .0503, 09C .0307; 09F .0102, .0105; 09G .0306, .0307, and .0407.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://ncdoj.gov/getdoc/82ec95af-b758-4888-b831-8fdd5cc9beb4/Public-Hearing-02-14-17.aspx>

Proposed Effective Date: August 1, 2019

Public Hearing:

Date: February 13, 2019

Time: 10:00 a.m.

Location: Wake Technical Community College-Public Safety Training Center, 321 Chapanoke Rd., Raleigh, NC 27603

Reason for Proposed Action: To provide clarity regarding instructor responsibilities, record retention and hearing procedures.

Comments may be submitted to: Charminique Williams, PO Drawer 149, Raleigh, NC 27602, phone (919) 779-8206, fax (919) 779-8210, email cdwilliams@ncdoj.gov

Comment period ends: March 4, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (>=\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09A - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

12 NCAC 09A .0107 PROCEDURES FOR PETITONS FOR RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

In addition to the procedures process set out in G.S. 150B-20, Petitions for Rule-Making shall be submitted to the Commission and shall may contain:

- (1) petitioner's name, address address, and telephone number;
(2) a draft of the proposed rule or rule change;
(3) the reason for its proposal;
(4) the effect of the proposal on existing rules or decisions;
(5) data supporting the proposal;

- (6) practices likely to be affected by the proposal; and
(7) a list or description of persons likely to be affected by the proposed rule.

(b) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge (as authorized in G.S. 150B-40) shall be governed by:

- (1) procedures set out in Article 3A of G.S. 150B;
(2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A-1;
(3) insofar as relevant, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

(c) The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in Title 26, Chapter 3 of the North Carolina Administrative Code are hereby incorporated by reference for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h). All such incorporations by reference shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6.

(d) If the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in Title 26, Chapter 3 of the North Carolina Administrative Code.

(e) Pursuant to G.S. 17C-11(b), an applicant for certification or a certified officer shall have 30 days from the date of receipt of a notice of proposed action by the Commission to request a contested case hearing.

Authority G.S. 17C-6; 150B-20; 150B-21.6; 150B-38(h); 150B-40.

SECTION .0200 - ENFORCEMENT OF RULES

12 NCAC 09A .0207 ADMINISTRATIVE HEARING PROCEDURES

(a) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge (as authorized in G.S. 150B-40) shall be governed by:

- (1) procedures set out in Article 3A of G.S. 150B;
(2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A-1;
(3) insofar as relevant, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

(b) The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in 26 NCAC 03 are hereby incorporated by reference for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h).

(c) If the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief

Administrative Law Judge or the presiding Administrative Law Judge in 26 NCAC 03.

(d) Pursuant to G.S. 17C-11(b), an applicant for certification or a certified officer shall have 30 days from the date of receipt of a notice of proposed action by the Commission to request a contested case hearing.

Authority G.S. 17C-6; 17C-11(b); 150B-38(h); 150B-40.

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT; EDUCATION; AND TRAINING

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS

(a) A person participating in a Commission-certified criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification, or Professional Lecturer Certification as outlined in Rules .0302, .0304 and .0306 of this Section. Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this Section and as stated on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his or her specialized areas. Such competence shall include remaining current in the instructor's area of expertise, which shall be demonstrated by attending and completing all updated instructor training courses required by the Commission.

(d) If a person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules in this Subchapter, the Commission shall take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; and
- (5) revoking the individual's certification.

(e) The Commission shall deny, suspend, or revoke an instructor's certification ~~if~~ when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification;
- (2) has failed to remain knowledgeable in the person's areas of expertise;

- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Instructor Training Manual" as found in 12 NCAC 09B .0209;
- (4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in 12 NCAC 09B .0205;
- (5) has demonstrated unprofessional personal conduct in the delivery of Commission-mandated training. For the purposes of this Subparagraph, unprofessional personal conduct means an act that is: job-related conduct that constitutes a violation of State or federal law; conviction or commission of a criminal offense, as set out in 12 NCAC 09A .0204; the willful violation of Rules of this Chapter; conduct that is detrimental to instruction in the Commission's mandated courses; the abuse of a client or student whom the instructor is teaching or supervising or falsification of an instructor application or in other employment documentation;
- (6) has demonstrated instructional incompetence;
- (7) has knowingly and willfully obtained or attempted to obtain instructor certification by deceit, fraud, or misrepresentation;
- (8) has failed to meet or maintain good moral character as defined in: re Willis, 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); in re State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority, and as required to effectively discharge the duties of a criminal justice instructor;
- (9) has failed to deliver training in a manner consistent with the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program as found in 12 NCAC 09H .0102;
- (10) has knowingly and willfully aided or attempted to aid any person in obtaining qualification or certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program by deceit, fraud, or misrepresentation;
- (11) has committed or been convicted of an offense which could result in the denial, suspension, or revocation of an officer's law enforcement certification, pursuant to 12 NCAC 09G .0504; or
- (12) has knowingly made a material misrepresentation of any information required for certification or accreditation.

(f) When a person certified as a law enforcement officer by the North Carolina Criminal Justice Education and Training Standards Commission (Commission), the North Carolina Sheriffs Education and Training Standards Commission (Sheriffs' Commission), the North Carolina Department of Insurance, Office of State Fire Marshal, Fire Rescue Commission (Fire Commission), or Office of Emergency Medical Services and the North Carolina Company/Campus Police Program; or a similar North Carolina, out of state or federal approving, certifying or licensing agency; has ~~been denied certification or had his or her certification suspended or revoked~~ his or her law enforcement officer or fire and rescue certification suspended or revoked by their respective Commission, or agency that person shall report the suspension or revocation to the Criminal Justice Standards within ~~30 days.~~ five days. He or she shall also have his or her General Instructor Certification (if applicable) similarly and automatically suspended or revoked for the same time period as his or her respective Commission certification.

- (1) This suspension or revocation of the General Instructor certification shall also include suspension or revocation to any Commission recognized Specialized or additional instructor certification, as outlined in 12 NCAC 09B .0304.
- (2) If the term of suspension or revocation exceeds the expiration date of the instructor's initial certification expiration date, he or she shall forfeit their certifications as a General Instructor and Specialized Instructor and shall be required to obtain certification pursuant to the requirements of 12 NCAC 09B .0302 before any instruction may be delivered in any Commission-approved or mandated training, including the completion of a subsequent General Instructor's training course in its entirety.
- (3) If the term of suspension or revocation does not exceed the expiration date of the instructor's initial certification expiration date, the instructor shall be reinstated as a General Instructor only upon reinstatement of his or her law enforcement officer certification by the Commission. The terms of renewal for the existing General Instructor and Specialized Instructor certifications shall remain subject to all renewal requirements pursuant to 12 NCAC 09B .0303(c) by the next immediate expiration date.

Authority G.S. 17C-6.

12 NCAC 09B .0302 GENERAL INSTRUCTOR CERTIFICATION

(a) A General Instructor Certification issued after December 31, 1984, shall be limited to those topics that are not expressly incorporated under the Specialized Instructor Certification category. Individuals certified under the general instructor category shall not teach any of the subjects specified in Rule .0304 of this Subchapter, entitled "Specialized Instructor Certification."

To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process by meeting the following requirements:

- (1) Present documentary evidence showing that the applicant:
 - (A) is a high school, college, or university graduate or has received a high school equivalency credential as recognized by the issuing state; and
 - (B) has acquired four years of practical experience as a Criminal Justice Officer, an administrator or specialist in a field directly related to the criminal justice system, or as an employee of a Criminal Justice Agency;
- (2) Present evidence showing completion of a Commission-accredited instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
- (3) Achieve a passing score on the comprehensive written examination administered by the Commission, as required by Rule .0413(d) of this Subchapter.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant passed the state comprehensive examination administered at the conclusion of the Commission-accredited instructor training program. ~~program or an equivalent instructor training course use the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.~~

~~(c) Persons having completed a Commission accredited instructor training course or an equivalent instructor training course using the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission accredited instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, in its entirety.~~

~~(d) Applicants for Speed Measuring Instrument Instructor courses shall possess probationary or General Instructor Certification.~~

(c) Persons having completed a Commission-accredited training course and not having made application within 60 days of completion of the course shall complete a subsequent Commission-accredited instructor training course in its entirety.

(d) Persons having completed an equivalent instructor training course using the Instructional Systems Design model, or an international model with applications in education, military training, and private enterprise, and are current instructors in good standing, are eligible to apply for General Instructor certification

upon achieving a passing score on the comprehensive written examination administered by the Commission, as required by Rule .0413(d) of this Subchapter.

(e) Applicants for Speed Measuring Instrument Instructor courses shall possess probationary or General Instructor Certification.

Authority G.S. 17C-6.

12 NCAC 09B .0303 TERMS AND CONDITIONS OF GENERAL INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for certification as a general instructor shall, for the first 12 months of certification, be in a probationary status. The General Instructor Certification, Probationary Status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor shall be eligible for general instructor status if the instructor, through application at the end of the probationary period, submits to the Commission a favorable recommendation from a School Director or In-Service Training Coordinator accompanied by a certification on a Commission Instructor Evaluation Form F-16 that the instructor taught a minimum of eight hours of Commission-accredited basic training course, Commission-recognized in-service training course, or training course pursuant to 12 NCAC 10B .0601, 10B .1302, or 10B .2005 during the probationary period. The instructor shall achieve a minimum of 64 points on all instruction evaluations submitted to the Commission. The Commission Instructor Evaluation Form F-16 is located on the agency's website: <http://www.ncdoj.gov/getdoc/c2eba6aa-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>.

(c) Probationary Instructors for just cause, may be granted an extension of the one-year period to teach the eight hour minimum requirement. The Director may grant such extensions on a one-time basis only not to exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from fulfilling the teaching requirement.

~~(c)~~(d) The term of certification as a general instructor is indefinite, provided the instructor completes during each calendar year a minimum of one hour of instructor refresher training provided by North Carolina Justice Academy. The Standards Division shall post on its website on January 1 of the current year the list of instructors who have met this requirement during the previous calendar year.

~~(d)~~(e) If the instructor fails to meet the instructor refresher training specified in Paragraph (c) of this Rule, he or she shall deliver eight hours of evaluated instruction in a Commission-accredited basic training, Commission-recognized in-service training course, or training course pursuant to 12 NCAC 10B .0601, 10B .1302, or 10B .2005, and complete the instructor refresher training specified in Paragraph (c) of this Rule within 60 days from the last day of the previous calendar year.

~~(e)~~(f) If an instructor fails to meet the requirements of Paragraph (c) or (d) of this Rule, the certification period for the instructor shall cease, and the instructor shall be required to complete the requirements of Rule 09B .0302 of this Section in order to obtain probationary instructor status.

~~(f)~~(g) The use of guest participants in a delivery of the Basic Law Enforcement Training Course is permissible. However, such

guest participants are subject to the direct on-site supervision of a Commission-certified instructor and must be authorized by the School Director. A guest participant shall only be used to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

~~(g)~~(h) "Commission-recognized in-service training" shall mean training meeting the following requirements:

- (1) training is taught by an instructor certified by the Commission;
- (2) training utilizes a lesson plan in the Instructional Systems Design format; and
- (3) completion of training shall be demonstrated by a passing score on a written test as follows:
 - (A) a written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course is exempt from this written test requirement;
 - (B) a student shall pass each test by achieving 70 percent correct answers; and
 - (C) a student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.
 - (D) Topics delivered pursuant to 12 NCAC 09E .0104(1) and 12 NCAC 09E .0105(a)(1) shall not require written testing.

Authority G.S. 17C-6.

SECTION .0500 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOL DIRECTORS

12 NCAC 09B .0503 SUSPENSION: REVOCATION: DENIAL/SCHOOL DIR. CERTIFICATION

(a) The Commission may deny, suspend, or revoke certification of a school director when the Commission finds that the person has failed to meet or continuously maintain any of the requirements for qualification or through performance fails to comply with program rules and procedures of the Commission or otherwise demonstrates incompetence.

(b) Prior to the Commission's action denying, suspending, or revoking a school director's certification, the Standards Division may notify the person that a deficiency appears to exist and may

attempt, in an advisory capacity, to assist the person in correcting the deficiency.

(c) The Commission shall deny, suspend or revoke the certification of a School Director when they have found the person has engaged in any conduct outlined in 12 NCAC 09B .0301.

Authority G.S. 17C-6.

SUBCHAPTER 09C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS

12 NCAC 09C .0307 AGENCY RETENTION OF RECORDS OF CERTIFICATION

(a) Each agency shall place in personnel files the official notification from the Commission of either probationary or general certification for each criminal justice officer employed or appointed by the agency. Such files shall be available for examination at any reasonable time by representatives of the Commission for the purpose of verifying compliance with these Rules. The personnel files shall also contain:

(1) Criminal Justice Officer with probationary certification:

- ~~(1)~~(A) the officer's Personal History Statement;
- ~~(2)~~(B) the officer's Medical History Statement and Medical Examination Report;
- ~~(3)~~(C) documentation of the officer's drug screening results;
- ~~(4)~~(D) for the criminal justice officer, the Commission's Mandated Background Investigation Form as completed by the agency's investigator; ~~for criminal justice officers employed by the North Carolina Department of Correction, a written summary of the Background Investigation conducted on the officer;~~
- ~~(5)~~(E) a written summary of the officer's Qualifications Appraisal Interview;
- ~~(6)~~(F) documentation of the officer's educational achievements;
- ~~(7)~~(G) documentation of all criminal justice training completed by the officer;
- ~~(8)~~(H) the results of the officer's fingerprint record check;
- ~~(9)~~(I) a written summary of the officer's psychological examination results; ~~and~~
- ~~(10)~~(J) for the law enforcement officer, documentation on a commission-approved form as set forth in 12 NCAC 09E .0103(3) and .0110(5) ~~and~~ that the officer has completed the minimum in-service training as ~~required~~; required;

(K) certified copy of proof of age, citizenship, and educational requirements required in 12 NCAC 09B .0101;

(L) copy of Report of Appointment/Application for Certification Form F-5A;

(M) oath of office;

(N) copy of firearms qualification; and

(O) once separated, a copy of the Affidavit of Separation.

(2) Criminal Justice Officer with general certification:

(A) the officer's Medical History Statement and Medical Examination Report;

(B) documentation of the officer's drug screening results;

(C) documentation of the officer's educational achievements;

(D) documentation of all criminal justice training completed by the officer;

(E) the results of the officer's fingerprint record check;

(F) for the law enforcement officer, documentation on a commission-approved form as set forth in 12 NCAC 09E .0103(3) and .0110(5) that the officer has completed the minimum in-service training as required;

(G) certified copy of proof of age, citizenship, and educational requirements required in 12 NCAC 09B .0101;

(H) a copy of the Report of Appointment/Application for Certification Form F-5;

(I) oath of office;

(J) copy of firearms qualification; and

(K) once separated, a copy of the Affidavit of Separation.

(b) These records shall be maintained in compliance with the North Carolina Department of Natural and Cultural Resources Retention Schedule which requires that Personnel Records be destroyed after 30 years from the date of separation except for those records involved in a pending audit, legal, or other official action which may be destroyed at the conclusion of any legal action if they met the required retention period as established by the North Carolina Department of Natural and Cultural Resources.

Authority G.S. 17C-2; 17C-6.

SUBCHAPTER 09F - CONCEALED HANDGUN TRAINING

SECTION .0100 - CONCEALED HANDGUN TRAINING PROGRAM

12 NCAC 09F .0102 TOPICAL AREAS

The course entitled "Concealed Carry Handgun Training" shall consist of eight hours of instruction and shall include the following identified topical areas:

- (1) Legal Issues (two hours): The student shall be able to explain the following:
(a) the types of situations that in which the use of deadly physical force would be justified;
(b) list the areas where the carrying of a concealed handgun is prohibited;
(c) the requirements of for handgun storage under G.S. 14-315.1; and
(d) the laws governing the carrying of a concealed handgun.

The instructor shall determine the student's level of understanding of the relevant legal issues by administering a written examination.

- (2) Handgun Nomenclature: The students shall be able either verbally or in writing to list the instructor shall identify to the students the primary parts of their personal handguns. the revolver and semiautomatic handgun.

- (3) Handgun Safety: The students shall be able to:
(a) list at least four rules of safe gun handling and demonstrate all of these procedures during range exercises;
(b) list four methods of safely storing a handgun and choose the method most appropriate for their personal use;
(c) describe safety issues relating to the safe carry of a handgun; and
(d) determine the proper storage of their handguns when there are minors in the home.

- (4) Handgun Fundamentals: The students instructor shall demonstrate to the students be able to:

- (a) demonstrate how to load both a revolver and a semiautomatic handgun;
(b) demonstrate how to unload both a revolver and a semiautomatic handgun;
(c) describe the operational characteristics of their handguns; and the revolver and the semiautomatic handgun.
(d) achieve a passing score on a proficiency test administered by the instructor as prescribed in Rule .0105 of this Section.

- (5) Marksmanship Fundamentals: The student shall be able to:

- (a) demonstrate a proper handgun grip;
(b) demonstrate either the Weaver or Isosceles Stance;
(c) describe the elements of sight alignment and sight picture; and

- (d) demonstrate trigger control in a dry fire exercise.
(6) Presentation Techniques: The students instructor shall be able to demonstrate to the students the draw or presentation of the revolver and semiautomatic handgun with their handguns. a variety of holster types.
(7) Cleaning and Maintenance: The students instructor shall be able to demonstrate to the student:
(a) demonstrate how to "field strip" the handguns if the their handguns handgun can be field stripped;
(b) describe how to perform a "Function Check" on their personal handguns; and
(c) based on the manufacturer's recommendations, list the lubrication points of their specific handguns.
(8) Ammunition: The students shall be able to list the four components of handgun ammunition.
(9) Proficiency Drills: The students shall be able to:
(a) demonstrate how to check a handgun in order to ensure that it is safe;
(b) during range exercises, demonstrate how to fire a handgun from a ready position;
(c) during range exercises, demonstrate the ability to fire a handgun from various distances; and
(d) during range exercises, achieve a passing score on a proficiency test administered by the instructor as prescribed in Rule .0105 of this Section.

Authority G.S. 14-415.12.

12 NCAC 09F .0105 INSTRUCTOR RESPONSIBILITIES

In delivering the "Concealed Carry Handgun Training" course the instructor shall:

- (1) have a valid Concealed Carry Handgun instructor certification issued by the Criminal Justice Standards Division;
(2) file a copy of the proposed firearms course description, outline, and proof of instructor certification along with a written request to conduct the "Concealed Carry Handgun Training" course for approval by the Commission prior to delivery of any instruction required by G.S. 14-415.12;
(3) file a copy of all modifications;
(4) be issued by Commission staff a quantity of certificates as requested by the instructor for course participants which shall bear the instructor's name, the instructor's assigned number, be sequentially numbered, and bear the raised seal of the Commission;

- (5) if a Concealed Carry Handgun Instructor relinquishes his or her certification and wants to transfer his or her assigned participants' certificates, to another Concealed Carry Handgun instructor a written request shall be submitted to the Criminal Justice Standards Division Director for approval. The written request shall include the following:
 - (a) instructor name and identification number;
 - (b) name of business;
 - (c) phone number and email address;
 - (d) recipient instructor name, identification number;
 - (e) business name;
 - (f) phone number, email address; and
 - (g) list of the assigned certificate numbers for participants to be transferred.
- (6)(5) affix the student's name to one certificate and issue that certificate to the student who successfully completes the "Concealed Carry Handgun Training" course;
- (7)(6) conduct the training consistent with the guidelines established in 12 NCAC 09F .0102;
- (8)(7) administer a written examination to the student on the legal issues block of instruction to demonstrate that the student is knowledgeable in the laws of this State governing the carrying of a concealed handgun and the use of deadly force; and
- (9)(8) administer a proficiency examination that demonstrates the student is competent in the firing and safe handling of a handgun. Such examination shall include the following:
 - (a) The student fires 30 rounds of ammunition at a bulls-eye or silhouette target from three, five and seven yard distances;
 - (b) At each yard distance the student shall fire a minimum of ten rounds; and
 - (c) 21 of the 30 rounds fired by the student hit the target.

North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice. The certification file shall also contain:

- (1) the officer's Report of Appointment/Application for Certification, including the Department of Public Safety Personnel Action Form;
- (2) the officer's Medical History Statement and Medical Examination Report;
- (3) documentation of the officer's drug screening results;
- (4) documentation of the officer's educational achievements;
- (5) documentation of all corrections training completed by the officer;
- (6) documentation of the officer's psychological examination results;
- (7) documentation and verification of the officer's age;
- (8) documentation and verification of the officer's citizenship;
- (9) documentation of any prior criminal record; and
- (10) miscellaneous documents including letters, investigative reports, and subsequent charges and ~~convictions~~ convictions;
- (11) oath of office; and
- (12) if separated, a copy of the Report of Separation or Department of Public Safety Action Form.

(b) All files and documents relating to an officer's certification shall be available for examination and utilization at any reasonable time by representatives of the Commission for the purpose of verifying compliance with the Rules in this Subchapter. These records shall be maintained in compliance with the North Carolina Department of ~~Public Safety, Division of Adult Correction and Juvenile Justice's Records Retention Schedule.~~ Natural and Cultural Resources Retention Schedule which requires that Personnel Records be destroyed after 30 years from the date of separation except for those records involved in a pending audit, legal, or other official action which may be destroyed at the conclusion of any legal action if they met the required retention period as established by the North Carolina Department of Natural and Cultural Resources.

Authority G.S. 14-415.12; 14-415.13.

Authority G.S. 17C-2; 17C-6.

SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION

SECTION .0300 - CERTIFICATION OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND INSTRUCTORS

12 NCAC 09G .0306 RETENTION OF RECORDS OF CERTIFICATION

(a) The North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall place in the officer's certification file the official notification from the Commission of either Probationary or General Certification for each correctional officer, probation/parole officer employed or appointed by the

12 NCAC 09G .0307 CERTIFICATION OF INSTRUCTORS

(a) ~~Any~~ A person participating in a Commission-accredited corrections training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification or Specialized Instructor Certification or Professional Lecturer Certification as outlined in 12 NCAC 09G ~~.0308, and .0310, .0308, .0310, and .0311~~ of this Section. ~~Such instructor~~ Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the

requirements of this Section and ~~reflected as stated~~ as stated on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-~~accredited~~ certified course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and ~~successfully~~ completing any instructor ~~all updates~~ updated instructor training courses issued required by the Commission.

~~(d) The Standards Division may notify an applicant for instructor certification or a certified instructor that a deficiency appears to exist and attempt, in an advisory capacity, to assist the person in correcting the deficiency.~~

~~(e)(d) When~~ If any a person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the Rules in this Subchapter, the Commission may take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; or
- (5) revoking the individual's certification.

~~(f)(e)~~ The Commission ~~may~~ shall deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification; ~~or~~
- (2) has failed to remain currently knowledgeable in the person's areas of expertise; ~~or~~
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Basic Instructor Training Manual" as found in 12 NCAC 09G .0414; ~~or~~
- (4) ~~has demonstrated unprofessional personal conduct in the delivery of Commission mandated training; or has failed to follow specific guidelines outlined in the basic corrections officers' training manual set out in 12 NCAC 09G .0411 through .0416;~~
- (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training. for the purposes of this Subparagraph, unprofessional personal conduct as evidenced by: job-related conduct which constitutes a violation of State or federal law; conviction or commission of a criminal offense, as set out in 12 NCAC 09G .0504; the willful violation of rules of this Chapter; conduct that is detrimental to instruction in the Commission's mandated courses; the abuse of a client or student whom the instructor is teaching or supervising; falsification of an instructor application or in other employment

documentation; or an amorous, dating or sexual relationship ("intimate relationship"), even when apparently consensual, between a student enrolled in the Basic Probation Parole Officer Training program and any instructor or School Director involved in the delivery of that program in which the student is enrolled.

- ~~(6)(5)~~ has demonstrated instructional incompetence; ~~or~~
- ~~(7)(6)~~ has knowingly and willfully obtained, or attempted to obtain instructor certification by deceit, fraud, or misrepresentation; ~~or~~
- ~~(7)~~ has failed to meet or maintain good moral character as required to effectively discharge the duties of a corrections instructor, as evidenced by, but not limited to:
 - (A) ~~not having been convicted of a felony;~~
 - (B) ~~not having been convicted of a misdemeanor as defined in 12 NCAC 09G .0102(10) for five years since the date of conviction or the completion of any corrections supervision imposed by the courts whichever is later;~~
 - ~~(C)~~ having submitted to and produced a negative result on a drug test which meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs, copies of which may be obtained from National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 at no cost, to detect the illegal use of at least cannabis, cocaine, phenacyclidine (PCP), opiates and amphetamines or their metabolites;
 - ~~(D)~~ submitting to a background investigation consisting of:
 - (i) verification of age;
 - (ii) verification of education;
 - (iii) criminal history check of local, state, and national files;
 - ~~(E)~~ being truthful in providing all required information as prescribed by the application process; or
- ~~(8)~~ has failed to meet or maintain good moral character as defined in: re Willis, 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority, and as required to effectively discharge the duties of a criminal justice instructor;

- (8) ~~has failed to deliver training in a manner consistent with the curriculum outlines in the corrections officers' training manuals set out in 12 NCAC 09G .0411 through .0416.~~
- (9) has committed or been convicted of an offense which could result in the denial, suspension, or revocation of an officers certification pursuant to 12 NCAC 09G .0204 or 12 NCAC 09G .0504;
- (10) has knowingly made a material misrepresentation of any information required for certification or accreditation.

(f) When a person certified as an officer by the North Carolina Criminal Justice Education and Training Standards Commission (Commission), the North Carolina Sheriffs Education and Training Standards Commission (Sheriffs' Commission), or the North Carolina Department of Insurance, Office of State Fire Marshal, Fire Rescue Commission (Fire Commission), Office of Emergency Medical Services and the North Carolina Company/Campus Police Program; or a similar North Carolina, out of state or federal approving, certifying or licensing agency; has been denied certification or had his or her certification suspended or revoked by their respective Commission or agency that person shall report the suspension or revocation to the Criminal Justice Standards within 5-days. They shall also have their General Instructor certification (if applicable) similarly and automatically suspended or revoked for the same time period as their respective Commission certification.

- (1) This suspension or revocation of the General Instructor certification shall also include suspension or revocation to any Commission recognized Specialized or additional instructor certification, as outlined in 12 NCAC 09G .0310.
- (2) If the term of suspension or revocation exceeds the expiration date of the instructor's initial certification expiration date, they shall forfeit their certifications as a General Instructor and Specialized Instructor and shall be required to obtain certification pursuant to the requirements of 12 NCAC 09G .0304 before any instruction may be delivered in any commission approved or mandated training, including the completion of a subsequent General Instructor's training course in its entirety.
- (3) If the term of suspension or revocation does not exceed the expiration date of the instructor's initial certification expiration date, the instructor shall be reinstated as a General Instructor only upon reinstatement of his or her law enforcement officer certification by the Commission. The terms of renewal for the existing General Instructor and Specialized Instructor certifications shall remain subject to all renewal requirements pursuant to 12 NCAC 09G .0309(c) by the next immediate expiration date.

Authority G.S. 17C-6; 17C-10.

SECTION .0400 – MINIMUM STANDARDS FOR TRAINING OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICER, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE

12 NCAC 09G .0407 SUSPENSION: REVOCATION: DENIAL/SCHOOL DIRECTOR CERTIFICATION

- (a) The Commission may deny, suspend, or revoke certification of a School Director when the Commission finds that the person has failed to meet or continuously maintain any of the requirements for qualification or through performance fails to comply with program rules of the Commission or otherwise demonstrates incompetence.
- (b) Prior to the Commission's action denying, suspending, or revoking a School Director's certification, the Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.
- (c) The Commission shall deny, suspend or revoke the certification of a School Director when they have found the person has engaged in any conduct outlined in 12 NCAC 09G .0307.

Authority G.S. 17C-6.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rule cited as 12 NCAC 09E .0105.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://ncdoj.gov/getdoc/82ec95af-b758-4888-b831-8fdd5cc9beb4/Public-Hearing-02-14-17.aspx>

Proposed Effective Date: January 1, 2020

Public Hearing:
Date: February 13, 2019
Time: 10:00 a.m.
Location: Wake Technical Community College-Public Safety Training Center, 321 Chapanoke Rd., Raleigh, NC 27603

Reason for Proposed Action: *To identify in-service training topics for law enforcement officers for 2020.*
Comments may be submitted to: Charminique Williams, PO Drawer 149, Raleigh, NC 27602, phone (919) 779-8206, fax (919) 779-8210, email cdwilliams@ncdoj.gov

Comment period ends: March 4, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the

legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (>=\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09E - IN-SERVICE TRAINING PROGRAMS

SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

(a) The following topics, specifications, and hours shall be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. All sworn law enforcement officers shall complete a minimum of 24 in-service training credits. The following topics, totaling 20 18 credits, shall be specifically required:

- (1) 2019 2020 Firearms Training and Qualification (4 credits);
(2) 2019 2020 Legal Update (4 credits);
(3) 2019 Juvenile Law Update (2 credits); 2020 Long-Term Effects of Childhood Adversity (2 credits);
(4) 2019 Individual Wellness: Coping with Stress & PTSD (2 credits); 2020 The Signs Within: Suicide Prevention Education and Awareness (2 credits);
(5) 2019 Best Practices for Officers During Community Dissent (2 credits); 2020 Career Survival: Training and Standards Issues (2 credits);
(6) 2019 Law Enforcement Intelligence Update: Gangs and Divisive Groups (2 credits); 2020 Communication Strategies When Encountering Persons Who are Deaf or Hard of Hearing (2 credits);
(7) 2019 Domestic Violence: Law and Procedure Update (2 credits); 2020 Armed/Unarmed

Security/Company Police: Understanding Their Roles and Authority (2 credits);

(8) Topics of Choice (12 credits):

(A) 2019 Opioid Awareness and Response (2 credits); Hazardous Materials (2 credits);

(B) Bloodborne Pathogens (2 credits);

(C) Situational Awareness/Subject Control (4 credits); and

(D) Law enforcement Threat Assessment (4 credits).

(b) All sworn law enforcement officers shall complete a minimum of 4 in-service credits, in topics identified by their respective agency heads. The agency head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission. Topics delivered pursuant to Rule .0104(1) of this Section and National Certification Programs administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) completed during the mandated in-service year, shall satisfy in part or in whole the topic requirements set forth by the agency head. To satisfy this requirement these topics shall not be required to be written in Instructional Systems Design format or delivered by an instructor certified by the Commission.

(c) The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

(d) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

(e) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

(f) Completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length shall include a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course and topics delivered pursuant to Rule .0104(1) of this Section shall be exempt from this written test requirement;
- (2) A student shall pass each test by achieving 70 percent correct answers; and
- (3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

Authority G.S. 17C-6; 17C-10.

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 61 – RESPIRATORY CARE BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Respiratory Care Board intends to amend the rule cited as 21 NCAC 61 .0204.

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

Proposed Effective Date: May 1, 2019

Public Hearing:

Date: January 17, 2019

Time: 9:00 a.m.-11:00 a.m.

Location: 125 Edinburgh South Drive, Suite 100, Cary, NC 27511

Reason for Proposed Action: *The North Carolina Respiratory Care Board determined that a required a rule amendment was required in the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d).*

Comments may be submitted to: William Croft, Ed.D., Ph.D., RRT, RCP, 125 Edinburgh South Drive, Suite 100, Cary, NC 27511, phone (919) 878-5595, fax (919) 878-5565, email bcroft@ncrcb.org

Comment period ends: March 4, 2019

SECTION .0200 – APPLICATION FOR LICENSE

21 NCAC 61 .0204 FEES

(a) Fees are as follows:

- (1) For an initial application, a fee of fifty dollars (\$50.00);
- (2) For issuance of an active license, a fee of one hundred twenty-five dollars (\$125.00);
- (3) For the renewal of an active license, a fee of seventy-five dollars (\$75.00);
- (4) For the late renewal of any license, an additional late fee of seventy-five dollars (\$75.00);
- (5) For a license with a provisional or temporary endorsement, a fee of fifty dollars (\$50.00);
- (6) For official verification of license status, a fee of twenty dollars (\$20.00);

(b) Fees shall be nonrefundable and shall be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Respiratory Care Board. However, personal checks shall be accepted for payment of renewal fees.

(c) In the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and renew licenses and all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

Authority G.S. 90-652(2)(9); 90-660; 93B-2(d).

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on November 15, 2018 Meeting.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

NAVIGATION AND PILOTAGE FOR THE CAPE FEAR RIVER AND BAR, COMMISSION OF

<u>Number of Pilots</u>	04 NCAC 15	.0119*	31:01 NCR
<u>Apprenticeship</u>	04 NCAC 15	.0121*	31:01 NCR
<u>Incidents or Accidents Involving Pilots</u>	04 NCAC 15	.0123*	31:01 NCR
<u>Movement of Vessels</u>	04 NCAC 15	.0124	31:01 NCR
<u>Pilotage Rates</u>	04 NCAC 15	.0127*	31:01 NCR
<u>Fees</u>	04 NCAC 15	.0128*	31:01 NCR

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Definitions</u>	10A NCAC 14C	.2101	33:03 NCR
<u>Performance Standards</u>	10A NCAC 14C	.2103	33:03 NCR

INSURANCE, DEPARTMENT OF

<u>Consent To Rate Procedures: Rate Bureau Coverages</u>	11 NCAC 10	.0602	33:04 NCR
<u>Consent To Rate Procedures: Commercial Coverages</u>	11 NCAC 10	.0603*	33:04 NCR
<u>Consent To Rate Auto Liability Coverage</u>	11 NCAC 10	.0605	33:04 NCR
<u>Consent To Rate Procedures</u>	11 NCAC 10	.0606	33:04 NCR

INDUSTRIAL COMMISSION

<u>Location of Main Office and Hours of Business</u>	11 NCAC 23A	.0101	33:04 NCR
<u>Official Forms</u>	11 NCAC 23A	.0102*	33:04 NCR
<u>Notice of Accident and Claim of Injury or Occupational Di...</u>	11 NCAC 23A	.0103	33:04 NCR
<u>Electronic Filings with the Commission; How to File</u>	11 NCAC 23A	.0108	33:04 NCR
<u>Required Contact Information from Carriers</u>	11 NCAC 23A	.0302	33:04 NCR
<u>Safety Rules</u>	11 NCAC 23A	.0411	33:04 NCR
<u>Notice of Last Payment Filing Requirement</u>	11 NCAC 23A	.0503*	33:04 NCR
<u>Request for Hearing</u>	11 NCAC 23A	.0602	33:04 NCR
<u>Responding to a Party's Request for Hearing</u>	11 NCAC 23A	.0603	33:04 NCR
<u>Statement of Incident Leading to Claim</u>	11 NCAC 23A	.0608*	33:04 NCR
<u>Medical Motions and Emergency Medical Motions</u>	11 NCAC 23A	.0609A*	33:04 NCR
<u>Pre-Trial Agreement</u>	11 NCAC 23A	.0610*	33:04 NCR
<u>Hearings Before the Commission</u>	11 NCAC 23A	.0611*	33:04 NCR
<u>Disqualification of a Commissioner or Deputy Commissioner</u>	11 NCAC 23A	.0618	33:04 NCR

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Admission of Trainees</u>	12 NCAC 09B	.0203*	32: 24 NCR
<u>Certification of Instructors</u>	12 NCAC 09B	.0301*	32: 24 NCR
<u>Definitions</u>	12 NCAC 09G	.0102*	32: 24 NCR
<u>Suspension: Revocation: or Denial of Certification</u>	12 NCAC 09G	.0504*	32: 24 NCR
<u>Period of Suspension: Revocation: or Denial</u>	12 NCAC 09G	.0505*	32: 24 NCR

APPROVED RULES

Report: Application: and Certification Forms 12 NCAC 09G .0701* 32: 24 NCR

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

Documentation of Educational Requirement 12 NCAC 10B .0302* 33:02 NCR
Evaluation for Training Waiver 12 NCAC 10B .0505* 33:02 NCR
Training for School Resource Officers 12 NCAC 10B .0510* 33:02 NCR
Minimum Training Requirements 12 NCAC 10B .2005 33:02 NCR

ALCOHOLIC BEVERAGE CONTROL COMMISSION

Definitions 14B NCAC 15A .2201 33:03 NCR
Collector Transport or Sale Permits 14B NCAC 15A .2202 33:03 NCR
Permissible Sales Under Collector Transport or Sale Permit 14B NCAC 15A .2203 33:03 NCR
Special Auction Permits 14B NCAC 15A .2204 33:03 NCR
Conditions of Sale Under Special Auction Permits 14B NCAC 15A .2205 33:03 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

Additional Design Requirements 15A NCAC 02K .0212 32:21 NCR

WATER POLLUTION CONTROL SYSTEM OPERATOR CERTIFICATION COMMISSION

Revocation, Relinquishment or Invalidation of Certification 15A NCAC 08F .0406* 32:18 NCR
Disciplinary Actions 15A NCAC 08G .0802* 32:18 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

Definitions 15A NCAC 13B .1101 32:24 NCR
Application Fee and Annual Permit Fee 15A NCAC 13B .1102 32:24 NCR
Generator of Scrap Tires 15A NCAC 13B .1103 32:24 NCR
General Conditions 15A NCAC 13B .1104* 32:24 NCR
Permit Required 15A NCAC 13B .1105 32:24 NCR
Scrap Tire Collection Site Permit Requirements 15A NCAC 13B .1106* 32:24 NCR
Scrap Tire Collection Site Operational Requirements 15A NCAC 13B .1107* 32:24 NCR
Scrap Tire Disposal Site Permit and Operational Requirements 15A NCAC 13B .1108 32:24 NCR
Closure of Non-Conforming Sites 15A NCAC 13B .1109 32:24 NCR
Scrap Tire Processing Facilities 15A NCAC 13B .1110 32:24 NCR

WATER TREATMENT FACILITY OPERATORS CERTIFICATION BOARD

Certified Operator Required 15A NCAC 18D .0206* 33:01 NCR

PUBLIC HEALTH, COMMISSION FOR

Location of Wastewater Systems 15A NCAC 18E .0601* 32:21 NCR
Applicability of Setbacks 15A NCAC 18E .0602* 32:21 NCR
Collection Sewers 15A NCAC 18E .0701* 32:21 NCR
Raw Sewage Lift Stations 15A NCAC 18E .0702* 32:21 NCR
Pipe Materials 15A NCAC 18E .0703* 32:21 NCR
General Design and Installation Criteria for Subsurface D... 15A NCAC 18E .0901* 32:21 NCR
Conventional Wastewater Systems 15A NCAC 18E .0902* 32:21 NCR
Bed Systems 15A NCAC 18E .0903* 32:21 NCR
Large Diameter Pipe Systems 15A NCAC 18E .0904* 32:21 NCR
Prefabricated Permeable Block Panel Systems 15A NCAC 18E .0905* 32:21 NCR

APPROVED RULES

<u>Sand Lined Trench Systems</u>	15A NCAC 18E .0906*	32:21 NCR
<u>Low Pressure Pipe Systems</u>	15A NCAC 18E .0907*	32:21 NCR
<u>Drip Dispersal Systems</u>	15A NCAC 18E .0908*	32:21 NCR
<u>Fill Systems</u>	15A NCAC 18E .0909*	32:21 NCR
<u>Artificial Drainage Systems</u>	15A NCAC 18E .0910*	32:21 NCR
<u>Privies</u>	15A NCAC 18E .0911*	32:21 NCR
<u>Alternative Toilets</u>	15A NCAC 18E .1001*	32:21 NCR
<u>Control Panels</u>	15A NCAC 18E .1103*	32:21 NCR
<u>Advanced Pretreatment System Standards</u>	15A NCAC 18E .1201*	32:21 NCR
<u>Operation and Maintenance of Advanced Pretreatment Systems</u>	15A NCAC 18E .1302*	32:21 NCR

FORESTERS, BOARD OF REGISTRATION FOR

<u>Qualifications for Registration</u>	21 NCAC 20 .0103*	32:22 NCR
<u>Examinations</u>	21 NCAC 20 .0104*	32:22 NCR

MEDICAL BOARD

<u>Reporting Criteria</u>	21 NCAC 32Y .0101*	32:24 NCR
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The following Rules are subject to Legislative Review.

HHS - MEDICAL ASSISTANCE, DIVISION OF

<u>Provider Billing of Patients who are Medicaid Recipients</u>	10A NCAC 22J .0106*	32:13 NCR
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PUBLIC HEALTH, COMMISSION FOR

<u>Reclaimed Water Systems</u>	15A NCAC 18E .1002*	32:21 NCR
<u>General Dosing System Requirements</u>	15A NCAC 18E .1101*	32:21 NCR
<u>Pump Dosing</u>	15A NCAC 18E .1102*	32:21 NCR
<u>Siphon Dosing</u>	15A NCAC 18E .1104*	32:21 NCR
<u>Timed Dosing</u>	15A NCAC 18E .1105*	32:21 NCR
<u>Pressure Dosed Gravity Distribution Devices</u>	15A NCAC 18E .1106*	32:21 NCR
<u>Siting and Sizing Criteria for Advanced Pretreatment Syst...</u>	15A NCAC 18E .1202*	32:21 NCR
<u>Siting and Sizing Criteria for Advanced Pretreatment Syst...</u>	15A NCAC 18E .1203*	32:21 NCR
<u>Advanced Pretreatment Dispersal Systems</u>	15A NCAC 18E .1204*	32:21 NCR
<u>Advanced Pretreatment Sand Lined Trench Systems</u>	15A NCAC 18E .1205*	32:21 NCR
<u>Advanced Pretreatment Bed Systems</u>	15A NCAC 18E .1206*	32:21 NCR
<u>Owner Responsibilities for Wastewater System Operation an...</u>	15A NCAC 18E .1303*	32:21 NCR
<u>Management Entity Responsibilities for Wastewater System ...</u>	15A NCAC 18E .1304*	32:21 NCR
<u>Local Health Department Responsibilities for Wastewater S...</u>	15A NCAC 18E .1305*	32:21 NCR
<u>System Malfunction and Repair</u>	15A NCAC 18E .1306*	32:21 NCR
<u>Wastewater Systems Abandonment</u>	15A NCAC 18E .1307*	32:21 NCR
<u>General</u>	15A NCAC 18E .1701*	32:21 NCR
<u>Application</u>	15A NCAC 18E .1702*	32:21 NCR
<u>Department of Commission Application Review</u>	15A NCAC 18E .1703*	32:21 NCR
<u>Approval Criteria for Provisional Systems</u>	15A NCAC 18E .1704*	32:21 NCR
<u>Approval Criteria for Innovative Systems</u>	15A NCAC 18E .1705*	32:21 NCR
<u>Approval Criteria for Accepted Systems</u>	15A NCAC 18E .1706*	32:21 NCR
<u>Design and Installation Criteria for Provisional, Innovat...</u>	15A NCAC 18E .1707*	32:21 NCR
<u>Wastewater Sampling Requirements for Advanced Pretreatmen...</u>	15A NCAC 18E .1709*	32:21 NCR

<u>Compliance Criteria for Advanced Pretreatment Systems</u>	15A NCAC 18E .1710*	32:21 NCR
<u>Provisional and Innovative Approval Renewal</u>	15A NCAC 18E .1711*	32:21 NCR
<u>Authorized Designers, Installers, and Management Entities</u>	15A NCAC 18E .1712*	32:21 NCR
<u>Local Health Department Responsibilities</u>	15A NCAC 18E .1713*	32:21 NCR

TITLE 04 - DEPARTMENT OF COMMERCE

04 NCAC 15 .0119 NUMBER OF PILOTS

(a) The commission shall license a number of pilots not to exceed one pilot per 98 piloted vessel arrivals annually or fraction thereof, subject to G.S. 76A-14. Annual piloted vessel arrivals shall be calculated by averaging the number of piloted arrivals during the five immediately-preceding calendar years.

(b) The apprentice system established in Rule .0121 of this Chapter shall be used to fill vacancies in the pilotage service except in emergencies, such as the incapacity of one or more licensed pilots due to accident, sickness, or death. In such emergency, the Commission may issue one or more limited-licenses for such term as is necessary to alleviate the emergency, based upon the number of licensed pilots whose capacity is unimpaired, the number of piloted vessel arrivals and departures, and any recommendation of a majority vote of the association. The association's recommendation shall be based on the qualifications of the candidate seeking a limited license, including the candidate's experience, agility, knowledge of the local waters, U.S. Coast Guard certifications, and other skills required to perform the duties of a limited-licensed pilot.

History Note: Authority G.S. 76A-1; 76A-5; 76A-13; 76A-14; Eff. December 1, 1985; Amended Eff. August 1, 2000; Readopted Eff. December 1, 2018.

04 NCAC 15 .0121 APPRENTICESHIP

(a) In order to be considered for an appointment as an apprentice pilot, an applicant shall:

- (1) provide evidence of graduation from a maritime college or regionally-accredited four-year college or university or hold a valid Third Mate's Unlimited Ocean license;
- (2) not have been convicted of a felony;
- (3) provide evidence of 20/20 visual acuity uncorrected or corrected by lens;
- (4) provide evidence of being able to distinguish colors by means of the Stilling Test or other equivalent test accepted by the Coast Guard;
- (5) provide three personal references;
- (6) provide evidence of passing a complete physical examination in the form required by the Coast Guard for the issuance of an original federal pilot's license; and
- (7) be a citizen and resident of North Carolina.

(b) If determined by a majority vote of the association that the applicant has demonstrated the knowledge and skill necessary to obtain an apprentice pilot's certificate and if approved by a majority vote of the commission, the applicant shall be issued an apprentice pilot's certificate. He or she shall be known as an

apprentice pilot during apprenticeship. No member of the association who is a parent, sibling, or grandparent of an applicant shall participate in the discussion or voting by the association in recommending whether to approve the application for an apprentice pilot's certificate.

(c) Under the direct supervision of a pilot, an apprentice pilot shall become proficient in all matters appertaining to the duties of a pilot, including:

- (1) the rules of the road as defined by the USCG;
- (2) the use of compass and navigational aids;
- (3) the set of various currents;
- (4) boarding of vessels in heavy weather;
- (5) the bearing of noted objects;
- (6) the number, shapes, and colors of buoys; and
- (7) the use of radar and ranges.

(d) An apprentice pilot shall make such boarding and trips and perform such duties as directed by a pilot in order to master the waters of the river and bar to master the handling of the various vessels that will be under the command of a pilot as they travel inbound from the ocean to the port of call and outbound from the port of call to the ocean.

(e) A limited license may be issued to an apprentice pilot by the commission upon a determination by a majority of the association that the applicant has demonstrated the knowledge and skill necessary to obtain a limited license and after consideration of the factors set forth in Paragraph (c) of this Rule. Prior to advancing from one limited license to the next, a majority of the association shall have signed the limited license, certifying progressive development of the knowledge and skill necessary for a limited license. The commission may issue the next limited license upon a determination by a majority of the association that the applicant has demonstrated the knowledge and skill necessary to obtain that limited license and after consideration of the factors set forth in Paragraph (c) of this Rule. No member of the association who is a parent, sibling, or grandparent of an applicant shall participate in the discussion or voting by the association in recommending whether to issue a limited license to the applicant.

(f) An apprenticeship may be terminated at any time there is a finding by the commission that progress is not being made as set forth in Paragraphs (c) through (e) or any of the requirements set forth in Paragraph (a) have been violated. A majority vote of the association shall be required in ordered to present these proposed findings to the commission and recommend termination of an apprenticeship. No member of the association who is a parent, sibling, or grandparent of an applicant shall participate in the discussion or voting by the association in recommending whether to terminate the applicant's apprenticeship.

(g) In order to be considered for an appointment as a pilot:

- (1) an applicant shall have satisfied all statutory requirements for a full license;
- (2) an applicant shall hold a pilot's license issued by the Coast Guard;

- (3) an applicant shall not have been convicted of a felony;
- (4) an applicant shall be recommended by a majority of the association and have been approved by a majority of the commission;
- (5) there shall be a vacancy in the number of pilots established pursuant to Rule .0119 of this Chapter; and
- (6) no member of the association or commission who is a parent, sibling, or grandparent of an applicant shall participate in the discussion or voting when considering whether to appoint an applicant as a fully licensed pilot.

(h) Upon the successful completion of the apprentice pilot training program and the requirements for a fully licensed pilot, an apprentice pilot shall then be placed on the apprentice pilots waiting list in the order in which they complete all such requirements. When a vacancy occurs in the number of fully licensed pilots, the apprentice next in line shall be appointed to that vacancy. If he or she declines, his or her name shall be stricken from the waiting list. During this interim between the expiration of the limited license and the occurrence of a vacancy, the apprentice shall be required to make an average of two boardings per month under the supervision of a fully licensed pilot.

History Note: Authority G.S. 76A-1; 76A-5; 76A-6; 76A-12; 76A-13;
Eff. December 1, 1985;
Amended Eff. August 1, 2000;
Readopted Eff. December 1, 2018.

04 NCAC 15 .0123 INCIDENTS OR ACCIDENTS INVOLVING PILOTS

- (a) Following any marine incident or accident involving a vessel in charge of a pilot, the pilot in charge of the vessel shall give an oral report to the commission chairman or other member if the chairman is not available. Within 120 hours of the pilot reaching his or her destination (the port inbound - sea buoy outbound), the pilot shall submit to the commission a written narrative report. Sketches and diagrams may be used to explain the situation if the pilot feels their use would be helpful, including aerial photos of the waters and area used by the ship while under pilotage, nautical maps, sounding charts, or any other visual aid to explain or describe the marine incident or accident.
- (b) The commission shall investigate such occurrence in accordance with G.S. 76A-5(d).

History Note: Authority G.S. 76A-1; 76A-5;
Eff. December 1, 1985;
Readopted Eff. December 1, 2018.

04 NCAC 15 .0124 MOVEMENT OF VESSELS

History Note: Authority G.S. 76A-1; 76A-5;
Eff. December 1, 1985;
Repealed Eff. December 1, 2018.

04 NCAC 15 .0127 PILOTAGE RATES

- (a) Requests for rate revisions shall be submitted in writing to the secretary of the commission before February 1 of the year in which the rate revision is requested.
- (b) Proposed rate revisions shall be considered by the commission at the first regular meeting after March 1 of the year in which the rate revision is requested.
- (c) The public shall be notified of any rate revision and its effective date by the following methods:
 - (1) publication in at least two Wilmington area newspapers;
 - (2) posting at the State Ports Authority Building of the N.C. State Ports Authority at Wilmington; and
 - (3) written notification to the N.C. Shipping Association.
- (d) Rate revisions shall be effective July 1 of the year in which the rate is revised by the commission.

History Note: Authority G.S. 76A-1; 76A-17;
Eff. December 1, 1985;
Readopted Eff. December 1, 2018.

04 NCAC 15 .0128 FEES

The pilots association shall pay to the commission one-fourth of one percent of every pilotage fee received by every fully licensed, limited-licensed, or apprentice pilot that is licensed or certified by the commission. Such payment shall be made on the 10th day of each quarter for the pilotage fees received the preceding quarter.

History Note: Authority G.S. 76A-1; 76A-24;
Eff. December 1, 1985;
Readopted Eff. December 1, 2018.

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 14C .2101 DEFINITIONS

The following definitions apply to all rules in this Section:

- (1) "Approved operating rooms" means those operating rooms that were approved for a certificate of need by the Healthcare Planning and Certificate of Need Section (Agency) prior to the date on which the applicant's proposed project was submitted to the Agency, but that have not been licensed.
- (2) "Dedicated C-section operating room" means an operating room as defined in Chapter 6 in the 2018 State Medical Facilities Plan. For purposes of this Section, Chapter 6 in the 2018 State Medical Facilities Plan is hereby incorporated by reference including subsequent amendments and editions. This document is available at no cost at <https://www.ncdhhs.gov/dhsr/ncsmfp/index.html>.
- (3) "Existing operating rooms" means those operating rooms in ambulatory surgical

facilities and hospitals that were reported in the Ambulatory Surgical Facility License Renewal Application Form or in the Hospital License Renewal Application Form submitted to the Acute and Home Care Licensure and Certification Section of the Division of Health Service Regulation, and that were licensed prior to the beginning of the review period.

- (4) "Health System" shall have the same meaning as defined in Chapter 6 in the 2018 State Medical Facilities Plan.
- (5) "Operating room" means a room as defined in G.S. 131E-176(18c).
- (6) "Operating Room Need Methodology" means the Methodology for Projecting Operating Room Need in Chapter 6 in the 2018 State Medical Facilities Plan.
- (7) "Service area" means the Operating Room Service Area as defined in Chapter 6 in the 2018 State Medical Facilities Plan.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. November 1, 1990; Amended Eff. March 1, 1993; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. January 1, 2002; July 1, 2001; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. January 1, 2005; Amended Eff. November 1, 2005; Temporary Rule Eff. February 1, 2006; Amended Eff. November 1, 2006; Temporary Amendment Eff. February 1, 2008; Amended Eff. November 1, 2008; Temporary Amendment Eff. February 1, 2018; Amended Eff. December 1, 2018.

10A NCAC 14C .2103 PERFORMANCE STANDARDS

(a) An applicant proposing to increase the number of operating rooms (excluding dedicated C-section operating rooms) in a service area shall demonstrate the need for the number of proposed operating rooms in addition to the existing and approved operating rooms in the applicant's health system in the applicant's third full fiscal year following completion of the proposed project based on the Operating Room Need Methodology set forth in the 2018 State Medical Facilities Plan. The applicant is not required to use the population growth factor.

(b) The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Amended Eff. March 1, 1993; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2002; July 1, 2001; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. January 1, 2005; Amended Eff. November 1, 2005; Temporary Rule Eff. February 1, 2006; Amended Eff. November 1, 2006; Temporary Amendment Eff. February 1, 2008; Amended Eff. November 1, 2008; Temporary Amendment Eff. February 1, 2009; Amended Eff. November 1, 2009; Temporary Amendment Eff. February 1, 2010; Amended Eff. November 1, 2010; Temporary Amendment Eff. February 1, 2018; Amended Eff. December 1, 2018.

10A NCAC 22J .0106 PROVIDER BILLING OF PATIENTS WHO ARE MEDICAID RECIPIENTS

(a) A provider may refuse to accept a patient as a Medicaid patient and bill the patient as a private pay patient only if the provider informs the patient that the provider will not bill Medicaid for any services or supplies but will charge the patient for all services or supplies provided. If a provider refuses to accept a patient as a Medicaid patient, the provider shall inform the patient before providing any services or supplies, except when it would delay provision of an appropriate medical screening, medical examination, or treatment as required by 42 U.S.C. 1395dd.

(b) A provider will be deemed to have accepted a patient as a Medicaid patient if the provider files a Medicaid claim for services or supplies provided to the patient. Verification of eligibility alone shall not be deemed acceptance of a patient as a Medicaid patient. A patient, or a patient's representative, must request acceptance as a Medicaid patient by:

- (1) presenting the patient's Medicaid card or presenting a Medicaid number either orally or in writing;
- (2) stating either orally or in writing that the patient has Medicaid coverage; or
- (3) requesting acceptance of Medicaid upon approval of a pending application or a review of continuing eligibility.

(c) Providers may bill a patient accepted as a Medicaid patient only in the following situations:

- (1) for allowable deductibles, co-insurance, or co-payments as specified in the Medicaid State Plan;
 - (2) before the service or supply is provided, the provider has informed the patient that the patient may be billed for a service or supply that is not one covered by Medicaid regardless of the type of provider or is beyond the limits of Medicaid coverage as specified in the Medicaid State Plan or applicable clinical coverage policy promulgated pursuant to G.S. 108A-54.2(b);
 - (3) the patient is 65 years of age or older and is enrolled in the Medicare program at the time services or supplies are received but has failed to supply a Medicare number as proof of coverage; or
 - (4) the patient is not eligible for Medicaid as defined in the Medicaid State Plan.
- (d) When a provider files a Medicaid claim for services or supplies provided to a Medicaid patient, the provider shall not bill the Medicaid patient for Medicaid services or supplies for which it receives no reimbursement from Medicaid when:
- (1) the provider failed to follow program regulations;
 - (2) the Division denied the claim on the basis of a lack of medical necessity; or
 - (3) the provider is attempting to bill the Medicaid patient beyond the situations stated in Paragraph (c) of this Rule.
- (e) A provider who accepts a patient as a Medicaid patient shall agree to accept Medicaid payment, plus any authorized deductible, co-insurance, co-payment, and third party payment as payment in full for all Medicaid covered services or supplies provided, except that a provider shall not deny services or supplies to any Medicaid patient on account of the individual's inability to pay a deductible, co-insurance, or co-payment amount as specified in the Medicaid State Plan. An individual's inability to pay shall not eliminate his or her liability for the cost sharing charge. Notwithstanding anything contained in this Paragraph, a provider may pursue recovery of third party funds that are primary to Medicaid.
- (f) When a provider accepts a private patient, bills the private patient personally for Medicaid services or supplies covered under Medicaid for Medicaid recipients, and the patient is later found to be retroactively eligible for Medicaid, the provider may file for reimbursement with Medicaid. Upon receipt of Medicaid reimbursement, the provider shall refund to the patient all money paid by the patient for the services or supplies covered by Medicaid with the exception of any third party payments or cost sharing amounts as described in the Medicaid State Plan.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-54.1B; 108A-54.2; 42 C.F.R. 447.15; 42 C.F.R. 447.52(e); 42 C.F.R. 433.139; Eff. January 1, 1988; Amended Eff. February 1, 1996; October 1, 1994; Readopted Eff. September 1, 2018.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 10 .0602 CONSENT TO RATE PROCEDURES: RATE BUREAU COVERAGES

- (a) Insurers may charge a premium in excess of that promulgated by the North Carolina Rate Bureau by instituting a consent to rate procedure that meets the requirements of G.S. 58-36-30(b), (b1) and this Rule.
- (b) Residential Property With Not More than Four Housing Units:
 - (1) The premium to be charged against loss to residential property with not more than four housing units shall be presumed reasonable if it does not exceed 250 percent of the premium based upon the approved rates in North Carolina.
 - (2) Any proposed premium in excess of 250 percent of the premium based upon the approved rates in North Carolina shall be filed with the Commissioner for his review and approval in accordance with the procedures set forth in G.S. 58-36-30(a).
- (c) All records generated under G.S. 58-36-30(b), (b1) and this Rule shall be maintained in accordance with the requirements of 11 NCAC 19 .0100.

History Note: Authority G.S. 58-2-40(1); 58-36-30(b); Eff. February 1, 1976; Readopted Eff. July 11, 1978; Amended Eff. August 3, 1992; February 1, 1990; January 1, 1989; Temporary Amendment Eff. November 8, 1996; Amended Eff. July 1, 1998; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017; Amended Eff. December 1, 2018.

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 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.

History Note: Authority G.S. 58-2-40(1); 58-40-30(c); Eff. February 1, 1976; Readopted Eff. July 11, 1978; Amended Eff. August 3, 1992; January 1, 1989; Temporary Amendment Eff. November 8, 1996; Amended Eff. July 1, 1998; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017; Amended Eff. December 1, 2018.

11 NCAC 10 .0605 CONSENT TO RATE AUTO LIABILITY COVERAGE

When the consent to rate procedures under G.S. 58-36-30(b) are used to provide motor vehicle liability coverage at higher liability limits as required by an excess liability insurer, the required consent to rate notice shall read as follows:

NOTICE: THE PREMIUM THAT WE ARE CHARGING FOR HIGHER LIABILITY LIMITS ON AUTOMOBILE LIABILITY COVERAGE FOR YOUR COVERED VEHICLE(S) EXCEEDS THE PREMIUM BASED UPON THE APPROVED RATES IN NORTH CAROLINA, IN ACCORDANCE WITH G.S. 58-36-30(b).

History Note: Authority G.S. 58-2-40(1); 58-36-30(b); Eff. February 1, 1996;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017; Amended Eff. December 1, 2018.

11 NCAC 10 .0606 CONSENT TO RATE PROCEDURES

History Note: Authority G.S. 58-2-40(1); 58-36-30(b); 58-40-30(c); Temporary Adoption Eff. November 8, 1996; Eff. July 1, 1998; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 3, 2017; Repealed Eff. December 1, 2018.

11 NCAC 23A .0101 LOCATION OF MAIN OFFICE AND HOURS OF BUSINESS

The main office of the North Carolina Industrial Commission is located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that may be filed via hand-delivery in accordance with Rule .0108 of this Section may be filed at the main office between the hours of 8:00 a.m. and 5:00 p.m. only. Documents permitted to be filed electronically may be filed until 11:59 p.m. on the required filing date.

History Note: Authority G.S. 97-80(a); Eff. January 1, 1990; Amended Eff. January 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000; Recodified from 04 NCAC 10A .0101 Eff. June 1, 2018; Amended Eff. December 1, 2018.

11 NCAC 23A .0102 OFFICIAL FORMS

(a) Copies of the Commission's rules and forms may be obtained by:

- (1) contacting the Commission in person at the address in Rule .0101 of this Section, by written request mailed to North Carolina Industrial Commission, 1236 Mail Service Center, Raleigh, NC 27699-1236, Attn.: Office of the Clerk, or
- (2) accessing or downloading the rules or forms from the Commission's website at <http://www.ic.nc.gov/abtrules.html> and <http://www.ic.nc.gov/forms.html>.

(b) Insurance carriers, self-insured employers, attorneys, and other parties may reproduce current Commission forms for their own use, provided:

- (1) no statement, question, or information blank contained on the Commission form is omitted from the substituted form; and
- (2) the substituted form is identical in size and format to the Commission form.

History Note: Authority G.S. 97-80(a); 97-81(a); Eff. January 1, 1990; Amended Eff. November 1, 2014; June 1, 2000;

*Recodified from 04 NCAC 10A .0102 Eff. June 1, 2018;
Amended Eff. December 1, 2018.*

11 NCAC 23A .0103 NOTICE OF ACCIDENT AND CLAIM OF INJURY OR OCCUPATIONAL DISEASE

To give notice of an accident or occupational disease and to make a workers' compensation claim, an employee may complete a Form 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent and file it in accordance with Rule .0108 of this Section.

History Note: Authority G.S. 97-22; 97-24; 97-58; 97-80(a); 97-81;

Eff. January 1, 1990;

Amended Eff. November 1, 2014;

Recodified from 04 NCAC 10A .0103 Eff. June 1, 2018;

Amended Eff. December 1, 2018.

11 NCAC 23A .0108 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

(a) All documents filed with the Commission in workers' compensation cases shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Any document filed with the Commission that requires contemporaneous payment of a processing fee pursuant to Rule 11 NCAC 23E .0203 shall not be deemed filed until the fee has been paid in full. The electronic filing requirements of this Rule shall not apply to employees, medical providers, or non-insured employers without legal representation. Employees, medical providers, and non-insured employers without legal representation may file all documents with the Commission via the Commission's Electronic Document Filing Portal ("EDFP"), electronic mail, facsimile, U.S. Mail, private courier service, or hand delivery.

(b) Except as set forth in Paragraphs (d) and (e) of this Rule, all documents shall be transmitted to the Commission via EDFP. Information regarding how to register for and use EDFP is available at <http://www.ic.nc.gov/training.html>. In the event EDFP is inoperable, all documents required to be filed via EDFP shall be transmitted to the Commission via electronic mail to edfp@ic.nc.gov. Documents required to be filed via EDFP that are sent to the Commission via electronic mail when EDFP is operable shall not be accepted for filing.

(c) Transcripts of depositions shall be filed with the Commission pursuant to this Rule by the court reporting service. Transcripts filed with the Commission shall have only one page of text per page and shall include all exhibits. The parties shall provide the Commission's court reporting service with the information necessary to effectuate filing of the deposition transcripts and attached exhibits via EDFP. If an exhibit to a deposition is in a form that makes submission of an electronic copy impracticable, counsel for the party offering the exhibit shall make arrangements with the Commission to facilitate the submission of the exhibit. Condensed transcripts and paper copies of deposition transcripts shall not be accepted for filing.

(d) A Form 19 shall be filed as the first report of injury (FROI) via electronic data interchange (EDI), except in claims involving non-insured employers or in claims for lung disease, in which case

the Form 19 shall be filed electronically to forms@ic.nc.gov, by mail to 1235 Mail Service Center, Raleigh, North Carolina 27699-1235, or as otherwise permitted pursuant to Paragraph (a) of this Rule. Information regarding how to register for and use EDI is available at www.ncicedi.info.

(e) The workers' compensation forms and documents listed in Table 1 shall not be required to be transmitted via EDFP provided all applicable qualifying conditions are met.

Table 1: Forms and documents exempt from EDFP filing requirements and how to file them:

DOCUMENT	QUALIFYING CONDITION(S)	HOW TO FILE
Form 18	No IC file number has been assigned	Electronically to forms@ic.nc.gov , by mail to 1235 Mail Service Center, Raleigh, North Carolina 27699-1235, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 18B	Always exempt from EDFP filing requirement	Electronically to forms@ic.nc.gov , by mail to 1235 Mail Service Center, Raleigh, North Carolina 27699-1235, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 51	Always exempt from EDFP filing requirement	Electronically to forms@ic.nc.gov
Plaintiff's Attorney Representation Letter	No IC file number has been assigned	Electronically to forms@ic.nc.gov
Documents to be filed with the Commission's Compliance & Fraud Investigative Division	Always exempt from EDFP filing requirement	Electronically to fraudcomplaints@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Medical Fees Section	Always exempt from EDFP filing requirement	Electronically to medicalfees@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Safety Education &	Always exempt from EDFP filing requirement	Electronically to safety@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule

Training Section		
A Form 25N to be filed with the Commission's Medical Rehabilitation Nurses Section	No IC file number has been assigned	Electronically to 25N@ic.nc.gov
Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section	No IC file number has been assigned	Electronically to rehab.referrals@ic.nc.gov

11 NCAC 23A .0411 SAFETY RULES

The process for the Commission to approve safety rules or regulations adopted by an employer as set forth in G.S. 97-12 is as follows:

- (1) The rules shall comply with the general provisions of the safety rules outlined by the American National Standards Institute and the Occupational Safety and Health Act. These standards can be purchased at <http://ansi.org/> and accessed free of charge at <https://www.osha.gov/law-regs.html>, respectively.
- (2) The rules shall be filed by the employer in writing with the Commission in accordance with Rule .0108 of this Subchapter.
- (3) The rules shall be reviewed by the Commission or the Commission's designee and approved if they are found to be in compliance with Item (1) of this Rule. The Commission shall return to the employer a copy of the rules bearing a certificate of approval from the Commission indicating that the rules have been approved by the Commission pursuant to G.S. 97-12. An employer may revise and resubmit the rules if not approved by the Commission.

History Note: Authority G.S. 97-12; 97-80(a); Eff. November 1, 2014; Recodified from 04 NCAC 10A .0411 Eff. June 1, 2018; Amended Eff. December 1, 2018.

11 NCAC 23A .0503 NOTICE OF LAST PAYMENT FILING REQUIREMENT

The form(s) required to be provided by G.S. 97-18(h) include the following:

- (1) Form 28B Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid and Notice of Right to Additional Medical Compensation; and
- (2) Form 28C Report of Employer or Carrier/Administrator of Compensation and Medical Compensation Paid Pursuant to a Compromise Settlement Agreement.

History Note: Authority G.S. 97-18(h); 97-80(a); Eff. January 1, 1990; Amended Eff. November 1, 2014; Recodified from 04 NCAC 10A .0503 Eff. June 1, 2018; Amended Eff. December 1, 2018.

11 NCAC 23A .0602 REQUEST FOR HEARING

(a) Contested claims shall be set on the hearing docket only upon the written request of one of the parties for a hearing or rehearing of the case in dispute. Any request for hearing shall contain the following:

- (1) the basis of the disagreement between the parties, including a statement of the issues raised by the requesting party;

(f) A self-insured employer, carrier or guaranty association, third-party administrator, court reporting service, or law firm may apply to the Commission for an emergency temporary waiver of the electronic filing requirement set forth in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.

(g) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via EDPF or U.S. Mail.

History Note: Authority G.S. 97-80; 97-81; Eff. February 1, 2016; Amended Eff. February 1, 2017; Recodified from 04 NCAC 10A .0108 Eff. June 1, 2018; Amended Eff. December 1, 2018.

11 NCAC 23A .0302 REQUIRED CONTACT INFORMATION FROM CARRIERS

All insurance carriers, third party administrators, and self-insured employers shall designate a primary contact person for workers' compensation issues in North Carolina and shall maintain and provide annually on July 1 to the Director of Claims Administration of the Commission via email at rule302@ic.nc.gov, the primary contact person's current contact information, including direct telephone and facsimile numbers, mailing addresses, and email addresses. Contact information shall be updated within 30 days of any change.

History Note: Authority G.S. 97-80(a); 97-94; Eff. January 1, 2011; Amended Eff. November 1, 2014; Recodified from 04 NCAC 10A .0302 Eff. June 1, 2018; Amended Eff. December 1, 2018.

- (2) the date of injury;
- (3) the part of the body injured;
- (4) the city and county where the injury occurred;
- (5) the names and addresses of all doctors and other expert witnesses whose testimony is needed by the requesting party;
- (6) the names of all lay witnesses to be called to testify for the requesting party;
- (7) an estimate of the time required for the hearing of the case; and
- (8) the telephone number(s), email address(es), and mailing address(es) of the party(ies) requesting the hearing and their legal counsel.

(b) A Form 33 Request that Claim be Assigned for Hearing, completed in full, shall constitute compliance with this Rule. The request for a hearing shall be filed with the Office of the Clerk in accordance with Rule .0108 of this Subchapter. A copy of the Form 33 Request that Claim be Assigned for Hearing shall be forwarded to the attorneys for all opposing parties, or to the opposing parties themselves, if unrepresented.

History Note: Authority G.S. 97-80(a); 97-83; Eff. January 1, 1990; Amended Eff. November 1, 2014; June 1, 2000; Recodified from 04 NCAC 10A .0602 Eff. June 1, 2018; Amended Eff. December 1, 2018.

11 NCAC 23A .0603 RESPONDING TO A PARTY'S REQUEST FOR HEARING

(a) No later than 45 days from receipt of a request for hearing from a party, the opposing party or parties shall file with the Commission a response to the request for hearing.

- (b) The response shall contain the following:
- (1) the basis of the disagreement between the parties, including a statement of the issues raised by the moving party that are conceded and the issues raised by the moving party that are denied;
 - (2) the date of the injury, if it is contended to be different than that alleged by the moving party;
 - (3) the part of the body injured, if it is contended to be different than that alleged by the moving party;
 - (4) the city and county where the injury occurred, if they are contended to be different than that alleged by the moving party;
 - (5) an estimate of the time required for the hearing of the case; and
 - (6) the telephone number(s), email address(es), and mailing address(es) of the party or parties responding to the request for hearing and their legal counsel.

(c) A Form 33R Response to Request that Claim be Assigned for Hearing, completed in full and filed with the Office of the Clerk in accordance with Rule .0108 of this Subchapter, shall constitute compliance with this Rule. A copy of the Form 33R Response to Request that Claim be Assigned for Hearing shall be forwarded to the attorneys for all opposing parties or the opposing parties themselves, if unrepresented.

History Note: Authority G.S. 97-80(a); 97-83; Eff. January 1, 1990; Amended Eff. November 1, 2014; June 1, 2000; Recodified from 04 NCAC 10A .0603 Eff. June 1, 2018; Amended Eff. December 1, 2018.

11 NCAC 23A .0608 STATEMENT OF INCIDENT LEADING TO CLAIM

(a) Upon the request of the employer or the employer's agent to take a written or a recorded statement, the employer or the employer's agent shall advise the employee that the statement may be used to determine whether the claim will be paid or denied. Any employee who gives his or her employer, the employer's carrier, or any agent of the employer either a written or recorded statement of the facts and circumstances surrounding his or her injury shall be furnished a copy of the statement within 45 days after a request by the employee. Further, any employee who gives a written or recorded statement of the facts and circumstances surrounding his or her injury shall, without request, be furnished a copy of the statement within 45 days after the filing of a Form 33 Request that Claim be Assigned for Hearing. The copy shall be furnished at the expense of the person, firm, or corporation at whose direction the statement was taken.

(b) If any person, firm, or corporation fails to comply with this Rule, then a Commissioner or Deputy Commissioner may, if it is in the interest of justice, enter an order prohibiting that person, firm, or corporation, or its representative, from introducing the statement into evidence or using any part of the statement.

History Note: Authority G.S. 97-80(a); Eff. January 1, 1990; Amended Eff. November 1, 2014; June 1, 2000; Recodified from 04 NCAC 10A .0608 Eff. June 1, 2018; Amended Eff. December 1, 2018.

11 NCAC 23A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS

(a) Medical motions brought pursuant to G.S. 97-25 and responses thereto shall be brought before either the Office of the Chief Deputy Commissioner or the Executive Secretary and shall be submitted in accordance with Rule .0108 of this Subchapter. For parties to whom the electronic filing requirements of Rule .0108(b) of this Subchapter apply, motions, responses, and notices of appeal shall be submitted under the EDPF category "Medical Motions and Responses." The submitting party shall contemporaneously serve a copy of the filing to the opposing party or opposing party's counsel, if represented.

(b) In addition to any notice of representation contained in a medical motion or response, an attorney who is retained by a party to prosecute or defend a medical motion or appeal before the Commission shall file a notice of representation in accordance with Rule .0108 of this Subchapter and send a copy of the notice to all other counsel and all unrepresented parties involved in the proceeding.

(c) Motions submitted pursuant to G.S. 97-25 and requesting medical relief other than emergency relief shall contain the following:

- (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25 and a statement directly

- underneath the case caption clearly indicating the request is for either an administrative ruling by the Executive Secretary or an expedited full evidentiary hearing before a Deputy Commissioner;
- (2) a statement of the treatment or relief requested;
 - (3) a statement of the medical diagnosis of the employee and the name of any health care provider having made a diagnosis or treatment recommendation that is the basis for the motion;
 - (4) a statement as to whether the claim has been admitted on a Form 60, Employer's Admission of Employee's Right to Compensation, Form 63, Notice to Employee of Payment of Compensation without Prejudice (G.S. 97-18(d)) or Payment of Medical Benefits Only without Prejudice (G.S. 97-2(19) & 97-25), Form 21, Agreement for Compensation for Disability, or is subject to a prior Commission Opinion and Award or Order finding compensability, with supporting documentation attached;
 - (5) a statement of the time-sensitive nature of the request, if any;
 - (6) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiners, and second opinion examiners;
 - (7) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify whether the employee has made a prior written request to the defendants for the examination, as well as the date of the request and the date of the denial, if any;
 - (8) a representation that informal means of resolving the issue have been attempted in good faith, and a statement of the opposing party's position or that there has been a reasonable attempt to contact the opposing party and ascertain its position; and
 - (9) a proposed Order in Microsoft Word format, in accordance with Rule .0609 of this Section.
- (d) Motions submitted pursuant to G.S. 97-25 and requesting emergency medical relief shall contain the following:
- (1) a boldface or otherwise emphasized designation as "Emergency Medical Motion";
 - (2) if the employee is unrepresented, the employee's telephone number and, if available, the employee's email address and fax number;
 - (3) the adjuster's name, email address, telephone number, and fax number if counsel for the employer/carrier has not been retained;
 - (4) an explanation of the medical diagnosis and treatment recommendation of the health care provider that requires emergency attention;
 - (5) a statement of the need for a shortened time period for review, including relevant dates and the potential for adverse consequences if the recommended relief is not provided emergently;
- (6) an explanation of opinions known and in the possession of the movant by any relevant experts, independent medical examiner, and second opinion examiners;
 - (7) a representation that informal means of resolving the issue have been attempted in good faith, and a statement of the opposing party's position or that there has been a reasonable attempt to contact the opposing party and ascertain its position;
 - (8) documents known and in the possession of the movant relevant to the request, including relevant medical records; and
 - (9) a proposed Order in Microsoft Word format, in accordance with Rule .0609 of this Section.
- (e) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of any time allowed for response and whether informal telephonic oral argument is necessary. The Commission shall consider the interests of justice or judicial economy when determining the time allowed for response and whether informal telephonic oral argument is necessary.
- (f) A party may appeal an Order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of this Subchapter by filing notice of appeal in accordance with Rule .0108 of this Subchapter within 15 calendar days of receipt of the Order. Notices of appeal shall be submitted via EDPF under the category "Medical Motions and Responses." A letter or motion expressing an intent to appeal a decision of the Executive Secretary shall be considered a request for an expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter or motion shall specifically identify the Order from which the appeal is taken and shall indicate that the appeal is from an administrative Order by the Executive Secretary entered pursuant to G.S. 97-25(f)(1). After receipt of a notice of appeal, the appeal shall be assigned to a Deputy Commissioner and an Order under the name of the Deputy Commissioner to which the appeal is assigned shall be issued within five days of receipt of the notice of appeal.
- (g) Depositions, if requested by the parties or ordered by the Deputy Commissioner, shall be taken in accordance with Rule .0612 of this Section and on the Deputy Commissioner's order pursuant to G.S. 97-25. In full evidentiary hearings conducted by a Deputy Commissioner pursuant to G.S. 97-25(f)(1) and (f)(2), depositions shall be completed and all transcripts, briefs, and proposed Opinion and Awards filed with the Deputy Commissioner in accordance with Rule .0108 of this Subchapter within 60 days of the filing of the motion or appeal. The Deputy Commissioner may reduce or enlarge the timeframe contained in this Paragraph for good cause shown or upon agreement of the parties.
- (h) A party may appeal the decision of a Deputy Commissioner filed pursuant to G.S. 97-25(f)(2) by filing notice of appeal to the Full Commission within 15 calendar days of receipt of the decision in accordance with Rule .0108 of this Subchapter. A letter expressing an intent to appeal a Deputy Commissioner's decision filed pursuant to G.S. 97-25 shall be considered notice of

appeal to the Full Commission, provided that the letter specifically identifies the decision from which appeal is taken and indicates that the appeal is taken from a decision by a Deputy Commissioner pursuant to G.S. 97-25(f)(2). After receipt of notice of appeal, the appeal shall be acknowledged by the Commission within three days by sending an Order under the name of the Chair of the Panel to which the appeal is assigned. The Order shall set the schedule for filing briefs. A Full Commission hearing on an appeal of a medical motion filed pursuant to G.S. 97-25 shall be held telephonically and shall not be recorded unless unusual circumstances arise and the Commission so orders. All correspondence, briefs, and motions related to the appeal shall be addressed to the Chair of the Panel and shall be filed in accordance with Rule .0108 of this Subchapter.

(i) A party may appeal the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee filed pursuant to G.S. 97-25(f)(3) by filing notice of appeal electronically in accordance with Rule .0108 of this Subchapter within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to appeal the Chief Deputy Commissioner's or the Chief Deputy Commissioner's designee's Order filed pursuant to G.S. 97-25(f)(3) shall be considered a notice of appeal, provided that the letter specifically identifies the Order from which appeal is taken and indicates that the appeal is from an Order of a Deputy Commissioner entered pursuant to G.S. 97-25(f)(3). After receipt of notice of appeal, the appeal shall be acknowledged within five days by sending an Order under the name of the Deputy Commissioner to whom the appeal is assigned. The appeal of the administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee shall be subject to G.S. 97-25(f)(2) and G.S. 97-84.

History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77; Eff. January 1, 2011; Amended Eff. February 1, 2016; November 1, 2014; Recodified from 04 NCAC 10A .0609A Eff. June 1, 2018; Amended Eff. December 1, 2018.

11 NCAC 23A .0610 PRE-TRIAL AGREEMENT

(a) A Pre-Trial Agreement shall be signed by the attorneys and filed with the Commission in accordance with Rule .0108 of this Subchapter 10 days before the hearing, unless a shorter time period is ordered upon agreement of the parties.

(b) The Pre-Trial Agreement shall be prepared in a form that conforms to the Order on Final Pre-Trial Conference adopted in the North Carolina Rules of Practice for the Superior and District Courts. Should the parties fail to comply with a Pre-Trial Order, the Commissioner or Deputy Commissioner shall remove the case from the hearing docket if required in the interests of justice or to promote judicial economy. Should the parties comply with the Pre-Trial Order after the removal of the case, the Pre-Trial Agreement shall be directed to the Commissioner or Deputy Commissioner who removed the case from the docket and filed in accordance with Rule .0108 of this Subchapter. The Commissioner or Deputy Commissioner shall order the case returned to the hearing docket as if a Request for Hearing had been filed on the date of the Order to return the case to the hearing

docket. No new Form 33 Request that Claim be Assigned for Hearing is required.

(c) If the parties need a conference, a Commissioner or Deputy Commissioner shall order the parties to participate in a pre-trial conference. This conference shall be conducted at such place and by such method as the Commissioner or Deputy Commissioner deems appropriate in the interests of justice or judicial economy, including conference telephone calls.

(d) Any party may request a pre-trial conference to aid in settling the case or resolving contested issues prior to trial. Requests for such pre-trial conferences shall be directed to the Commissioner or Deputy Commissioner before whom the claim has been calendared.

History Note: Authority G.S. 97-80(a); 97-80(b); 97-83; Eff. January 1, 1990; Amended Eff. February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000; March 15, 1995; Recodified from 04 NCAC 10A .0610 Eff. June 1, 2018; Amended Eff. December 1, 2018.

11 NCAC 23A .0611 HEARINGS BEFORE THE COMMISSION

(a) The Commission may, on its own motion, order a hearing or rehearing of any case in dispute. The Commission shall set a contested case for hearing in a location deemed convenient to witnesses and the Commission.

(b) In setting contested cases for hearing, cases in which the payment of workers' compensation benefits is at issue take precedence.

(c) The Commission shall give notice of hearings in every case. Postponement or continuance of a duly scheduled hearing shall be allowed only in the discretion of a Commissioner or Deputy Commissioner before whom the case is set if required in the interests of justice or to promote judicial economy. When a party has not notified the Commission of the attorney representing the party prior to the mailing of calendars for hearing, notice to that party constitutes notice to the party's attorney.

(d) In a contested case, the record includes all prior Opinion and Awards, filed Commission forms, form agreements, awards, and orders of the Commission. Any other documents that the parties wish to have included in the record shall be introduced and received into evidence.

(e) In the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or delayed and rescheduled if the proceedings before the General Court of Justice in that county are cancelled or delayed.

History Note: Authority G.S. 97-79; 97-80(a); 97-84; 97-91; Eff. January 1, 1990; Amended Eff. November 1, 2014; June 1, 2000; Recodified from 04 NCAC 10A .0611 Eff. June 1, 2018; Amended Eff. December 1, 2018.

11 NCAC 23A .0618 DISQUALIFICATION OF A COMMISSIONER OR DEPUTY COMMISSIONER

History Note: Authority G.S. 97-79(b); 97-80(a); Eff. November 1, 2014;

*Recodified from 04 NCAC 10A .0618 Eff. June 1, 2018;
Repealed Eff. December 1, 2018.*

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 09B .0203 ADMISSION OF TRAINEES

(a) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.

(b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment if the individual will be 20 years of age prior to the date of the State Comprehensive Examination for the course.

(c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302 of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.

(e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual, within one year prior to admission to the Basic Law Enforcement Training Course, scores at or above mastery level on the NROC Edready™ Skills Inventory for English or places into course DRE 098 or above at a North Carolina Community College as a result of taking the Reading and English component of the North Carolina Diagnostic Assessment and Placement test as approved by the State Board of Community Colleges on October 17, 2014, (<http://www.nccommunitycolleges.edu/state-board-community-colleges/meetings/october-17-2014>), or has taken the reading component of a nationally standardized test and has scored at or above the tenth grade level or the equivalent. For the purposes of this Rule:

- (1) Partial or limited enrollee does not include enrollees who hold, or have held within 12 months prior to the date of enrollment, general certification pursuant to 12 NCAC 09C .0304.
- (2) A "nationally standardized test" means a test that:
 - (A) reports scores as national percentiles, stanines, or grade equivalents; and
 - (B) compares student test results to a national norm.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided to the School Director a medical examination report, completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform

the essential job functions of a criminal justice officer. The Director of the Standards Division shall grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual is a high school, college, or university graduate or has received a high school equivalency credential recognized by the issuing state. High school diplomas earned through correspondence enrollment in an entity that charges a fee and requires the individual to complete little or no education or coursework to obtain a high diploma shall not be recognized toward the educational requirements.

(h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided the School Director a certified criminal record check for local and state records for the time period since the trainee has become an adult and from all locations where the trainee has resided since becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check shall satisfy this requirement.

(i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who has been convicted of the following:

- (1) a felony;
- (2) a crime for which the punishment could have been imprisonment for more than two years;
- (3) a crime or unlawful act defined as a Class B Misdemeanor within the five year period prior to the date of application for employment, unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission;
- (4) four or more crimes or unlawful acts defined as Class B Misdemeanors, regardless of the date of conviction;
- (5) four or more crimes or unlawful acts defined as Class A Misdemeanors, except the trainee may be enrolled if the last conviction date occurred more than two years prior to the date of enrollment; or
- (6) a combination of four or more Class A Misdemeanors or Class B Misdemeanors regardless of the date of conviction, unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(j) Individuals charged with crimes specified in Paragraph (i) of this Rule may be admitted into the Basic Law Enforcement Training Course if such offenses were dismissed or the person was found not guilty, but completion of the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a

presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no contest to, pleads guilty to, or is found guilty of, and of all Domestic Violence Protective Orders (G.S. 50B) that are issued by a judicial official after a hearing that provides an opportunity for both parties to be present. This includes all criminal offenses except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions that shall be reported to the School Director are G.S. 20-138.1 (driving while under the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5)(fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5)(fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph shall be in writing and specify the nature of the offense, the court where the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Protective Order (50B), and the final disposition and the date thereof. The notifications required under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981;

Amended Eff. January 1, 2019; April 1, 2018; January 1, 2017; February 1, 2016; November 1, 2015; March 1, 2015; January 1, 2015; June 1, 2012; February 1, 2011; June 1, 2010; December 1, 2004; July 1, 2004; August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985.

12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS

(a) A person participating in a Commission-certified criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification, or Professional Lecturer Certification as outlined in Rules .0302, .0304 and 0306 of this Section. Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord

with the requirements of this Section and as stated on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his or her specialized areas. Such competence shall include remaining current in the instructor's area of expertise, which shall be demonstrated by attending and completing all updated instructor training courses required by the Commission.

(d) If a person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules in this Subchapter, the Commission shall take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; and
- (5) revoking the individual's certification.

(e) The Commission shall deny, suspend, or revoke an instructor's certification if the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification;
- (2) has failed to remain knowledgeable in the person's areas of expertise;
- (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Instructor Training Manual" as found in 12 NCAC 09B .0209;
- (4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in 12 NCAC 09B .0205;
- (5) has demonstrated unprofessional personal conduct in the delivery of Commission-mandated training. For the purposes of this Subparagraph, unprofessional personal conduct means an act that is: job-related conduct that constitutes a violation of State or federal law; conviction or commission of a criminal offense, as set out in 12 NCAC 09A .0204; the willful violation of Rules of this Chapter; conduct that is detrimental to instruction in the Commission's mandated courses; the abuse of a client or student whom the instructor is teaching or supervising or falsification of an instructor application or in other employment documentation;
- (6) has demonstrated instructional incompetence;
- (7) has knowingly and willfully obtained or attempted to obtain instructor certification by deceit, fraud, or misrepresentation;
- (8) has failed to meet or maintain good moral character as defined in: re Willis, 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976

(1975); in re State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); in re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); in re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority, and as required to effectively discharge the duties of a criminal justice instructor;

- (9) has failed to deliver training in a manner consistent with the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program as found in 12 NCAC 09H .0102;
- (10) has knowingly and willfully aided or attempted to aid any person in obtaining qualification or certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program by deceit, fraud, or misrepresentation;
- (11) has committed or been convicted of an offense which could result in the denial, suspension, or revocation of an officer's law enforcement certification, pursuant to 12 NCAC 09G .0504; or
- (12) has knowingly made a material misrepresentation of any information required for certification or accreditation.

(f) When a person certified as a law enforcement officer by the North Carolina Criminal Justice Education and Training Standards Commission (Commission), the North Carolina Sheriffs Education and Training Standards Commission (Sheriffs' Commission), the North Carolina Department of Insurance, Office of State Fire Marshal, Fire Rescue Commission (Fire Commission), or Office of Emergency Medical Services has his or her law enforcement officer or fire and rescue certification suspended or revoked by their respective Commission, that person shall report the suspension or revocation to the Criminal Justice Standards within 30 days. He or she shall also have his or her

General Instructor Certification (if applicable) similarly and automatically suspended or revoked for the same time period as his or her respective Commission certification.

- (1) This suspension or revocation of the General Instructor certification shall also include suspension or revocation to any Commission recognized Specialized or additional instructor certification, as outlined in 12 NCAC 09B .0304.
- (2) If the term of suspension or revocation exceeds the expiration date of the instructor's initial certification expiration date, he or she shall forfeit their certifications as a General Instructor and Specialized Instructor and shall be required to obtain certification pursuant to the requirements of 12 NCAC 09B .0302 before any instruction may be delivered in any Commission-approved or mandated training, including the completion of a subsequent General Instructor's training course in its entirety.
- (3) If the term of suspension or revocation does not exceed the expiration date of the instructor's initial certification expiration date, the instructor shall be reinstated as a General Instructor only upon reinstatement of his or her law enforcement officer certification by the Commission. The terms of renewal for the existing General Instructor and Specialized Instructor certifications shall remain subject to all renewal requirements pursuant to 12 NCAC 09B .0303(c) by the next immediate expiration date.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. December 1, 2018; October 1, 2017; October 1, 2009; August 1, 2004; April 1, 1999; July 1, 1991; January 1, 1985.

12 NCAC 09G .0102 DEFINITIONS

The following definitions apply throughout this Subchapter only:

- (1) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified offense.
- (2) "Convicted" or "Conviction" means, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Correctional Officer" means an employee of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, responsible for the custody of inmates or offenders.
- (4) "Corrections Officer" means either or both of the two classes of officers employed by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice: correctional officer or probation/parole officer.
- (5) "Criminal Justice System" means the whole of the State and local criminal justice agencies including the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (6) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.

APPROVED RULES

- (7) "Educational Points" means points earned toward the State Correction Officers' Professional Certificate Program for studies completed, with passing scores achieved, for semester hour or quarter hour credit at a regionally accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (8) "High School" means a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- (9) "In-Service Training Coordinator" means a person designated by a Criminal Justice Agency head to administer the agency's In-Service Training program.
- (10) "Misdemeanor" for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses for corrections officers are classified by the Commission as the following as set forth in G.S. or other state or federal law:
- (a) 14-2.5 Punishment for attempt (offenses that are Class A-1 misdemeanor)
 - (b) 14-32.1(f) Simple Assault on handicapped persons
 - (c) 14-33(b)(9) Assault, battery against sports official
 - (d) 14-33(c) Assault, battery with circumstances
 - (e) 14-34 Assault by pointing a gun
 - (f) 14-72 Larceny of property; receiving stolen goods etc.; not more than one thousand dollars (\$1000.00)(14-72(a))
 - (g) 14-72.1 Concealment of merchandise (14-72.1(e); third or subsequent offense)
 - (h) 14-76 Larceny, mutilation, or destruction of public records/papers
 - (i) CH 14 Art. 19A False/fraudulent use of credit device (14-113.6)
 - (j) CH 14 Art. 19B Financial transaction card crime
 - (k) 14-114(a) Fraudulent disposal of personal property on which there is a security interest
 - (l) 14-118 Blackmailing
 - (m) 14-118.2 Obtaining academic credit by fraudulent means (14-118.2(b))
 - (n) 14-122.1 Falsifying documents issued by a school (14-122.1(c))
 - (o) 14-127 Willful and wanton injury to real property
 - (p) 14-160 Willful and wanton injury to personal property greater than two hundred dollars (\$200.00)(14-160(b))
 - (q) 14-190.5 Preparation of obscene photographs
 - (r) 14-190.9 Indecent Exposure
 - (s) 14-190.14 Displaying material harmful to minors (14-190.14(b))
 - (t) 14-190.15 Disseminating harmful material to minors (14-190.15(d))
 - (u) 14-202.2 Indecent liberties between children
 - (v) 14-204 Prostitution
 - (w) 14-223 Resisting officers
 - (x) 14-225(a) False, etc., reports to law enforcement agencies or officers
 - (y) 14-230 Willfully failing to discharge duties
 - (z) 14-231 Failing to make reports and discharge other duties
 - (aa) 14-232 Swearing falsely to official records
 - (bb) 14-239 Allowing prisoners to escape; punishment
 - (cc) 14-255 Escape of working prisoners from custody
 - (dd) 14-256 Prison breach and escape
 - (ee) 14-258.1(b) Furnishing certain contraband to inmates
 - (ff) 14-259 Harboring or aiding certain persons; misdemeanants
 - (gg) CH 14 Art. 34 Persuading inmates to escape; harboring fugitives (14-268)
 - (hh) 14-269.2 Weapons on campus or other educational property (14-269.2(d), (e) and (f))
 - (ii) 14-269.3(a) Weapons where alcoholic beverages are sold and consumed
 - (jj) 14-269.4 Weapons on state property and in courthouses
 - (kk) 14-269.6 Possession and sale of spring-loaded projectile knives prohibited (14-269.6(b))
 - (ll) 14-277 Impersonation of a law-enforcement or other public officer verbally, by displaying a badge or insignia, or by operating a red light (14-277 (d1) and (e))
 - (mm) 14-277.2(a) Weapons at parades, etc., prohibited
 - (nn) 14-277.3A Stalking
 - (oo) 14-288.2(b) Riot

(pp)	14-288.2(d)	Inciting to riot
(qq)	14-288.6(a)	Looting; trespassing during emergency
(rr)	14-315(a)	Selling or giving weapons to minors
(ss)	14-315.1	Storage of firearms to protect minors
(tt)	14-316.1	Contributing to delinquency
(uu)	14-318.2	Child abuse
(vv)	14-360(a)	Cruelty to animals
(ww)	14-361	Instigating or promoting cruelty to animals
(xx)	14-401.14	Ethnic intimidation; teaching any technique to be used for
(yy)	14-454(a) or (b)	Accessing computers less than \$1000 in damages
(zz)	14-458	Computer trespass (Damage less than two thousand five hundred dollars) (\$2500.00)
(aaa)	15A-287	Interception and disclosure of wire etc. communications
(bbb)	15B-7(b)	Filing false or fraudulent application for compensation award
(ccc)	18B-902(c)	False statements in application for ABC permit (18B-102(b))
(ddd)	20-37.8(a) & (c)	Fraudulent use of a fictitious name for a special identification card
(eee)	20-102.1	False report of theft or conversion of a motor vehicle
(fff)	20-111(5)	Fictitious name or address in application for registration
(ggg)	20-130.1	Use of red or blue lights on vehicles prohibited (20-130.1(e))
(hhh)	20-137.2	Operation of vehicles resembling law-enforcement vehicles (20-137.2(b))
(iii)	20-138.1	Driving while impaired (punishment level 1 (20-179(g)) or 2 (20-179(h))
(jjj)	20-138.2(e)	Impaired driving in commercial vehicle
(kkk)	20-141.5(a)	Speeding to elude arrest
(lll)	20-166(b)	Duty to stop in event of accident or collision
(mmm)	20-166(c)	Duty to stop in event of accident or collision
(nnn)	20-166(c1)	Duty to stop in event of accident or collision
(ooo)	50B-4.1(a)	Knowingly violating valid protective order
(ppp)	58-33-105	False statement in applications for insurance
(qqq)	58-81-5	Careless or negligent setting of fires
(rrr)	14-111.4	Misuse of 911 system
(sss)	90-95(d)(2)	Possession of schedule II, III, IV
(ttt)	90-95(d)(3)	Possession of Schedule V
(uuu)	90-95(d)(4)	Possession of Schedule VI (when punishable as Class 1 misdemeanor)
(vvv)	90-95(e)(4)	Conviction of 2 or more violations of Art. 5
(www)	90-95(e)(7)	Conviction of 2 or more violations of Art. 5
(xxx)	90-113.22	Possession of drug paraphernalia (90-113.22(b))
(yyy)	90-113.23	Manufacture or delivery of drug paraphernalia (90-113.23(c))
(zzz)	97-88.2(a)	Misrepresentation to get worker's compensation payment less than four hundred dollars (\$400.00)
(aaaa)	108A-39(a)	Fraudulent misrepresentation of public assistance
(bbbb)	108A-53	Fraudulent misrepresentation of electronic food and nutrition benefits
(cccc)	108A-64	Medical assistance recipient fraud; less than four hundred dollars (\$400.00)(108-64(c)(2))
(dddd)	108A-80	Recipient check register/list of all recipients of AFDC and state-county special assistance (108A-80(b))
(eeee)	108A-80	Recipient check register/ list of all recipients of AFDC and state-county special assistance; political mailing list (108A-80(c))
(ffff)	113-290.1(a)(2)	Criminally negligent hunting; no bodily disfigurement
(gggg)	113-290.1(a)(3)	Criminally negligent hunting; bodily disfigurement
(hhhh)	113-290.1(a)(4)	Criminally negligent hunting; death results
(iiii)	113-290.1(d)	Criminally negligent hunting; person convicted/suspended license
(jjjj)	143-58.1(a)	Use of public purchase or contract for private benefit (143-58.1(c))
(kkkk)	148-45(d)	Aiding escape or attempted escape from prison
(llll)	162-55	Injury to prisoner by jailer
(mmmm)		Common-Law misdemeanors:
(i)		Going Armed to the Terror of the People
(ii)		Common-Law Mayhem
(iii)		False Imprisonment

- (iv) Common-Law Robbery
- (v) Common-Law Forgery
- (vi) Common-Law Uttering of Forged paper
- (vii) Forcible Trespass
- (viii) Unlawful Assembly
- (ix) Common-Law Obstruction of Justice
- (nnnn) Those offenses occurring in other jurisdictions that are comparable to the offenses specifically listed in (a) through (rrrr) of this Rule.
- (oooo) Any offense proscribed by 18 U.S.C. 922 (1996), (<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap44-sec922.pdf>), that would prohibit possessing a firearm or ammunition.
- (11) "Pilot Courses" means those courses approved by the Education and Training Committee, consistent with 12 NCAC 09G .0404, which are used to develop new training course curricula.
- (12) "Probation/Parole Officer" means an employee of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, whose duties include supervising, evaluating, or otherwise instructing offenders placed on probation, parole, post release supervision, or assigned to any other community-based program operated by the Division of Adult Correction and Juvenile Justice.
- (13) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when a certified institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified course.
- (14) "School" means an institution, college, university, academy, or agency that offers penal or corrections training for correctional officers or probation/parole officers. "School" includes the corrections training course curricula, instructors, and facilities.
- (15) "School Director" means the person designated by the Secretary of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice to administer the School.
- (16) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (17) "State Corrections Training Points" means points earned toward the State Corrections Officers' Professional Certificate Program by completion of Commission-approved corrections training courses. Twenty classroom hours of Commission-approved corrections training equals one State Corrections training point.

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. December 1, 2018; January 1, 2017; January 1, 2015; April 1, 2009; August 1, 2004.*

**12 NCAC 09G .0504 SUSPENSION; REVOCATION;
OR DENIAL OF CERTIFICATION**

(a) The Commission shall revoke the certification of a correctional officer or probation/parole officer when the Commission finds that the officer has committed or been convicted of a felony offense.

(b) The Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and completed with passing scores the required basic training course in its entirety in time periods prescribed in 12 NCAC 09G .0400 applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the employment standards required by 12 NCAC 09G .0200 for the category of the officer's certification or fails to meet or maintain one or more of the training standards required by 12 NCAC 09G .0400 for the category of the officer's certification;

- (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification;
- (4) has been discharged by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice for:
 - (A) commission or conviction of a motor vehicle offense requiring the revocation of the officer's drivers license; or
 - (B) lack of good moral character as defined in 12 NCAC 09G .0206;
- (5) has been discharged by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice because the officer lacks the mental or physical capabilities to fulfill the responsibilities of a corrections officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation, or cheating whatsoever,

- obtained or attempted to obtain credit, training, or certification from the Commission;
- (8) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation, or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training, or certification from the Commission;
- (9) has failed to notify the Standards Division of all criminal charges or convictions as required by 12 NCAC 09G .0302;
- (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- (11) has refused to submit to an applicant drug screen as required by 12 NCAC 09G .0206; or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the Department of Public Safety, Division of Adult Correction and Juvenile Justice;
- (12) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09G .0206, where the positive result cannot be explained to the Commission's satisfaction. For the purposes of this Rule, "to the Commission's satisfaction" shall be determined on a case-by-case basis, and the use of a prescribed drug shall be satisfactory; or
- (13) has been denied certification or had such certification suspended or revoked by a previous action of the North Carolina Criminal Justice Education and Training Standards Commission, the North Carolina Company Police Program, the North Carolina Campus Police Program, the North Carolina Sheriffs' Education and Training Standards Commission, or a similar North Carolina, out of state, or federal approving, certifying, or licensing agency whose function is the same or similar to the agencies if the certification was denied, suspended, or revoked based on grounds that would constitute a violation of this Subchapter.

(c) Following suspension, revocation, or denial of the person's certification, the person shall not remain employed or appointed as a corrections officer and the person shall not exercise any authority of a corrections officer during a period for which the person's certification is suspended, revoked, or denied.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. December 1, 2018; January 1, 2015; April 1, 2009; December 1, 2004; August 1, 2004.

12 NCAC 09G .0505 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL

(a) When the Commission revokes or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of the sanction shall be 10 years where the cause of sanction is:

- (1) commission or conviction of a felony offense;
- (2) the second suspension of an officer's certification for any of the causes requiring a three-year period of suspension; or
- (3) revocation or denial of certification by the North Carolina Sheriffs' Education and Training Standards Commission based on grounds that would constitute a violation of this Subchapter.

(b) When the Commission suspends or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of sanction shall be not less than three years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (c) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is:

- (1) commission or conviction of a misdemeanor as defined in 12 NCAC 09G .0102;
- (2) discharge by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice pursuant to 12 NCAC 09G .0504(b)(4) and (b)(5) of this Section;
- (3) refusal to submit to the applicant drug screen required by the Rules in this Subchapter;
- (4) production of a positive result on a drug screen reported to the Commission under 12 NCAC 09G .0206, where the positive result cannot be explained to the Commission's satisfaction. For the purposes of this Rule, "to the Commission's satisfaction" shall be determined on a case-by-case basis, and the use of a prescribed drug shall be satisfactory;
- (5) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (6) has knowingly and willfully obtained, attempted to obtain, aided another person to obtain, or aided another person attempt to obtain credit, training or certification by any means of false pretense, deception, defraudation, misrepresentation or cheating;
- (7) failure to make either of the notifications as required by 12 NCAC 09G .0302;
- (8) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
- (9) certification revoked or denied by the North Carolina Sheriffs' Education and Training Standards Commission, if such certification was revoked or denied based on grounds that would constitute a violation of Section 09G of these Rules.

(c) When the Commission suspends or denies the certification of a corrections officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy relevant basic training requirements;
- (2) failure to meet or maintain the minimum standards for certification; or
- (3) discharge from the North Carolina Department of Correction for impairment of physical or mental capabilities.

History Note: Authority G.S. 17C-6; 17C-10; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. December 1, 2018; December 1, 2004.

12 NCAC 09G .0701 REPORT: APPLICATION: AND CERTIFICATION FORMS

(a) The following are Commission approved forms to be used by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice in making reports, applications, or requests for certification to the Commission:

- (1) The Medical History Statement. The Medical History Statement is a questionnaire to be completed by an applicant. The form includes information pertinent to the applicant's present and past physical condition, injuries, diseases, or operations.
- (2) The Medical Examination Report. The Medical Examination Report is a form provided to the examining physician to record the results of the applicant's medical examination. The Medical Examination Report is form that includes the following information regarding the applicant:
 - (A) contact information;
 - (B) date of birth; and
 - (C) medical information.
- (3) The Request for School Accreditation Form. The Request for School Accreditation Form provides the means for an agency or institution to become certified to conduct corrections training and to affiliate with the Criminal Justice Education and Training System. It seeks information on the physical, financial, and staff support provided to the school by the agency or institution.
- (4) The Request for Training Course Accreditation Form. The Request for Training Course Accreditation Form is used to obtain accreditation for a school's particular offering of a corrections training course. It requests information regarding the administration of the course, the particular facilities to be used, and the proposed curriculum of the course.
- (5) The Report of Appointment/Application for Certification. The Report of Appointment/Application for Certification is

used for reporting the appointment of correctional officers and probation/parole officers, and indicating the applicant's progress toward completing the requirements for certification. The Report of Appointment/Application for Certification form includes the following information:

- (A) type of certification;
- (B) applicant contact information;
- (C) criminal history;
- (D) military history;
- (E) applicant appointment date and position title; and
- (F) medical information.

(6) Notice of Transfer. The Notice of Transfer form is used to notify the Standards Division of an officer's change in the type of corrections officer certification. The Notice of Transfer form includes the following information:

- (A) applicant information;
- (B) transfer information;
- (C) employment date and title; and
- (D) education completed.

(7) Report of Separation. The North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, when separating a person from employment as a correctional officer or probation/parole officer shall forward to the Commission a completed Report of Separation or Department of Public Safety Personnel Action Form within 30 days of separation. The Report of Separation form includes the following information:

- (A) type of certification;
- (B) applicant contact information;
- (C) criminal history; and
- (D) applicant appointment date and position title.

(8) The Request for Instructional Certification Form. The Request for Instructional Certification Form is used by persons seeking certification as general instructors. It seeks information regarding personal and professional background as well as documentation of the specific criteria for certification. The Request for Instructional Certification form includes:

- (A) applicant contact information;
- (B) certification type;
- (C) employment date and title;
- (D) education completed;
- (E) practical experience; and
- (F) recommendation

(9) The Recommendation for General Instructor Certification Form. The Recommendation for General Instructor Certification Form is completed by a School Director or agency head after an instructor has finished the required probationary period. In the form the official

recommends that the instructor receive General Instructor Certification and certifies that the official has observed and evaluated the instructor to be a teaching professional. The Recommendation for General Instructional Certification form includes:

- (A) applicant contact information;
- (B) certification type;
- (C) employment date and title;
- (D) education completed;
- (E) practical experience; and
- (F) recommendation

(10) The Application for Award of State Corrections Certificate. The Application For Award of State Corrections Certificate requests information regarding the education, training, and experience qualifying the applicant for various levels of certification under the State Corrections Officers' Professional Certificate Program. The Application for Award of State Corrections Certificate form includes:

- (A) applicant contact information;
- (B) certificate type;
- (C) employment date and title;
- (D) education completed;
- (E) practical experience; and
- (F) recommendation

(b) All forms contained in this Rule may be accessed on the agency's website at <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. December 1, 2018; August 1, 2002.

12 NCAC 10B .0302 DOCUMENTATION OF EDUCATIONAL REQUIREMENT

(a) Each applicant for Justice Officer certification shall furnish documentary evidence of high school, college or university graduation to the employing agency. Documentary evidence of high school graduation consists of diplomas or transcripts from public schools or private schools which meet standards adopted by either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or a comparable out of state agency. Documentary evidence of college or university graduation consists of diplomas or transcripts from colleges or universities accredited as such by the Department of Education of the state in which the institution is located, an accredited body recognized by either the U.S. Department of Education or Council for Higher Education Accreditation, or the state university of the state in which the institution is located.

(b) High School Diplomas earned through home school programs must be accompanied by a true and accurate or certified transcript and must meet the requirements of Part 3 of Article 39 of Chapter 115C of the North Carolina General Statutes, or a comparable out-of-state statute.

(c) Diplomas earned from High Schools outside of the United States must be translated into English and be accompanied by an authentic transcript. Transcripts shall be evaluated to ensure they are scholastically comparable to United States curriculum requirements.

(d) High School diplomas earned through on-line or correspondence courses from an entity that charges a fee and requires the student to complete little or no education or coursework to obtain a high school diploma, are not recognized toward the minimum educational requirements.

(e) Documentary evidence of having earned a High School Equivalency (HSE) Diploma shall be satisfied by a certified copy of a nationally recognized high school equivalency credential from the issuing state.

(f) Documentary evidence of the attainment of satisfactory scores on any military high school equivalency examination is acceptable as evidence of high school graduation if verified by a true copy of the veteran's DD214.

History Note: Authority G.S. 17E-4; Eff. January 1, 1989; Amended Eff. January 1, 2019; January 1, 2008; August 1, 2000; January 1, 1992; January 1, 1990.

12 NCAC 10B .0505 EVALUATION FOR TRAINING WAIVER

This Rule shall be used by Division staff in evaluating an applicant's training and experience to determine eligibility for a waiver of training as set forth in 12 NCAC 10B .0504(a).

(1) Persons who separated from a sworn law enforcement position during their probationary period after having completed a commission-certified Basic Law Enforcement Training Course and who have been separated from a sworn law enforcement position for one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.

(2) Persons who separated from a sworn law enforcement position during their probationary period without having completed Basic Law Enforcement Training, or whose certification was suspended pursuant to 12 NCAC 10B .0204(b)(1), and who have remained separated or suspended for over one year shall:

- (a) complete a commission-certified Basic Law Enforcement Training Course in its entirety;
- (b) pass the State Comprehensive Examination; and
- (c) complete a 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(3) Persons transferring to a Sheriff's Office from another law enforcement agency who held certification and who have previously completed a commission-certified Basic Law Enforcement Training Course beginning on or

after October 1, 1984, and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall complete the following topics of a commission-certified Basic Law Enforcement Training Course:

- (a) Civil Process 24 hours
 - (b) Sheriffs' Responsibilities: Detention Duties 4 hours
 - (c) Sheriffs' Responsibilities: Court Duties 6 hours
- UNIT TOTAL 34 hours

Following completion of the required training topics, the applicant shall pass that portion of the State Comprehensive Examination which deals with those subjects within 12 months of the date of appointment as defined in 12 NCAC 10B .0103(1).

- (4) Unless a waiver has been granted pursuant to 12 NCAC 10B .1901, persons who have training and experience as a military law enforcement officer and are appointed as a deputy sheriff in North Carolina shall, within the 12 month probationary period set forth in 12 NCAC 10B .0503(a), complete:
 - (a) a commission-certified Basic Law Enforcement Training Course in its entirety regardless of previous military training and experience; and
 - (b) pass the State Comprehensive Examination.
- (5) Persons transferring to a sheriff's office from another law enforcement agency who have previously completed a commission-certified Basic Law Enforcement Training Course beginning on or after January 1, 1996 through July 1, 1997, and who did not complete the Commission's Driver Training curriculum, and who have been separated from a sworn law enforcement position for no more than one year or who have had no break in service shall complete the following topic of a Commission-certified Basic Law Enforcement Training Course within 12 months of the date of appointment as defined in 12 NCAC 10B .0103(1): Law Enforcement Driver Training 40 hours.
- (6) North Carolina applicants; qualified out-of-state transferees; and qualified federal transferees who meet the requirements set forth in Items (7), (8) and (9) of this Rule shall be allowed to select one of the following two options for gaining North Carolina certification as a deputy sheriff:
 - (a) Undertake and successfully complete Basic Law Enforcement Training in its entirety during a one year probationary period and successfully

pass the State Comprehensive Examination; or

- (b) Pass the following entry criteria:
 - (i) Challenge the Basic Law Enforcement Training Comprehensive State Examination to be delivered at the end of an ongoing Basic Law Enforcement Training Course and successfully pass each unit examination of the comprehensive examination with a minimum score of 70%. Any applicant failing to pass more than two unit examinations shall complete the Basic Law Enforcement Training Course in its entirety. Any applicant failing one or two unit examinations shall enroll in each topic area which comprises that unit taught in a subsequent BLET course and submit to the unit examination at the end of the course and pass that unit examination;
 - (ii) Each applicant shall demonstrate proficiency in the following skills related activities to the satisfaction of an instructor certified by the North Carolina Criminal Justice Education and Training Standards Commission in the corresponding topical area. Successful completion of the skills related activities as set out in this rule shall be documented by the certified instructor on the corresponding Commission approved form found in the "Basic Law Enforcement Training Manual" published by the North Carolina Justice Academy and provided by the Division.
 - (A) First Responder;
 - (B) Firearms;
 - (C) Law Enforcement Driver Training;
 - (D) Physical Fitness; and
 - (E) Subject Control Arrest Techniques.

- (iii) Any applicant failing to pass a unit examination after remediation as referenced in this Rule shall be required to complete Basic Law Enforcement Training in its entirety; and
 - (iv) All criteria referenced in this Rule must be successfully completed within the one-year probationary period.
- (7) North Carolina applicants shall:
- (a) have a minimum of two years full-time sworn law enforcement experience that occurred prior to their application;
 - (b) have had a break in service exceeding one year;
 - (c) have previously received General or Grandfather certification as a sworn law enforcement officer by either the Commission or the North Carolina Criminal Justice Education and Training Standards Commission, and such certification has not been denied, revoked or suspended by either Commission; and
 - (d) have held general powers of arrest.
- (8) Out-of-state transferees shall:
- (a) have a minimum of two years full-time sworn law enforcement experience that occurred prior to their application;
 - (b) have held certification in good standing as a sworn law enforcement officer from the appropriate Peace Officer's Standards and Training entity in the transferee's respective state;
 - (c) have had general powers of arrest; and
 - (d) submit documentation verifying their qualified status.
- (9) Federal Transferees shall:
- (a) have a minimum of two years full-time sworn law enforcement experience;
 - (b) have held certification or commissioning as a sworn law enforcement officer from the appropriate federal entity authorized to issue such sworn law enforcement officers certification or commission;
 - (c) have held general powers of arrest; and
 - (d) submit documentation verifying their qualified status.
- (10) Persons transferring to a sheriff's office from another law enforcement agency who held certification, who have previously been granted a training waiver by the North Carolina Criminal Justice Commission and who have been separated from a sworn law enforcement

position for no more than one year or who had no break in service shall not be required to complete the Basic Law Enforcement Training course, but shall have the waiver honored by this Commission.

- (11) Persons previously holding Grandfather law enforcement certification in accordance with G.S. 17C-10(a) or G.S. 17E-7(a) who have been separated from a sworn law enforcement position for less than one year or have had no break in service shall not be required to complete a commission-certified Basic Law Enforcement Training Course.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 1989; Amended Eff. January 1, 2005; August 1, 2002; August 1, 2000; August 1, 1998; February 1, 1998; January 1, 1996; January 1, 1994; January 1, 1993; January 1, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018; Amended Eff. January 1, 2019.

12 NCAC 10B .0510 TRAINING FOR SCHOOL RESOURCE OFFICERS

(a) The School Resource Officer training course for law enforcement officers shall be designed to provide the trainee with the skills and knowledge to perform in the capacity of a School Resource Officer. The course shall consist of not less than 40 hours of training.

(b) The "School Resource Officer Training" course published by the North Carolina Justice Academy shall be used as the curriculum for this training course. Copies of this publication may be inspected at the office of the agency:

Sheriffs' Standards Division
 North Carolina Department of Justice
 1700 Tryon Park Drive
 Post Office Drawer 629
 Raleigh, North Carolina 27602

and may be obtained at the cost of printing and postage from the North Carolina Justice Academy at the following address:

North Carolina Justice Academy
 Post Office Drawer 99
 Salemburg, North Carolina 28385

(c) Deputy Sheriffs assigned by their agency to perform the duties of a School Resource Officer shall:

- (1) Have been issued general certification by the North Carolina Sheriffs' Education and Training Standards Commission as a law enforcement officer; and
- (2) Have completed or will complete within one year after being assigned by their agency as a School Resource Officer the "School Resource Officer Training" course pursuant to Paragraph (b) of this Rule.

History Note: Authority G.S. 17E-4; 17E-7 Eff. January 1, 2019.

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topic areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training and as described in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly increments. A student who completes the training shall receive the number of credits that correspond to the number of hours assigned to the course, regardless of the amount of time the student spends completing the course, where each hour of instruction shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

(b) The 2018 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Strategies to Improve Law Enforcement Interactions and Relationships with Minority Youth;
- (3) Equality in Policing;
- (4) Communications Skills With Persons In Crisis – De-escalation Techniques;
- (5) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (6) Any topic areas of the Sheriff's choosing.

(c) The 2018 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Recognizing Warning Signs and Strategies Associated with Mental Illness;
- (2) Equality in Detention Practices;
- (3) Communications Skills With Persons In Crisis – De-escalation Techniques;
- (4) Career Survival; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

(d) The 2018 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Communications Center Trainer;
- (2) Equality in Policing;

- (3) Communications Skills With Persons In Crisis – De-escalation Techniques; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2019 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
- (2) Juvenile Law Update;
- (3) Individual Wellness: Coping with Stress and PTSD;
- (4) Best Practices for Officers During Community Dissent;
- (5) Law Enforcement Intelligence Update: Gangs and Divisive Groups;
- (6) Domestic Violence: Law and Procedure Update;
- (7) Opioid Awareness and Response;
- (8) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (9) Any topic areas of the Sheriff's choosing.

(f) The 2019 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Detention Officer Legal Update;
- (2) Detention Intelligence Update: Gangs and Divisive Groups;
- (3) Individual Wellness: Coping with Stress and PTSD;
- (4) Inmate Suicide Prevention;
- (5) Opioid Awareness and Response; and
- (6) Any topic areas of the Sheriff's or Department Head's choosing.

(g) The 2019 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) Individual Wellness: Coping with Stress and PTSD;
- (2) Civil Liability for Telecommunicators;
- (3) Human Fatigue in Shift Work; Strategies for Improving Performance;
- (4) Handling Difficult Callers; and
- (5) Any topic areas of the Sheriff's or Department Head's choosing.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 2007; Amended Eff. January 1, 2018; January 1, 2017; January 1, 2016; January 1, 2015; February 1, 2014; January 1, 2013; February 1, 2012; January 1, 2011; January 1, 2010; January 1, 2009; January 1, 2008; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018; Amended Eff. January 1, 2019.

TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

14B NCAC 15A .2201 DEFINITIONS

The following definitions apply to this Section:

- (1) "Collector" means a person, other than an industry member, engaged in the collection of one or more wines, decorative decanters of spirituous liquor, or antique spirituous liquors.
- (2) "Decorative decanters of spirituous liquor" means the manufacturer's original sealed decanters, limited in quantities as a specialized limited run or as a limited edition, filled with spirituous liquor by a person issued a permit pursuant to state or federal law.
- (3) "Private sale" means a sale between two collectors, neither of who are required to hold permits pursuant to Chapter 18B of the General Statutes, except for permits issued pursuant to G.S. 18B-1002(a)(4).

History Note: Authority G.S. 18B-100; 18B-207; 18B-1002; Temporary Adoption Eff. February 23, 2018 (See S.L. 2017-87, s. 19.(a)); Eff. December 1, 2018.

14B NCAC 15A .2202 COLLECTOR TRANSPORT OR SALE PERMITS

To qualify for a permit issued pursuant to G.S. 18B-1002(a)(4), in addition to the applicable information required pursuant to G.S. 18B-900, a collector shall submit an application to the Commission that requires the following information:

- (1) the basis for qualification as a collector;
- (2) whether the application is for the transportation or sale of wine or spirituous liquors;
- (3) a list of the specific wine or spirituous liquors being transported, possessed, or sold, including the name, brand, quantity, and volume of each bottle or decanter;
- (4) pictures of the containers of spirituous liquors to be transported, possessed, or sold in sufficient clarity for the content of the labels to be legible;
- (5) if the application is for a sale, the details of the method of sale including whether the sale will be as a special order pursuant to 14B NCAC 15A .1403, by auction, or by private sale, including the name of the buyer if by special order or private sale, or the name of the auctioneer if by auction; and
- (6) certification under oath to the conditions for permits pursuant to G.S. 18B-900.

History Note: Authority G.S. 18B-100; 18B-207; 18B-900; 18B-1002; Temporary Adoption Eff. February 23, 2018 (See S.L. 2017-87, s. 19.(a)); Eff. December 1, 2018.

14B NCAC 15A .2203 PERMISSIBLE SALES UNDER COLLECTOR TRANSPORT OR SALE PERMIT

(a) Sales of wine or spirituous liquor by the holder of a permit issued pursuant to Rule .2202 of this Section shall be subject to the following conditions:

- (1) sales shall only be made to persons at least 21 years of age;
- (2) sales shall only be made as a special order pursuant to 14B NCAC 15A .1403, by auction, or by private sale;
- (3) sales shall be conducted subject to the dates, time, place, and manner specified in the permit;
- (4) no sales shall be made to a person who is intoxicated as defined in 14B NCAC 15B .0101(2); and
- (5) the quantity of wine or spirituous liquor sold to a single buyer shall not be in excess of the limits set forth in G.S. 18B-303, unless the buyer of the wine or spirituous liquor has a valid permit issued pursuant to G.S. 18B-1002(a)(4).

(b) The wine or spirituous liquor sold pursuant to a permit issued pursuant to this Rule shall remain in the possession of the collector until transferred to the buyer.

(c) A permit issued pursuant to G.S. 18B-1002(a)(4) is not required for sales of wine or spirituous liquors by auction pursuant to G.S. 18B-1002.1.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1002; Temporary Adoption Eff. February 23, 2018 (See S.L. 2017-87, s. 19.(a)); Eff. December 1, 2018.

14B NCAC 15A .2204 SPECIAL AUCTION PERMITS

(a) To qualify for a permit issued pursuant to G.S. 18B-1002.1, in addition to the applicable information required pursuant to G.S. 18B-900, an auction firm or auctioneer licensed pursuant to Chapter 85B of the General Statutes shall submit an application to the Commission that requires the following information:

- (1) a copy of the applicable active license issued by the North Carolina Auctioneers Commission;
- (2) the details of the date, time, duration, place, and manner of the auction;
- (3) a list of the specific wine or spirituous liquors which may be subject to auction, including the name, brand, quantity, and volume of each bottle or decanter; and
- (4) pictures of the containers of spirituous liquors to be sold in sufficient clarity for the content of the labels to be legible.

(b) No permit is required pursuant to G.S. 18B-1002.1 for sale at auction of alcoholic beverages pursuant to a permit issued pursuant to G.S. 18B-1002(a)(1), (2) or (3), or a permit issued pursuant to G.S. 18B-1002(a)(4) when the auction is conducted on the collector's premises and the alcoholic beverages remain in the possession of the collector until transferred to the buyer.

History Note: Authority G.S. 18B-100; 18B-207; 18B-900; 18B-1002.1;

Temporary Adoption Eff. February 23, 2018 (See S.L. 2017-87, s. 19.(a)); Eff. December 1, 2018.

14B NCAC 15A .2205 CONDITIONS OF SALE UNDER SPECIAL AUCTION PERMITS

Sales at auction of wine or spirituous liquor by the holder of a permit issued pursuant to Rule .2204 of this Section shall be subject to the following conditions:

- (1) the auctioneer shall be in physical possession of the wine or spirituous liquor subject to sale at auction;
- (2) sales shall only be made to persons at least 21 years of age;
- (3) sales shall be conducted subject to the date, time, place, and manner specified in the permit;
- (4) no sales shall be made to a person who is intoxicated as defined in 14B NCAC 15B .0101(2);
- (5) delivery of possession of a quantity of wine or spirituous liquor sold pursuant to this Rule to a single buyer in excess of the limits set forth in G.S. 18B-303 shall not be permitted unless the buyer at auction of the wine or spirituous liquor has a valid permit issued pursuant to G.S. 18B-1002(a)(4) or otherwise complies with the provisions of G.S. 18B-303;
- (6) records of sales maintained in accordance with G.S. 85B-7(d) of an auction conducted pursuant to Rule .2204 of this Section shall be open to inspection by the Commission and law enforcement agents in accordance with G.S. 18B-502; and
- (7) purchases by the holder of a permit issued pursuant to Rule .2204 of this Section who bids on and purchases at auction wine or spirituous liquor shall be subject to the conditions, limitations, and requirements of Items (2), (4), and (5) of this Rule.

History Note: Authority G.S. 18B-100; 18B-207; 18B-303; 18B-502; 18B-1002; 18B-1002.1; Temporary Adoption Eff. February 23, 2018 (See S.L. 2017-87, s. 19(a)); Eff. December 1, 2018.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02K .0212 ADDITIONAL DESIGN REQUIREMENTS

- (a) All elements of the dam and reservoir shall conform to generally accepted engineering standards. The safety factors, design standards, and design references that are used shall be included with the final design report and the plans and specifications as set forth in Rule .0201 of this Section.
- (b) Monitoring or inspection devices may be required by the Director for use by inspectors or owners in the inspection during

construction and filling and after completion of construction if the Director determines that these measures are needed to carry out the purposes of the Dam Safety Law of 1967. The Director shall also require that monitoring or inspection devices be observed and the information recorded and made available to the Department.

(c) The plans, construction schedule, and construction specification shall also contain the elements necessary to achieve the conditions specified in G.S. 143-215.31(b).

History Note: Authority G.S. 143-215.26; 143-215.27; 143-215.31; Eff. June 15, 1980; Readopted Eff. December 1, 2018.

15A NCAC 08F .0406 DISCIPLINARY ACTIONS

(a) The Commission, in accordance with the provisions of G.S. 90A-47.5, may suspend or revoke the certificate of a certified operator in charge.

(b) The Chairman of the Commission may issue notification of summary suspension in accordance with the provisions of G.S. 150B-3.

(c) The Chairman shall convene a disciplinary committee to review the circumstances of the proposed disciplinary action(s).

- (1) The disciplinary committee shall include:
 - (A) the Chairman of the Commission;
 - (B) the Vice Chairman of the Commission;
 - (C) both members of the Commission appointed by the Commissioner of Agriculture; and
 - (D) a certified operator who is not a member of the Commission and has been appointed from the public by the Chairman.
- (2) The members of the disciplinary committee shall offer guidance to the Commission Chairman regarding the actions that should be taken against an operator.

(d) Notification of the disciplinary committee meeting shall be sent by certified mail to the last known address of the operator at least 15 days prior to the date of the meeting of the disciplinary committee. This notification shall contain the alleged facts or conduct upon which the proposed revocation or suspension of the certification is based.

(e) The operator shall have an opportunity to submit a written response to the Chairman prior to the date of the disciplinary committee meeting. The operator shall also be given the opportunity to make an oral statement before the disciplinary committee.

(f) Within 10 business days of the conclusion of the disciplinary committee meeting, the Chairman shall issue the decision of the disciplinary committee. If this decision is to issue a revocation or suspension, the Chairman shall advise the operator of the effective date of the action and the facts or conduct upon which the action is based. The revocation or suspension of a certification shall be delivered to the operator and the owner of the system(s) at which the operator works by certified mail, at the last known address for

the operator and owner on file with the Commission, at least 20 days prior to the effective date of the revocation or suspension.

(g) If the certified operator initiates administrative proceedings, the Commission shall defer final action on the matter until receipt of a decision as provided for in G.S. 150B-34.

(h) If an applicant is caught cheating on an examination by a proctor, the applicant shall be removed from the examination, the examination shall not be graded, the fee for the examination shall be forfeited by the applicant, and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set forth in G.S. 90A-47.5 and in this Rule.

(i) If the Commission determines, after the examination has been graded, that an applicant cheated on an examination and certification has been conveyed to the applicant, the certification obtained through the examination shall be revoked and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set forth in G.S. 90A-47.5 and in this Rule.

History Note: Authority G.S. 90A-47.5; Temporary Adoption Eff. January 7, 1997; Eff. August 1, 1998; Readopted Eff. December 1, 2018.

15A NCAC 08G .0802 DISCIPLINARY ACTIONS

(a) The Commission may revoke or suspend the certification of an operator or issue a letter of reprimand to an operator in accordance with the provisions of G.S. 90A-41.

(b) The Chairman of the Commission may issue notification of summary suspension, in accordance with the provisions of G.S. 150B-3.

(c) The Chairman shall convene a disciplinary committee to review the circumstances of the proposed disciplinary action(s).

- (1) The disciplinary committee shall include:
 - (A) the Chairman of the Commission;
 - (B) the Vice Chairman of the Commission;
 - (C) the member of the Commission who represents the type of system at which the operator is employed or another member of the Commission appointed by the Chairman of the Commission; and
 - (D) a certified operator who is not a member of the Commission and has been appointed from the public by the Chairman.

(2) The members of the disciplinary committee shall offer guidance to the Commission chairman in regards to the actions that should be taken against an operator.

(d) Notification of the disciplinary committee meeting shall be sent by certified mail to the last known address of the operator at least 15 days prior to the date of the meeting of the disciplinary committee. This notification shall contain the alleged facts or conduct upon which the proposed revocation or suspension of the certification or letter of reprimand is based.

(e) The operator shall have an opportunity to submit a written response to the Chairman prior to the date of the disciplinary

committee meeting. The operator shall also be given the opportunity to make an oral statement before the disciplinary committee.

(f) Within 10 business days of the conclusion of the disciplinary committee meeting, the Chairman shall issue the decision of the disciplinary committee. If this decision is to issue a revocation or suspension or a letter of reprimand, the Chairman shall advise the operator of the effective date of the action and the facts or conduct upon which the action is based. The revocation or suspension of a certification or the letter of reprimand shall be delivered to the operator and the owner of the system(s) at which the operator works by certified mail, at the last known address for the operator and owner on file with the Commission, at least 20 days prior to the effective date of the revocation or suspension or letter of reprimand.

(g) If the certified operator initiates administrative proceedings, the Commission shall defer final action on the matter until receipt of a decision as provided for in G.S. 150B-34.

(h) If an applicant is caught cheating on an examination by a proctor, the applicant shall be removed from the examination, the examination shall not be graded, the fee for the examination shall be forfeited by the applicant, and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set forth in G.S. 90A-41 and in Rule .0801 of this Section.

(i) If the Commission determines, after the examination has been graded, that an applicant cheated on an examination and certification has been conveyed to the applicant, the certification obtained through the examination shall be revoked and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set forth in G.S. 90A-41 and in Rule .0801 of this Section.

History Note: Authority G.S. 90A-40; 90A-41; Eff. April 1, 1999; Amended Eff. December 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015; Amended Eff. December 1, 2018.

15A NCAC 13B .1101 DEFINITIONS

The definitions in G.S. 130A-309.53 and the following definitions shall apply throughout this Section:

- (1) "Disposal site" means any place at which scrap tires are disposed of by sanitary landfill or incineration.
- (2) "Processing" means chopping, chipping, shredding, slicing, cutting, stamping, dyeing, pyrolyzing, or other physicochemical processing of scrap tires either for disposal or production of useable materials.

History Note: Authority G.S. 130A-309.57; Eff. October 1, 1990; Readopted Eff. December 1, 2018.

15A NCAC 13B .1102 APPLICATION FEE AND ANNUAL PERMIT FEE

History Note: Authority G.S. 130A-309.57; Eff. October 1, 1990; Repealed Eff. December 1, 2018.

15A NCAC 13B .1103 GENERATOR OF SCRAP TIRES

No person shall discard, deposit, or dispose of a scrap tire except at a site or facility permitted to receive scrap tires under these Rules, or at a business exempt from a permit under G.S. 130A-309.57(d).

History Note: Authority G.S. 130A-309.57; Eff. October 1, 1990; Readopted Eff. December 1, 2018.

15A NCAC 13B .1104 GENERAL CONDITIONS

(a) Landfilling of whole scrap tires is prohibited. Shreds or portions of scrap tires less than half of a whole scrap pneumatic tire shall be suitable for landfilling.

(b) The owner or operator of a scrap tire disposal site or processing facility may submit a request to the Division to use a scrap tire disposal or processing method other than the disposal methods in G.S. 130A-309.58. The request shall be included with a permit application or renewal submitted to the Division in accordance with Rule .1106 of this Section, and shall be approved by the Division if the owner or operator demonstrates that the proposed method meets the following conditions:

- (1) is protective of human health and the environment;
- (2) does not create a nuisance or safety hazard; and
- (3) complies with the requirements of this Subchapter.

(c) Scrap Tire Certification Forms in accordance with G.S. 130A-309.58(f) shall be obtained from the Division website at <https://deq.nc.gov/about/divisions/waste-management>.

History Note: Authority G.S. 130A-309.57; 130A-309.58; Eff. October 1, 1990; Readopted Eff. December 1, 2018.

15A NCAC 13B .1105 PERMIT REQUIRED

(a) No person, other than a person exempted by G.S. 130A-309.57(d), shall establish, operate or maintain, or allow to be established, operated or maintained upon land owned, leased, or otherwise controlled by that person, a scrap tire collection site or scrap tire disposal site unless a permit for the site has been obtained from the Division.

(b) Applications for permits submitted in accordance with Rule .1106 of this Section shall be forwarded to the Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh, North Carolina 27699-1646.

(c) A permit is issued to the permit applicant for a particular site and shall not be transferable.

(d) Trailers and covered roll-off containers used as scrap tire collection facilities are exempt from the requirements of Rule .1106(c) of this Section with the exception of Subparagraphs (c)(3) and (c)(5) of this Rule.

(e) Scrap tire collection sites operated by units of local government are exempt from the financial responsibility requirements established in Rule .1111 of this Section.

History Note: Authority G.S. 130A-309.57; Eff. October 1, 1990; Readopted Eff. December 1, 2018.

15A NCAC 13B .1106 SCRAP TIRE COLLECTION SITE PERMIT REQUIREMENTS

(a) A scrap tire collection site permit shall be issued for a period of five years. Permit renewal applications shall be submitted to the Division not less than 60 days prior to the expiration date of the permit.

(b) A permit shall specify the storage limit for a scrap tire collection site.

(c) Scrap tire collection sites shall meet the following siting and design requirements for a permit to be issued:

- (1) a site shall not be located within either the 100-year floodplain or 100 feet of any surface water; A site shall not be located within any wetland as defined in the Federal Clean Water Act, section 404(b)(1), which is hereby incorporated by reference, including any subsequent amendments or additions.
- (2) a site shall maintain a 50-foot buffer between all property lines and scrap tire storage areas;
- (3) the site shall be served by an access road that shall be kept passable at all times for any motor vehicle, including fire trucks;
- (4) the site shall be designed to prevent standing water on-site and prevent off-site drainage problems;
- (5) access to the site shall be controlled to prevent unauthorized entry through the use of barriers such as fences, gates, or berms; and
- (6) the site shall be designed to prevent liquid runoff from a potential tire fire from entering any surface water.

(d) The following information shall be submitted to the Division in an application for a scrap tire collection site permit:

- (1) name and location of proposed facility, including street address or state road number, city, county, and zip code;
- (2) name, address, telephone number, and signature of site operator;
- (3) name, address, telephone number, and signature of property owner, and a copy of the deed or other legal description of the site that would be sufficient as a description in an instrument of conveyance, showing property owner's name;
- (4) a map or aerial photograph showing the area within one-fourth mile of the site, and identifying the following:
 - (A) the property owned or leased for use as a scrap tire collection site by the applicant; and

- (B) the location of all homes, buildings, public or private utilities, roads, wells, water courses, floodplains, and other details regarding the topography;
 - (5) a description of the operation of the facility;
 - (6) quantity of tires, expressed in tons, for the following:
 - (A) the quantity expected to be received per month from each source;
 - (B) the quantity expected to be shipped off-site per month; and
 - (C) the quantity expected to be stored on-site.
 - (7) plans for disposition of all tires collected at the site, including the names, addresses, and permit information, if applicable, of all facilities where the tires will be recycled, processed, or disposed;
 - (8) the projected date of commencing operation;
 - (9) a description of how any waste resulting from the operation of the tire site will be disposed;
 - (10) a description of how the scrap tire collection site will meet the siting and design requirements of Paragraph (c) of this Rule;
 - (11) a letter stating that this use complies with local zoning from the unit of local government having zoning authority over the site. If no zoning is applicable, the unit of local government shall provide documentation to that effect;
 - (12) a letter from the local fire protection authority accepting the responsibility for fire protection services and an annual fire safety survey for the site;
 - (13) a description of how the scrap tire collection site will meet the operational requirements of Rule .1107 of this Section;
 - (14) documentation of the operator's ability to meet the financial responsibility requirements of Rule .1111 of this Section;
 - (15) documentation that all processors or recyclers have access to a disposal site that is permitted to receive scrap tires; and
 - (16) documentation from the Division of Energy, Land, and Mineral Resources within the Department stating that the planned site use and operations comply with the requirements of the Sedimentation Pollution Control Law (15A NCAC 04).
- (1) Owners and operators of collection sites that process scrap tires shall submit to the Division an annual report by August 1 of each year, for the previous calendar year. The report shall be submitted on a form prescribed by the Division. The following information shall be included in the report:
 - (a) the facility name, address, and permit number;
 - (b) the year covered by the report;
 - (c) the total quantity and type of scrap tires or processed tires received at the facility during the year covered by the report;
 - (d) the total quantity and type of scrap tires or processed tires shipped from the facility during the year covered by the report;
 - (e) the quantity of scrap tires or processed tires shipped to each receiving facility identified by name and address; and
 - (f) the total quantity and type of scrap tires or processed tires located at the facility on January 1 of the year covered by the report.
 - (2) All scrap tire collection, processing, or disposal sites that store scrap tires or processed tires outdoors shall comply with the following technical and operational standards:
 - (a) Whole scrap tires shall be placed in an outdoor scrap tire pile(s) having dimensions no greater than 200 feet in length, 50 feet in width, and 15 feet in height.
 - (b) A 50-foot wide fire lane shall be placed around the perimeter of each scrap tire pile. Access to the fire lane for emergency vehicles shall be unobstructed and passable at all times.
 - (c) The owner or operator of any scrap tire collection site shall control mosquitoes and rodents to protect the public health and welfare. Whole and partial scrap tires capable of holding water shall be covered upon receipt with a water shedding material or disposed of, processed, or removed from the site within ten days of receipt. Sliced scrap tires stacked concave-side down shall not be required to be covered. The Division may approve other methods of rodent and mosquito control, if the owner or operator submits a request for the proposed method in writing to the Division, and demonstrates the effectiveness of this method to be protective of public health and the environment, and to

*History Note: Authority G.S. 130A-309.57;
 Eff. October 1, 1990;
 Readopted Eff. December 1, 2018.*

**15A NCAC 13B .1107 SCRAP TIRE COLLECTION
 SITE OPERATIONAL REQUIREMENTS**

Scrap tire collection sites shall meet the following operational requirements:

- comply with the requirements of this Subchapter.
- (d) If the scrap tire collection site receives tires from persons other than the operator of the site, a sign shall be posted at the entrance of the site and the sign shall state the operating hours. An attendant shall be present when the site is open for receipt of tires.
 - (e) No operations involving the use of open flames, blow torches, or flammable substances shall be conducted within 50 feet of a scrap tire or processed materials pile.
 - (f) A fire safety survey shall be conducted annually by local fire protection authorities that accepted responsibility for fire protection services in the letter submitted in accordance with Rule.1106(d)(12) of this Section.
 - (g) Communication equipment shall be maintained at the scrap tire collection site to assure that the site operator is able to contact local fire protection authorities in case of a fire.
 - (h) Debris, grass, underbrush, and other potentially flammable vegetation shall not be within 10 feet of scrap tires or processed materials.
 - (i) The operator of the scrap tire collection site shall prepare and keep an emergency preparedness manual at the site. The manual shall be updated at least once a year, or upon changes in operations at the site. The manual shall contain the following elements:
 - (i) a list of names and numbers of persons to be contacted in the event of a fire, flood, or other emergency;
 - (ii) a list of the emergency response equipment at the scrap tire collection site, its location, and how it should be used in the event of a fire or other emergency;
 - (iii) a description of the procedures to be followed in the event of a fire, including procedures to contain and dispose of the oily material generated by the combustion of large numbers of tires; and
 - (iv) a listing of all hazardous materials stored on-site, their location, and information regarding precautions.
 - (j) The operator of the scrap tire collection site shall within 24 hours notify the Division in the event of a fire or other emergency if that emergency has potential off-site effects. Within two weeks of any emergency involving potential off-site impact, the operator of the site shall submit to the Division a written report describing the cause(s) of the emergency, actions taken to deal with the emergency, results of the actions taken, and an analysis of the success or failure of these actions.
 - (k) The operator of the scrap tire collection site shall maintain the following records and make them available for inspection by the Division at the Division's request:
 - (i) a copy of the permit;
 - (ii) records of the quantity of scrap tires and processed tires received at the site, stored at the site and shipped from the site, including destination (name and address of facility); and
 - (iii) all certification forms applicable to any tires received, stored, or shipped from the site.
 - (l) Unless otherwise specified by the Division in the facility permit, the number of scrap tires stored at a scrap tire collection site shall not exceed 60,000 tires on site at any time and shall not exceed the stated number of scrap tires shipped off-site per month plus the stated number of scrap tires disposed of on-site per month, except that the storage limit for collection sites associated with scrap tire processing facilities shall be determined by multiplying the daily through put of the processing equipment used by 30.
 - (m) A scrap tire processing facility shall not accept any scrap tires for processing above the number that may be processed daily if it has reached its storage limit. At least 75 percent of both the scrap tires and processed tires that are delivered to or maintained on the site of the scrap tire processing facility site shall be processed and removed for recycling or disposal at a solid waste management facility permitted by the Division to receive such waste within one year of their receipt.

- (n) The temperature of any above ground piles of compacted, processed tires over 1,000 cubic yards in size shall be monitored and shall not exceed 300 degrees Fahrenheit. Temperature control measures shall be instituted so that pile temperatures do not exceed 300 degrees Fahrenheit. Temperature monitoring and controls shall not be required for processed tires disposed of in sanitary landfills permitted by the Division to receive such waste.
- (o) The operator of the scrap tire collection site shall prepare and keep a contingency plan stating disposal methods or other means to handle tires during adverse weather, equipment failure, or other conditions that cause the site to be unavailable.

History Note: Authority G.S. 130A-309.57; Eff. October 1, 1990; Readopted Eff. December 1, 2018.

15A NCAC 13B .1108 SCRAP TIRE DISPOSAL SITE PERMIT AND OPERATIONAL REQUIREMENTS

History Note: Authority G.S. 130A-309.57; Eff. October 1, 1990; Repealed Eff. December 1, 2018.

15A NCAC 13B .1109 CLOSURE OF NON-CONFORMING SITES

- (a) Any scrap tire collection or disposal site that does not meet the requirements of this Section shall be closed.
- (b) In closing any non-conforming scrap tire site, the owner or operator shall:
 - (1) prevent public access to the site;
 - (2) post a notice indicating the site is closed and the nearest permitted site where scrap tires may be deposited;
 - (3) notify the Division of the closing prior to tire removal;
 - (4) remove all scrap tires, processed tires and residuals to a scrap tire collection site that is permitted in accordance with this Section, or that is exempt from permitting pursuant to G.S. 130A 309.57(d); or to a solid waste management facility permitted by the Division to accept scrap tires or processed tires, and provide receipts to the Division by a deadline that shall be specified by the Division; and
 - (5) remove any solid waste to a solid waste management facility permitted by the Division to receive such waste.
- (c) Once all requirements set forth in Paragraph (b) of this Rule are complete, the owner or operator shall notify the Division in writing.

History Note: Authority G.S. 130A-309.57; Eff. October 1, 1990; Readopted Eff. December 1, 2018.

15A NCAC 13B .1110 SCRAP TIRE PROCESSING FACILITIES

History Note: Authority G.S. 130A-309.57; Eff. October 1, 1990; Repealed Eff. December 1, 2018.

15A NCAC 18D .0206 CERTIFIED OPERATOR REQUIRED

- (a) All public water systems shall have a certified operator in responsible charge for each water treatment facility that:
 - (1) alters the physical, chemical, or microbiological characteristics of the water;
 - (2) has approved plans for such alterations; or
 - (3) has equipment installed for such alterations.

The owner shall notify the Board in writing within 10 days of a vacancy that results in noncompliance with this Rule.

(b) There shall be an operator holding at least a Grade C-Surface certification assigned to be on duty on the premises when a surface water treatment facility is treating water. Implementation of this requirement shall be subject to the following provisions:

- (1) upon vacancy of a position resulting in noncompliance with this requirement, the owner shall notify the Board within 24 hours or at the start of the next business day of the vacancy; and
- (2) upon the vacancy, the owner shall fill the position with a certified Grade C-Surface operator or an operator with a temporary Grade C-Surface certification within 90 days.

(c) There shall be an operator in responsible charge for the distribution portion of community and non-transient non-community public water systems. This operator shall possess a valid distribution certificate issued by the Board with the grade equivalent to or exceeding the water system's distribution classification. A system serving 100 or fewer service connections shall be exempt from this requirement if it has an operator in responsible charge as required in Paragraph (a) of this Rule. A system that is classified as D-distribution only may use a Board-certified distribution, well, or surface operator to meet the operator in responsible charge requirements of this Rule

(d) There shall be an operator in responsible charge for the cross-connection control facilities of any public water system required by 15A NCAC 18C .0406(b) to have five or more testable backflow prevention assemblies. The operator shall possess a valid Cross-Connection Control certificate issued by the Board.

(e) All operators of community and non-transient non-community public water systems shall follow the standard operating procedures established by the operator in responsible charge. Decisions about water quality or quantity that affect public health that have not been addressed in the standard operating procedures shall be referred to the operator in responsible charge or to the certified operator on duty.

(f) No operator in responsible charge shall be required for transient non-community public water systems with either or both ultraviolet light (uv) disinfection or softening (if not required by 15A NCAC 18C) as the only treatment applied to water.

History Note: Authority G.S. 90A-20; 90A-28; 90A-29; 90A-32; Eff. July 1, 1991; Amended Eff. November 1, 2006; August 1, 2004; August 1, 2002; August 1, 2000; May 1, 1994; May 3, 1993; Readopted Eff. December 1, 2018.

15A NCAC 18E .0601 LOCATION OF WASTEWATER SYSTEMS

(a) Every wastewater system shall be located the minimum setbacks from the site features specified in Table IX. The setback shall be measured from the nearest wastewater system component sidewall or as otherwise specified in a system specific rule or PIA Approval.

TABLE IX. Minimum setbacks from all wastewater systems to site features

Site Features	Setback (feet)
Any water supply well	100
A private drinking water well or upslope spring serving a single family dwelling unit with a wastewater system including the dispersal field repair area	50
Any other well or source not listed in this table, excluding monitoring wells	50
Surface waters classified WS-I, from mean high-water mark	100
Waters classified SA, from mean high-water mark	100
Any Class I or Class II reservoir, from normal pool elevation	100
Lake, pond, or stormwater retention pond, from flood pool elevation	50
Stormwater detention (temporary) pond	25
Any other coastal water, canal, marsh, stream, non-water supply spring, perennial waterbodies, intermittent or perennial streams, or other surface waters, from the mean high-water mark	50
Any water line, including fire protection and irrigation water lines	10
Geothermal aqueous closed loop wells	50
Geothermal direct expansion closed loop wells	50
Horizontal closed-loop geothermal system	15
Building foundation with artificial drainage	15
Building or other foundation without artificial drainage, including patio, deck, porch, stoop, lighting fixtures, or signage supporting columns, or posts	5
Any basement, cellar, or in-ground swimming pool	15

Buried storage tank or basin, except stormwater	15
Above ground swimming pool	5
Top of slope of embankment or cuts of two feet or more vertical height	15
Subsurface groundwater lowering system, ditch, or device, as measured on the ground surface from the edge of the feature	25
Surface water diversion, except for an upslope swale or berm, as measured on the ground surface from the edge of the diversion	15
Interceptor drain – upslope	10
Interceptor drain – sideslope	15
Interceptor drain – downslope	25
Upslope swale or berm, as measured on the ground surface from the edge of the swale	5
Ephemeral stream	15
Any stormwater conveyance (pipe or open channel), excluding gutter drains that connect to a stormwater conveyance	15
Permanent stormwater retention basin or sediment detention basin	50
Bio-retention area, injection well, or infiltration gallery	25
Any other dispersal field, except designated dispersal field repair area for project site	20
Any property line	10
Burial plot or graveyard boundary	15
Above ground storage tank (from dripline or foundation pad, whichever is more limiting)	5
Utility transmission and distribution line poles and towers, including guy wires	15
Utility transformer, ground-surface mounted	10

(b) Wastewater systems may be located closer than 100 feet from water supply wells for repairs, space limitations, and other site-planning considerations. The wastewater system shall be located the maximum feasible distance and never less than 50 feet from a water supply well or upslope spring. The wastewater system may be located closer than 100 feet for a shared water supply well or wastewater system installed in saprolite when a variance for a reduced separation has been issued in accordance with Rule 15A NCAC 02C .0118.

(c) Wastewater systems shall not be located closer than 100 feet to springs and uncased wells used as a source of drinking water and located downslope from the dispersal field.

(d) Initial and repair dispersal field systems shall not be located under impervious surfaces or areas subject to vehicular traffic unless approved in accordance with G.S. 130A-343 and Section .1700 of this Subchapter.

(e) If a collection sewer is installed under areas subject to vehicular traffic or areas subject to soil disturbance or compaction, one of the following pipe materials shall be used:

- (1) DIP;

- (2) a minimum of Schedule 40 pipe (PVC, Polyethylene, or ABS) sleeved in DIP;
- (3) a minimum of Schedule 40 pipe (PVC, Polyethylene, or ABS) sleeved in DOT traffic rated culvert pipe;
- (4) a minimum of Schedule 40 pipe (PVC, Polyethylene, or ABS) with 30 inches of compacted cover provided over the crown of the pipe; or
- (5) other pipe materials may be proposed when designed, inspected, and certified by a PE and approved by the LHD.

(f) In addition to the requirements of Paragraph (a) of this Rule, wastewater systems with a proposed DDF greater than 3,000 gpd, as determined in Rule .0401 of this Subchapter, shall be located the minimum setbacks from the site features in Table X.

TABLE X. Minimum setbacks from wastewater systems greater than 3,000 gpd to site features

Feature	Setback (feet)
Any Class I or II reservoir or any public water system source utilizing a shallow (under 50 feet) groundwater aquifer	500
Any other public water system source, unless a confined aquifer	200
Any private water supply source, unless a confined aquifer	100
Surface water classified WS- I, from mean high-water mark	200
Surface waters classified WS-II, WS-III, B, or SB, from mean high-water mark	100
Waters classified SA, from mean high-water mark	200
Any property line	25

(g) Wastewater systems with a DDF greater than 3,000 gpd that meet the requirements of Rule .0510(f) of this Subchapter may use the setbacks identified in Table IX of this Rule.

(h) Collection sewers shall be located the minimum setbacks to site features shown in Table XI.

TABLE XI. Minimum setbacks from collection sewers to site features

Feature	Setback (feet)
Any public water system source, including wells, springs, and Class I or Class II reservoirs	100, unless the collection sewer is constructed of or sleeved in DIP with mechanical joints equivalent to water main standards, in which case the minimum setback may be reduced to 50 ft*
Any private water supply source, including wells and springs	50, unless the collection sewer is construction of or sleeved in DIP with mechanical joints equivalent to water main standards, in which case the

	minimum setback may be reduced to 25 ft*
Surface waters classified WS-I, WS-II, WS-III, B, SA, or SB, from flood pool elevation	50, unless the collection sewer is construction of or sleeved in DIP with mechanical joints equivalent to water main standards, in which case the minimum setback may be reduced to 10 ft*
Any other stream, canal, marsh, coastal water, lakes, ponds, and other impoundments, or other surface waters	10
Geothermal aqueous closed loop wells	25
Geothermal direct expansion closed loop wells	25
Horizontal closed loop geothermal wells	5
Any basement, cellar, or in-ground swimming pool	10
Top of slope of embankment or cuts of two feet or more vertical height	5
Surface water diversion, as measured on the ground surface from the edge of the diversion	5
Any stormwater conveyance (pipe or open channel) or ephemeral stream	10
Permanent stormwater retention basin or sediment detention basin	10
Bio-retention area, injection well, or infiltration gallery	5
Any other dispersal field except designated dispersal field repair area for project site	5
Any property line	5
Burial plot or graveyard boundary	5
Utility transmission and distribution line poles and towers, including guy wires	5
Utility transformer, ground-surface mounted	5

*Pipe materials other than DIP shall be acceptable when the materials conform to materials, testing methods, and acceptability standards meeting water main standards and when the line has been designed, installed, inspected, and certified by a PE and approved by the LHD.

(i) The minimum setback from water lines to collection sewers shall be 10 feet, except as follows:

- (1) the water line is laid in a separate trench with the elevation of the bottom of the water line 18 inches above the top of the collection sewer; or

- (2) the water line is laid in the same trench as the collection sewer with the water line located on one side of the trench, on a bench of undisturbed earth and with the elevation of the bottom of the water line 18 inches above the top of the collection sewer. The collection sewer shall be located the width of the trench from the water line.

(j) Collection sewers and water lines shall not cross, except as follows:

- (1) 18 inches clear vertical separation is maintained, with the collection sewer crossing under the water line; or
- (2) the water line crosses under the collection sewer or 18 inches clear vertical separation is not maintained and the following criteria are met:
 - (A) the collection sewer is constructed of DIP with joints equivalent to water main standards and extend 10 feet on each side of the point of crossing, with full sections of pipe centered at the point of crossing; and
 - (B) the water line is constructed of ferrous materials with joints equivalent to water main standards and extend a minimum of 10 feet on each side of the point of crossing, with full sections of pipe centered at the point of crossing.

(k) Collection sewers shall not cross storm drains, except as follows:

- (1) 12 inches clear vertical separation is maintained between the collection sewer and storm drain;
- (2) the collection sewer is constructed of DIP with mechanical joints or restrained push-on joints equal to water main standards; or
- (3) the collection sewer is encased in concrete or DIP for a minimum of five feet on either side of the crossing.

(l) Collection sewers shall not cross under a stream, except as follows:

- (1) a minimum of 36 inches of stable cover is maintained;
- (2) the collection sewer is constructed of DIP with mechanical joints or restrained push-on joints equal to water main standards; or
- (3) the collection sewer is encased in concrete or DIP for a minimum of 10 feet on either side of the crossing and protected against the normal range of high and low water conditions, including the 100-year flood or wave action.

(m) Collection sewer aerial crossings shall be constructed of DIP with mechanical joints or restrained push-on joints equal to water main standards and freeze protected. Pipe shall be anchored for a minimum of 10 feet on either side of the crossing.

(n) Septic tanks, pump tanks, grease tanks, raw sewage lift stations, wastewater treatment plants, sand filters, and other advanced pretreatment systems shall not be located in areas subject to flood at a frequency greater than a 10-year storm, unless

designed and installed to be watertight and to remain operable during a 10-year storm. Mechanical or electrical components of treatment systems shall be above the 100-year flood level or otherwise protected against a 100-year flood.

History Note: Authority G.S. 130A-334; 130A-335(e) and (f); Eff. Pending Delayed Effective Date.

15A NCAC 18E .0602 APPLICABILITY OF SETBACKS

(a) The minimum setback requirements in Table IX of Rule .0601(a) of this Section for SA waters, basements, property lines, and cuts of two feet or more vertical height, shall not apply to the installation of a single wastewater system serving a single-family residence with a maximum DDF of 480 gpd on a lot or tract of land that meets the following requirements:

- (1) on July 1, 1977, is described in a deed, contract, other instrument conveying fee title, or in a recorded plat;
- (2) is of insufficient size to satisfy the minimum setback requirements in Table IX of Rule .0601(a) of this Section for SA waters, basements, property lines, and cuts of two feet or more vertical height of this Section on July 1, 1977; and
- (3) cannot be served by a community or public sewerage system on the date system construction is proposed to begin.

(b) For those lots or tracts of land described in Paragraph (a) of this Rule, the maximum feasible setback shall be required, but shall not be less than the minimum setbacks in Table XII.

TABLE XII. Minimum setbacks from wastewater systems to specific site features on lots described in this Rule

Feature	Minimum setback (feet)
SA waters from mean high-water mark	50
Basement	8
Property line	5
Cuts of two feet or more vertical height	5

(c) For wastewater systems installed in Group I soils on lots or tracts of land that meet the requirements of Paragraph (a) of this Rule, the wastewater system shall be located the maximum feasible distance but no less than 10 feet from any other wastewater system.

(d) For wastewater systems installed on lots or tracts of land which, on July 1, 1982, are specifically described in a deed or recorded plat, and the wastewater system cannot meet the minimum setbacks in Table IX of Rule .0601(a) of this Section for groundwater lowering systems, the wastewater system shall be located the maximum feasible horizontal distance but no less than 10 feet from the groundwater lowering system.

(e) Any local board of health ordinances in effect on June 30, 1977, which establish greater minimum setback requirements than those provided for in this Section, shall remain in effect and shall apply to a lot or tract of land to which Table IX of Rule .0601(a) of this Section does not apply.

*History Note: Authority G.S. 130A-335(e);
Eff. Pending Delayed Effective Date.*

15A NCAC 18E .0701 COLLECTION SEWERS

(a) Collection sewers shall be designed and constructed in accordance with the following criteria:

- (1) Building drains and building sewers shall be in accordance with the North Carolina Plumbing Code and approved by the local building inspector.
- (2) Pipe material shall be specified to comply with the applicable ASTM standards based on pipe material.
- (3) Gravity sewers shall be designed to maintain minimum scour velocities of two feet per second with the pipe half full and one-foot per second at the peak projected instantaneous flow rate. Force mains shall be sized to obtain a minimum two-foot per second scour velocity at the projected pump operating flow rate.
- (4) Infiltration and exfiltration shall not exceed 100 gpd per inch diameter per mile of gravity sewer pipe or 20 gpd per inch diameter per mile of pressure pipe in force mains and supply lines.
- (5) Three-foot minimum cover shall be provided for all collection sewers, except as provided for in Rule .0601(e)(4) of this Subchapter.
- (6) Ferrous material pipe or other pipe designed and bedded for traffic-bearing loads shall be provided where collection sewers are subject to vehicular traffic.
- (7) Manholes shall be used for gravity collection sewers at any bends, junctions, and a maximum of every 425 feet along the collection sewer. Drop manholes shall be required where the inlet to outlet elevation difference exceeds two and one half feet. Manhole lids shall be watertight if located below the 100-year flood elevation, within 100 feet of any public water system source, or within 50 feet of any private water system source or any surface waters classified WS-I, WS-II, WS-III, SA, SB, or B.
- (8) Cleanouts may be used instead of manholes for four-inch and six-inch sewers serving one or two design units, or as otherwise allowed by the North Carolina Plumbing Code. Cleanouts shall be required a maximum of every 100 feet for four or six-inch sewers and at all junctions and bends which exceed 45 degrees, unless otherwise allowed by the North Carolina Plumbing Code.
- (9) Air relief valves shall be provided as needed for force mains when the length exceeds 1,000 feet or for intermediate high points that exceed five feet.
- (10) Collection sewers may require additional ventilation provisions, such as a stand pipe, based on length, size, and location.

(b) STEP systems may be used as an alternative to gravity collection sewers.

*History Note: Authority G.S. 130A-335(e), (f), and (f1);
Eff. Pending Delayed Effective Date.*

15A NCAC 18E .0702 RAW SEWAGE LIFT STATIONS

(a) Raw sewage lift stations permitted by the LHD shall meet all setbacks for wastewater systems in accordance with Table IX of Rule .0601(a) of this Subchapter.

(b) Raw sewage lift stations shall meet the following design and construction standards:

- (1) dual pumps shall be provided for stations serving two or more buildings or for a facility with more than six water closets;
- (2) pumps shall be listed by a third-party electrical testing and listing agency, such as Underwriter's Laboratories;
- (3) pumps shall be grinder pumps or solids-handling pumps capable of handling a minimum of three-inch spheres. If the raw sewage lift station serves no more than a single water closet, lavatory, and shower, two-inch solids handling pumps shall be acceptable;
- (4) minimum pump capacity shall be two and one half times the average daily flow;
- (5) raw sewage lift stations serving single buildings shall be designed for pump run times between three to 10 minutes at average daily flow;
- (6) pump station emergency storage capacity and total liquid capacity shall be determined in accordance with Rule .0802 of this Subchapter except for a sealed, watertight chamber serving an individual building, in which case a minimum storage capacity of eight hours shall be required; and
- (7) all applicable requirements for pump tanks and dosing systems as set forth in Rule .0802 and Section .1100 of this Subchapter shall apply to raw sewage lift stations.

(c) A raw sewage lift station that is a sealed, watertight chamber shall meet the setbacks requirements for collection sewers in Rule .0601(h) of this Subchapter. Sealed, watertight chambers shall be a single prefabricated unit with a sealed top cover, and preformed inlet and outlet pipe openings connected with solvent welds, O-ring seals, rubber boots, stainless steel straps or equivalent.

*History Note: Authority G.S. 130A-335(e), (f), and (f1);
Eff. Pending Delayed Effective Date.*

15A NCAC 18E .0703 PIPE MATERIALS

(a) The gravity pipe between a septic tank, gravity distribution device, and the dispersal field shall be a minimum of three-inch Schedule 40 PVC, Schedule 40 polyethylene, or Schedule 40 ABS.

(b) Three-inch or greater non-perforated polyethylene corrugated tubing, PVC SDR 21 and SDR 26 pressure rated at 160 psi or greater and labeled as compliant with ASTM D2241, PVC SDR 35 gravity sewer pipe rated as compliant with ASTM D3034, or

alternative non-perforated pipe materials described in Paragraph (d) of this Rule, may be substituted for Schedule 40 between the distribution device and the dispersal field when the following minimum installation criteria are met:

- (1) the pipe is placed on a compacted, smooth surface free of indentations or clods at a uniform grade, and with an excavation width of one-foot;
- (2) the pipe is placed in the middle of the excavation with three inches of clearance between the pipe and the walls;
- (3) a washed gravel or crushed stone envelope is placed in the excavation on both sides of the pipe and to a point two inches above the top of the pipe;
- (4) six inches of soil cover is placed and compacted over the stone or gravel envelope; and
- (5) earthen dams consisting of two feet of undisturbed or compacted soil are located at both ends of the excavation separating the trench from the distribution device.

(c) All pipe joints from the septic tank to the dispersal field shall be watertight. Solvent cement-joints shall be made in a two-step process with primer manufactured for thermoplastic piping systems and solvent cement conforming to ASTM D2564.

(d) Pipe used for gravity distribution laterals shall be corrugated plastic tubing complying with ASTM F667 or smooth-wall plastic pipe complying with ASTM D2729 or ASTM F810. The pipe shall be marked as complying with ASTM standards. The corrugated tubing or smooth-wall pipe shall have three rows of holes, each hole between 1/2-inch and 3/4-inch in diameter, and spaced longitudinally approximately four inches on centers. The rows of holes may be equally spaced 120 degrees on centers around the pipe periphery, or three rows may be located in the lower portion of the tubing, the outside rows being approximately on 120-degree centers. The holes may be located in the same corrugation or staggered in adjacent corrugations. Other types of pipe may be used for laterals provided the pipe satisfies the requirements of this Rule and is approved by the State.

(e) Pump discharge piping, including the force main to the next component in the wastewater system, shall be of Schedule 40 PVC or stronger material and pressure rated for water service at a minimum of 160 psi or two times the maximum operating pressure, whichever is greater. The pipe shall meet ASTM D1784, ASTM D1785, and ASTM D2466.

(f) Pipe materials other than those identified in this Rule may be proposed when designed and certified by a PE, including any installation and testing procedures. Gravity pipe materials shall be shown to meet the requirements of Paragraphs (a), (b), and (c) of this Rule. Alternative pressure rated pipe materials shall be constructed of PVC, polyethylene, or other pressure rated pipe and conform to applicable ASTM standards for pipe material and methods of joining. The proposed pipe shall be installed per ASTM D2774. Installation testing shall include a hydrostatic pressure test similar to pressure testing required for water mains for any line exceeding 500 feet in length and shall comply with the requirements of Rule .0701(a)(4) of this Section.

History Note: Authority G.S. 130A-335(e), (f), and (f1);

Eff. Pending Delayed Effective Date.

15A NCAC 18E .0901 GENERAL DESIGN AND INSTALLATION CRITERIA FOR SUBSURFACE DISPERSAL SYSTEMS

(a) Wastewater systems shall be used on sites classified suitable in accordance with Rule .0509 of this Subchapter. The sizing and siting criteria in this Rule shall be based on soil receiving DSE. The site shall meet the following minimum criteria:

- (1) 12 inches of naturally occurring soil between the infiltrative surface and any LC; and
- (2) 18 inches of separation between the infiltrative surface and any SWC if more than six inches of separation consists of Group I soils.

(b) If any part of the trench or bed media extends above the naturally occurring soil surface, the system shall be a fill system and must meet the requirements of Rule .0909 of this Section.

(c) The LTAR shall be determined in accordance with the following:

- (1) Tables XVI and XVII shall be used, as applicable;
- (2) the LTAR shall be assigned based upon soil textural class or saprolite textural class, as applicable, structure, consistence, SWC, depth, percent coarse rock, landscape position, topography, and system type;
- (3) LTARs determined from Table XVI shall be based on the soil textural class of the most limiting, naturally occurring soil horizons to a depth of 12 inches below the infiltrative surface (18 inches to any SWC if more than six inches of the separation consists of Group I soils);
- (4) LTARs determined from Table XVII shall be based on the saprolite textural class of the most limiting, naturally occurring saprolite to a depth of 24 inches (or less if combined with soil in accordance with Rule .0506(b) of this Subchapter) below the infiltrative surface; and
- (5) for facilities that generate HSE as specified in Rule .0401(h) of this Subchapter or a facility with a full kitchen, the LTAR shall not exceed the mean rate for the applicable Soil Group.

TABLE XVI. LTAR for wastewater systems based on Soil Group and texture class

Soil Group	USDA Soil Textural Class		LTAR (gpd/ft²)
I	Sands	Sand	0.8 – 1.2
		Loamy Sand	
II	Coarse Loams	Sandy Loam	0.6 – 0.8
		Loam	
III	Fine Loams	Sandy Clay Loam	0.3 – 0.6
		Silt Loam	
		Clay Loam	
		Silty Clay Loam	

IV	Clays	Silt	0.1 – 0.4
		Sandy Clay	
		Silty Clay	
		Clay	

TABLE XVII. LTAR for wastewater systems in saprolite based on Saprolite Group and texture class

Saprolite Group	Saprolite Textural Class		LTAR (gpd/ft ²)
I	Sands	Sand	0.6 – 0.8
		Loamy Sand	0.5 – 0.7
II	Loams	Sandy Loam	0.4 – 0.6
		Loam	0.2 – 0.4
III	Fine Loams	Silt Loam	0.1 – 0.3
		Sandy Clay	0.05 – 0.15
		Loam*	

* Sandy clay loam saprolite can only be used with advanced pretreatment in accordance with Section .1200 of this Subchapter.

(d) The minimum required infiltrative surface area and trench length shall be calculated in accordance with the following:

- (1) the minimum required infiltrative surface area shall be calculated by dividing the DDF by the LTAR;
- (2) the minimum trench length shall be calculated by dividing the minimum required infiltrative surface area by the equivalent trench width. The following equation shall be used to calculate the minimum trench length required:

$$TL = (DDF \div LTAR) \div ETW$$

Where TL = trench length (feet)
 DDF = design daily flow (gpd)
 LTAR = in gpd/ft²
 ETW = equivalent trench width (feet);
- (3) the area occupied by step-downs, drop boxes, and supply lines shall not be part of the minimum required infiltrative surface area;
- (4) the total trench length required for trench products other than conventional gravel shall be as follows:
 - (A) for trench products identified in Section .0900 of this Subchapter, the minimum line length shall be calculated in accordance with this Section; or
 - (B) for trench products approved under Section .1700 of this Subchapter, the minimum line length shall be calculated in accordance with the PIA Approval; and
- (5) when HSE is proposed to be discharged to a dispersal field with no advanced pretreatment or has not been reclassified as DSE in accordance with Rule .0402(c) of this Subchapter, a licensed professional, if required

in G.S. 89C, 89E, or 89F, shall calculate the adjusted LTAR in accordance with Rule .0402(b)(2) of this Subchapter.

(e) Any dispersal field where cover is required above the naturally occurring soil surface shall not be installed on slopes greater than 30 percent.

(f) Soil cover above the original grade shall be placed over the entire dispersal field and shall extend laterally five feet beyond the trenches. On level sites, the final grade of the dispersal field shall be crowned at one-half percent grade as measured from the centerline of the dispersal field.

(g) Wastewater system installation shall be in accordance with the following criteria:

- (1) a device that measures elevation, such as an engineer's level or laser level shall be used for the following:
 - (A) staking (flagging) or marking on the ground surface the location of trenches on site before installation begins;
 - (B) installation of the trenches; and
 - (C) verification of elevations, excavations, and installation of other system components;
- (2) trenches shall be installed with 12 inches of naturally occurring suitable soil between the infiltrative surface and any unsuitable LC. If the vertical separation between the infiltrative surface and any SWC is less than 18 inches, and if more than six inches of the separation consists of Group I soils, a pressure dispersal system shall be required;
- (3) the trenches shall follow the ground contour. Trenches may be installed level but off contour if an authorized agent has determined that there is sufficient vertical separation to a LC along the entire trench length in accordance with (g)(2) of this Paragraph;
- (4) the lateral shall be centered horizontally in the trench;
- (5) the type and placement of soil cover shall be approved by the authorized agent in accordance with this Subparagraph. The cover material shall not have more than 10 percent by volume of fibrous organics, building rubble, rocks, or other debris and shall be Soil Groups II or III;
- (6) final soil cover over the dispersal field shall be a minimum of six inches deep after settling. The finished grade over the tanks and dispersal field shall be sloped to shed surface water;
- (7) surface water runoff, including stormwater, gutter drains, or downspouts, shall be diverted away from the wastewater system. No depressions shall be allowed over the dispersal field area;
- (8) Schedule 40 PVC or other pipe approved pursuant to Section .0700 of this Subchapter may be used as needed to connect sections of trench and overcome site limitations. The trench bottom area where solid piping is

- installed shall not be included as part of the minimum required infiltrative surface area;
- (9) gravity effluent distribution components including distribution boxes, drop boxes, and flow diversion devices shall be watertight, corrosion resistant, constructed to withstand active and passive loads, and their installation shall meet the following criteria:
- (A) separated by a minimum of two feet of undisturbed soil from the septic tank and trench(es);
- (B) placed level on a solid foundation of undisturbed soil, pea gravel, or concrete to prevent differential settling of the component; and
- (C) backfilled by hand to minimize disturbance;
- (10) when parallel distribution is used to distribute effluent to the trenches, the installer shall demonstrate to the authorized agent during the final inspection that the distribution devices perform as designed;
- (11) serial and sequential distribution shall be approved by the authorized agent when the step-down or drop box in an individual trench is constructed to allow full utilization of the upstream trench prior to overflowing to the next downslope trench in accordance with the following criteria:
- (A) step-downs shall be constructed of a minimum of two feet of undisturbed soil, bedding material, or concrete and the effluent shall be conveyed over the step-down through Schedule 40 PVC or other pipe approved in accordance with Rule .0703 of this Subchapter. The installer shall demonstrate that the step-downs perform as designed. The authorized agent shall approve the step-downs when the installation and elevations have been verified in accordance with the CA; and
- (B) drop boxes shall be separated from the trench by a minimum of two feet of undisturbed soil and constructed to allow for full utilization of the upstream trench prior to overflowing to the next lower drop box. The installer shall demonstrate that the drop boxes perform as designed. The authorized agent shall approve the drop boxes when the installation and elevations have been verified in accordance with the CA; and
- (12) trench products other than conventional gravel shall be installed as follows:
- (A) for trench products identified in Section .0900, the trench products shall be installed in accordance with this Section; or
- (B) for trench products approved under Section .1700 of this Subchapter, the trench products shall be installed in accordance with their PIA Approval.
- (h) Alternating dual dispersal fields shall only be used with DSE in Soil Groups III and IV. Alternating dual dispersal fields shall be approved when designed and installed in accordance with Paragraph (g) of this Rule and the following:
- (1) both initial and repair dispersal fields shall be installed at the same time;
- (2) initial and repair dispersal fields of the same system type are each sized at a minimum of 75 percent of the total trench length required;
- (3) the initial and repair dispersal fields shall be separated by an effluent flow diversion valve(s);
- (4) diversion valve(s) shall be resistant to 500 pounds crushing strength and corrosion resistant;
- (5) effluent flow diversion valves shall be installed below finished grade in a valve box and be accessible and operable from the ground surface;
- (6) trench products approved under Section .1700 of this Subchapter shall be installed in accordance with their PIA Approval; and
- (7) the maximum reduction in trench length is 25 percent as compared to a conventional gravel system, unless a greater percentage is specified in a PIA Approval or this Subchapter.

History Note: Authority G.S. 130A-335(e), (f), and (f1); Eff. Pending Delayed Effective Date.

15A NCAC 18E .0902 CONVENTIONAL WASTEWATER SYSTEMS

- (a) A conventional wastewater system shall consist of a septic tank and a gravity distribution dispersal field. In addition to the requirements set forth in Rule .0901 of this Section, this Rule shall apply to conventional wastewater systems as defined in G.S. 130A-343.
- (b) In addition to the installation requirements set forth in Rule .0901(g) of this Section, the following shall apply:
- (1) trenches shall be constructed level in all directions with a plus or minus one-half inch tolerance from side-to-side and the maximum fall in a single trench not to exceed one-fourth inch in 10 feet as determined a device that measures elevation, such as an engineer's level or laser level;
- (2) trenches shall be located not less than three times the trench width on centers. The minimum spacing for trenches is six feet on center;
- (3) trench widths shall be at least two feet, but no more than three feet and trench depth shall not exceed 36 inches on the downslope side of the

- trench, except as approved by an authorized agent;
- (4) aggregate used in trenches shall be clean, washed gravel or crushed stone and graded or sized in accordance with size numbers 4, 5, or 6 of ASTM D448. The aggregate shall be distributed uniformly across the infiltrative surface and over the pipe and placed 12 inches deep with a minimum of six inches below the pipe and two inches over the pipe; and
- (5) the laterals shall meet the requirements of Rule .0703(d) of this Subchapter.

- particles while allowing the movement of liquids and gases; and
- (7) when pressure dispersal is used, the lateral design criteria shall meet the minimum requirements of Rules .0907(e) and (f) or .0908(d) and (f) of this Section or in accordance with a PIA Approval.

History Note: Authority G.S. 130A-335(e), (f), and (f1); Eff. Pending Delayed Effective Date.

History Note: Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Delayed Effective Date.

15A NCAC 18E .0903 BED SYSTEMS

- (a) This Rule shall apply to bed systems receiving DSE.
- (b) Bed systems shall be limited to 600 gpd unless approved for a greater DDF in accordance with a PIA Approval.
- (c) Sites for bed systems shall meet the following criteria:
- (1) soil texture is Group I, II, or III; and
 - (2) design options for the site are limited by topography or available space.
- (d) The number of square feet of infiltrative surface area required shall be increased by 50 percent over that required for a trench system as calculated in accordance with Rule .0901(d) of this Section.
- (e) In addition to the installation requirements set forth in Rule .0901(g) of this Section, the following shall apply:
- (1) the bottom of the bed shall be excavated level, plus or minus one-half inch, in all directions;
 - (2) laterals shall be one and one-half feet from the side of the bed;
 - (3) laterals shall be placed on three-foot centers;
 - (4) aggregate used shall comply with the requirements of Rule .0902(b)(4) of this Section;
 - (5) products approved under Section .1700 of this Subchapter shall be installed in accordance with their PIA Approval;
 - (6) the gravel surface shall be covered by an approved geo-textile fabric capable of preventing the downward movement of soil

15A NCAC 18E .0904 LARGE DIAMETER PIPE SYSTEMS

- (a) LDP systems consist of laterals composed of eight-inch inside diameter (10-inch outside diameter) or 10-inch inside diameter (12-inch outside diameter) corrugated, polyethylene tubing encased in a nylon and polyester blend filter wrap that are installed in trenches in the dispersal field. LDP systems shall only be used with DSE.
- (b) LDP pipe, filter wrap, and fittings shall meet the following criteria:
- (1) pipe and fittings shall comply with the requirements of ASTM F667;
 - (2) the corrugated pipe shall have two rows of holes, each hole between three-eighths inch and one-half inch in diameter, located 120 degrees apart along the bottom half of the pipe (each 60 degrees from the bottom center line) and staggered so that one hole is present in the valley of each corrugation;
 - (3) pipe shall be marked with a visible top location indicator, 120 degrees away from each row of holes;
 - (4) corrugated pipe shall be covered with filter wrap at the factory;
 - (5) filter wrap shall be spun, bonded, or spunlaced nylon, polyester, or nylon/polyester blend filter wrap meeting the minimum requirements in Table XVIII; and
 - (6) the LDP with filter wrap shall be encased in a black polyethylene sleeve prior to installation in the trench to prevent physical damage and ultraviolet radiation deterioration of the filter wrap.

Table XVIII. Minimum filter wrap requirements for LDP

Property	Value
Unit Weight	1.0 ounce per square yard
Sheet Grab Tensile Strength	Machine Direction: 23 pounds
Trapezoid Tear Strength	Machine Direction: 6.2 pounds Cross Direction: 5.1 pounds
Mullen Burst Strength	40 psi or 276 kilopascals
Frazier Air Permeability	500 cubic feet per minute per square foot at pressure differential of 0.5 inches of water

(c) The requirements of Rule .0901 of this Section shall apply to LDP systems except as follows:

- (1) the LTAR determined in accordance with Rule .0901(c) of this Section shall not exceed 0.8 gpd/ft²; and
- (2) to calculate the minimum trench length in accordance with Rule .0901(d) of this Section, an equivalent trench width of two feet shall be used for eight-inch LDP and two and one-half feet shall be used for 10-inch LDP.

(d) In addition to the requirements set forth in Rule .0901(g) of this Section, LDP system installations shall comply with the following:

- (1) trenches for eight-inch LDP shall be a minimum of 10 inches and a maximum of 18 inches wide. Trenches for ten-inch LDP shall be a minimum of 12 inches and a maximum of 24 inches wide;
- (2) the infiltrative surface and pipe shall be level with a maximum fall of one inch in 100 feet;
- (3) backfill material shall have no more than 10 percent by volume of fibrous organics, building rubble, rocks, large clods, or other debris and shall be Soil Groups I, II, or III;
- (4) the LDP shall be connected to the collection sewer or a stepdown pipe using an offset adapter to create a mechanical joint; and
- (5) the minimum on center spacing for eight-inch LDP shall be five feet and for 10-inch LDP shall be six feet.

History Note: Authority G.S. 130A-335(e) and (f); Eff. Pending Delayed Effective Date.

15A NCAC 18E .0905 PREFABRICATED PERMEABLE BLOCK PANEL SYSTEMS

(a) PPBPS utilize both horizontal and vertical air chambers in a 16-inch PPBPS and are constructed to promote downline and horizontal distribution of effluent. PPBPS systems shall only be used with DSE.

(b) The requirements of Rule .0901 of this Section shall apply to PPBPS systems except as follows:

- (1) the LTAR determined in accordance with Rule .0901(c) of this Section shall not exceed 0.8 gpd/ft²; and
- (2) to calculate the minimum trench length in accordance with Rule .0901(d) of this Section, an equivalent trench width of six feet shall be used.

(c) In addition to the requirements set forth in Rule .0901(g) of this Section, PPBPS system installations shall comply with the following and the manufacturer's specifications:

- (1) PPBPS trenches shall be located a minimum of eight feet on center or three times the trench width, whichever is greater;
- (2) trench sidewalls shall be raked in Group IV soils;
- (3) pressure dosed gravity distribution or pressure dispersal shall be used when the individual

trench lengths are greater than 50 feet and less than or equal to 70 feet; and
 pressure dispersal shall be used when the individual trench lengths are greater than 70 feet.

- (4)

History Note: Authority G.S. 130A-335(e) and (f); Eff. Pending Delayed Effective Date.

15A NCAC 18E .0906 SAND LINED TRENCH SYSTEMS

(a) Sand lined trench systems receiving DSE may be used on sites originally classified unsuitable due to SWC, soil morphology, restrictive horizon, or soil depth that may be reclassified suitable in accordance with this Rule when there is a DDF less than or equal to 1,500 gpd.

(b) Sand lined trench systems with advanced pretreatment shall comply with Rule .1205 of this Subchapter.

(c) The soil and site shall meet the following criteria:

- (1) the texture of the receiving permeable horizon is sand, loamy sand, sandy loam, loam, or silt loam;
 - (2) the structure of the receiving permeable horizon is classified suitable;
 - (3) the moist consistence of the receiving permeable horizon is loose, very friable, friable, or firm;
 - (4) if the receiving permeable horizon has zones of heavier textured materials, these zones are discontinuous with an average thickness not exceeding 1/3 of the required thickness of the receiving permeable horizon;
 - (5) the naturally occurring receiving permeable horizon shall be less than or equal to 60 inches below the naturally occurring soil surface. If the receiving permeable horizon is greater than 60 inches below the naturally occurring soil surface, advanced pretreatment shall be used in accordance with Rule .1205 of this Subchapter;
 - (6) artificial drainage shall be provided, as needed, to maintain the following minimum vertical separation from the infiltrative surface to a SWC:
 - (A) 18 inches with gravity or pressure dosed gravity distribution; or
 - (B) 12 inches with pressure dispersal; and
 - (7) the minimum required thickness of the receiving permeable horizon shall be determined by the texture of that horizon as follows:
 - (A) sand or loamy sand texture requires a minimum thickness of one-foot;
 - (B) sandy loam or loam texture requires a minimum thickness of two feet; or
 - (C) silt loam texture requires a minimum thickness of three feet.
- (d) If a groundwater lowering system is required to meet the minimum vertical separation in Paragraph (c)(6) of this Rule to a SWC that is not related to lateral water movement, design plans

and specifications shall be prepared by a licensed professional if required in G.S. 89C, 89E, or 89F. The groundwater lowering system shall:

- (1) extend into the receiving permeable horizon;
- (2) have an outlet with location and elevation that allows for free discharge of groundwater as required for the groundwater lowering system to be functional. The outlet location and elevation must be shown on the artificial drainage system plan with relative water level elevations and wastewater system site elevations labeled; and
- (3) all groundwater lowering system components are integral to the wastewater system and

subject to ownership and control requirements of Rule .0301(b) and (c) of this Subchapter.

(e) The LTAR shall be determined in accordance with Table XIX for sand-lined trench systems. An equivalent trench width of three feet shall be used to determine trench length in accordance with Rule .0901(d) of this Section. The LTAR shall be based on the lesser of the following:

- (1) LTAR set forth in Table XIX based on the most hydraulically limiting, naturally occurring soils overlying the permeable receiving horizon; or
- (2) 10 percent of the in-situ Ksat of the receiving permeable horizon.

TABLE XIX. LTAR for sand lined trench systems based on the most hydraulically limiting, naturally occurring soils overlying the permeable receiving horizon

Soil Group	Texture of Most Hydraulically Limiting Overlying Soil Horizon	Distribution Type	LTAR (gpd/ft²)
I	Sands	Gravity or Pressure Dosed Gravity	0.7 - 0.9
		Pressure Dispersal	0.8 - 1.2
II	Coarse Loams	Gravity or Pressure Dosed Gravity	0.5 - 0.7
		Pressure Dispersal	0.6 - 0.8
III	Fine Loams	Gravity or Pressure Dosed Gravity	0.2 - 0.4
		Pressure Dispersal	0.3 - 0.6
IV	Clays	Gravity or Pressure Dosed Gravity	0.1 - 0.2
		Pressure Dispersal	0.15 - 0.3

(f) There shall be no reduction in trench length compared to a conventional wastewater system when Accepted or Innovative gravelless trench product is used.

(g) A Special Site Evaluation in accordance with Rule .0510 of this Subchapter shall be required for the following conditions to field verify the LTAR:

- (1) the texture of the receiving permeable horizon is sandy loam or loam and the system DDF is greater than 600 gpd; or
- (2) the texture of the receiving permeable horizon is silt loam.

(h) In addition to the requirements set forth in Rule .0901(g) of this Section, sand lined trench system installations shall comply with the following:

- (1) gravity trenches shall have a maximum width of three feet and a minimum width of one and a half feet;
- (2) trenches shall be located not less than three times the trench width on centers. The minimum spacing for trenches shall be five feet on centers;
- (3) the sand lined trenches shall be constructed to extend into the naturally occurring receiving permeable horizon;
- (4) the infiltrative surface shall be no deeper than 24 inches below finished grade. The top of the trench media shall be at or below the naturally occurring soil surface. Drip tubing shall be

installed a minimum of six inches below the natural grade;

- (5) soil used to line the trench shall be sand in texture. The installer shall provide written laboratory verification of the media textural classification and quality when requested by the LHD based on a visual inspection of the sand used during installation. When laboratory analysis is required, the material shall be clean, uncoated fine, medium, or coarse sand with a minimum of 90 percent in sizes ranging from 0.1 to 2.0 millimeters, with no more than one percent smaller than 0.074 millimeters (No. 200 Sieve);
- (6) pressure dosed gravity distribution or pressure dispersal shall be used when the total dispersal field line length exceeds 750 linear feet in a single system;
- (7) pressure dispersal shall be used when the total dispersal field line length exceeds 1,200 linear feet in a single system;
- (8) when pressure dispersal is used, the pressure dispersal network shall be designed in accordance with Rules .0907(e) or .0908(f) of this Section, except that the trench width shall comply with this Paragraph. The total line length shall be calculated based on infiltrative surface area;

- (9) drip dispersal systems in sand lined trenches shall require multiple runs per trench of drip tubing with emitters as follows:
- (A) a minimum of two runs within a trench between one and one half and two feet wide; and
 - (B) a minimum of three runs within a trench between two and three feet wide.

The drip tubing shall be uniformly spaced across the trench with the tubing six inches from the trench sidewalls. Drip tubing shall be covered by a minimum of six inches of sand lined trench media meeting the requirements of Subparagraph (5) of this Paragraph. Drip dispersal systems shall comply with the requirements of Section .1600 of this Subchapter and this Rule;

- (10) finished grade shall provide for positive surface drainage away from all system components, with the dispersal field crowned at one-half percent as measured from the centerline of the dispersal field. The finished grade requirements shall be made a condition of the CA; and
- (11) trench products approved under Section .1700 of this Subchapter shall be installed in accordance with PIA Approval.

(i) Other sand lined trench systems may be approved on a site-specific basis in accordance with Rule .0509(c) of this Subchapter.

History Note: Authority G.S. 130A-335(e) and (f); Eff. Pending Delayed Effective Date.

15A NCAC 18E .0907 LOW PRESSURE PIPE SYSTEMS

(a) LPP systems utilize a network of small diameter pipes with three to six-foot pressure head to distribute effluent across the entire dispersal field. Any subsurface dispersal system listed in this Section may incorporate LPP dispersal.

(b) LPP systems with advanced pretreatment shall comply with Rules .1202, .1203, .1205, or .1206 of this Subchapter.

(c) The LTAR shall be determined as follows:

- (1) Tables XX and XXI shall be used to determine the LTAR for LPP systems, as applicable;
- (2) the LTAR determined from Table XX shall be based on the soil textural class of the most limiting, naturally occurring soil horizon to a depth of 12 inches below the infiltrative surface;
- (3) the LTAR determined from Table XXI shall be based on the saprolite textural class of the most limiting, naturally occurring saprolite to a depth of 24 inches (or less if combined with soil in accordance with Rule .0506(b) of this Subchapter) below the infiltrative surface; and
- (4) for facilities that generate HSE as specified in Rule .0401(h) of this Subchapter or a facility

with a full kitchen, the LTAR shall not exceed the mean rate for the applicable Soil Group.

TABLE XX. LTAR for LPP systems based on Soil Group and texture class

Soil Group	USDA Soil Textural Class		LTAR (gpd/ft ²)
I	Sands	Sand	0.4 – 0.6
		Loamy Sand	
II	Coarse Loams	Sandy Loam	0.3 – 0.4
		Loam	
III	Fine Loams	Sandy Clay Loam	0.15 – 0.3
		Silt Loam	
		Clay Loam	
		Silty Clay Loam	
		Silt	
IV	Clays	Sandy Clay	0.05 – 0.2
		Silty Clay	
		Clay	

TABLE XXI. LTAR for LPP systems in saprolite based on Saprolite Group and texture class

Saprolite Group	Saprolite Textural Class		LTAR (gpd/ft ²)
I	Sands	Sand	0.3 – 0.4
		Loamy Sand	0.25 – 0.35
II	Loams	Sandy Loam	0.2 – 0.3
		Loam	0.1 – 0.2
		Silt Loam	0.05 – 0.15

(d) The minimum required dispersal field area and trench length shall be calculated in accordance with the following:

- (1) the minimum required dispersal field area shall be calculated by dividing the DDF by the LTAR; and
- (2) the minimum trench length shall be calculated by dividing the required dispersal field area by a lateral spacing of five feet. The following equation shall be used to calculate the minimum line length required.

$$TL = (DDF \div LTAR) \div LS$$

Where TL = length of trench (feet)

DDF = design daily flow (gpd)

LTAR = in gpd/ft²

LS = line spacing (five feet)

LS = line spacing (five feet)

- (3) When HSE is proposed to be discharged to an LPP dispersal field with no advanced pretreatment or has not been reclassified as DSE in accordance with Rule .0402(c) of this Subchapter, a licensed professional, if required in G.S. 89C, 89E, or 89F, shall calculate the

adjusted LTAR in accordance with Rule .0402(b) of this Subchapter.

(e) In addition to the requirements set forth in Rule .0901(g) of this Section, LPP system design and installation shall comply with the following, unless otherwise specified in a PIA Approval:

- (1) the LPP distribution network shall be constructed of small diameter (one to two inches) pressure rated Schedule 40 PVC laterals placed in gravel that meets the requirements in Rule .0902(b)(4) of this Section or other approved media;
- (2) the trench width shall be one to two feet;
- (3) trenches shall be located not less than three times the trench width on center. The minimum spacing for trenches shall be five feet on center;
- (4) trenches shall include a minimum of eight inches of gravel or other approved media, either from a PIA Approval or subsurface dispersal system listed in Section .0900 of this Subchapter. The lateral shall be installed a minimum of five inches above the infiltrative surface;
- (5) laterals, manifolds and LPP fields shall comply with the following design criteria:
 - (A) the maximum lateral length shall yield no more than a 10 percent difference in orifice delivery rate between the first and last orifice along the lateral;
 - (B) no more than 1/3 of the total number of holes shall be less than 5/32-inch diameter, with no orifices sized smaller than 1/8-inch diameter in any lateral line;
 - (C) all orifices shall face upwards, except for two orifices, 1/3 of the way from the beginning and end of each lateral, which shall face downward and
 - (D) maximum orifice spacing shall be as follows: Soil Group I - five feet; Soil Group II - six feet; Soil Group III - eight feet; and Soil Group IV - 10 feet;
- (6) the orifices shall be protected by the following:
 - (A) lateral sleeved within a three or four-inch perforated corrugated or smooth wall tubing meeting the requirements of Rule .0703(d) of this Subchapter; or
 - (B) specially designed and approved orifice shields;
- (7) the following additional design provisions shall be required for sloping sites:
 - (A) separately valved manifolds shall be required for all subfield segments where the elevation difference between the highest and lowest laterals exceeds three feet;
 - (B) the orifice spacing, orifice size or both shall be adjusted to compensate for relative elevation differences between laterals branching off a common

supply manifold and to compensate for the lines at the lowest elevation receiving more effluent at the beginning and end of a dosing cycle; the lateral network shall be designed to achieve a 10 to 30 percent higher steady state (pipe full) flow rate into the upper lines, relative to the lower lines, depending on the amount of elevation difference; and

- (C) maximum elevation difference between the highest and lowest laterals in a field shall not exceed 10 feet unless the flow is uniformly divided using multiple pumps or split between subfield segments without requiring simultaneous adjustment of multiple pressure regulating valves in separate locations. Flow shall be uniformly divided such that the dose volumes to the subfields does not vary more than 10 percent on an area basis. The State shall approve other designs based upon the authorized designer or PE providing documentation showing equivalent hydraulic performance to this Subparagraph;
- (8) turn-ups shall be provided at the ends of each lateral, constructed of Schedule 40 PVC pipe or stronger pressure-rated pipe, and shall terminate at the ground surface and be installed in a valve box or equivalent that provides access for operation and maintenance;
- (9) the supply manifold shall be constructed of solvent-welded pressure rated Schedule 40 PVC;
- (10) the supply manifold shall be sized large enough based on the size and number of laterals served to prevent more than a 20 percent variation in pressure head between the first and last laterals due to losses within the manifold when feeding the manifold from a lower elevation;
- (11) the supply manifold shall comply with the following design criteria:
 - (A) the ratio of the supply manifold inside cross-sectional area to the sum of the inside cross-sectional areas of the laterals served shall exceed 0.7:1;
 - (B) the reduction between the manifold and connecting laterals shall be made off the manifold using reducing tees or fittings; and
 - (C) cleanouts shall be installed at the distal ends of the supply manifold and shall be enclosed in valve boxes accessible from the ground surface;
- (12) pressure regulating valves shall be provided for pressure adjustment at the fields;

- (13) valves shall be installed in an access device, such as a valve box, and be accessible and operable from the ground surface. Valves serving contiguous subfields shall be in a common valve box;
- (14) the LPP dosing system shall comply with the following design criteria:
 - (A) the pump operating flow rate shall be based upon delivering three feet to six feet of residual pressure head at the distal end of all laterals;
 - (B) the dose volume shall be between five and 10 times the liquid capacity of the lateral pipe dosed, plus the liquid capacity of the portions of manifold and supply lines which drain between doses; and
 - (C) when pumping downhill and the supply line volume exceeds 20 percent of the calculated dose volume, special design considerations shall be followed to prevent more than 20 percent of the dose volume from draining by gravity to the dispersal field between doses; and
- (15) the trenches shall be covered to a minimum depth of four inches after settling.

(f) Drip dispersal systems used in LPP trenches and other LPP designs may be approved on a site-specific basis. The authorized designer or PE shall provide documentation showing that the proposed design meets the performance requirements of this Rule.

History Note: Authority G.S. 130A-335(e) and (f); Eff. Pending Delayed Effective Date.

15A NCAC 18E .0908 DRIP DISPERSAL SYSTEMS

- (a) This Rule provides for the permitting of drip dispersal systems receiving DSE. Drip dispersal systems shall comply with the provisions of this Rule and Section .1600 of this Subchapter.
- (b) Drip dispersal systems with advanced pretreatment shall comply with Rule .1204 of this Subchapter.
- (c) Drip dispersal systems shall meet the following soil and site criteria:

- (1) A minimum of 18 inches of naturally occurring suitable soil above a LC, 13 inches of naturally occurring suitable soil above a SWC, and the minimum vertical separation to any LC shall be 12 inches. A groundwater lowering system may be used to meet the vertical separation to a SWC when only Group I or II soils with suitable structure are present within 36 inches of the naturally occurring soil surface.
- (2) For new fill, the soil and site shall meet the following criteria:
 - (A) Rule .0909(b) and (c) of this Section, except as otherwise specified in this Subparagraph;

- (B) no SWC shall exist within the first 12 inches below the naturally occurring soil surface. A groundwater lowering system shall not be used to meet the initial site requirements for a new fill system; and
 - (C) minimum vertical separation to any unsuitable soil horizon or rock shall be 18 inches and 12 inches for any SWC.
- (3) For existing fill, the soil and site shall meet the following criteria:
- (A) Rule .0909(d) and (e) of this Section, except as otherwise specified in this Subparagraph; and
 - (B) minimum vertical separation to any LC shall be 24 inches.
- (d) Tables XXII and XXIII shall be used to determine the LTAR for all DSE drip dispersal systems:

- (1) Table XXII shall be used for systems utilizing soil. The LTAR shall be based on the most limiting, naturally occurring soil horizon within 18 inches of the naturally occurring soil surface or to a depth of 12 inches below the infiltrative surface, whichever is deeper;
- (2) Table XXIII shall be used for systems utilizing saprolite. The LTAR shall be based on the most limiting, naturally occurring saprolite to a depth of 24 inches below the infiltrative surface;
- (3) the LTAR for new fill systems shall not exceed 0.5 gpd/ft² for Group I, 0.3 for gpd/ft² Group II, 0.15 gpd/ft² for Group III or 0.05 gpd/ft² for Group IV soils, respectively;
- (4) sections of tubing without emitters (blank tubing) shall not count towards the minimum dripline length required; and
- (5) the DDF shall be divided by the LTAR, determined from Table XXII or XXIII, to determine the minimum dispersal field area required. The minimum dripline length shall be determined by dividing the required area by the maximum line spacing of two feet. The designer may recommend additional linear footage as soil and site conditions allow. The following equations shall be used to calculate the minimum dispersal field area and dripline length required:

$$MA = DDF \div LTAR$$

$$DL = MA \div LS$$

Where MA = minimum dispersal field area (ft²)
 DDF = design daily flow (gpd)
 LTAR = in gpd/ft²
 DL = dripline length (feet)
 LS = line spacing (two-foot)

TABLE XXII. LTAR for DSE drip dispersal systems based on Soil Group and texture class

Soil Group	USDA Soil Textural Class		LTAR (gpd/ft ²)
I	Sands	Sand	0.4 – 0.6
		Loamy Sand	
II	Coarse Loams	Sandy Loam	0.3 – 0.4
		Loam	
III	Fine Loams	Sandy Clay Loam	0.15 – 0.3
		Silt Loam	
		Clay Loam	
		Silty Clay Loam	
		Silt	
IV	Clays	Sandy Clay	0.05 – 0.2
		Silty Clay	
		Clay	

TABLE XXIII. LTAR for DSE drip dispersal systems based on Saprolite Group and texture class

Saprolite Group	Saprolite Textural Class	LTAR (gpd/ft ²)
I	Sand	0.3 – 0.4
	Loamy sand	0.25 – 0.35
II	Sandy loam	0.2 – 0.3
	Loam	0.1 – 0.2
	Silt Loam	0.05 – 0.1

(e) A Special Site Evaluation shall be required in accordance with Rule .0510 of this Subchapter, as applicable.

(f) Drip dispersal installation shall be in accordance with the following criteria:

- (1) dripline shall be installed in accordance with the approved design. The design shall specify installation depth, installation equipment, blanking, drainback prevention, and any other site-specific design requirements identified by the designer;
- (2) dripline shall be installed a minimum of one-inch into naturally occurring soil, except when installed in a fill system;
- (3) driplines shall be installed level. A maximum variance of plus or minus two inches shall be allowed within any contiguous section of dripline containing drip emitters;
- (4) a minimum of six inches of cover shall be maintained over the dripline. The six inches of cover may be met by the addition of up to six inches, after settling, of suitable Group II or III soil over the drip field;
- (5) drip dispersal fields shall be sloped to shed surface water;
- (6) if cover material is required and the slope is greater than 30 percent, a slope stabilization plan must be provided by a licensed professional if required in G.S. 89C, 89E, or 89F; and
- (7) the drip dispersal system shall be field tested after installation in accordance with Rule .1603 of this Subchapter.

Eff. Pending Delayed Effective Date.

15A NCAC 18E .0909 FILL SYSTEMS

(a) A fill system (including new and existing fill) is a system in which all or part of the dispersal field media is installed in fill material. The system includes both the basal area of dispersal field and the toe slope in all directions.

(b) New fill systems may be installed on sites that meet the following requirements:

- (1) a minimum of the first 18 inches below the naturally occurring soil surface consist of suitable soil with the exception that no SWC exists within the first 12 inches below the naturally occurring soil surface and a groundwater lowering system is not used to meet this requirement;
- (2) systems shall be installed only on sites with uniform slopes less than four percent;
- (3) stormwater diversions, subsurface interceptor drains, or swales shall be required as needed upslope of the system to divert surface runoff or lateral flow from passing over or into the system; and
- (4) the area of suitable soil shall be large enough to include the basal area of dispersal field and the toe slope in all directions.

(c) New fill system design and installation shall be in accordance with the following criteria:

- (1) trenches shall be installed with a minimum of 24 inches separating the infiltrative surface and any LC for gravity distribution and pressure dosed gravity distribution, except for any SWC that requires 18 inches of separation. If pressure dispersal is used, the minimum separation

History Note: Authority G.S. 130A-335(e) and (f);

- distance shall be 18 inches between the infiltrative surface and any LC and 12 inches to a SWC. This separation requirement may be met with the use of a groundwater lowering system only in Soil Groups I and II with suitable structure;
- (2) fill systems with a DDF greater than 480 gpd shall use pressure dispersal systems;
 - (3) fill material soil texture shall be classified sand or loamy sand (Soil Group I) up to the top of the trenches. The final six inches of fill used to cover the system shall have a finer texture (such as Group II or III) for the establishment of a vegetative cover;
 - (4) minimum cover shall be six inches after settling;
 - (5) additional fill may be added to facilitate drainage and accommodate final landscaping requirements at the site necessary to stabilize the fill, shed surface water, and establish a vegetative cover. The additional fill may be provided if the infiltrative surface is less than 30 inches below the finished grade;
 - (6) where fill material is added, the fill material and the existing soil shall be mixed to a depth of six inches below the interface. Vegetative cover or organic litter (O horizon) shall be removed before the additional fill material is incorporated;
 - (7) the fill system shall be constructed as an elongated berm with the long axis parallel to the ground elevation contours of the slope;
 - (8) the side slope of the fill system shall not exceed a rise to run ratio of 1:4. If the first 18 inches below the naturally occurring soil surface is Group I soil, the side slope of the fill shall not exceed a rise to run ratio of 1:3;
 - (9) the outside edge of the trench shall be located a minimum of five feet horizontally from the top of the side slope;
 - (10) the fill system shall be shaped to shed surface water and shall be stabilized with a vegetative cover;
 - (11) trench products approved under Section .1700 of this Subchapter shall be installed in accordance with PIA Approval; and
 - (12) the setback requirements shall be measured from the projected toe of the slope. If this setback cannot be met, the setback requirements shall be measured five feet from the nearest edge of the trench if the following conditions are met:
 - (A) slope of the site does not exceed two percent;
 - (B) the first 18 inches of soil beneath the naturally occurring soil surface shall consist of Group I soils; and
 - (C) the lot or tract of land was recorded on or before December 31, 1989.
- (d) An existing pre-July 1, 1977 fill site that does not meet the requirements of Paragraph (b) of this Rule may be utilized for a wastewater system if the following requirements are met:
- (1) substantiating data are provided by the lot owner (if not readily available to the LHD) indicating that the fill material was placed on the site prior to July 1, 1977;
 - (2) the fill material shall have sand or loamy sand (Group I) soil texture for a minimum depth of 24 inches below the existing ground surface;
 - (3) the fill material shall have no more than 10 percent by volume of fibrous organics, building rubble, or other debris, and shall not have discreet layers containing greater than 35 percent of shell fragments;
 - (4) if a minimum of 24 inches of Group I fill material is present, additional fill with soil texture classified Group I may be added to meet the separation requirements of Subparagraph (e)(5) of this Rule;
 - (5) SWC is 18 inches or greater below the ground surface of the fill. This requirement shall be met without the use of a groundwater lowering system; and
 - (6) the area of suitable soil shall be large enough to include the basal area of dispersal field and the toe slopes in all directions.
- (e) Existing fill system design and installation shall be in accordance with Paragraph (c) of this Rule and the following criteria:
- (1) the DDF shall not exceed 480 gpd;
 - (2) pressure dispersal shall be used. LPP systems shall meet the requirements of Rule .0907(d), (e), and (f) of this Section. Drip dispersal systems shall meet the requirements of Rule .0908(d) and (f) of this Section;
 - (3) the LTAR shall not exceed 0.5 gpd/ft²;
 - (4) existing fill sites with 48 inches of Group I soils may use conventional trenches with a maximum LTAR of 1.0 gpd/ft² in lieu of a pressure dispersal system;
 - (5) the minimum vertical separation to any LC shall be 24 inches for pressure dispersal systems and 48 inches for conventional systems. This vertical separation requirement may be met by adding additional Group I soil, but shall not be met with the use of a groundwater lowering system;
 - (6) where additional Group I fill is to be added, the side slope of the fill shall not exceed a side slope ratio of 1:3; and
 - (7) trench products approved under Section .1700 of this Subchapter shall be installed in accordance with their PIA Approval.
- (f) The LTAR for new and existing fill systems shall be determined in accordance with Rule .0901(c) of this Section and the following:
- (1) the LTAR shall be based on the most limiting, naturally occurring soil horizon within 18

inches of the ground surface or to a depth 12 inches below the infiltrative surface, whichever is deeper;

- (2) the lowest LTAR for the applicable Soil Group shall be used for systems installed in accordance with this Rule; and
- (3) for sites with a minimum of 18 inches of Group I soils below the naturally occurring soil surface or to a depth of 12 inches below the infiltrative surface, whichever is deeper, the LTAR shall not exceed 1.0 gpd/ft² for gravity or pressure dosed gravity distribution or 0.5 gpd/ft² for pressure dispersal systems.

(g) Other fill systems may be approved on a site-specific basis in accordance with a PIA Approval or Rule .0509(c) of this Subchapter.

*History Note: Authority G.S. 130A-335(e) and (f);
Eff. Pending Delayed Effective Date.*

15A NCAC 18E .0910 ARTIFICIAL DRAINAGE SYSTEMS

(a) Artificial drainage systems are a site modification and may be proposed to reclassify sites as suitable that were originally classified unsuitable due to a SWC, lateral water movement, saturated soils, a perched water table, or other oxyaquic conditions. Artificial drainage systems include groundwater lowering systems, interceptor drains, and surface water diversions.

(b) Groundwater lowering systems may be used when the following criteria are met:

- (1) the site has Group I or II soils with suitable structure and clay mineralogy; and
- (2) the groundwater lowering system shall be designed to maintain the vertical separation to a SWC as specified in Rule .0901(g)(2) of this Section.

(c) Plans and specifications for the use of a groundwater lowering system to meet the vertical separation to a SWC shall be prepared by a licensed professional if required in G.S. 89C, 89E, or 89F in accordance with Rule .0303 of this Subchapter. The plans and specifications shall meet the following design criteria:

- (1) Gravity groundwater lowering systems shall be designed in accordance with the following:
 - (A) substantiating information, calculations and data shall be provided justifying the effectiveness of the proposed drainage system design;
 - (B) design and devices shall comply with accepted standards of practice as set forth in the USDA-NRCS National Engineering Handbook, Part 624 - Drainage, Chapter 10 - Water Table Control, and Part 650 - Engineering Field Handbook, Chapter 14 - Water Management, Drainage;
 - (C) the effectiveness of groundwater lowering systems shall be determined by use of the Ellipse, Hooghoudt, or

equivalent drainage equations for sites with Group I or II soils. Justification for use of a specific drainage equation shall be provided;

- (D) drainage equation input parameters shall be based upon field descriptions of soil profiles and in-situ Ksat measurements. The drainage coefficient used in these equations shall be calculated from the highest monthly rainfall value with a 30-percent exceedance probability from the closest available National Weather Service or North Carolina State Climate Office station. A source of these data is the WETS tables published on the Natural Resource Conservation Service Field Office Technical Guides available online at: efotg.sc.egov.usda.gov/efotg_locator.aspx. This monthly value shall be divided by 14 to give the drainage coefficient (inches per day). For systems with a DDF greater than 1,500 gpd, the projected contribution of wastewater application shall be added to the drainage coefficient used in the equations;

- (E) DRAINMOD shall be used to determine the groundwater lowering system effectiveness at sites with three or more effective soil layers, Group III or IV soils within 36 inches of the naturally occurring soil surface, or sites requiring a groundwater lowering system using pumps; and
- (F) the modeling procedure set forth in Rule .0504(h) of this Subchapter shall be followed.

(2) Groundwater lowering systems using pumps shall be designed in accordance with the following:

- (A) plan and profile detail drawings of pump tank, showing all dimensions, pumps, discharge piping, floats, and float and alarm activation levels;
- (B) calculations and supporting information shall be provided as the basis for sizing the pumps, dose volume, emergency storage capacity, and overall tank capacity;
- (C) the high-water alarm in the control panel shall automatically contact a 24-hour maintenance service;
- (D) information on discharge pipe line, line location, materials, and provisions for erosion control at the discharge point;

- (E) except as otherwise provided in this Paragraph, the requirements of Section .1100 of this Subchapter shall apply to artificial drainage systems using pumps; and
 - (F) dual alternating pumps shall be required when serving two or more design units. Each pump shall be sized at a capacity of two and one half times the projected peak inflow rate to the pump tank.
- (3) Plans and specifications for all groundwater lowering systems shall include the following:
- (A) location of existing and proposed drainage systems in relation to all facilities and wastewater system components. Plans shall indicate flow direction, slope and drain outlet location;
 - (B) profile drawings showing drainage trench dimensions, depth, pipe size, aggregate envelope and filter fabric detail, cover, and cleanout detail;
 - (C) elevations with reference to an established benchmark;
 - (D) specifications for all groundwater lowering system materials and installation procedures;
 - (E) the entire groundwater lowering system, including the outlet, shall be on property owned or controlled by the person owning or controlling the system. Necessary legal agreements shall be provided in accordance with Rule .0301(c) of this Subchapter; and
 - (F) easements for egress, ingress, and regress for maintenance of groundwater lowering systems serving two or more lots shall be at least 20 feet wide plus the width of the groundwater lowering system.
- (d) Interceptor drains shall be used on sites where a SWC results from laterally flowing groundwater that can be diverted away from the dispersal field.
- (e) Other artificial drainage systems, including surface water diversions, shall comply with USDA-NRCS guidance documents.

History Note: Authority G.S. 130A-335(e) and (f); Eff. Pending Delayed Effective Date.

15A NCAC 18E .0911 PRIVIES

- (a) A privy shall be approved when it consists of a pit, floor slab, and seat assembly housed in a building that affords privacy and protection from the weather and meets the following criteria:
- (1) the pit shall consist of an excavation with a minimum bottom surface area of three and one half feet square;
 - (2) the maximum depth of the pit shall not exceed 36 inches;

- (3) the pit bottom shall not be located closer than 12 inches to a LC;
 - (4) the pit shall be curbed to prevent caving. In sandy or loose soil, the curb shall extend the full depth of the pit. In clay soils, partial curbing may be acceptable if soils have sufficient cohesion to not collapse;
 - (5) the floor shall be constructed of concrete, wood, or other approved materials. The following criteria shall be met, as applicable:
 - (A) for wood construction, rot resistant joists are used covered with tight tongue-and-groove rot resistant flooring;
 - (B) wood floors shall be anchored to the sills. The minimum sill size shall be four-inch by four-inch; and
 - (C) when other materials are used the material shall be shown to provide strength, durability and prevent entrance of flies and mosquitoes to the privy pit;
 - (6) the pit shall be vented through screened PVC Schedule 40 pipe or other pipe approved in accordance with Rule .0703 of this Subchapter, six inches in diameter, and extending above the roofline. The vent pipe shall be:
 - (A) located on a south side wall of the building;
 - (B) covered to prevent rainfall from entering, but still allow gases to escape;
 - (C) straight without any bends in the pipe; and
 - (D) black colored pipe; and
 - (7) privies shall not be used for the disposal of water-carried sewage.
- (b) Any person owning or controlling the property upon which a privy is located shall be responsible for the following requirements:
- (1) when the pit becomes filled to within 18 inches of the top of the ground, the privy building shall be moved to a new pit and the old pit covered with soil; and
 - (2) if the pit caves in, a new pit shall be provided.
- (c) The person owning or controlling the system shall be responsible for the following requirements:
- (1) the privy and grounds adjacent shall be kept free of debris and excess vegetation;
 - (2) a hinged seat cover and hinged door shall be provided and kept closed when the privy is not in use;
 - (3) flies shall be excluded from the pit by the privy building door fitting in the frame and no unscreened openings in the building;
 - (4) garbage and trash shall be kept out of the pit; and
 - (5) the privy building shall not be used for storage.
- (d) When a new pit is required, a CA and OP shall be obtained.

*History Note: Authority G.S. 130A-335(e) and (f);
Eff. Pending Delayed Effective Date.*

15A NCAC 18E .1001 ALTERNATIVE TOILETS

- (a) Use of alternative toilets, such as incinerating, composting, and mechanical toilets, and vault privies shall comply with the North Carolina Plumbing Code and this Rule.
- (b) Use of chemical or portable toilets is governed by G.S. 130A-335(h).
- (c) When an alternative toilet or chemical toilet is used, all wastewater generated in the facility shall be discharged to a wastewater system that is approved under this Subchapter.
- (d) Removal of residuals from incinerating toilets, composting toilets, mechanical toilets, vault privies, chemical toilets, or portable toilets shall be performed only by a person that holds a current NC Septage Management Firm permit in accordance with Rule 15A NCAC 13B .0832(a)(1). All waste shall be taken to an approved disposal site per G.S. 130A-291.1(d).

*History Note: Authority G.S. 130A-335(e);
Eff. Pending Delayed Effective Date.*

15A NCAC 18E .1002 RECLAIMED WATER SYSTEMS

- (a) An RCW system shall be one of the following:
 - (1) an alternate management option as identified in 15A NCAC 02U .0401(c) for use with a system permitted in accordance with 15A NCAC 02U;
 - (2) a conjunctive wastewater system, as defined in 15A NCAC 02U .0103(3), permitted under the rules of this Subchapter that:
 - (A) incorporates a beneficial use component, such as toilet flushing or landscape irrigation; and
 - (B) the beneficial use component is not necessary to meet the wastewater disposal needs of the facility;
 - (3) a conjunctive wastewater system permitted under the rules of this Subchapter when there is a non-conjunctive use wastewater system permitted and approved in accordance with 15A NCAC 02H or 15A NCAC 02T for the facility; or
 - (4) a wastewater system designed for the complete recycle or reuse of DSE.
- (b) An RCW system shall be designed to produce effluent prior to discharge that complies with the effluent standards for a Type I treatment process in accordance with 15A NCAC 02U .0301(b) or a TS-II system in accordance with Table XXIV of Rule .1201(a) of this Subchapter, whichever is more restrictive. The wastewater system shall be approved in accordance with Section .1700 of this Subchapter or designed by a PE and approved by the State when it has been determined to comply with this Rule.
- (c) When utilizing a TS-II system, the dispersal field and repair area shall comply with the siting and sizing requirements of Section .1200 of this Subchapter for a TS-II system except as follows:
 - (1) setback reductions may be concurrently taken with either of the following:
 - (A) LTAR increase; or

- (B) vertical separation reduction;
- (2) for systems designed to meet a TN standard of 10 mg/L one of the following siting and sizing criteria may be utilized:
 - (A) the property line setback may be reduced to five feet and the SA waters setback may be reduced to 50 feet for wastewater systems with a DDF less than or equal to 3,000 gpd;
 - (B) the property line setback may be reduced to 10 feet, the SA waters setback may be reduced to 100 feet, and the other surface waters setback may be reduced to 50 feet for systems with a DDF greater than 3,000 gpd; or
 - (C) the vertical separation to a SWC may be reduced to 12 inches for wastewater systems with a DDF greater than 3,000 gpd that use pressure dispersal;
- (3) the LTAR may be increased up to a factor of four compared to that assigned by the LHD for a system using DSE in Group I soils with a wastewater system that uses pressure dispersal when the following site conditions are met:
 - (A) 48 inches of Group I soils from the naturally occurring soil surface; and
 - (B) 30 inches to a SWC below the naturally occurring soil surface; and
- (4) requirements to comply with an effluent TN standard set forth in this paragraph may be waived when a site-specific nitrogen migration analysis based on projected or measured effluent nitrogen levels demonstrates that the nitrate-nitrogen concentration at the property line will not exceed 10 mg/L.
- (d) Conjunctive uses may include toilet and urinal flushing and landscape irrigation by drip dispersal. Wastewater from a system designed for complete recycling of DSE shall be used only for flushing of toilets and urinals. RCW shall not be used for body contact or human consumption. An RCW system that includes conjunctive use shall meet the following:
 - (1) Toilet and urinal flushing components shall be approved by the local building inspections department and be in compliance with the North Carolina Plumbing Code, including pipe marking requirements and back-siphon protection provisions for proximate potable water supplies.
 - (2) Siting, sizing, setbacks, and installation requirements of this Subchapter may be modified for the landscape irrigation component if they comply with the requirements for conjunctive use irrigation systems in 15A NCAC 02U, based upon information provided by the licensed professionals, if required in G.S. 89C, 89E, or 89F.
 - (3) System design, operation, and management requirements shall comply with requirements

for comparable systems in 15A NCAC 02U, including provisions for continuous on-line monitoring and recording for turbidity and a mechanism to prevent effluent utilization if the turbidity exceeds 10 NTUs, if the E. Coli or fecal coliform levels are not being met, or the disinfection unit is not operable.

- (4) Requirements to comply with an effluent TN standard may be waived on a project specific basis when documentation is provided showing that the proposed design will not result in an exceedance of the groundwater standards in accordance with 15A NCAC 02L.

(e) All RCW systems approved in accordance with this rule shall be designed by a PE and the plans approved by the State prior to LHD permit issuance.

History Note: Authority G.S. 130A-335(e); Eff. Pending Legislative Review.

15A NCAC 18E .1101 GENERAL DOSING SYSTEM REQUIREMENTS

(a) Dosing systems with a single pump or siphon shall be required to be used to deliver effluent into laterals when:

- (1) gravity distribution cannot be achieved between the septic tank and dispersal field;
- (2) the total lateral length exceeds 750 linear feet in a single system; or
- (3) a pressure dosed gravity distribution or pressure dispersal system is used.

(b) Dosing systems with multiple alternating or sequencing pumps or siphons shall be used to discharge to separate dispersal fields when:

- (1) DDF from a single system exceeds 3,000 gpd; or
- (2) the total length of trench exceeds 2,000 linear feet in a single system.

(c) If alternating pumps or siphons are not required in accordance with Paragraph (b) of this Rule, but used, then the alternating pumps or siphons may discharge to a single dispersal field.

(d) The dose volume to a dispersal field shall be calculated as follows:

- (1) 66 to 75 percent of the volume of the installed linear lateral footage for pressure dosed gravity distribution systems;
- (2) 66 to 75 percent of the volume of the installed linear lateral footage for LDP systems and trench products with a PIA approval based on lateral capacity equivalent to the capacity of a four-inch corrugated pipe;
- (3) LPP systems in accordance with Rule .0907(e)(14)(B) of this Subchapter; and
- (4) drip dispersal systems in accordance with Rule .1602(f)(3) of this Subchapter.

(e) The pump operating flow rate from a dosing system shall be designed to achieve scour velocity in the supply line and to distribute effluent in accordance with the dispersal field design.

(f) All dosing systems shall be tested using clean water prior to issuance of an OP. The test shall be conducted by the installer,

LSS, authorized designer, and PE, as applicable, witnessed by the LHD, and include a demonstration and documentation of the following:

- (1) pump or siphon operating flow rate and dose volume delivered;
- (2) float control levels;
- (3) high water alarm, including sound;
- (4) operating pressure head, if applicable; and
- (5) delivery of water to the dispersal field.

History Note: Authority G.S. 130A-335(e), (f), and (f1); Eff. Pending Legislative Review.

15A NCAC 18E .1102 PUMP DOSING

(a) The effluent pump shall be:

- (1) capable of handling a minimum of ½-inch solids or be a screened, high head pump designed for effluent;
- (2) designed to meet the pump operating flow rate and total dynamic head specified for the effluent distribution system;
- (3) removable without requiring entrance into the tank; and
- (4) listed by a third-party electrical testing and listing agency, such as Underwriter's Laboratory. A PE may propose a pump model not listed by a third-party electrical testing and listing agency. The State shall approve the pump when review of documentation provided by the PE demonstrates that the pump model meets the performance requirements for the dispersal field design.

(b) A vent or anti-siphon hole of a 3/16-inch minimum diameter shall be used to prevent air locking of the pump and siphoning from the pump tank when pumping downhill. When a check valve is provided, the anti-siphon hole or vent shall be located between the pump and the check valve. Additional venting may be required at the high point in the pump force main to prevent siphoning.

(c) Each pump discharge line in a pump tank shall have a disconnect device, such as a pressure-rated threaded union, flange, or camlock.

(d) Check valves or other type valves shall prevent drainback from the dispersal field or supply line into the pump tank. A system may be designed and approved for the supply line to drain back to the pump tank based on site specific considerations, such as freeze protection.

(e) An isolation valve shall be provided on the field side of the disconnect device when pumping uphill.

(f) The pump discharge piping shall be accessible within the tank or riser from finished grade.

(g) Fittings and valves shall be of compatible non-corrodible material. Isolation valves and disconnects shall be located within 18 inches of the top of the access riser opening.

(h) All submersible pumps shall be provided with a non-corrodible rope or chain attached to each pump enabling pump removal from the ground surface without requiring dewatering or entrance into the tank.

History Note: Authority G.S. 130A-335(e), (f), and (f1);

Eff. Pending Legislative Review.

15A NCAC 18E .1103 CONTROL PANELS

(a) A control panel shall be provided for all systems that use a pump. The control panel enclosure shall be rated NEMA 4X at a minimum. A third-party electrical testing and listing agency, such as Underwriter's Laboratory, shall list the control panel. The control panel shall include for each pump:

- (1) an independent overload protection (if not integral with the pump motor);
- (2) circuit breaker(s);
- (3) a motor contactor that disconnects all current to the pump or a solid-state relay that controls current to the pump;
- (4) a hand-off automatic (H-O-A) switch or alternate method to enable manual or automatic pump operation and for the pump to be deactivated manually;
- (5) a pump run light;
- (6) an elapsed time meter; and
- (7) an event counter.

(b) An automatic pump sequencer shall be provided in systems requiring multiple pumps in accordance with Rule .1101(b) of this Section and shall remain operable whenever any pump is inoperable.

(c) When telemetry is required in accordance with Sections .0800, .1500, .1600, and .1700 of this Subchapter, the control panel shall be connected to an active phone line, wireless internet router, dedicated cellular line, or another form of telemetry that allows the Management Entity to be notified and respond to alarm conditions. The telemetry shall remain active for the life of the wastewater system.

(d) The control panel bottom shall be mounted a minimum of 24 inches above finished grade, within 50 feet of and in view of the pump tank. The control panel shall be accessible to the Management Entity and LHD.

(e) When the control panel is located more than 10 feet from the pump tank access riser, and when one or more electrical splices are used, a NEMA 4X junction box shall be installed above grade on or adjacent to the pump tank access riser. Electrical splices shall not be used within the conduit piping.

(f) Wiring shall be conveyed to the control panel or outside junction box through waterproof, gasproof, and corrosion-resistant conduits, with no splices or junction boxes inside the tank. Materials and methods, such as wire grips or duct seal, shall be used to seal wire and wire conduit openings inside the pump tank and disconnect enclosure.

(g) Dual and multiple fields shall be dosed by separate pumps that shall automatically alternate or sequence. The supply lines shall be "H" connected to permit manual alternation between fields dosed by each pump. "H" connection valving shall be accessible from the ground surface, either from the pump tank access manhole or in a separate valve chamber outside the pump tank. The State shall approve other methods of dosing dual or multiple fields when the authorized designer or PE provides documentation of equivalent performance to this Paragraph.

(h) Liquid level detection devices, such as floats, shall be provided in the pump tank to control pump cycles and trigger

notification of alarm conditions. The liquid level detection device configuration shall meet the following requirements:

- (1) a minimum of 12 inches of effluent shall be maintained in the bottom of the pump tank;
- (2) pump-off level shall be set to keep the pump submerged or in accordance with the manufacturer's written specifications;
- (3) a separate control float shall be provided to activate the high-water alarm;
- (4) the high-water alarm float shall be set to activate within six inches of the pump-on level or higher, if applicable, if providing design equalization capacity in a timed dosing system; the lag pump float switch, where provided, shall be located at or above the high-water alarm activation level; and
- (6) floats shall be supported utilizing durable, corrosion resistant material, and designed to be adjustable, removable, and replaceable from the ground surface without requiring dewatering, entrance into the tank, or pump removal.

(i) The pump tank shall have a high-water alarm that shall:

- (1) be audible and visible to the system users and the Management Entity;
- (2) have a silencer button or device that is located on the outside of the panel enclosure;
- (3) provide for manual testing;
- (4) the alarm shall automatically reset after testing and when an alarm condition has cleared;
- (5) remain operable whenever the pump is inoperable;
- (6) have an enclosure that is watertight, corrosion resistant, and shall be rated NEMA 4X at a minimum; and
- (7) be mounted outside the facility and accessible.

(j) For systems designed by a PE, the PE may propose other panel construction and location criteria that meet these panel performance criteria, comply with local electrical codes, and are approved by the local electrical inspector.

History Note: Authority G.S. 130A-335(e), (f), and (f1); Eff. Pending Delayed Effective Date.

15A NCAC 18E .1104 SIPHON DOSING

Siphons and siphon tanks may be used when a minimum of two feet of elevation drop is maintained between the siphon outlet invert and the inlet invert in the dispersal field distribution system. Siphons and siphon tanks shall meet the following criteria:

- (1) Slope and size of the siphon discharge line shall be sufficient to handle the peak siphon discharge by gravity flow without the discharge line flowing full. Vents for the discharge lines shall be located outside of the siphon tank and shall not serve as an overflow for the tank.
- (2) All siphon parts shall be installed in accordance with the manufacturer's specifications. All materials shall be corrosion-resistant, of cast iron, high-density plastic, fiberglass, stainless steel, or equal as approved by the State when

- documentation is provided which shows the materials meet the requirements of this Rule.
- (3) Siphon tanks shall have a functioning trip counter and high-water alarm. The high-water alarm shall be audible and visible by system users and weatherproof if installed outdoors in an enclosure rated as NEMA 4X at a minimum. The high-water alarm shall be set to activate within two inches of the siphon trip level.

History Note: Authority G.S. 130A-335(e), (f), and (f1); Eff. Pending Legislative Review.

15A NCAC 18E .1105 TIMED DOSING

- (a) Timed dosing systems shall be used with the following:
- (1) when a dosing system is required in accordance with Rule .1101 of this Section in conjunction with an adjusted DDF granted in accordance with Rule .0403 of this Subchapter;
 - (2) flow equalization systems;
 - (3) advanced pretreatment or dispersal systems, if required by the manufacturer; or
 - (4) when specified by the authorized designer.
- (b) The timed dosing system shall be integrated with the pump tank control sensors to ensure that the minimum dose volume calculated in accordance with Rule .1101(d) of this Section is present prior to the start of any scheduled dose event and to provide that a full dose is delivered.
- (c) The float configuration of a flow equalization system using timed dosing shall be adjusted by the LHD, authorized designer, or PE, to provide for equalization capacity in the system.

History Note: Authority G.S. 130A-335(e), (f), and (f1); Eff. Pending Legislative Review.

15A NCAC 18E .1106 PRESSURE DOSED GRAVITY DISTRIBUTION DEVICES

- (a) Pressure manifolds for pressure dosed gravity distribution shall meet the following minimum design and performance requirements:
- (1) uniform distribution of flow among individual laterals with a minimum of two feet of residual pressure head;

- (2) a pressure regulating valve incorporated in the supply line just prior to the pressure manifold to control pressure to the manifold;
- (3) a mechanism or device for measuring residual pressure head in the manifold;
- (4) a mechanism to stop flow to individual laterals;
- (5) a method to visually verify the flow to each individual lateral. Such methods may include observation ports. Observation ports may be located inside or outside of the pressure manifold box; and
- (6) the pressure manifold and appurtenances shall be designed and installed to be accessible for inspection, operation, maintenance, and monitoring.

- (b) A distribution box or a drop box may be used to dissipate or distribute flow in a pressure dosed gravity dispersal system for parallel, serial, or sequential distribution. Such devices shall be watertight, corrosion resistant, constructed to withstand active and passive loads, and the volume of the device shall be such that when the dose volume is delivered, the box shall not overflow. The authorized agent shall approve the distribution device when it has been determined to be in accordance with Rule .0901(g)(9) through (11) of this Subchapter.

History Note: Authority G.S. 130A-335(e), (f), and (f1); Eff. Pending Legislative Review.

15A NCAC 18E .1201 ADVANCED PRETREATMENT SYSTEM STANDARDS

- (a) Advanced pretreatment systems with a DDF less than or equal to 3,000 gpd shall meet the following conditions:
- (1) have an RWTS or PIA Approval;
 - (2) be designed to meet the effluent standard specified in the OP and defined in Table XXIV prior to effluent dispersal to the soil;
 - (3) comply with the siting and sizing requirements of this Section; and
 - (4) comply with Rules .1302(f) and .1710 of this Subchapter.

TABLE XXIV. Effluent standards for advanced pretreatment systems

Constituent	Effluent Standards		
	NSF-40	TS-I	TS-II
CBOD	≤ 25 mg/L	≤ 15 mg/L	≤ 10 mg/L
TSS	≤ 30 mg/L	≤ 15 mg/L	≤ 10 mg/L
NH ₃		≤ 10 mg/L or 80% removal of NH ₃ if influent TKN exceeds 50 mg/L	≤ 10 mg/L
TN			≤ 30 mg/L
Fecal Coliform		≤ 10,000 colonies/100 mL	≤ 1,000 colonies/100 mL

- (b) The effluent applied to advanced pretreatment systems shall not exceed DSE as specified in Table III of Rule .0402(a) of this Subchapter, unless the system is designed to treat HSE and

approved by the State on a product or project-specific basis in accordance with the rules of this Subchapter and engineering practices.

(c) Wastewater systems with a DDF greater than 3,000 gpd, proposed to meet TS-II effluent standards shall meet a TN standard of less than or equal to 20 mg/L.

History Note: Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343; Eff. Pending Delayed Eff. Date.

15A NCAC 18E .1202 SITING AND SIZING CRITERIA FOR ADVANCED PRETREATMENT SYSTEMS WITH A DESIGN DAILY FLOW LESS THAN OR EQUAL TO 1,500 GALLONS/DAY

(a) Wastewater systems utilizing advanced pretreatment with a DDF less than or equal to 1,500 gpd may only use one of the following modifications to system siting and sizing criteria, unless otherwise identified in this Rule:

- (1) reduction in depth to LC or vertical separation to LC in accordance with Paragraph (b) of this Rule;
- (2) LTAR increase in accordance with Paragraph (c) of this Rule; or
- (3) setback reductions in accordance with Paragraph (d) of this Rule.

(b) The minimum required vertical separation to a LC in natural soil may be reduced with the use of advanced pretreatment in accordance with Table XXV. Table XXVI provides the minimum depths and vertical separation for new and existing fill. A Special Site Evaluation shall be submitted and approved in accordance with Rule .0510 of this Subchapter when a reduction in vertical separation to a LC is proposed in accordance with this Rule.

Table XXV. Minimum vertical separation to LC based on effluent standards for wastewater systems with a DDF less than or equal to 1,500 gpd

Minimum vertical separation (inches) from infiltrative surface to LC					
Soil Group	Distribution Method	Effluent Standard**			
		DSE*	NSF-40	TS-I	TS-II
I	Gravity	18	12	12	12
	LPP	12	12	9	6
	Drip	12	12	9	6
II-IV	Gravity	12	12	9	9
	LPP	12	12	9	6
	Drip	12	12	9	6

*For comparison

**12-inch vertical separation shall always be maintained to rock or tidal water

Table XXVI. Minimum depth to LC and vertical separation to SWC in new or existing fill based on effluent standard for wastewater systems with a DDF less than or equal to 1,500 gpd

Minimum depth (inches) from naturally occurring soil surface to LC					
Type of Fill	Distribution Method	Effluent Standard			
		DSE**	NSF-40	TS-I	TS-II
New Fill (≤1,500 gpd) (slope ≤ 4%)	Gravity	18 to LC 12 to SWC	18 to LC 12 to SWC	14 to LC 12 to SWC	14 to LC 12 to SWC
	LPP	18 to LC 12 to SWC	18 to LC 12 to SWC	12	12
	Drip	18 to LC 12 to SWC	18 to LC 12 to SWC	12	12
Existing Fill (≤480 gpd)	Gravity	36 of Group I Fill/Soil			
	LPP	24 of Group I Fill/Soil			
	Drip	24 of Group I Fill/Soil			
Minimum vertical separation (inches) from infiltrative surface to LC*					
Type of Fill	Distribution Method	Effluent Standard			
		DSE**	NSF-40	TS-I	TS-II
New Fill (≤1,500 gpd) (slope ≤ 4%)	Gravity	24 to LC 18 to SWC	18 to LC 18 to SWC	18 to LC 14 to SWC	18 to LC 14 to SWC
	LPP	18 to LC 12 to SWC	18 to LC 12 to SWC	12 to LC 9 to SWC	12 to LC 9 to SWC
	Drip	18 to LC 12 to SWC	18 to LC 12 to SWC	12 to LC 9 to SWC	12 to LC 9 to SWC

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Existing Fill (≤480 gpd)	Gravity	36	36	36	36
	LPP	18	18	12	12
	Drip	18	18	12	12

*Minimum depth after adjustment for slope correction

**For comparison

(c) The LTAR shall be based on the effluent standard and dispersal field type proposed in accordance with the following:

- (1) The LTAR may be increased by the following factors when compared to the rate assigned by the authorized agent for a new system using DSE:
 - (A) up to 1.33 for NSF-40 effluent standards in soils which are Group I or II with suitable structure;
 - (B) up to 2.0 for TS-I or TS-II effluent standards when pressure dispersal is utilized; or
 - (C) up to 2.5 for TS-II effluent standards when all the following conditions are met: minimum of 36 inches of Group I soils from the naturally occurring soil surface; minimum depth to a SWC below the naturally occurring soil surface is 24 inches; space shall be available for an equivalently sized dispersal field repair area; and pressure dispersal shall be utilized.
- (2) A Special Site Evaluation, if required in accordance with Rule .0510 of this Subchapter, shall be submitted and approved.

- (3) The LTAR for an aerobic drip system shall be determined in accordance with Rule .1204 of this Section.
- (4) Trench dispersal products approved for a specific dispersal field reduction in area or trench length when receiving DSE in accordance with this Subchapter or a PIA Approval shall not be reduced by more than 50 percent when any LTAR adjustments are taken in accordance with this Rule.
- (5) The DDF shall not be increased by the addition of advanced pretreatment to an existing wastewater system.
- (d) Advanced pretreatment systems shall meet the following setback requirements:
 - (1) minimum setback requirements of Section .0600 of this Subchapter shall be met, except as shown in Table XXVII; and
 - (2) when any other siting or sizing modifications are applied (reduced depth to LC, vertical separation, or increased LTAR) for a TS-I or TS-II system in accordance with Paragraphs (b) and (c) of this Rule, no setback reductions shall be taken except those to artificial drainage systems described in Table XXVII.

Table XXVII: Setbacks for wastewater systems meeting NSF-40, TS-I, or TS-II effluent standards

Feature (structure, water source, etc.)	Setback (feet) according to Effluent Standard			
	DSE*	NSF-40	TS-I	TS-II
Surface waters classified WS-I, from mean high-water mark	100	70	70	50
Waters classified SA, from mean high-water mark	100	70	70	50
Any Class I or Class II reservoir, from normal pool elevation	100	70	70	50
Any other coastal water, canal, marsh, stream, perennial waterbodies, streams, or other surface waters, from mean high-water mark	50	35	35	25
Lake or pond, from flood pool elevation	50	35	35	25
Subsurface groundwater lowering system, ditch, or device, as measured on the ground surface from the edge of the feature	25	25	20	15
Surface water diversion, as measured on the ground surface from the edge of the diversion	15	15	10	10
Interceptor drain - upslope	10	10	7	7
Interceptor drain – sideslope	15	15	10	10
Interceptor drain – downslope	25	25	20	15
Any stormwater conveyance (pipe or open channel) or ephemeral stream	15	15	10	10
Permanent stormwater retention basin or detention basin	50	50	35	25

Any other dispersal field, except designated dispersal field repair area for project site	20	20	10	10
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*For comparison

History Note: Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1203 SITING AND SIZING CRITERIA FOR ADVANCED PRETREATMENT SYSTEMS WITH A DESIGN DAILY FLOW GREATER THAN 1,500 GALLONS/DAY AND LESS THAN OR EQUAL TO 3,000 GALLONS/DAY

(a) Wastewater systems utilizing advanced pretreatment with a DDF greater than 1,500 gpd and less than or equal to 3,000 gpd may use utilize the system siting and sizing in this Rule.

(b) The LTAR shall be based on the effluent standard and dispersal field type proposed in accordance with the following:

- (1) The LTAR may be increased by the following factors when compared to the rate assigned by the authorized agent for a new system using DSE:
 - (A) up to 2.0 for TS-I or TS-II effluent standards;
 - (B) up to 2.5 for TS-II effluent standards when there is a minimum of 48 inches of Group I soils from the naturally occurring soil surface and a minimum of 30 inches to a SWC below the naturally occurring soil surface.
- (2) The LTAR for an aerobic drip system shall be determined in accordance with Rule .1204 of this Section.

(c) When the LTAR for a system is proposed to be increased in accordance with Paragraph (b) of this Rule, the following conditions shall be met:

- (1) a Special Site Evaluation required in accordance with Rule .0510 of this Subchapter shall be submitted and approved;
- (2) pressure dispersal shall be utilized;
- (3) space shall be available for an equivalently sized dispersal field repair area; and
- (4) 25-foot setback shall be maintained to all property lines unless a site-specific nitrogen migration analysis for a TS-I system indicates that the nitrate-nitrogen concentration at the property line will not exceed 10 mg/L or a TS-II system is used.

(d) Trench dispersal products approved for a specific dispersal field reduction in area or trench length when receiving DSE in accordance with this Subchapter or a PIA Approval shall not be reduced by more than 50 percent as a result of increased LTAR in accordance with this Rule.

(e) The DDF shall not be increased by the addition of advanced pretreatment to an existing wastewater system.

History Note: Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1204 ADVANCED PRETREATMENT DRIP DISPERSAL SYSTEMS

(a) This Rule provides for the permitting of drip dispersal systems receiving advanced pretreatment effluent with a DDF less than or equal to 3,000 gpd. Drip dispersal systems shall comply with the provisions of this Rule and Section .1600 of this Subchapter.

(b) Drip dispersal systems with a DDF less than or equal to 1,500 gpd shall utilize the siting and sizing criteria in this Paragraph when used with advanced pretreatment.

- (1) The soil and site characteristics shall meet the following criteria based on effluent standards:
 - (A) NSF-40 Systems
 - (i) a minimum of 18 inches of naturally occurring suitable soil above a LC and 13 inches of naturally occurring suitable soil above a SWC, and the minimum vertical separation to any LC shall be 12 inches;
 - (ii) for new fill, the requirements of Rules .0909(b) and (c) of this Subchapter shall be met, except there shall be a minimum of 18 inches of naturally occurring suitable soil above a LC and a minimum of 12 inches of naturally occurring suitable soil above a SWC, and the minimum vertical separation shall be 18 inches to a LC and 12 inches to a SWC; or
 - (iii) for existing fill, the requirements of Rules .0909(d) and (e) of this Subchapter shall be met, except that the minimum vertical separation to any LC shall be 18 inches;
 - (B) TS-I Systems
 - (i) a minimum of 15 inches of naturally occurring suitable soil above a LC and a minimum of 13 inches of naturally occurring suitable soil above a SWC, and the minimum vertical separation to any LC shall be nine inches;
 - (ii) for new fill, the requirements of Rules .0909(b) and (c) of

- this Subchapter shall be met, except there shall be a minimum of 12 inches of naturally occurring suitable soil above a LC, a minimum of nine inches vertical separation to a SWC, and a minimum of 12 inches vertical separation to a LC; or
- (iii) for existing fill, the requirements of Rules .0909(d) and (e) of this Subchapter shall be met, except that the minimum vertical separation to any LC shall be 12 inches; and
- (C) **TS-II Systems**
 - (i) a minimum of 13 inches of naturally occurring suitable soil above a LC and the minimum vertical separation to any LC shall be six inches;
 - (ii) for new fill, the requirements of Subpart (B)(ii) of this Paragraph shall be met; or
 - (iii) for existing fill, the requirements of Subpart (B)(iii) of this Paragraph shall be met.
- (2) Site modifications for advanced pretreatment drip dispersal systems shall meet the following criteria based on effluent standards:
- (A) NSF-40 Systems may utilize a groundwater lowering system to meet the vertical separation requirements to a SWC only when Group I or II soils with suitable structure are present within 36 inches of the naturally occurring soil surface. The minimum vertical separation to the projected (drained) SWC shall be 12 inches. The addition of fill material shall not be used to meet this requirement; and
 - (B) TS-I and TS-II Systems may utilize a groundwater lowering system to meet the vertical separation requirements to a SWC. The minimum vertical separation to the projected (drained) SWC shall be 12 inches. The groundwater lowering system may be used with the following: Group III soils are present at any depth above the invert elevation of the highest point of the artificial drainage system or within 36 inches of the naturally occurring soil surface, whichever is deeper; or on new fill sites.
- (3) Table XXVIII shall be used to determine the LTAR for advanced pretreatment drip dispersal systems based on Soil Group. Limitations in adjustment allowances for NSF-40, TS-I, and TS-II systems are listed in Parts (b)(3)(E), (b)(3)(F), and (b)(3)(G) of this Rule.

TABLE XXVIII. LTAR for advanced pretreatment drip dispersal systems based on Soil Group

Soil Group	USDA Soil Textural Class		LTAR (gpd/ft ²)		
			NSF-40	TS-I	TS-II
I	Sands	Sand	0.6 – 1.0	0.8 – 1.2	0.8 – 1.5
		Loamy Sand			
II	Coarse Loams	Sandy Loam	0.4 – 0.6	0.5 – 0.8	0.6 – 0.8
		Loam			
III	Fine Loams	Sandy Clay Loam	0.15 – 0.4	0.2 – 0.6	0.2 – 0.6
		Silt Loam			
		Clay Loam			
		Silty Clay Loam			
		Silt			
IV	Clays	Sandy Clay	0.05 – 0.2	0.05 – 0.2	0.05 – 0.2
		Silty Clay			
		Clay			

- (A) The LTAR shall be based on the most limiting, naturally occurring soil horizon within 18 inches of the naturally occurring soil surface or to a depth of 12 inches below the infiltrative surface.
- (B) The DDF shall be divided by the LTAR, determined from Table XXVIII or XXIX, to calculate the minimum dispersal field area required. The minimum dripline length shall be calculated by dividing the required area by the maximum line spacing of two feet. The following equations shall be used to calculate the minimum dispersal field area and dripline length required:

- MA = DDF ÷ LTAR
 DL = MA ÷ LS
 Where MA = minimum dispersal field area (ft²)
 DDF = design daily flow (gpd)
 LTAR = in gpd/ft²
 DL = dripline length (feet)
 LS = two-foot line spacing

- (C) The minimum dripline length calculated in Part (b)(3)(B) of this Rule shall not be less than 0.5 x DDF for Group I soils, 0.83 x DDF for Group II soils, 1.25 x DDF for Group III soils, or 3.33 x DDF for Group IV soils. The dripline spacing may be adjusted in accordance with Rule .1602(e)(3) of this Subchapter and the PIA Approval so that the minimum required dispersal field area calculated in Part (b)(3)(B) of this Rule does not need to be increased.
- (D) Sections of tubing without emitters (blank tubing) required to meet site-specific conditions shall not count towards the minimum length of dripline needed when laying out the system or when calculating the linear footage of dripline needed.
- (E) LTAR adjustment limitations for NSF-40 Systems
- (i) the LTAR for new fill shall not exceed 0.6 gpd/ft² for Group I soils, 0.4 gpd/ft² for Group II soils, 0.15 gpd/ft² for Group III soils, or 0.05 gpd/ft² for Group IV soils; and
 - (ii) the LTAR for existing fill shall not exceed 0.8 gpd/ft².
- (F) LTAR adjustment limitations for TS-I Systems
- (i) the LTAR for new fill shall not exceed 1.0 gpd/ft² for Group I soils, 0.5 gpd/ft² for Group II soils, 0.2 gpd/ft² for Group III soils, or 0.07 gpd/ft² for Group IV soils; and
 - (ii) the LTAR for existing fill shall not exceed 1.0 gpd/ft²; and
 - (iii) the LTAR for sites with less than 18 inches of naturally occurring soil to any unsuitable LC shall not exceed the lowest LTAR for Soil Groups I, II, and III, and 0.1 gpd/ft² for Group IV soils.
- (G) LTAR adjustment limitations for TS-II Systems
- (i) the LTAR for new fill shall not exceed 1.0 gpd/ft² for Group I soils, 0.6 gpd/ft² for Group II soils, 0.2 gpd/ft² for Group III soils, or 0.07 gpd/ft² for Group IV soils; and
 - (ii) the LTAR for existing fill shall not exceed 1.0 gpd/ft²; and
 - (iii) the LTAR for sites with less than 18 inches of naturally occurring soil to any unsuitable LC shall not exceed the lowest LTAR for Soil Groups I, II, and III, and 0.1 gpd/ft² for Group IV soils.
- (4) Table XXIX shall be used in determining the LTAR for advanced pretreatment drip dispersal systems installed in sapolite. The LTAR shall be based on the most limiting, naturally occurring sapolite to a depth of 24 inches below the infiltrative surface.

TABLE XXIX. LTAR for advanced pretreatment drip dispersal systems based on Sapolite Group

Sapolite Group	Sapolite Textural Class	LTAR (area basis)(gpd/ft ²)	
		NSF-40	TS-I and TS-II
I	Sand	0.4 – 0.5	0.4 – 0.6
	Loamy sand	0.3 – 0.4	0.3 – 0.5
II	Sandy loam	0.25 – 0.35	0.25 – 0.4
	Loam	0.2 – 0.25	0.2 – 0.3
	Silt loam	0.05 – 0.1	0.05 – 0.15
III	Sandy clay loam	0.05 – 0.1	0.05 – 0.15

- (5) A Special Site Evaluation shall be required in accordance with Rule .0510 of this Subchapter, as applicable.
- (6) Setbacks allowed in Table XXVII of Rule .1202(d) of this Section may be used with advanced pretreatment drip dispersal systems when no reduction in the depth to a LC or vertical separation reduction is proposed compared to the requirements for DSE in Table XXV or Table XXVI of Rule .1202(b) of this Section. A minimum of 18 inches of naturally occurring soil to an unsuitable LC shall be required to take setback reductions. The following LTAR limitations shall be applicable:
 - (A) for NSF-40 and TS-I systems, with the exception of the setback reductions to artificial drainage systems, when reductions are taken in setbacks, the LTAR shall not exceed the lowest LTAR for Soil Groups I, II, and III, and 0.1 gpd/ft² for Group IV soil;
 - (B) for TS-II Systems, with the exception of setback reductions to artificial drainage systems, when reductions are taken in setbacks, the LTAR shall not exceed the mid-range LTAR for Soil Groups I, II, and III, and 0.1 gpd/ft² for Group IV soils; and
 - (C) for NSF-40, TS-I, and TS-II Systems, Table XXVIII may be used to determine the LTAR when no other setback reductions are taken aside of those to artificial drainage systems.
- (c) Drip dispersal systems with a DDF greater than 1,500 gpd and less than or equal to 3,000 gpd used with advanced pretreatment may propose an adjusted LTAR if the following criteria are met:
 - (1) no reduction in the depth to a LC, vertical separation, or setback reduction is proposed;
 - (2) proposed LTAR is supported by a Special Site Evaluation in accordance with Rule .0510 of this Subchapter; and
- (3) 25-foot setback shall be maintained to all property lines, unless one of the following criteria is met:
 - (A) site-specific nitrogen migration analysis for a TS-I system indicates that the nitrate-nitrogen concentration at the property line will not exceed 10 mg/L; or
 - (B) TS-II system is used.
- (d) Drip dispersal installation shall be in accordance with Rule .0908(f) of this Subchapter.

History Note: Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1205 ADVANCED PRETREATMENT SAND LINED TRENCH SYSTEMS

- (a) Sand lined trench systems with a DDF less than or equal to 1,500 gpd receiving TS-I or TS-II effluent shall meet the requirements of this Rule.
- (b) The site meets the criteria in Rule .0906(c) of this Subchapter and the receiving permeable horizon may be deeper than 60 inches below the natural grade.
- (c) If a groundwater lowering system is used to meet the vertical separation to a SWC, the following conditions shall apply:
 - (1) the site shall comply with the requirements of Rule .0906(d) of this Subchapter; and
 - (2) the vertical separation requirement to a SWC shall be reduced to nine inches with pressure dosed gravity distribution or six inches with pressure dispersal.
- (d) Table XXX shall be used to determine the LTAR for a sand-lined trench system and shall be based on the most limiting, naturally occurring soils overlying the permeable receiving layer. An equivalent trench width of three feet shall be used to determine trench length in accordance with Rule .0901(d) of this Subchapter. The LTAR shall be one of the following:
 - (1) the rate set forth in Table XXX; or
 - (2) 20 percent of the in-situ Ksat of the receiving permeable horizon or the rate set forth in Table XXX, whichever is less.

TABLE XXX. LTAR for advanced pretreatment sand lined systems based on texture of the most hydraulically limiting overlying soil horizon

Soil Group	Texture of Most Hydraulically Limiting Overlying Soil Horizon	LTAR (gpd/ft ²)*
I	Sand	0.9 – 1.4
II	Coarse Loams	0.7 – 1.0
III	Fine Loams	0.4 – 0.8
IV	Clays	0.2 – 0.4

*There shall be no reduction in trench length compared to a conventional gravel trench when Accepted or Innovative gravelless trench product is used.

- (e) A Special Site Evaluation in accordance with Rule .0510 of this Subchapter shall be required for the following conditions to field verify the LTAR:
 - (1) when the texture of the receiving permeable horizon is sandy loam or loam, and the system DDF is greater than 600 gpd; or

- (2) when the texture of the receiving permeable horizon is silt loam.
- (f) Setbacks in accordance with Table XXVII of Rule .1202(d) of this Section shall be applied to sand lined trench systems.
- (g) Sand lined trench system installation shall be in accordance with Rule .0906(h) of this Subchapter.

History Note: Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1206 ADVANCED PRETREATMENT BED SYSTEMS

(a) This Rule shall apply to bed systems receiving advanced pretreatment.

(b) Bed systems receiving NSF-40 effluent, or better, on sites with a DDF less than or equal to 600 gpd shall meet the following requirements:

- (1) the soil and site shall meet the following criteria:
 - (A) the vertical separation requirements of Rule .0901(g)(2) of this Subchapter;
 - (B) soil texture is Group I, II or III; and
 - (C) design options for the site are limited by topography or available space;
- (2) Table XVI in Rule .0901 of this Subchapter shall be used to determine the LTAR for a bed system. On sites where the soil texture is Group I or II, the initial LTAR shall be increased by a factor of 1.125 with no further reduction in bed size allowed;
- (3) setbacks allowed in Table XXVII of Rule .1202(d) of this Section shall be used; and
- (4) bed system installation shall be in accordance with Rule .0903(e) of this Subchapter.

(c) Bed systems receiving TS-I or TS-II effluent on sites with a DDF less than or equal to 1,500 gpd shall meet the following requirements:

- (1) The soil and site meet the following criteria:
 - (A) there is a minimum of 30 inches of suitable Group I or II soils below the naturally occurring soil surface and no SWC within the first 36 inches below the naturally occurring soil surface or 36 inches of Group I soils below the naturally occurring soil surface and no SWC exists within the first 12 inches below the naturally occurring soil surface;
 - (B) the requirement for 30 inches of Group I or II soils or 36 inches of Soil Group I in Part (c)(1)(A) of this Rule may be reduced to 18 inches when a Special Site Evaluation in accordance with Rule .0510 of this Subchapter is provided;
 - (C) sites shall have a uniform slope not exceeding two percent, unless a Special Site Evaluation submitted and

approved in accordance with Rule .0510 of this Subchapter is provided; and

(D) the bed system shall be considered to be a fill system if the infiltrative surface is installed less than six inches below the naturally occurring soil surface. For bed systems in fill, the requirements of Paragraph (e) of this Rule shall also be met.

(2) Table XVI in Rule .0901(c) of this Subchapter shall be used to determine the initial LTAR for a bed system and shall be based on the most limiting, naturally occurring soil horizon within 36 inches of the naturally occurring soil surface or to a depth of 12 inches below the bed bottom, whichever is deeper. The minimum bed size shall be determined in accordance with the following:

- (A) the minimum amount of bottom area square feet shall be determined by dividing the DDF by the LTAR;
- (B) when the bed is a fill system, the lowest LTAR for the applicable Soil Group shall be used. The LTAR shall not exceed 1.0 gpd/ft²;
- (C) fill shall not be added to the naturally occurring soil surface in order to increase the LTAR of a bed system;
- (D) the minimum bed size shall be reduced by up to 25 percent when the system is designed to meet TS-I or TS-II effluent and is not installed in existing fill; and
- (E) the minimum bed size may be reduced by up to 40 percent when the following criteria are met: the system is designed to meet TS-II effluent; Group I Soil is present in the first 36 inches of naturally occurring soil; no SWC exists within the first 30 inches below the naturally occurring soil surface or within 24 inches of the bed bottom; the bed or beds are not located beneath the advanced pretreatment components, and pressure dispersal is used; effluent is distributed to the beds by a pump and timer control system designed to distribute flow evenly over a 24-hour period; and there is 100 percent dispersal field repair area.

(3) A Special Site Evaluation shall be submitted and approved in accordance with Rule .0510 of this Subchapter when the vertical separation to a LC is reduced and on sites with slopes greater than two percent.

(4) Setbacks as set forth in Table XXVII of Rule .1202(d) of this Section shall apply as follows:

- (A) the setbacks shall be measured from the nearest edge of the bed;
 - (B) for bed systems using fill, the setbacks shall be measured from a point five feet from the nearest edge of the bed sidewall, or from the projected toe of the slope that is required to meet the soil and site limitations, whichever is greater;
 - (C) the minimum separation between initial and repair dispersal field areas serving a single system and facility shall be two feet of naturally occurring soil. Ten feet of naturally occurring soils shall separate the initial and repair dispersal field areas serving separate facilities when these bed systems are on a common site or tract of land; and
 - (D) whenever the bed size is reduced in accordance with this Rule, only reduced setbacks to artificial drainage systems in accordance with Table XXVII of Rule .1202(d) of this Section shall be allowed.
- (5) Bed system installation shall be in accordance with Rule .0903(e) of this Subchapter and the following:
- (A) pressure dispersal shall be used whenever effluent is distributed to a bed not located beneath the advanced pretreatment component; and
 - (B) when new fill is required for the installation of a bed system, suitable Group I fill material shall be used to meet the vertical separation requirements from the bed bottom to a LC, when all of the following conditions are met: a groundwater lowering system is not used to meet the vertical separation requirements; new fill material is sand or loamy sand, containing not more than 10 percent by volume fibrous organics, building rubble, or other debris and does not have discreet layers containing greater than 35 percent of shell fragments by volume; and the requirements of Rule .0909(c)(8) of this Subchapter, for the projected side slope of the fill are met, as determined beginning at a point six inches above the top edge of the bed.
- (d) Bed systems receiving TS-I or TS-II effluent on sites with a DDF greater than 1,500 gpd and less than or equal to 3,000 gpd shall meet the following requirements:
- (1) The soil and site shall meet the minimum following criteria:
 - (A) Group I soils are present for 54 inches below the naturally occurring soil surface;
 - (B) no SWC exists within the first 48 inches below the naturally occurring soil surface; and
 - (C) vertical separation of 24 inches to any SWC is maintained below the bed bottom, unless a site-specific groundwater mounding analysis is performed and demonstrates a 12-inch separation or 18-inch minimum for a fill system in accordance with Rule .0909(c) of this Subchapter shall be maintained.
 - (2) Table XVI in Rule .0901(c) of this Subchapter shall be used to determine the initial LTAR for a bed system and shall be based on the most limiting, naturally occurring soil horizon within 36 inches of the naturally occurring soil surface or to a depth of 12 inches below the bed bottom, whichever is deeper. The minimum bed size shall be determined in accordance with the following:
 - (A) the minimum number of square feet of bed bottom area shall be calculated by dividing the DDF by the LTAR;
 - (B) the minimum bed size shall be reduced by up to 25 percent when the system is designed and approved to meet TS-I or TS-II effluent standards and will be installed in naturally occurring soil; and
 - (C) the minimum bed size may be reduced by up to 40 percent when all of the following criteria are met: the system is designed and approved to meet TS-II effluent standards; the hydraulic assessment demonstrates that a 24-inch minimum vertical separation to a SWC is maintained after accounting for projected groundwater mounding; and there is 100 percent dispersal field repair area.
 - (3) A Special Site Evaluation shall be submitted and approved in accordance with Rule .0510 of this Subchapter.
 - (4) No setback reductions shall be allowed in accordance with Table XXVII of Rule .1202(d) of this Section. The following horizontal setbacks shall be met:
 - (A) the minimum setback between initial and repair dispersal field areas serving a single system and facility shall be two feet of naturally occurring soil. Ten feet of naturally occurring soil shall separate the initial and repair dispersal field areas serving separate

- (B) facilities when these bed systems are on a common site or tract of land; when two beds are used, the minimum separation between two beds shall be 20 feet. When three or more beds are used, the minimum separation between beds shall be 10 feet; and
- (C) a 25-foot setback shall be maintained from edge of the bed to the property line unless a site-specific nitrogen migration analysis indicates that the nitrate-nitrogen concentration at the property line will not exceed 10 mg/L or TS-II or better effluent is produced by the approved system.

(5) Bed system installation shall be in accordance with Rule .0903(e) of this Subchapter and the following criteria:

- (A) two or more equally sized beds shall be used and the beds shall not be located beneath the advanced pretreatment components; and
- (B) effluent shall be distributed to the beds by a pressure dispersal system. A timer control system shall be used to distribute flow evenly to the beds over a 24-hour period.

(e) Bed systems receiving TS-I or TS-II quality effluent may be proposed for a site with existing fill that meets the requirements of Rule .0909(d) of this Subchapter under the following conditions:

- (1) no SWC exists within 18 inches of the existing fill surface;
- (2) 18 inches of vertical separation exists to the SWC;
- (3) the DDF does not exceed 480 gpd; and
- (4) pressure dispersal is used. The requirement for pressure dispersal shall not be required if the advanced pretreatment system PIA Approval allows for advanced pretreatment unit(s) to discharge directly to the underlying bed and for multiple units, where applicable, when the advanced pretreatment units are spaced at equal intervals across the entire bed area.

History Note: Authority G.S. 130A-334; 130A-335; 130A-342; 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1302 OPERATION AND MAINTENANCE OF ADVANCED PRETREATMENT SYSTEMS

- (a) This Rule shall apply to all advanced pretreatment systems approved in accordance with Sections .1500 and .1700 of this Subchapter.
- (b) System management in accordance with Table XXXI of Rule .1301(b) of this Section shall be required for advanced pretreatment systems and may be modified in accordance with Rule .1301(e).

(c) Prior to the issuance or re-issuance of an OP for an advanced pretreatment system, the owner shall provide to the LHD documentation that a contract for operation and maintenance of the system is in place with a Management Entity. For proprietary advanced pretreatment systems, the contract shall be with either the manufacturer, manufacturer's representative, or a Management Entity authorized in writing by the manufacturer or manufacturer's representative to operate the system. For non-proprietary advanced pretreatment systems, the contract shall be with an operator certified in accordance with Rule .0303(e) of this Subchapter for the classification indicated on the OP.

(d) Operation and maintenance for advanced pretreatment shall be in accordance with the following:

- (1) the Management Entity shall evaluate the performance of each system;
- (2) minimum inspection, sampling, and reporting frequency shall be in accordance with this Section, the RWTS or PIA Approval, and conditions of the OP;
- (3) the Management Entity shall inspect each system during one or more of the required Management Entity inspections while the system is in operation using a VIP specified by the manufacturer and included in the RWTS or PIA Approval. The VIP shall include the following:
 - (A) a visual inspection and evaluation of all critical treatment components and of the effluent in the field for solids, clarity, color, and odor. The VIP shall also include field tests of pH, turbidity, and dissolved oxygen content and, for TS-II systems, alkalinity, and any other tests proposed by the manufacturer and specified in the RWTS or PIA Approval;
 - (B) compliance criteria to determine system compliance status and proposed responses to conditions observed; and
 - (C) for systems serving vacation rentals subject to the North Carolina Vacation Rental Act, G.S. 42A, this visit shall be scheduled during the seasonal high use period and shall coincide with a water quality sampling event if required in accordance with Rule .1709 of this Subchapter;
- (4) the actual flow shall be recorded in accordance with the RWTS or PIA Approval by the Management Entity prior to the visual inspection of the system in accordance with Subparagraph (d)(3) of this Rule and prior to any effluent sampling event required in accordance with Rule .1709 of this Subchapter; and
- (5) sampling and resampling for an approved RWTS or PIA System shall be undertaken as

required in accordance with Rule .1709 of this Subchapter and the following:

- (A) all samples shall be collected, preserved, transported, and analyzed in compliance with 40 CFR 136;
- (B) samples shall be taken to a certified laboratory, as defined in G.S. 130A-313(2), for analysis;
- (C) documented chain of custody for each sample collected shall be maintained; and
- (D) re-sampling at any site shall be performed as required in the RWTS or PIA Approval, Rule .1709 of this Subchapter, or as otherwise directed by the LHD or State as part of an enforcement action. The owner, manufacturer, or manufacturer's representative may also re-sample a system to verify or refute sample results. A new complete data set for re-sampling conducted within 30 days of receipt of a non-compliant data set may be substituted to demonstrate compliance with the designed effluent quality standard in accordance with Table XXIV of Rule .1201(a) of this Subchapter. All sample results collected shall be reported.

(e) The results of all sampling shall be reported by the Management Entity to the owner, LHD, State, and the proprietary advanced pretreatment manufacturer.

(f) An individual advanced pretreatment system at a single site shall be considered compliant when the following conditions are met:

- (1) annual VIP specified in the RWTS or PIA Approval indicates that the results of the VIP meet the requirements specified in the RWTS or PIA Approval; and
- (2) the arithmetic mean for BOD₅, TSS, TKN, and TN and the geometric mean for Fecal Coliform from three or more consecutive sampling dates does not exceed the designated effluent standard in Table XXIV in Rule .1201(a) of this Subchapter. A new complete data set for re-sampling conducted within 30 days of receipt of a non-compliant data set may be substituted to demonstrate compliance with the designed effluent quality standard in accordance with Table XXIV of Rule .1201(a) of this Subchapter.

(g) Mass loading for BOD₅, TSS, or TN may be used to demonstrate site compliance with Subparagraph (f)(2) of this Rule for a wastewater system with a DDF less than or equal to 3,000 gpd. The mass loading to the wastewater system shall be based on site specific water use data and effluent sampling results. At least one year of water use data shall be used in this calculation. The mass loading to the wastewater system shall be calculated as follows:

$$\begin{aligned} \text{EML} &= \text{Flow} \times \text{EFF} \text{ (mg/L)} \\ \text{AML} &= 0.6 \times \text{DDF} \times \text{TS} \text{ (mg/L)} \\ \text{If } \text{EML} &\leq \text{AML, the site is compliant} \end{aligned}$$

- Where
- EML = effective mass loading
 - AML = allowable mass loading
 - Flow = average daily flow during the peak water use month or the average of the peak 30 consecutive day period during the prior year
 - EFF = average of the results for the constituent (BOD₅, TSS, or TN) from the two most recent complete data sets.
 - TS = the effluent limit based on the constituent and effluent standard from Table XXIV in Rule .1201(a) of this Subchapter

(h) The Management Entity may record daily wastewater flow and may sample influent to the advanced pretreatment system as needed to determine compliance with this Rule and OP conditions.

History Note: Authority G.S. 130A-335(e) and (f); Eff. Pending Delayed Effective Date.

15A NCAC 18E .1303 OWNER RESPONSIBILITIES FOR WASTEWATER SYSTEM OPERATION AND MAINTENANCE

(a) Any person owning or controlling the property upon which a wastewater system is installed shall be responsible for the following items regarding the operation and maintenance of the system:

- (1) the wastewater system shall be operated and maintained to protect North Carolina ground and surface water quality standards and to prevent the following conditions:
 - (A) discharge of sewage or effluent to the surface of the ground, surface waters, or into groundwater at any time;
 - (B) back-up of sewage or effluent into the facility, building drains, collection system, freeboard volume of the tanks, or distribution system; or
 - (C) effluent within three inches of finished grade over one or more trenches based on two or more observations made not

less than 24 hours apart, and greater than 24 hours after a rainfall event;

- (2) the system shall be considered to be malfunctioning when one or more of the conditions of Subparagraph (a)(1) of this Rule occur or if it is necessary to remove the contents of the tank(s) at a frequency greater than once per month in order to prevent one or more of the conditions of Subparagraph (a)(1). The owner shall contact the LHD when the wastewater system is malfunctioning and implement remedies as directed by the LHD in accordance with Rule .1306 of this Section;
- (3) wastewater systems shall be inspected, and the entire contents of all septic tank compartments shall be removed whenever the depth of solids (both scum and sludge) is found to be more than 1/3 of the liquid depth in any compartment. The effluent filter shall be rinsed to remove accumulated solids that can cause the wastewater to back up into the facility or clog the system, or replaced as needed;
- (4) residuals from the wastewater system shall be transported and disposed of in accordance with G.S. 130A, Article 9, and 15A NCAC 13B et seq;
- (5) grease traps and grease tanks shall be pumped as needed to prevent discharge of FOG from the trap or tank to the next treatment component, but no less than yearly. Grease traps and grease tanks shall be maintained in accordance with Rule .0803(h) of this Subchapter and the owner shall maintain a contract with a septage management firm. All pumping records shall be maintained on-site;
- (6) site-specific vegetation shall be established and maintained over the wastewater system and repair area to stabilize slope and control erosion; and
- (7) activities that result in soil disturbance or soil compaction shall not occur over the initial and repair dispersal field areas.

(b) A contract for operation and maintenance of a wastewater system required to be maintained by a Management Entity, as specified in Table XXXI of Rule .1301(b) of this Section, shall be in effect for as long as the system is in use. A contract shall be executed between the system owner and a Management Entity prior to the issuance of an OP, unless the system owner and Management Entity are the same. The contract shall include:

- (1) specific requirements for operation, maintenance, and associated reporting;
- (2) responsibilities of the owner;
- (3) responsibilities of the system Management Entity;
- (4) provisions for notification to the LHD by the owner and Management Entity upon termination of the contract; and
- (5) other requirements for the continued performance of the system, as determined by

the Management Entity, LHD, and State, as applicable.

History Note: Authority G.S. 130A-335(e) and (f); Eff. Pending Legislative Review.

15A NCAC 18E .1304 MANAGEMENT ENTITY RESPONSIBILITIES FOR WASTEWATER SYSTEM OPERATION AND MAINTENANCE

(a) When a Management Entity is required to be or to employ a certified operator as specified in Table XXXI in Rule .1301(b) of this Section, the operator shall, at a minimum, be certified as a subsurface operator in accordance with G.S. 90A, Article 3, and 15A NCAC 08G. Operators of systems classified as Type V or VI in Table XXXI in Rule .1301(b) of this Section may be required to have additional certifications by the State in accordance with Rule .1301(e) of this Section and upon consultation with the Water Pollution Control Systems Operator Certification Commission, if required by G.S. 90A, Article 3.

(b) The Management Entity shall inspect the wastewater system at the frequency specified in Table XXXI in Rule .1301(b) of this Section or in accordance with the RWTS or PIA Approval.

(c) The Management Entity shall provide a copy of the inspection report, including results of the VIP with respect to compliance criteria as specified in the RWTS or PIA Approval and effluent sampling, to the owner and LHD within 30 days of the system inspection.

(d) When inspections indicate the need for system repairs, the Management Entity shall notify the LHD within 48 hours.

(e) The Management Entity shall be responsible for conducting routine maintenance procedures and monitoring requirements in accordance with the conditions of the OP and the contract.

(f) The Management Entity shall notify the LHD and the proprietary advanced pretreatment manufacturer, as applicable, when the owner or the Management Entity chooses not to renew an operation and maintenance contract executed in accordance with this Rule.

(g) The Management Entity shall submit the inspection report to the State centralized data management system.

History Note: Authority G.S. 130A-335(e) and (f); Eff. Pending Legislative Review.

15A NCAC 18E .1305 LOCAL HEALTH DEPARTMENT RESPONSIBILITIES FOR WASTEWATER SYSTEM OPERATION AND MAINTENANCE

(a) No IP, CA, or OP shall be issued for Type IV, V, or VI systems, unless a Management Entity of the type specified in Table XXXI in Rule .1301(b) of this Section is authorized and operational to carry out operation and maintenance requirements for the wastewater system as set forth in these Rules and the OP.

(b) A LHD may be the Management Entity only for systems classified Type IV, Va, Vb, Vc, Vd, Ve, Vf, and Vg and only when authorized by the local board of health.

(c) An authorized agent shall review the performance and inspection reports submitted in accordance with Rule .1304(c) of this Section and perform an on-site compliance inspection of the systems as required in Table XXXI in Rule .1301(b) of this

Section. More frequent inspections may be performed by an authorized agent if requested by the system owner or the Management Entity, or specified in the PIA approval or OP.

(d) The LHD may provide the owner with the option for a private Management Entity to perform the on-site compliance inspection for Type IIIb and IIIh systems in accordance with Table XXXI in Rule .1301(b) of this Section instead of the LHD. The Management Entity shall provide to the owner and LHD a written compliance inspection report.

(e) The LHD or State shall issue a written notice of non-compliance to the owner when the wastewater system is non-compliant with the performance standards listed in the CA and OP or the ATO.

(f) The LHD shall investigate malfunctions in accordance with Rule .1306 of this Section.

History Note: Authority G.S. 130A-335(e) and (f); Eff. Pending Legislative Review.

15A NCAC 18E .1306 SYSTEM MALFUNCTION AND REPAIR

(a) This Rule identifies the responsibilities of the LHD and the owner when a system is malfunctioning or otherwise determined to require repair.

(b) The LHD or State shall issue a written NOV to the wastewater system owner for the following:

- (1) malfunctioning wastewater system determined in accordance with Rule .1303(a)(1) and (2) of this Section;
- (2) wastewater system that creates or has created a public health hazard or nuisance by effluent surfacing, or effluent discharging into groundwater or surface waters; or
- (3) wastewater system that is partially or totally destroyed, such as components that are crushed, broken, damaged, or otherwise rendered unusable or ineffective so that the component will not function as designed.

(c) The wastewater system shall be repaired within 30 days of the date on the NOV issued by the State or LHD unless the NOV specifies a different time frame for the repair based on site specific factors, such as the severity of the repair, wastewater backing up into a restaurant or discharging into SA waters, or adverse weather that delays construction of the repair. The following steps shall be followed to remedy a malfunctioning wastewater system:

- (1) The owner shall apply for a repair in accordance with Section .0200 of this Subchapter, unless only maintenance is required to bring the wastewater system into compliance.
- (2) After investigating the malfunction, the State or LHD shall require that the wastewater system be repaired to correct the malfunction and eliminate any public health hazard. The wastewater system shall be repaired so that it meets G.S. 130A, Article 11 and this Subchapter. When it is not possible to bring the wastewater system into compliance with G.S. 130A, Article 11 and this Subchapter, the authorized agent shall use their best

professional judgement, based on education and experience, to require a repair that will enable the wastewater system to function in a manner that eliminates the public health hazard.

- (3) When necessary to protect the public health, the State or LHD shall require the owner of a malfunctioning system to pump and haul sewage to an approved wastewater system during the time needed to repair the wastewater system. This requirement shall be included in the NOV issued to the owner.

(d) If no repair options are available for the wastewater system in accordance with Paragraph (c), the LHD may issue a CA for a permanent pump and haul system. The permanent pump and haul system shall meet the following conditions:

- (1) Prior to issuance of the CA by the LHD, the owner shall provide the following information:
 - (A) a contract with a septage management firm permitted in accordance with G.S. 130A-291.1 to pump and haul the sewage;
 - (B) documentation of the wastewater system approved under this Subchapter or in accordance with 15A NCAC 02H or 15A NCAC 02T to accept the sewage;
 - (C) documentation from the facility receiving the sewage confirming that the facility has the capacity for the additional sewage and agrees to accept it; and
 - (D) a contract with a Management Entity for inspection and maintenance of the system.

(2) Tanks shall be approved by the LHD for permanent pump and haul if shown to be structurally sound, watertight, and of a capacity needed based on the DDF and projected pumping frequency. Existing tanks may be used for permanent pump and haul if the tanks meet the requirements in this Subparagraph.

(3) A non-transferrable OP, valid for a period not to exceed five years, shall be issued to the pump and haul system owner.

(e) A malfunctioning wastewater system that has been disconnected from the facility for any reason shall be repaired prior to reuse.

(f) If a malfunctioning wastewater system is found to be nonrepairable the dispersal system shall not be used. The system owner shall be required to abandon the system to protect the public health and safety as specified in Rule .1307 of this Section.

(g) Legal remedies may be pursued, in accordance with G.S. 130A, Part 2, after an authorized agent has observed and documented one or more malfunctioning conditions and issued an NOV.

History Note: Authority G.S. 130A-291.1; 130A-291.2; 130A-335(e) and (f); Eff. Pending Legislative Review.

15A NCAC 18E .1307 WASTEWATER SYSTEM ABANDONMENT

If a wastewater system is abandoned or is otherwise no longer in use, the tanks shall:

- (1) have the contents removed by a septage management firm permitted in accordance with G.S. 130A-291.1;
- (2) be removed, collapsed, or otherwise rendered unable to retain liquid, and backfilled; and
- (3) have the electrical components de-energized and above ground components removed.

History Note: Authority G.S. 130A-335; Eff. Pending Legislative Review.

15A NCAC 18E .1701 GENERAL

PIA Systems are any wastewater systems, system components, or devices as defined by G.S. 130-343(a) that are not described in other Sections of this Subchapter and systems for which any of the following are proposed:

- (1) reduced setbacks;
- (2) reduced depth to LC or vertical separation requirements; or
- (3) increased LTAR.

This Section shall provide for the approval and permitting of PIA Systems.

History Note: Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1702 APPLICATION

(a) An application shall be submitted in writing to the Department for a PIA System. All applications shall include the information required by G.S. 130A-343(d), (f), (g), (g1), and (h), and the following, as applicable:

- (1) identification of the type of PIA Approval requested:
 - (A) Provisional;
 - (B) Innovative;
 - (C) Functionally Equivalent;
 - (D) Accepted; or
 - (E) a combination of any of the above;
- (2) plans and specifications for the system, including the following:
 - (A) description of the system;
 - (B) materials used in construction;
 - (C) proposed use of system;
 - (D) system design criteria;
 - (E) system design and drawings;
 - (F) installation manual;
 - (G) operation and maintenance manual, including a checklist for documentation of inspection and maintenance activities and the VIP;
 - (H) influent and effluent sampling locations for advanced pretreatment systems while the system remains in operation;

- (I) method for automatically measuring and recording daily wastewater flow dispersed to the dispersal field for advanced pretreatment systems; and
- (J) start-up requirements and information;
- (3) the following information:
 - (A) product specific literature;
 - (B) published research; and
 - (C) previous experience and performance with the system;
- (4) results of any available testing, research or monitoring of pilot systems or full-scale operational systems including:
 - (A) identification of the third-party research or testing organization that conducted the testing, research, or monitoring provided;
 - (B) documentation that the protocol or evaluation used in the testing, research, or monitoring is:
 - (i) established by a nationally recognized certification body;
 - (ii) a listed protocol that has been approved by the Department in accordance with G.S. 130A-343(d);
 - (iii) a comparable evaluation protocol used for system approval in other states. The comparable evaluation protocol shall include information on relevant conditions such as wastewater system design, soil types, climate, and hydrology and be reviewed by the Department; or
 - (iv) in accordance with an alternative performance evaluation protocol proposed by the manufacturer for approval;
 - (C) documentation that the system is tested, certified, and listed by a nationally recognized certification body and complies with an ongoing verification program administered by that certification body, as applicable; and
 - (D) documentation that the system can be sampled in compliance with 40 CFR 136 and that the method for system sampling monitors system compliance with effluent standards;
- (5) verification that the product submitted for PIA Approval is the same as the certified, listed, or tested product, and if not, identification of any modifications made to the submitted product;

- (6) notification of any proprietary or trade secret information, system, component, or device. All documents received are considered Public Records in accordance with G.S. 132-1, unless they meet the criteria for classification as a trade secret as defined in G.S. 66-152(3);
- (7) draft written PIA Approval that includes criteria for site selection, installation requirements, operation and maintenance procedures including a VIP protocol with compliance criteria, system classification, frequency of system inspection and monitoring in accordance with Table XXXI of Rule .1301(b) of this Subchapter, and minimum certification or licensing requirements as set forth in applicable certification and licensing rules and statutes for designers, installers, and Management Entities; and
- (8) fee payment as required by G.S. 130A-343(k), by corporate check, money order or cashier's check made payable to: North Carolina On-Site Water Protection System Account or North Carolina OSWW System Account, and mailed to the State. Fees received are non-refundable.

(b) Innovative System applications shall include the information listed in Paragraph (a) of this Rule.

(c) Provisional System applications shall include the information listed in Paragraph (a) of this Rule and an evaluation protocol containing all information set forth in G.S. 130-343(f), including:

- (1) identity and qualifications of the proposed third-party evaluator, including documentation of their third-party status;
- (2) description of the evaluation protocol, including any proposed laboratory and field testing;
- (3) number of systems to be installed;
- (4) site selection criteria;
- (5) system monitoring and reporting procedures, and proposed duration of evaluation; and
- (6) any other information needed for the system to be able to achieve Innovative status upon completion of the Provisional System evaluation protocol.

(d) Functionally Equivalent Trench System Innovative applications shall include the information listed in Paragraph (a) of this Rule and documentation that the manufacturer has petitioned the Commission for Public Health in accordance with G.S. 130A-343(g1).

(e) Accepted System applications shall include the information listed in Paragraph (a) of this Rule and documentation that the manufacturer has petitioned the Commission for Public Health in accordance with G.S. 130A-343(h).

History Note: Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1703 DEPARTMENT AND COMMISSION APPLICATION REVIEW

(a) The Department shall review all applications submitted to determine if the information listed in Rule .1702 of this Section is included and determine whether additional information is needed to continue the review.

(b) Within 30 days of receipt of the initial application, the Department shall notify the manufacturer of any items necessary to complete the application or notify the manufacturer that the application is complete. This determination shall not constitute a qualitative review of the information provided, nor the approval or denial of the proposed system designation. Specified additional information shall be received within 180 days or the application file shall be closed.

(c) Upon receipt of a complete application, the Department shall conduct a qualitative review in accordance with PIA Approval criteria identified in Rules .1704, .1705, and .1706 of this Section.

(d) For systems that are certified and listed by a nationally recognized certification body, the Department shall complete its review and determine whether to approve or deny Provisional System applications within 90 days of receipt of a complete application.

(e) The Department shall complete its review and determine whether to approve or deny Innovative System applications within 90 days of publication in the North Carolina Register of the notice of receipt of a complete application.

(f) The Department shall prepare and submit its findings and recommendations for a Functionally Equivalent Trench System or an Accepted System to the Commission within 120 days of receipt of a complete application.

(g) Upon request by the petitioner, the Commission may modify the 180-day time frame for receipt of additional information specified by the Department for a Functionally Equivalent Trench System or Accepted System petition based on a determination that a petition is incomplete and additional information is needed. The petitioner may also request Commission review of the Department's determination that a petition is incomplete or additional information request.

(h) The Department shall notify the applicant and LHDs of the approval or denial of a PIA System. The PIA Approval shall include conditions for permitting, siting, installation, use, monitoring, operation and maintenance, and number of systems that can be installed. When an application is denied, the Department shall inform the applicant in writing of the reason for denial. The Department shall assign a unique code to the approved products for tracking purposes.

(i) An applicant may reapply in accordance with this Section. When reapplying, a new application shall be required and the applicant shall make a new fee payment as required by G.S. 130A-343(k).

History Note: Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1704 APPROVAL CRITERIA FOR PROVISIONAL SYSTEMS

(a) A dispersal system shall be approved for use as a Provisional System when the following criteria have been met:

- (1) documentation of one of the following is provided:
 - (A) a minimum of 50 installations that have been in use for a minimum of 12 months, with available information indicating comparable hydraulic performance and rate of malfunction to a conventional trench system;
 - (B) the system's design is functionally similar to another approved system described elsewhere in this Subchapter, or to a PIA System approved in accordance with this Section. The system's design and functional similarity shall be equal or superior to the approved comparable system for the following: material physical properties and chemical durability; field installed permeable sidewall area and bottom infiltrative area; method and manner of function for conveyance and application of effluent; structural integrity; and field installed storage volume;
 - (C) the system has been certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6), for a period that exceeds one year; or
 - (D) the system has complied with a comparable evaluation protocol used for system approval in other states. The comparable evaluation protocol shall include information on relevant conditions such as wastewater system design, soil types, climate, and hydrology and be reviewed by the Department;
 - (2) documentation of load testing is provided that demonstrates the structural integrity to be comparable to a conventional trench system, including subjecting the trench system to the following without collapsing, fracturing, or breaking when installed in a trench with the proposed product configuration and width:
 - (A) an axle load of 16,000 pounds when covered with 12 inches of compacted soil; and
 - (B) an axle load of 4,000 pounds when covered with six inches of compacted soil; and
 - (3) a proposed evaluation protocol to be overseen by a third-party evaluator is submitted to the Department for review. The evaluation protocol shall ensure that all information necessary to satisfy the criteria to achieve Innovative Approval, as specified in G.S. 130A-343(f) and Rule .1705 of this Section, is collected. The protocol shall include the following:
 - (A) a minimum of 100 installations operational and in use for a minimum of 12 months; and
 - (B) sufficient information collected to evaluate the system's hydraulic performance, structural integrity and rate of malfunction compared with a conventional trench system.
- (b) Advanced pretreatment systems shall be approved for use as a Provisional System when the following criteria have been met:
- (1) documentation of one of the following is provided for designs complying with TS-I, TS-II, or RCW effluent standards:
 - (A) a minimum of 50 complete third-party field verification data sets from a minimum of 15 sites that have been in use for six months, including all constituents necessary to verify compliance with the applicable effluent standard. Two to five data sets may be from the same site if collected a minimum of three months apart, with no data excluded from the field sampling sites. The data sets shall demonstrate compliance with TS-I, TS-II, or RCW effluent standards in accordance with Rules .1002 and .1709 of this Subchapter, as applicable;
 - (B) the system's design is functionally similar to another approved system described elsewhere in this Subchapter, or to a Provisional or Innovative System approved in accordance with this Section. The system's design and functional similarity shall be equal or superior to the comparable system for all of the following: material physical properties and chemical durability; structural integrity; biological, chemical, or physical treatment processes; method and manner of function for conveyance and application of effluent through the system; and number and size of system compartments;
 - (C) the system has been certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6), for a period that exceeds one year; or
 - (D) the system has complied with a comparable evaluation protocol used for system approval in other states. The comparable evaluation protocol shall include information on relevant conditions such as wastewater system design, soil types, climate, and

- hydrology and be reviewed by the Department; and
- (2) a proposed evaluation protocol to be overseen by a third-party evaluator is submitted to the Department for review. The evaluation protocol shall ensure that all information necessary to satisfy the criteria to achieve Innovative Approval, as specified in G.S. 130A-343(f) and Rule .1705 of this Section, is collected. The protocol shall include one of the following:
- (A) for a system that has been certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6) for a period that exceeds two consecutive years, a minimum of 50 complete third-party field verification data sets from a minimum of 15 sites in operation for a minimum of six months, including all constituents necessary to verify compliance with the applicable effluent standard. Two to five data sets may be from the same site if collected a minimum of three months apart, with no data excluded from the field sampling sites. The data may be collected from systems in-state or out-of-state. The data sets shall show compliance with TS-I, TS-II, or RCW effluent standards in accordance with Rules .1002 and .1709 of this Subchapter, as applicable; or
- (B) a minimum of 150 complete third-party field verification data sets from a minimum of 50 sites in operation for a minimum of six months, including all constituents necessary to verify compliance with the applicable effluent standard. Two to five data sets may be from the same site if collected a minimum of three months apart, with no data excluded from the field sampling sites. The data sets shall demonstrate compliance with TS-I, TS-II, or RCW effluent standards in accordance with Rule .1709 of this Section, as applicable.
- (c) Manufacturers requesting Provisional Approval as both an advanced pretreatment and dispersal system shall meet the requirements for advanced pretreatment and dispersal as described in this Rule.

15A NCAC 18E .1705 APPROVAL CRITERIA FOR INNOVATIVE SYSTEMS

- (a) A dispersal system shall be approved for use as an Innovative System when the following criteria have been met:
- (1) the performance requirements for an Innovative System identified in G.S. 130A-343(a)(5) and (g) have been met;
 - (2) materials used in construction are equal or superior in physical properties, chemical durability, and structural integrity compared to materials used for similar proposed systems described in other Sections of this Subchapter;
 - (3) the system has been demonstrated to perform equal or superior to a system that is described in other Sections of this Subchapter or to an Innovative or Accepted System previously approved in accordance with this Section, based upon controlled pilot-scale research studies or statistically valid monitoring of full-scale operational systems;
 - (4) the system has met one of the following criteria:
 - (A) the system has completed an evaluation protocol as a Provisional System in accordance with Rule .1704 of this Section;
 - (B) the manufacturer has provided comparable third-party research and testing conducted in other states, with the data and findings of all evaluations of the system performance, that support the proposed use of the system. The comparable research shall include information on relevant conditions, such as wastewater system design, soil types, climate, and hydrology; or
 - (C) the system has been evaluated in accordance with G.S. 130A-343(g)(3); and
 - (5) the following documentation is provided:
 - (A) load testing that demonstrates the structural integrity to be comparable to a conventional trench system, including subjecting the trench system to an axle load of 16,000 pounds when covered with 12 inches of compacted soil and an axle load of 4,000 pounds when covered with six inches of compacted soil without collapsing, fracturing, or breaking;
 - (B) a minimum of 100 installations operational and in use for a minimum of one year. The 100 installations sites may include any combination of systems installed in conjunction with an approved Provisional System evaluation completed in North Carolina and systems in other states; and

History Note: Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Legislative Review.

- (C) system hydraulic performance and rate of malfunction is equal or superior to the demonstrated performance of a conventional trench system.
- (b) Advanced pretreatment systems complying with TS-I, TS-II, or RCW effluent standards shall be approved for use as an Innovative System when the following information is provided:
 - (1) information required in Paragraphs (a)(1) through (a)(4) of this Rule; and
 - (2) documentation of one of the following:
 - (A) for a system that has been certified and listed by a nationally recognized certification body, as defined by G.S. 130A-343(a)(6) for a period that exceeds two consecutive years, a minimum of 50 complete third-party field verification data sets from a minimum of 15 sites in operation for a minimum of six months, including all constituents necessary to verify compliance with the applicable effluent standard. Two to five data sets may be from the same site if collected a minimum of three months apart, with no data excluded from the field sampling sites. The data may be collected from systems in-state or out-of-state. The data sets shall demonstrate compliance with TS-I, TS-II, or RCW effluent standards, as applicable; or
 - (B) a minimum of 150 complete third-party field verification data sets from a minimum of 50 sites in operation for a minimum of six months, including all constituents necessary to verify compliance with the applicable effluent standard. Two to five data sets may be from the same site if collected a minimum of three months apart, with no data excluded from the field sampling sites. The 50 sites may include a combination of sites monitored in conjunction with an approved Provisional System evaluation completed in North Carolina and sites in other states. The data sets shall demonstrate compliance with TS-I, TS-II, or RCW effluent standards, as applicable.
- (c) Manufacturers requesting Innovative Approval as both an advanced pretreatment and dispersal system shall meet the requirements for advanced pretreatment and dispersal as described in this Rule.

History Note Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1706 APPROVAL CRITERIA FOR ACCEPTED SYSTEMS

- (a) The Commission shall designate a wastewater dispersal system as an Accepted System when it finds based on the information provided in accordance with this Rule that the standards set forth by G.S. 130A-343(a)(1) and G.S. 130A-343(h) have been met.
- (b) The following information shall be provided by the petitioner and reviewed by the Commission prior to granting Accepted System status:
 - (1) documentation of a minimum of 300 systems installed statewide and in use as an approved Innovative System for more than five years;
 - (2) data and findings of all prior evaluations of the system performance as provided by the manufacturer;
 - (3) results of prior performance surveys of Innovative Systems in use in North Carolina for the five-year period immediately preceding the petition, including any information available to the manufacturer pertinent to the accuracy and validity of performance surveys not completed under their control;
 - (4) review(s) of records on system use and performance reported by LHDs, authorized designers, installers, and Management Entities documenting the experiences with performance of the system in North Carolina, including information collected and reported in accordance with Rules .1711 and .1712 of this Section. Upon request of the manufacturer, the Department and manufacturer shall meet to discuss the accuracy and validity of performance data and surveys to be considered for inclusion in the review. LHDs and other stakeholders shall be invited to participate in the discussion;
 - (5) a statistically valid survey of system performance shall be performed, as follows:
 - (A) the manufacturer shall provide a proposed survey plan for Department concurrence prior to carrying out the survey. This plan shall specify the number of systems to be evaluated, period of evaluation, method to randomly select systems to be evaluated, methods of field and data evaluation, and proposed survey team members, including proposed cooperative arrangements to be made with Department and LHD staff. The Department shall facilitate LHD participation with any performance review or survey. The Department shall utilize the Division of Public Health's State Center for Health Statistics for assistance in evaluating the statistical validity of proposed evaluation protocols; and

(B) the survey shall include the field evaluation of a minimum of 250 randomly selected Innovative Systems compared with a minimum of 250 comparably aged randomly selected conventional systems, with a minimum of 100 of each type of surveyed system currently in use and in operation for a minimum of five years. Systems surveyed shall be distributed throughout the three physiographic regions of the state (Mountain, Piedmont and Coastal Plain) in approximate proportion to the relative usage in the three regions. The survey shall determine comparative system failure rates, with field evaluations completed during a typical wet-weather season (February through early April), with matched Innovative and conventional Systems sampled during similar time periods in each region. The petitioner shall provide a statistical analysis of the survey results showing a one-sided test where, if the failure rate in the sample of Innovative Systems is a minimum of five percentage points higher than the failure rate in the sample of conventional systems, there is only a five percent chance that a difference this large would occur by chance (95 percent confidence level). If a statistically significant higher failure rate in the Innovative System is not detected, the Commission shall find that the Innovative System performs the same as or better than the conventional system;

(6) Other criteria for determining whether the proposed system has been in general use, and other surveys, including evaluations of different numbers of Innovative and conventional systems, designed to verify equal or superior performance of the Innovative System compared to the conventional system under actual field conditions in North Carolina shall be approved by the Department when they are demonstrated to have comparable statistical validity as described in Subparagraph (b)(5) of this Rule. The Department's review and approval of proposed alternate criteria for determining whether the system has been in general use, or of other proposed surveys are subject to review and concurrence by the Commission.

(c) The Commission shall impose any use, design, installation, operation, maintenance, monitoring, and management conditions in accordance with G.S. 130A-343.

History Note: Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1707 DESIGN AND INSTALLATION CRITERIA FOR PROVISIONAL, INNOVATIVE, AND ACCEPTED APPROVALS

All products approved under this Section shall be designed and installed in accordance with the requirements of the PIA Approval.

History Note: Authority G.S. 130A-335(e) and (f); 130A-343. Eff. Pending Legislative Review.

15A NCAC 18E .1709 WASTEWATER SAMPLING REQUIREMENTS FOR ADVANCED PRETREATMENT SYSTEMS

(a) Wastewater sampling requirements shall vary in accordance with wastewater system classification, designated effluent standard, DDF, and performance history.

- (1) Provisional Systems shall be grab or composite sampled quarterly for all applicable influent and effluent constituents listed in Table XXIV of Rule .1201(a) of this Subchapter until the system receives Innovative Approval.
- (2) When the DDF is less than or equal to 1,500 gpd, Innovative Systems shall be grab or composite sampled annually for all applicable influent and effluent constituents from Table XXIV of Rule .1201(a) of this Subchapter.
- (3) When the DDF is greater than 1,500 gpd and less than or equal to 3,000 gpd, Innovative Systems shall be grab or composite sampled twice a year for all applicable influent and effluent constituents listed in Table XXIV of Rule .1201(a) of this Subchapter.
- (4) Sampling for Fecal Coliforms shall not be required for Innovative Systems at any site that is found to be compliant with all other constituents in Table XXIV of Rule .1201(a) of this Subchapter.
- (5) Innovative Systems serving vacation rentals subject to the North Carolina Vacation Rental Act, G.S. 42A, shall be sampled during the seasonal high use period.
- (6) Effluent may be re-sampled within 30 days of receipt of laboratory results indicating non-compliance with Table XXIV of Rule .1201(a) of this Subchapter if requested by the owner, manufacturer, or manufacturer's representative, or required in a PIA Approval. Complete data sets from resampling may be substituted to meet the minimum number of compliant data sets required for PIA Approval. Data sets from resampling may be used by a manufacturer as part of a reduced effluent sampling request in accordance with Subparagraph (d)(3) of this Rule.
- (7) The Management Entity may record daily wastewater flow and sample influent to the

advanced pretreatment system as needed to determine compliance with Rule .1302(f) of this Subchapter.

- (8) A manufacturer of a Provisional or Innovative System may apply for adjusted sampling requirements in accordance with this Rule.

(b) The manufacturer of a Provisional System may apply to the Department in accordance with Rule .1701 of this Section to request adjusted effluent sampling requirements for Fecal Coliforms. The Department shall approve the request when the documentation submitted to the Department includes the following information:

- (1) data from a minimum of five separate North Carolina sites in operation for a minimum of six months after the Provisional Approval has been issued;
- (2) a minimum of 25 data sets, including results for Fecal Coliforms. No data sets shall be excluded. Data sets may be from the same site if collected a minimum of three months apart; and
- (3) analysis indicating compliant system performance in accordance with Rule .1710 of this Section.

(c) If an effluent sample for a Provisional or Innovative System that is not required to sample for Fecal Coliforms is determined to be non-compliant with Table XXIV of Rule .1201(a) of this Subchapter, the effluent may be re-sampled in accordance with Rule .1302(f)(2) of this Subchapter. If re-sampled, the effluent shall also be sampled for Fecal Coliforms in addition to all other applicable constituents. If re-sampling indicates compliance with Table XXIV of Rule .1201(a) of this Subchapter, no further Fecal Coliform sampling is required from that site, unless an effluent sample is again determined to be non-compliant for one or more constituents.

(d) The manufacturer of an Innovative System may apply to the Department in accordance with Rule .1701 of this Section to request an adjustment in sampling requirements (constituents or frequency), including reducing to field parameters only. The Department shall approve the request when one of the following conditions are met:

- (1) documentation submitted to the Department includes the following information:
 - (A) data from a minimum of 25 separate North Carolina sites in operation for a minimum of six months after the Innovative Approval has been issued;
 - (B) written reports summarizing results of the VIP inspections for all North Carolina sites submitted as part of this Rule;
 - (C) a minimum of 50 complete data sets, with no data excluded. Data sets may be from the same site if collected a minimum of three months apart;
 - (D) analysis indicating compliant system performance in accordance with Rule .1710 of this Section; and

(E) identification of the constituents for which the manufacturer requests a reduced sampling frequency;

- (2) the proprietary advanced pretreatment system is also certified and listed by a nationally recognized certification body and is in compliance with the ongoing verification program of such body, and the manufacturer is requesting a reduction in date set requirements set forth in Rule .1705 of this Section by up to 50 percent only; or
- (3) the manufacturer has demonstrated compliant system performance in accordance with Rule .1710 of this Section and is only requesting to replace the requirement for routine effluent sampling as set forth in Rule .1705 of this Section for all individual sites with routine field constituent testing that is included as part of the VIP.

(e) Systems approved for field parameters shall only be required to sample the field parameters listed in Table XXXII at the site during a VIP Management Entity inspection. The PIA Approval may specify other field parameters or alternative field parameter effluent criteria. The results shall be recorded in the written report. If the field parameters fall outside the range specified in the PIA Approval, an effluent sample shall be collected and analyzed for all parameters as necessary to demonstrate system compliance with the site's applicable effluent standard specified in Table XXIV of Rule .1201(a) of this Subchapter

TABLE XXXII. Field parameters advanced pretreatment systems

Field Parameter	Effluent Criteria
pH	5 - 9
Turbidity	≤ 10
DO	≥ 2

(f) While routine sampling of individual sites may no longer be required in accordance with Paragraph (c) of this Rule, effluent sampling may still be determined to be necessary during the visual inspection of the system in accordance with Rule .1302(d) of this Subchapter or if required as part of an enforcement action by the LHD or the Department.

(g) Alternative sampling requirements may be proposed by the manufacturer for a Provisional or Innovative System and approved by the Department when determined to provide an equal or more reliable indication of system compliance with effluent standards.

History Note: Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1710 COMPLIANCE CRITERIA FOR ADVANCED PRETREATMENT SYSTEMS

An approved system shall be considered in compliance with the effluent standards of Table XXIV of Rule .1201(a) of this Subchapter when all the following conditions are met:

- (1) the arithmetic mean for BOD₅, TSS, TKN, and TN and the geometric mean for Fecal Coliform for all data collected from all sites does not exceed the designated effluent standard;
 - (2) no more than 20 percent of all data from all sites shall exceed the designated effluent standard for any applicable constituent. A new complete data set for re-sampling conducted within 30 days of receipt of a non-compliant data set may be substituted to demonstrate compliance with the designed effluent quality standard in accordance with Table XXIV of Rule .1201(a) of this Subchapter;
 - (3) fifty percent of all complete data sets from all sites shall comply with the designated effluent standard for all applicable constituents;
 - (4) when determining compliance with system effluent standards in Items (1), (2), and (3) of this Rule, no data sets shall be excluded from individual advanced pretreatment systems except at single sites found to be out of compliance in accordance with Rule .1302(f) of this Subchapter and that have been documented to have been subjected to abuse, such as hydraulic or organic overloading, physical damage to the system, discharge of deleterious substances; and
 - (5) results of influent samples from all sites shall be provided to demonstrate compliance with percent reduction effluent criteria in accordance with Table XXIV in Rule .1201(a) of this Subchapter.
- (2) results of all effluent samples collected, as applicable;
 - (3) copies of all Management Entity inspection reports, as applicable;
 - (4) assessment of system performance in relation to this Subchapter;
 - (5) summary of progress made to complete installations, research, and testing as outlined in the approved evaluation protocol;
 - (6) any conditions and limitations related to the use of the system; and
 - (7) a list of all authorized designers, installers, and management entities.
- (e) A PIA Approval shall be deemed to be renewed upon receipt of the completed renewal form and annual report in accordance with Paragraphs (b) and (d) of this Rule, as applicable.
- (f) The Department shall review all annual reports for Provisional Approvals for compliance with its PIA approval conditions, including its approved evaluation protocol, and determine whether any action to modify, suspend, or revoke the approval is warranted in accordance with Rule .1708 of this Section.

History Note: Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1712 AUTHORIZED DESIGNERS, INSTALLERS, AND MANAGEMENT ENTITIES

- (a) Designers, installers, and Management Entities shall be authorized in writing by the manufacturer when required in the PIA Approval based on product specific factors, such as wastewater system classification, designated effluent standard, DDF, wastewater strength, complexity, and operation and maintenance.
- (b) Manufacturers of proprietary systems approved under this Section shall provide a list of manufacturer's authorized designers, installers, and Management Entities, as specified in the PIA Approval, to the Department and LHDs. The manufacturers shall update this list annually and include it with the product renewal form required in accordance with Rule .1711(a) of this Section.

History Note: Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1713 LOCAL HEALTH DEPARTMENT RESPONSIBILITIES

To implement this Section the LHD shall:

- (1) When a Provisional System is proposed, confirm that the designated repair system complies with the provisions of Rule .0508 of this Subchapter and with individual PIA Approval requirements, except:
 - (a) when an existing wastewater system is available for immediate use, including connection to a public or community wastewater system;
 - (b) when the Provisional System is used as a repair to an existing malfunctioning system when there are

History Note: Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Legislative Review.

15A NCAC 18E .1711 PROVISIONAL AND INNOVATIVE APPROVAL RENEWAL

- (a) All PIA Approvals shall expire on December 31 of each year. PIA manufacturers or other parties who wish to continue product approval shall submit annually a product renewal form provided by the Department no later than November 30 of each year.
- (b) The renewal form shall include the following updated information:
 - (1) company or organization's name, address, contact information, and contact name;
 - (2) model number(s) approved; and
 - (3) a notarized statement that the product(s) has not changed from the previous year without prior approval.
- (c) The Department shall notify the manufacturer of the pending PIA Approval expiration in writing no later than September 30 of each year. The notification shall include information on how to request PIA Approval renewal.
- (d) Manufacturers of proprietary products with Provisional Approvals shall additionally submit with its renewal form an annual report to the State with the following information:
 - (1) list of all systems installed under the Provisional Approval;

- (c) no other approved Innovative or Accepted repair options; or as provided in G.S. 130A-343(f) for Provisional Systems.
- (2) Notify the Department of all IPs, CAs, and OPs issued for Provisional Systems.
- (3) Notify the Department of all OPs issued for Innovative Systems.
- (4) Permit systems designated as approved Accepted Systems in an equivalent manner to a conventional system at the owner's request, provided the location of each trench, trench depth, or effluent distribution method remains unchanged. The type of Accepted System installed shall be indicated on the OP.
- (5) Grant permit reductions in total trench length less than or equal to 25 percent for Innovative or Accepted Systems only to dispersal fields receiving DSE or better quality. A facility with a full kitchen shall not be granted a permit reduction in total trench length.
- (6) Grant facilities generating HSE the 25 percent reduction allowed for Innovative or Accepted Systems if the system includes an approved advanced pretreatment system designed to ensure effluent strength equal to or better than DSE.
- (7) Prohibit issuance of an OP for a proprietary system installed by a person not authorized by the manufacturer, unless the manufacturer of the proprietary system approves the installation in writing.
- (8) Inform the Department, as well as the manufacturer or their authorized representative, of any system determined to be malfunctioning.
- (9) Issue a NOV to the owner when the system is determined to be malfunctioning in accordance with Rule .1303(a)(1) and (2) of this Subchapter or when an individual advanced pretreatment system at a single site is out of compliance in accordance with Rule .1302(f) of this Subchapter. The notice shall identify the violations and steps necessary to remedy the problems, including modification of the system, established time frame to achieve compliance, other follow-up requirements, and specify further enforcement possibilities if compliance is not achieved.
- (10) Include in its monthly activity report submitted to the Department the following information identified by unique codes:
 - (a) number of new system OPs issued for PIA Systems;
 - (b) number of new system OPs issued for Accepted Systems;
 - (c) number of CAs issued for Provisional Systems, including system type;

- (d) number of CAs issued for repairs of PIA Systems, including system type being repaired;
- (e) number of CAs issued for repairs of Accepted Systems, including system type being repaired; and
- (f) repair system type.

History Note: Authority G.S. 130A-335(e) and (f); 130A-343; Eff. Pending Legislative Review.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 20 – BOARD OF REGISTRATION FOR FORESTERS

21 NCAC 20 .0103 QUALIFICATIONS FOR REGISTRATION

- (a) An application may be obtained from the Board's website at www.ncbrf.org.
- (b) An applicant shall submit an application to the Board that shall include:
 - (1) Official college transcripts, if applicable;
 - (2) Five references as required in Rule .0105 of this Section;
 - (3) Proof of professional work experience in forestry; and
 - (4) Payment of the application fee as set out in Rule .0106 of this Section.
- (c) For purposes of G.S. 89B-9(a)(1), a forestry curriculum is a curriculum that satisfies the education requirements used by the Society of American Foresters (SAF) to become a Certified Forester. The education requirements of the SAF are hereby incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at www.safnet.org.
- (d) An applicant who holds a forestry or related natural resources degree from a program that is not SAF-accredited shall submit their transcript to SAF for review prior to applying to the Board. SAF shall determine if the applicant's education meets the SAF education requirements to be qualified to take the SAF Certified Forester exam. If SAF determines that the applicant's education meets the requirements to be qualified to take the SAF Certified Forester exam, SAF will issue a letter stating this determination. The applicant shall submit this letter as part of his or her application to the Board. An applicant whose education satisfies the education requirements to be qualified to take the SAF Certified Forester exam shall be deemed to have met the education requirements to take the North Carolina Registered Forester exam.
- (e) Forester-in-training certificates issued pursuant to G.S. 89B-9(b1) shall be valid for four years.

History Note: Authority G.S. 89B-6; 89B-9; Eff. February 1, 1976; Amended Eff. May 1, 1989; February 1, 1985; Temporary Amendment Eff. March 1, 1999; Amended Eff. August 1, 2010; August 1, 2000;

Readopted Eff. December 1, 2018.

21 NCAC 20 .0104 EXAMINATIONS

- (a) Applicants meeting the requirements of G.S. 89B-9(a)(1) shall take the Level 2 examination that focuses on the practice of forestry in North Carolina.
- (b) Applicants not meeting the education requirements of G.S. 89B-9(a)(1) shall take the Level 1 examination that tests the applicants' knowledge of forestry approximating that obtained through graduation from a four-year curriculum in forestry and focuses on the practice of forestry in North Carolina.
- (c) The Board shall offer both the Level 1 and Level 2 examination twice annually.
- (d) The Board shall notify applicants of the date, location, and time that the exam is scheduled, not less than 60 days before each scheduled examination. . Applicants must notify the Board at least 30 days prior to the exam date of his or her intent to take the exam.
- (e) The passing grade for registration shall be 70 percent on any exam. The determination by the Board as to the score on each exam shall be final.
- (f) There is no limit to the number of times that an applicant may attempt the exam. Re-examination fees shall be forty dollars (\$40.00) per examination.

History Note: Authority G.S. 89B-6; 89B-9; 89B-12;
Eff. February 1, 1976;
Amended Eff. May 1, 1989; February 1, 1985;
Temporary Amendment Eff. March 1, 1999;
Amended Eff. August 1, 2010; August 1, 2000;
Readopted Eff. December 1, 2018.

CHAPTER 32 - MEDICAL BOARD

21 NCAC 32Y .0101 REPORTING CRITERIA

- (a) The Department of Health and Human Services ("Department") may report to the North Carolina Medical Board ("Board") information regarding the prescribing practices of those physicians and physician assistants ("prescribers") whose prescribing:
 - (1) falls within the top two percent of those prescribing 100 morphine milligrams equivalents ("MME") per patient per day; or
 - (2) falls within the top two percent of those prescribing 100 MME's per patient per day in

combination with any benzodiazepine and who are within the top one percent of all controlled substance prescribers by volume.

- (b) In addition, the Department may report to the Board information regarding prescribers who have had two or more patient deaths in the preceding twelve months due to opioid poisoning where the prescribers authorized more than 30 tablets of an opioid to the decedent and the prescriptions were written within 60 days of the patient deaths.
- (c) In addition, the Department may report to the Board information regarding prescribers who meet three or more of the following criteria, if there are a minimum of five patients for each criterion:
 - (1) At least 25 percent of the prescriber's patients receiving opioids reside 100 miles or greater from the prescriber's practice location;
 - (2) The prescriber had more than 25 percent of patients receiving the same opioids and benzodiazepine combination;
 - (3) The prescriber had 75 percent of patients receiving opioids self-pay for the prescriptions;
 - (4) The prescriber had 90 percent or more of patients in a three-month period that received an opioid prescription that overlapped with another opioid prescription for at least one week;
 - (5) More than 50 percent of the prescriber's patients received opioid doses of 100 MME or greater per day excluding office based treatment medications; and
 - (6) The prescriber had at least 25 percent of patients who used three or more pharmacies within a three-month period to obtain opioids regardless of the prescriber.

- (d) The Department may submit these reports to the Board upon request and may include the information described in G.S. 90-113.73(b).
- (e) The reports and communications between the Department and the Board shall remain confidential pursuant to G.S. 90-16 and G.S. 90-113.74.

History Note: Authority G.S. 90-5.1; 90-113.74;
Eff. May 1, 2015;
Amended Eff. December 1, 2018; July 1, 2017.

CONTESTED CASE DECISIONS

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 919-431-3000.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge

JULIAN MANN, III

Senior Administrative Law Judge

FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter
Don Overby
J. Randall May
David Sutton
Tenisha Jacobs

A. B. Elkins II
Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>PUBLISHED</u>			
17	ABC	06296	10/24/2018; 10/25/2018	NC Alcoholic Beverage Control Commission	v.	Bees Town Inc T/A Bees Town	Ward
17	DHR	04630	8/6/2018; 10/9/2018	Managed Health Resources, IncMHR), controlled by The Charlotte Mecklenburg Hospital Authority (CMHA) d/b/a Atrium Health	v.	Cardinal Innovations Healthcare Solutions	Malherbe
18	DHR	01530	10/22/2018	Juaneza Kay Gooch	v.	North Carolina Department of Health and Human Services DSS Program Integrity Food Stamps	Ward
18	DHR	02146	10/26/2018	Emma P Williams	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Sutton
18	DHR	02983	10/10/2018	Carla Denise Cook	v.	Department of Health and Human Services	Malherbe
18	DOJ	00592	10/10/2018	Jeffrey Laine Guyton	v.	NC Sheriffs Education and Training Standards Commission	Overby
18	DOJ	02968	10/30/2018	Robert O Laney Jr	v.	NC Sheriffs Education and Training Standards Commission	May
18	DOJ	02974	10/30/2018	Tyler Stockton	v.	NC Sheriffs Education and Training Standards Commission	May
18	DOL	01666	10/8/2018	Signature Payroll Services LLC D/B/A	v.	NC Department of Labor	Ward

CONTESTED CASE DECISIONS

				Signature Payroll Services			
				<u>UNPUBLISHED</u>			
18	ABC	03296	10/24/2018	NC Alcoholic Beverage Control Commission	v.	Diversified Corp T/A Mansion	Elkins
18	BOG	05185	10/23/2018	Donald Bruce Nothdurft	v.	North Carolina Board for Licensing of Geologists	Malherbe
18	CPS	04672	10/19/2018	Patricia Nevins	v.	NC Crime Victims Compensation Commission	Mann
18	CRA	04538	10/8/2018	Clinton Driggers Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
18	CSE	03326	10/3/2018	Derrick Nicholson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
18	CSE	03671	10/23/2018	William O Martin	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	DHR	03320	10/23/2018	Kezmit Howard	v.	The Division of Child Development and Early Education- Department of Health and Human Services	Malherbe
18	DHR	03448	10/24/2018	Joyce Sykes Fitch	v.	NC Department of Health and Human Services Division of Public Health Environmental Health Section	Overby
18	DHR	03872	10/11/2018	Jennifer R Lewis Executive Director Youth Focus Inc	v.	NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification	May
18	DHR	04155	10/5/2018	Luis Reyes	v.	NC Office of EMS/Dept of Health & Human Services	Mann
18	DHR	04248	10/16/2018	Vanessa Diane Bradley	v.	DHHS Healthcare Registry	Jacobs
18	DHR	04614	10/11/2018	Sharpe and Williams Kesha Spaulding	v.	NC Department of Health and Human Services, Division of Health Service Regulation	May
18	DHR	04728	10/19/2018	Christopher D Quick	v.	Medicaid	Mann
18	DHR	04880	10/4/2018	Jesusito Rondon Guzman Tienda Mexicana La Posadita 2	v.	WIC Agency	Elkins
18	DHR	05125	10/24/2018	Paulette Powell	v.	Department of Health and Human Services, Division of Health Service Regulation	Jacobs
18	DHR	05140	10/3/2018	Dianne Clark	v.	Dept of Health and Human Services, Division of Health Service	Overby
18	DHR	05220	10/25/2018	Daniel J Hall	v.	Department of Health and Human Services, Division of Health Service Regulation	Jacobs

CONTESTED CASE DECISIONS

18	DHR	05228	10/24/2018	Paradigm Inc Jason T Barnett Jeannette Barnett	v.	NCDHHS/ Office of Admin Hearing	Jacobs
18	DOJ	04889	10/10/2018	John Edward Suttles Jr.	v.	NC Criminal Justice Education and Training Standards Commission	Sutton
18	DOJ	05016	10/10/2018	Derrick Demond Lee	v.	NC Sheriffs Education and Training Standards Commission	Jacobs
18	DOJ	05261	10/19/2018	Stephen D Watson	v.	NC Sheriffs Education and Training Standards Commission	Sutton
18	DOT	02605	10/5/2018	Jannett Stickland Smith	v.	NC Department of Transportation	Mann
18	INS	04329	10/26/2018	Jennifer Weider	v.	North Carolina State Health Plan for Teachers and State Employees	Overby
18	INS	05085	10/31/2018	Robert Michael Absher	v.	State Health Plan of NC	May
18	OSP	04572	10/19/2018	Sanita Jefferies	v.	Murdoch Developmental Center	Mann
18	SOS	04165	10/5/2018	Paul Edward Nichols	v.	State of North Carolina Department of the Secretary of State	Jacobs
18	UNC	03931	10/5/2018	Lisa M Seaton	v.	UNC Hospital Patient Account Services	Mann