

NORTH CAROLINA REGISTER

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December 16, 2019

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

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

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215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

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amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

150 Fayetteville Street, Suite 300

Raleigh, North Carolina 27601

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scollins@nclm.org

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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
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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
34:11	12/02/19	11/06/19	12/17/19	01/31/20	02/20/20	03/19/20	04/01/20	08/28/20
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 Application to modify existing Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Health and Human Services (DHHS) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DHHS:

Application by: Damon Hunley
Advanced Drainage Systems Inc.
4640 Trueman Blvd.
Hilliard, OH 43026

For: Owner Change of Innovative Approval for existing Innovative Approval IWWS-2002-02-R3

DHHS Contact: Nancy Deal
1-919-707-5875
Fax: 919-845-3973
Nancy.Deal@dhhs.nc.gov

These applications may be reviewed by contacting the applicant or Nancy Deal, Branch Head at 5605 Six Forks Rd., Raleigh, NC, On-Site Water Protection Branch, Environmental Health Section, Division of Public Health. Draft proposed innovative approvals and proposed final action on the application by DHHS can be viewed on the On-Site Water Protection Branch web site: <http://ehs.ncpublichealth.com/oswp/>.

Written public comments may be submitted to DHHS within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Ms. Nancy Deal, Branch Head, On-site Water Protection Branch, 1642 Mail Service Center, Raleigh, NC 27699-1642, or Nancy.Deal@dhhs.nc.gov, or fax 919-845-3973. Written comments received by DHHS in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.



NORTH CAROLINA

State Board of Elections & Ethics Enforcement

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611-7255

Phone: (919) 814-0700
Fax: (919) 715-0135

July 20, 2018

Mr. Emmanuel J. Wilder
4211 Grace Park Drive
Morrisville, NC 27560

Re: **Request for Advisory Opinion under N.C.G.S. § 163A-1441 Regarding a Political Committee's Acceptance of Cryptocurrency as a Campaign Contribution**

Dear Mr. Wilder:

You have contacted the State Board of Elections and Ethics Enforcement office ("State Board Office") to request an advisory opinion pursuant to N.C.G.S. § 163A-1441 on a political committee's acceptance of cryptocurrency as a campaign contribution. Specifically, you seek a written "opinion on the acceptance of cryptocurrency as political donations." We do not approve the use of cryptocurrencies to make donations to political committees in North Carolina.

North Carolina's campaign finance laws are written with a number of monetary limits that are expressed in U.S. dollars. *See, e.g.*, N.C.G.S. § 163A-1421(a) (exempting some candidates from certain reporting requirements if they receive and spend no more than \$1,000 in a campaign); N.C.G.S. § 163A-1428(b) (contributions of over \$50 must not be in cash form); N.C.G.S. § 163A-1425(a) (limiting contributions to \$5,200 per candidate per election). Campaign contributions also cannot be made anonymously. N.C.G.S. § 163A-1428(a). It is important that the State Board Office be able to monitor campaign contributions and expenditures and react appropriately to those that do not comply with North Carolina law.

Currently, market participants currently have great difficulty in establishing reliable valuations of cryptocurrencies.¹ Cryptocurrency exchanges, while developing in sophistication, do not provide

¹ See Dean Curnutt, *Cryptocurrencies Steal Volatility Away From Stocks*, Bloomberg (Jan. 11, 2018) ("What makes cryptocurrencies different? There are no earnings and there is no consensus valuation framework."); Ted Knutson, *Valuing Cryptocurrency Assets Warned as Thorny for Financial Advisors*, Forbes (April 16, 2018) (Volatility makes the valuation issues of when cryptocurrencies and other cryptoassets were sold even more problematic); Arjun Kharpal, *After the cryptocurrency bubble bursts, we may see a legitimate valuation for some coins*, CNBC (Dec. 25, 2017) ("It's hard to say bitcoin has an inherent value beyond the belief of the people trading it."); Samantha Chang, *Federal Reserve Governor: We're Monitoring 'Extreme Volatility' of Cryptocurrencies*, CCN (April 4, 2018) ("One area that the Federal Reserve is monitoring is the extreme volatility evidenced by some cryptocurrencies").

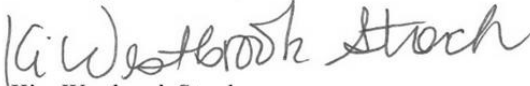
July 20, 2018
Page 2 of 2

the stability to ensure reliable valuations and are not subject to the same regulatory scrutiny as, say, equity stock exchanges.²

Given that lack of certainty, we do not have confidence that we could adequately regulate contributions to a political campaign in North Carolina in the form of cryptocurrency. We do not view a contribution of cryptocurrency as an in-kind contribution that would be appropriate under N.C.G.S. § 163A-1411(13). Typical in-kind contributions of, say, a desk or a laptop computer, will be subject to rational valuations that could be sworn to by affidavit and other credible evidence. At this point, we do not view the valuation of cryptocurrency in the same light. Of course, a contributor could convert cryptocurrency to U.S. dollars and then make a contribution in those dollars.

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

Sincerely,



Kim Westbrook Strach
Executive Director

cc: Molly Masich, Codifier of Rules

² *Statement on Potentially Unlawful Online Platforms for Trading Digital Assets, Securities and Exchange Commission Divisions of Enforcement and Trading and Markets* (Mar. 7, 2019) (“[M]any of these [cryptocurrency] platforms give the impression that they perform exchange-like functions by offering order books with updated bid and ask pricing and data about executions on the system, but there is no reason to believe that such information has the same integrity as that provided by national securities exchanges.”); John Reed Stark & David Fontaine, *Attention All Cryptocurrency Exchanges: Beware the Ides of March*, Law360 (Mar. 11, 2018) (“[C]ryptocurrency exchanges . . . currently operate unfettered, unmonitored and essentially free from regulatory oversight.”).

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 Medical Care Commission intends to amend the rules cited as 10A NCAC 13B .3501, .3703, .3708, readopt with substantive changes the rules cited as 10A NCAC 13B .3502, .3503, .3701, .3704-.3707, and repeal through readoption the rule cited as 10A NCAC 13B .3702.

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

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

Proposed Effective Date: July 1, 2020

Public Hearing:

Date: February 5, 2020

Time: 2:00 p.m.

Location: Dorothea Dix Park, 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, all rules are reviewed at least every 10 years, or they shall expire. As a result of the periodic review of Subchapter 10A NCAC 13B, Licensing of Hospitals, a total of 40 rules were determined as “Necessary With Substantive Public Interest,” thus requiring readoption. At this time, the agency is proposing to readopt seven rules with substantive changes, repeal one rule through readoption, and amend three rules for hospital medical staff and bylaws to improve safety, quality and access to care by modernizing the rules and ensuring consistency with Medicare regulations and Joint Commission standards. The proposed rules provide for physician consultation and input while recognizing the facility's governance responsibilities. The proposed rules update language, provide clarity in the rules, remove ambiguity, implement technical changes, and reference general statute where appropriate. In addition, the requirements for Rule 10A NCAC 13B .3702 are incorporated into rule 10A NCAC 13B .3704 proposed for readoption with substantive changes, therefore this rule is not necessary and is proposed for readoption as a repeal.

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

Comment period ends: February 14, 2020

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

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

CHAPTER 13 – MEDICAL CARE COMMISSION

SUBCHAPTER 13B – LICENSING OF HOSPITALS

SECTION .3500 - GOVERNANCE AND MANAGEMENT

10A NCAC 13B .3501 GOVERNING BODY

(a) The governing body, ~~owner~~ owner, or the person or persons designated by the owner as the governing ~~authority~~ body shall be responsible for ~~seeing~~ ensuring that the objectives specified in the ~~charter (or resolution if publicly owned)~~ facility's governing documents are attained.

(b) The governing body shall be the final authority ~~in the facility to which the administrator, for decisions for which the facility administration, the medical staff, and the facility personnel and all auxiliary organizations are directly or indirectly responsible.~~ responsible within the facility.

(c) A local advisory board shall be established if the facility is owned ~~or controlled~~ by an organization or persons outside of North Carolina. A local advisory board shall include members from the county where the facility is located. The local advisory board will provide non-binding advice to the governing body.

Authority G.S. 131E-75; 131E-79.

**10A NCAC 13B .3502 REQUIRED FACILITY
BYLAWS, POLICIES, RULES, AND REGULATIONS**

(a) The governing body shall adopt written bylaws, policies, rules, and regulations in accordance with all requirements contained in this Subchapter and in accordance with the community responsibility of the facility. The written bylaws, policies, rules, and regulations shall:

- (1) state the purpose of the facility;
- (2) describe the powers and duties of the governing body officers and committees and the responsibilities of the chief executive officer;
- (3) state the qualifications for governing body membership, the procedures for selecting members, and the terms of service for members, officers and committee chairmen;
- (4) describe the authority delegated to the chief executive officer and to the medical staff. No assignment, referral, or delegation of authority by the governing body shall relieve the governing body of its responsibility for the conduct of the facility. The governing body shall retain the right to rescind any such delegation;
- (5) require ~~Board~~ governing body approval of the bylaws of any auxiliary organizations established by the ~~hospital~~; facility;
- (6) require the governing body to review and approve the bylaws of the medical ~~staff organization~~; staff;
- (7) establish ~~a procedure~~ procedures for processing and evaluating the applications for medical staff membership and for the granting of clinical privileges;
- (8) establish a procedure for implementing, disseminating, and enforcing a Patient's Bill of Rights as set forth in Rule .3302 of this Subchapter and in compliance with G.S. 131E-117; and
- (9) require the governing body to institute procedures to provide for:
 - (A) orientation of newly elected ~~board~~ governing body members to ~~specific~~ board functions and procedures;
 - (B) the development of procedures for periodic reexamination of the relationship of the ~~board~~ governing body to the total facility community; and
 - (C) the recording of minutes of all governing body and executive committee meetings and the dissemination of those minutes, or summaries thereof, on a regular basis to all members of the governing body.

(b) The governing body shall ~~assure~~ provide written policies and procedures to assure billing and collection practices in accordance with G.S. 131E-91. These policies and procedures shall include:

- (1) a financial assistance policy as defined in G.S. 131E-214.14(b)(3);

- (2) how a patient may obtain an estimate of the charges for the statewide 100 most frequently reported Diagnostic Related Groups (DRGs), where applicable, 20 most common outpatient imaging procedures, and 20 most common outpatient surgical procedures. The policy shall require that the information be provided to the patient in writing, either electronically or by mail, within three business days;
- (3) how a patient or patient's representative may dispute a bill;
- (4) issuance of a refund within 45 days of the patient receiving notice of the overpayment when a patient has overpaid the amount due to the ~~hospital~~; facility;
- (5) providing written notification to the patient or patient's representative at least 30 days prior to submitting a delinquent bill to a collections agency;
- (6) providing the patient or patient's representative with the facility's charity care and financial assistance policies, if the facility is required to file a Schedule H, federal form 990;
- (7) the requirement that a collections agency, entity, or other assignee obtain written consent from the facility prior to initiating litigation against the patient or patient's representative;
- (8) a policy for handling debts arising from the provision of care by the ~~hospital~~ facility involving the doctrine of necessities, in accordance with G.S. 131E-91(d)(5); and
- (9) a policy for handling debts arising from the provision of care by the ~~hospital~~ facility to a minor, in accordance with G.S. 131E-91(d)(6).

(c) The governing body shall ensure that the bylaws, rules, and regulations of the medical staff and the bylaws, rules, policies, and regulations of the facility shall not be in conflict.

(d) The written policies, rules, and regulations shall be reviewed every three years, revised as necessary, and dated to indicate when last reviewed or revised.

(e) To qualify for licensure or license renewal, each facility must provide to the Division, upon application, an attestation statement in a form provided by the Division verifying compliance with the requirements of this Rule.

(f) On an annual basis, on the license renewal application provided by the Division, the facility shall provide to the Division the direct website address to the facility's financial assistance policy. This ~~Rule~~ requirement applies only to facilities required to file a Schedule H, federal form 990.

Authority G.S. 131E-79; 131E-91; 131E-214.8; 131E-214.13(f); 131E-214.14. S.L. 2013-382, s. 10.1; S.L. 2013-382, s. 13.1.

10A NCAC 13B .3503 FUNCTIONS

(a) The governing body shall:

- (1) provide management, physical ~~resources~~ resources, and personnel determined by the governing body to be required to meet the needs

- of the patients for ~~which it is licensed~~; treatment as authorized by the facility's license;
- (2) require ~~management~~ facility administration to establish a quality control mechanism ~~which that includes as an integral part~~ a risk management component and an infection control program;
- (3) formulate short-range and long-range plans ~~for the development of the facility~~; as defined in the facility bylaws, policies, rules, and regulations;
- (4) conform to all applicable ~~federal, State and federal laws, rules, and regulations~~, and applicable local laws and regulations; ordinances;
- (5) provide for the control and use of the physical and financial resources of the facility;
- (6) review the annual audit, ~~budget~~ budget, and periodic reports of the financial operations of the facility;
- (7) consider the ~~advice~~ recommendation of the medical staff in granting and defining the scope of clinical privileges to ~~individuals. When the governing body does not concur in the medical staff recommendation regarding the clinical privileges of an individual, there shall be a review of the recommendation by a joint committee of the medical staff and governing body before a final decision is reached by the governing body~~; individuals in accordance with medical staff bylaws requirements for making such recommendations and the facility bylaws established by the governing body for the review and final determination of such recommendations;
- (8) require that applicants be informed of the disposition of their application for medical staff membership or clinical ~~privileges, or both, within an established period of time after their~~ privileges in accordance with the facility bylaws established by the governing body, after an application has been submitted;
- (9) review and approve the medical staff bylaws, ~~rules rules, and regulations~~ rules, and regulations;
- (10) delegate to the medical staff the authority ~~to to~~:
 (A) evaluate the professional competence of medical staff members and applicants for ~~staff privileges~~ medical staff membership and clinical privileges; and
 (B) ~~hold the medical staff responsible for recommending~~ recommend to the governing body initial medical staff appointments, ~~reappointments~~ reappointments, and assignments or curtailments of privileges;
- (11) require that resources be made available to address the emotional and spiritual needs of patients either directly or through referral or arrangement with community agencies;
- (12) maintain ~~effective~~ communication with the medical staff which ~~shall may be established, established~~ through:
 ~~(a)(A)~~ (A) meetings with the ~~Executive Committee~~ executive committee of the ~~Medical Staff~~; medical staff;
- ~~(b)(B)~~ (B) service by the president of the medical staff as a member of the governing body with or without a vote;
- ~~(c)(C)~~ (C) appointment of individual medical staff members to ~~governing body committees; or the medical review committee; or~~ governing body committees;
- ~~(d)(D)~~ (D) a joint conference ~~committee~~; committee that will be a committee of the governing body and the medical staff composed of equal representatives of each of the governing body, the chairman of the board or designee, the medical staff, and the chief of the medical staff or designee, respectively;
- (13) require the medical staff to establish controls that are designed to provide that standards of ethical professional practices are met;
- (14) provide ~~the necessary~~ administrative staff support to facilitate utilization review and infection control within the ~~facility and facility~~, to support quality ~~control~~, control and any other medical staff functions required by this Subchapter or by the facility bylaws;
- (15) meet the following disclosure requirements:
 ~~(a)(A)~~ (A) provide data required by the Division;
- ~~(b)(B)~~ (B) disclose the facility's average daily inpatient charge upon request of the Division; and
- ~~(c)(C)~~ (C) disclose the identity of persons owning ~~5.0~~ five percent or more of the facility as well as the facility's officers and members of the governing body upon request;
- (16) establish a procedure for reporting the occurrence and disposition of ~~any unusual incidents, allegations of abuse or neglect of patients and incidents involving quality of care or physical environment at the facility~~. These procedures shall require that:
 ~~(a)(A)~~ (A) incident reports are analyzed and ~~summarized; summarized by a designated party~~; and
- ~~(b)(B)~~ (B) corrective action is taken ~~as indicated by based upon~~ the analysis of incident reports;
- (17) in a facility with one or more units, or portions of units, however described, utilized for psychiatric or substance abuse treatment, adopt policies implementing the provisions of G.S. 122C, Article 3, and Article 5, Parts, 2, 3, 4, 5, 7, and 8;

- (18) develop arrangements for the provision of extended care and other long-term healthcare services. Such services shall be provided in the facility or by outside resources through a transfer agreement or referrals;
 - (19) provide and implement a written plan for the care or for the referral, or ~~for both~~, of patients who require mental health or substance abuse services while in the ~~hospital~~; facility;
 - (20) develop a conflict of interest policy which shall apply to all governing body members and ~~corporate officers~~. facility administration. All governing body members shall execute a conflict of interest ~~statement~~; statement; and
 - (21) ~~prohibit members of the governing body from engaging in the following forms of self-dealing:~~
 - (a) ~~the sale, exchange or leasing of property or services between the facility and a governing board member, his employer or an organization substantially controlled by him on a basis less favorable to the facility than that on which such property or service is made available to the general public;~~
 - (b) ~~furnishing of goods, services or facilities by a facility to a governing board member, unless such furnishing is made on a basis not more favorable than that on which such goods, services, or facilities are made available to the general public or employees of the facility; or~~
 - (c) ~~any transfer to or use by or for the benefit of a governing board member of the income or assets of a facility, except by purchase for fair market value; and~~
 - (22) ~~prohibit the lease, sale, or exclusive use of any facility buildings or facilities receiving a license in accordance with this Subchapter to any entity which provides medical or other health services to the facility's patients, unless there is full, complete disclosure to and approval from the Division.~~
 - (21) conduct direct consultations with the medical staff at least twice during the year.
- (b) For the purposes of this Rule, "direct consultations" means the governing body, or a subcommittee of the governing body, meets with the leader(s) of the medical staff(s), or his or her designee(s) either face-to-face or via a telecommunications system permitting immediate, synchronous communication.
- (c) The direct consultations shall consist of discussions of matters related to the quality of medical care provided to the hospital's patients, including quality matters arising out of the following:
- (1) the scope and complexity of services offered by the facility;
 - (2) specific clinical populations served by the facility;

- (3) limitations on medical staff membership other than peer review or corrective action in individual cases;
- (4) circumstances relating to medical staff access to a facility resource; or
- (5) any issues of patient safety and quality of care that a hospital's quality assessment and performance improvement program might identify as needing the attention of the governing body in consultation with the medical staff.

(d) For the purposes of this Rule, "specific clinical populations" includes those individuals who may be treated at the facility by the medical staff in place at the time of the consultation.

Authority G.S. 131E-14.2; 131E-79; 42 CFR 482.12; 42 CFR 482.22.

SECTION .3700 - MEDICAL STAFF

10A NCAC 13B .3701 GENERAL PROVISIONS

(a) The facility shall have a self-governed medical staff organized in accordance with the facility's by-laws which that shall be accountable to the governing body and which shall have responsibility for the quality of professional services care provided by individuals with medical staff membership and clinical privileges. privileges to provide medical services in the facility. Facility policy shall provide that individuals with clinical privileges shall perform only services within the scope of individual privileges granted.

(b) Minutes required by the rules of this Section shall reflect all transactions, conclusions, and recommendations of meetings. Minutes shall be prepared and retained in accordance with a policy established by the facility and medical staff, and available for inspection by members of the medical staff and governing body, respectively, unless such minutes include confidential peer review information that is not accessible to others in accordance with applicable law, or as otherwise protected by law.

Authority G.S. 131E-79.

10A NCAC 13B .3702 ESTABLISHMENT

Authority G.S. 131E-79.

10A NCAC 13B .3703 APPOINTMENT

(a) The governing body may grant, deny, renew, modify, suspend, or terminate medical staff membership and clinical privileges after consideration of the recommendation made by the medical staff in accordance with the bylaws established by the medical staff and approved by the governing body for making such recommendations, and the facility bylaws established by the governing body for review and final determination of such recommendations.

(b) Formal appointment Review of an applicant for medical staff membership and the granting of clinical privileges shall follow procedures set forth in the ~~by-laws, rules or bylaws, rules, and regulations~~ of the medical staff. These procedures shall require the following:

- (1) a signed application for medical staff membership, specifying age, date of birth, year and school of graduation, date of licensure, statement of postgraduate or special training and ~~experience with~~ experience, and a statement of the scope of the clinical privileges sought by the applicant;
- (2) verification by the ~~hospital facility~~ of the applicant's qualifications of the applicant as stated in the application, including evidence of any required continuing education; and
- (3) written notice to the applicant from ~~the medical staff and the governing body,~~ body regarding appointment or ~~reappointment~~ reappointment, which specifies the approval or denial of clinical privileges and the scope of the privileges granted; ~~and if granted,~~
- (4) ~~members of the medical staff and others granted clinical privileges in the facility shall hold current licenses to practice in North Carolina.~~

(c) Members of the medical staff and others granted clinical privileges in the facility shall hold current licenses to practice in North Carolina.

(d) Medical staff appointments shall be reviewed at least once every two years by the medical staff in accordance with the bylaws established by the medical staff and approved by the governing body, and shall be followed with recommendations made to the governing body for review and a final determination.

(e) The facility shall maintain a file containing performance information for each medical staff member. Representatives of the Division shall have access to these files in accordance with, and subject to the limitations and restrictions set forth in, G.S. 131E-80; however, to the extent that the same includes confidential medical review information, such information shall be reviewable and confidential in accordance with G.S. 131E-80(d) and other applicable law.

(f) Minutes shall be taken and maintained of all meetings of the medical staff and governing body that concern the granting, denying, renewing, modifying, suspending or terminating of clinical privileges.

Authority G.S. 131E-79; 42 CFR 482.12(a)(10); 42 CFR 482.22(a)(1).

10A NCAC 13B .3704 STATUS ESTABLISHMENT AND CATEGORIES OF MEDICAL STAFF MEMBERSHIP

(a) The medical staff shall be established in accordance with the bylaws of the facility and organized in accordance with the bylaws, rules, and regulations of the medical staff. The governing body of the facility, after considering the recommendations of the medical staff, may grant medical staff membership and clinical privileges to qualified, licensed practitioners in accordance with their training, experience, and demonstrated competence and judgment in accordance with the medical staff bylaws, rules, and regulations.

~~(a)(b)~~ Every facility shall have an active medical staff staff, as defined by the medical staff bylaws, rules, and regulations, to deliver medical services within the facility. The active medical staff shall be responsible for the organization and administration

of the medical staff. Every member facility and to administer medical staff functions. The members of the active medical staff shall be eligible to vote at medical staff meetings and to hold office. medical staff office positions as determined by the medical staff bylaws, rules, and regulations and shall be responsible for recommendations made to the governing body regarding the organization and administration of the medical staff. Medical staff office positions shall be determined in the medical staff bylaws, rules, and regulations.

~~(b)(c)~~ The active medical staff may establish other categories for membership in the medical staff. These categories for membership shall be identified and defined in the medical staff bylaws, rules or regulations adopted by the active medical staff. bylaws. Examples of these other membership categories for membership are: include:

- (1) active medical staff;
- ~~(4)(2)~~ associate medical staff;
- ~~(2)(3)~~ courtesy medical staff;
- ~~(3)(4)~~ temporary medical staff;
- ~~(4)(5)~~ consulting medical staff;
- ~~(5)(6)~~ honorary medical staff; or
- ~~(6)(7)~~ other staff classifications.

The medical staff bylaws, rules or regulations may grant limited or full bylaws shall describe the authority, duties, privileges, and voting rights to any one or more of these other for each membership categories. category consistent with applicable law, rules, and regulations and requirements of facility accrediting bodies.

~~(e) Medical staff appointments shall be reviewed at least once every two years by the governing board.~~

~~(d) The facility shall maintain an individual file for each medical staff member. Representatives of the Department shall have access to these files in accordance with G.S. 131E-80.~~

~~(e) Minutes of all actions taken by the medical staff and the governing board concerning clinical privileges shall be maintained by the medical staff and the governing board, respectively.~~

Authority G.S. 131E-79.

10A NCAC 13B .3705 MEDICAL STAFF BYLAWS, RULES RULES, OR AND REGULATIONS

(a) The active medical staff shall develop and adopt, subject to the approval of the governing body, a set of bylaws, ~~rules or rules,~~ and regulations, regulations to establish a framework for self governance self-governance of medical staff activities and accountability to the governing body.

(b) The medical staff bylaws, rules rules, and regulations shall provide for at least the following:

- (1) organizational structure;
- (2) qualifications for medical staff membership;
- (3) procedures for admission, retention, assignment, and reduction or withdrawal of granting or renewing, denying, modifying, suspending, and revoking clinical privileges;
- (4) procedures for disciplinary or corrective actions;
- ~~(4)(5)~~ procedures for fair hearing and appellate review mechanisms for denial of staff appointments;

- ~~reappointments, suspension, or revocation of denying, modifying, suspending, and revoking clinical privileges;~~
- (5)(6) composition, functions and attendance of standing committees;
- (6)(7) policies for completion of medical ~~records and procedures for disciplinary actions;~~ records;
- (7)(8) formal liaison between the medical staff and the governing body;
- (8)(9) methods developed to formally verify that each medical staff member on appointment or reappointment agrees to abide by current medical staff ~~bylaws~~ bylaws, rules, and regulations, and ~~the facility bylaws; and bylaws, rules, policies, and regulations;~~
- (9)(10) procedures for ~~members of medical staff participation in quality assurance functions;~~ functions by medical staff members;
- (11) the process for the selection and election and removal of medical staff officers; and
- (12) procedures for the proposal, adoption, and amendment, and approval of medical staff bylaws, rules, and regulations.

(c) Neither the medical staff, the governing body, nor the facility administration may unilaterally amend the medical staff bylaws, rules, and regulations.

(d) Neither the medical staff, the governing body, nor the facility administration may waive any provision of the medical staff bylaws, rules, and regulations, except in an emergency circumstance. For purposes of this Rule, an "emergency circumstance" means a situation of urgency that justifies immediate action and when there is not sufficient time to follow the applicable provisions and procedures of the medical staff bylaws. Examples of an emergency circumstance include an immediate threat to the life or health of an individual or the public, a natural disaster, or a judicial or regulatory order. The duration of a waiver permitted by this Rule will be only so long as the emergency circumstance exists.

Authority G.S. 131E-79.

10A NCAC 13B .3706 ORGANIZATION AND RESPONSIBILITIES OF THE MEDICAL STAFF

(a) The medical staff shall be organized to accomplish its required functions as established by the governing body and medical staff bylaws, rules, and regulations and provide for the election or appointment of its own officers.

(b) There shall be an executive committee, or its equivalent, which represents the medical staff, ~~which that~~ which has responsibility for the effectiveness of all medical activities of the staff, and ~~which that~~ which acts for the medical staff.

(c) ~~All minutes of proceedings of medical staff committees shall be recorded and available for inspections by members of the medical staff and the governing body.~~

(d)(c) The following ~~reviews and~~ functions shall be performed by the medical staff:

- (1) credentialing review;
- (2) ~~surgical case review;~~
- (3)(2) medical records review;

- (4) ~~medical care evaluation review;~~
- (5)(3) drug utilization review;
- (6)(4) radiation safety review;
- (7)(5) blood usage review; ~~and~~
- (8)(6) ~~bylaws review; review;~~
- (7) medical review;
- (8) peer review; and
- (9) recommendations for discipline or corrective action of medical staff members.

(e)(d) ~~There shall be medical staff and departmental meetings for the purpose of reviewing the performance of the medical staff, departments or services, and reports and recommendations of medical staff and multi-disciplinary committees. The medical staff shall ensure that minutes are taken at prepared for each meeting and retained in accordance with the policy of the facility. These minutes shall reflect the transactions, conclusions and recommendations of the meetings. medical staff, departmental, and committee meeting.~~

Authority G.S. 131E-79.

10A NCAC 13B .3707 MEDICAL ORDERS

(a) No medication or treatment shall be administered or discontinued except in response to the order of a member of the medical staff in accordance with ~~established rules~~ policies, rules, and regulations established by the facility and medical staff and as provided in Paragraph (f) ~~below.~~ of this Rule.

(b) Such orders shall be dated and recorded directly in the patient ~~chart or in a computer or data processing system which provides a hard copy printout of the order for the patient chart.~~ medical record. A method shall be established to safeguard against fraudulent recordings.

(c) All orders for medication or treatment shall be authenticated according to ~~hospital policies.~~ medical staff and facility policies, rules, or regulations. The order shall be taken by personnel qualified by medical staff ~~rules~~ bylaws, rules, and regulations, and shall include the date, time, and name of persons who gave the order, and the full signature of the person taking the order.

(d) The names of drugs shall be recorded in full and not abbreviated except where approved by the medical staff.

(e) The medical staff shall establish a written policy in conjunction with the pharmacy committee or its equivalent for all medications not specifically prescribed as to time or number of doses to be automatically stopped after a reasonable time limit, but no more than 14 days. The prescriber shall be notified according to established policies and procedures at least 24 hours before an order is automatically stopped.

(f) For patients who are under the continuing care of an out-of-state physician but are temporarily located in North Carolina, a ~~hospital~~ facility may process the out-of-state physician's prescriptions or orders for diagnostic or therapeutic studies which maintain and support the patient's continued program of care, where the authenticity and currency of the prescriptions or orders can be verified by the physician who prescribed or ordered the treatment requested by the patient, and where the ~~hospital~~ facility verifies that the out-of-state physician is licensed to prescribe or order the treatment.

Authority G.S. 131E-75; 131E-79. ~~143B-165.~~

10A NCAC 13B .3708 MEDICAL STAFF RESPONSIBILITIES FOR QUALITY IMPROVEMENT REVIEW

- (a) The medical staff shall have in effect a system to review ~~medical services rendered, care provided at the facility by members of the medical staff, to assess quality, to provide a process for improving performance when indicated quality improvement, and to monitor the outcome.~~ outcome, outcome of quality improvement activities.
- (b) The medical staff shall establish criteria for the evaluation of the quality of ~~medical care.~~
- (c) The facility shall have a written plan ~~approved by the medical staff, administration and governing body which that~~ generates reports to permit identification of patient care ~~problems. The plan shall establish problems and that establishes~~ a system to use this data to document and identify interventions. The plan shall be approved by the medical staff, facility administration, and the governing body.
- (d) The medical staff shall establish ~~and a policy to maintain a continuous review process of the care rendered to both inpatients and outpatients provided by members of the medical staff to all patients in every medical department of the facility. At least quarterly, the~~ The medical staff shall have a meeting policy to schedule meetings to examine the review process and results. The review process shall include both practitioners and allied health professionals from the ~~facility medical staff.~~
- (e) Minutes shall be ~~taken at prepared for all meetings reviewing quality improvement, and these minutes shall be made available to the medical staff on a regular basis in accordance with established policy. These minutes shall be retained as determined by the facility.~~ improvement and shall reflect all of the transactions, conclusions, and recommendations of the meeting.

Authority G.S. 131E-79.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Insurance intends to adopt the rules cited as 11 NCAC 06A .1001, .1002 and readopt with substantive changes the rules cited as 11 NCAC 04 .0418, .0419, .0421, and .0425.

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

Proposed Effective Date: April 1, 2020

Public Hearing:

Date: January 14, 2020

Time: 10:00 a.m.

Location: 1st Floor Hearing Room, Room 131 (Albemarle Building) located at 325 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: The rules are being submitted to provide clarity, modifications, and guidance on existing and new regulations to industry, motor vehicle damage appraisers,

consumers, and interested parties about the expectations for all parties involved in the claims process. This includes providing motor vehicle damage appraisers ethical standards they shall follow, provide industry, motor vehicle damage appraisers, consumers, and interested party's guidance on how to address motor vehicle repair estimates, handling of loss and claims payments, and managing total loss claims settlements.

11 NCAC 04 .0418; 11 NCAC 04 .0419; 11 NCAC 04 .0421; 11 NCAC 04 .0425 are being proposed for readoption in accordance with G.S. 150-B21.3A(d)(2).

Comments may be submitted to: Loretta Peace-Bunch, NC Department of Insurance, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 807-6004; email loretta.peace-bunch@ncdoi.gov

Comment period ends: February 14, 2020

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

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

CHAPTER 04 - CONSUMER SERVICES DIVISION

SECTION .0400 - PROPERTY AND LIABILITY

11 NCAC 04 .0418 TOTAL LOSSES ON MOTOR VEHICLES

~~The commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning settlement of covered "total loss" motor vehicle claims when such failure is so frequent as to indicate a general business practice:~~

- (1) ~~If the insurer and the claimant are initially unable to reach an agreement as to the value of the vehicle, the insurer shall base any further settlement offer not only on published regional average values of similar vehicles, but also on~~

- the value of the vehicle in the local market. Local market value shall be determined by using either the local market price of a comparable vehicle or, if no comparable vehicle can be found, quotations from at least two qualified dealers within the local market area. Additionally, if the claimant represents that the vehicle actually owned by him was in better than average condition, the insurer shall give due consideration to the condition of the claimant's vehicle prior to the accident.
- (2) ~~Where the insurer has the right to elect to replace the vehicle and does so elect, the replacement vehicle shall be available without delay, similar to the lost vehicle, and paid for by the insurer, subject only to the deductible and to the value of any enhancements acceptable to the insured.~~
- (3) ~~If the insurer makes a deduction for the salvage value of a "total loss" vehicle retained by the claimant, the insurer, if so requested by the claimant, shall furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted.~~
- (4) ~~If a written statement is requested by the claimant, a total loss payment by an insurer shall be accompanied by a written statement listing the estimates, evaluations and deductions used in calculating the payment, if any, and the source of these values.~~
- (5) ~~When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or exceeds 75 percent of the preaccident actual cash value, as such value is determined in accordance with this Rule, an insurance carrier shall "total loss" the automobile by paying the claimant the preaccident value, and in return, receiving possession of the legal title of the salvage of said automobile. At the election of the claimant, or in those circumstances where the insurance carrier will be unable to obtain an unencumbered title to the damaged vehicle then the insurance carrier shall have the right to deduct the value of the salvage of the total loss from the actual value of the vehicle and leave such salvage with the claimant subject to the insurance carrier abiding by Subparagraphs (3) and (6) of this Rule. No insurer, adjuster, appraiser, agent, or any other person shall enter into any oral or written agreement(s), by and between themselves, to limit any original or supplemental claim(s) so as to artificially keep the repair cost of a damaged vehicle below 75% of its preaccident value, if in fact such original and any supplemental claim(s) exceed or would exceed 75% of the vehicle's preaccident value.~~
- (6) ~~The insurer shall be responsible for all reasonable towing and storage charges until~~
- ~~three days after the owner and storage facility are notified in writing that the insurer will no longer reimburse the owner or storage facility for storage charges. Notification to the owner shall include the name, address, and telephone number of the facility where the vehicle is being stored. Notification to the storage facility shall include the name, address, and, if available, telephone number of the owner. No insurer shall abandon the salvage of a motor vehicle to a towing or storage service without the consent of the service involved. In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of such service shall be payable jointly to the owner and the towing or storage service.~~
- (a) The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company to adhere to the procedures in this Rule concerning the settlement of covered "total loss" motor vehicle claims when the failure is so frequent as to indicate a general business practice.
- (b) For the purposes of this Rule, the following terms shall mean:
- (1) "Licensed Motor Vehicle Dealer" means a person who is licensed by the North Carolina Department of Transportation Division of Motor Vehicles pursuant to Chapter 20, Article 12 of the N.C. General Statutes.
 - (2) "Local Market Area" means an area within a 100-mile radius of the place where the motor vehicle is principally garaged. If a substantially similar motor vehicle is unavailable within a 100-mile radius, the insurance company may increase the radius in increments of 50 miles until a substantially similar motor vehicle can be found.
 - (3) "Published Regional Average Values" means values derived from printed or electronically published pricing guides including Edmunds, Kelley Blue Book, and National Automobile Dealers Association Pricing Guide Book.
 - (4) "Reasonable and Customary Towing and Storage Charges" means the amount that is generally charged in in the local business market.
 - (5) "Substantially Similar Motor Vehicle" means a motor vehicle of the same make, model, year, options, equipment, condition, and mileage of the damaged motor vehicle. If unable to identify substantially similar motor vehicles, documentation in Paragraph (d) of this Rule shall be sufficient proof of compliance for the purposes of this Rule.
- (c) When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or exceeds 75 percent of the pre-accident actual cash value as determined in accordance with Paragraph (d) of this Rule, an insurance company shall designate the motor vehicle as a "total loss" and pay the claimant the pre-accident value. In return, the insurance company

shall receive possession of the legal title of the salvage of the total loss motor vehicle.

(d) If the insurance company and the claimant are initially unable to reach an agreement as to the actual cash value of the total loss motor vehicle, the actual cash value shall be calculated using the following methods and adjusted for condition, options, equipment, and mileage, less the cost of unrepaired damage that pre-existed the accident:

- (1) The published regional average values of substantially similar motor vehicles; and
- (2) The retail cost of two or more substantially similar motor vehicles in the local market area when substantially similar motor vehicles are available or were available within the last 90 days to consumers in the local market area; or
- (3) One of two or more quotations obtained by the insurance company from two or more licensed motor vehicle dealers located within the local market area.

(e) Applicable sales tax and vehicle registration fees shall be included as part of the actual cash value settlement of the total loss motor vehicle, except where the claimant retains the salvage vehicle.

(f) The insurance company shall give consideration to evidence presented by the claimant such as receipts, photographs or other documentation that the total loss motor vehicle owned by him or her was in a better condition prior to the accident than suggested by the insurer's settlement offer.

(g) When a motor vehicle's total loss is settled on a basis which deviates from this Rule, the deviation must be supported by documentation within the claim file detailing the total loss motor vehicle's condition and the reason for the deviation. Any deductions from the actual cash value of the total loss motor vehicle, including deduction for salvage or prior damage, must be itemized and contain the amount of the deduction. The basis for the settlement shall be explained to the claimant. The insurance company's record shall include documentation of the total loss settlement.

(h) If requested by the claimant, a total loss payment by an insurance company shall be accompanied by a written statement listing the estimates, evaluations, and any deductions used in calculating the payment, and the source of these values.

(i) No insurance company, adjuster, appraiser, agent, or any other person shall enter into any oral or written agreement(s), by and between themselves, to limit any original or supplemental claim(s) to keep the repair cost of a damaged motor vehicle below 75 percent of its pre-accident value.

(j) At the election of the claimant, or in those circumstances where the insurance company will be unable to obtain an unencumbered title to the total loss motor vehicle, the insurance company shall have the right to deduct the value of the salvage of the total loss motor vehicle from the actual cash value calculation and leave the salvage motor vehicle with the claimant.

(k) If the insurance company makes a deduction for the salvage value of a total loss motor vehicle retained by the claimant, the insurance company shall, upon request of the claimant, furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted.

(l) Where the insurance company has the right to elect to replace the total loss motor vehicle and does so, the replacement motor vehicle shall be substantially similar to the total loss motor vehicle and paid for by the insurance company, subject only to the deductible and to the value of any additional options and equipment chosen by the claimant.

(m) The insurance company shall be responsible for all reasonable and customary towing and storage charges until three days after the motor vehicle's owner and storage facility are notified in writing that the insurance company will no longer reimburse the motor vehicle's owner or storage facility for storage charges. Notification to the motor vehicle's owner shall include the name, address, and telephone number of the facility where the motor vehicle is being stored. Notification to the storage facility shall include the name, address, and, if available, telephone number of the motor vehicle's owner. Proof of mailing, as defined in Rule .0430 of this Section, shall serve as the proof that the notification required by this Rule occurred.

(n) No insurance company shall abandon the salvage of a total loss motor vehicle to a towing or storage service without the consent of the service involved.

Authority G.S. 58-2-40; 58-63-65; 58-63-65; 20-279.2; 20-279.21.

11 NCAC 04 .0419 MOTOR VEHICLE REPAIR ESTIMATES

The commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning repair estimates on covered motor vehicle damage claims submitted when such failure is so frequent as to indicate a general business practice:

- (1) If the insurer requires the claimant to obtain more than two estimates of property damage, the cost, if any, of such additional estimates shall be borne by the insurer.
- (2) No insurer shall refuse to inspect the damaged vehicle if a personal inspection is requested by the claimant. However, if the damaged vehicle is situated other than where it is normally used or cannot easily be moved, the insurer may satisfy the requirements of this Section by having a competent local appraiser inspect the damaged vehicle.
- (3) When the insurer elects to have the claimant's property repaired, the insurer shall, if so requested by the claimant, furnish the claimant with a legible front and back copy of its estimate. This estimate shall contain the name and address of the insurer and, if the estimate was prepared by a repair service, the name and address of that service. If there is a dispute concerning pre-existing damage to the vehicle which the insurer does not intend to have repaired, the extent of such damage shall be clearly stated in the estimate.
- (4) If requested by a claimant, an insurer shall provide to the claimant copies of the estimate

~~and all supplements thereto that it uses to offer a settlement.~~

(a) The Commissioner shall consider as prima facie violative of G.S. 58-63-15(11) the failure by an insurance company to adhere to the procedures in this Rule concerning repair estimates on covered motor vehicle damage claims when the failure is so frequent as to indicate a general business practice.

(b) For the purposes of this Rule, the following terms shall mean:

- (1) "Digital Inspection" means an inspection of a damaged motor vehicle conducted by using digital photographs, videos or other digital evidence through an electronic processing system authorized by an insurer.
- (2) "Licensed Motor Vehicle Damage Appraiser" means an individual who is licensed as a motor vehicle damage appraiser pursuant to Article 33 of Chapter 58 of the N.C. General Statutes or is licensed in another state whose licensing requirements are substantially similar to or exceed those established under that Article.
- (3) "Physical Inspection" means an inspection of a damaged motor vehicle conducted in person by an insurer's representative.

(c) When a motor vehicle is damaged, and the claim is either covered by an insurer for a first-party claim or liability is established for a third-party claim, the insurer shall adhere to the following procedures concerning repair estimates:

- (1) If the insurer requires the claimant to obtain more than two estimates of property damage, any cost of the additional estimate(s) shall be paid by the insurer.
- (2) An insurer shall perform a physical or digital inspection of the damaged vehicle within 10 business days. If the insurer cannot perform the inspection in the timeframe, the insurer shall provide the claimant with a verbal or written explanation of the reason the inspection has not occurred. The reason for the delay shall be documented in writing within the claim file.
- (3) No insurer shall refuse to perform a physical inspection of the damaged vehicle if requested by the claimant.
- (4) The insurer may satisfy the inspection requirements of this Rule by having a licensed motor vehicle damage appraiser conduct the inspection of the damaged vehicle.
- (5) An insurer shall provide a verbal or written explanation to the claimant if there is any delay in responding to a request for a supplemental inspection. The reason for the delay shall be documented in writing in the claim file.
- (6) An insurer shall, upon request, provide copies of the original estimate and all supplemental estimates to the claimant.
- (7) When the insurer elects to have the damaged vehicle repaired, the insurer shall, upon request of the claimant, furnish the claimant with a copy of its estimate. This estimate shall contain the name and address of the insurer and, if the

estimate was prepared by someone other than the insurer, the name and address of the person preparing the estimate. If there is a dispute concerning pre-existing damage to the vehicle that the insurer does not intend to have repaired, the extent of such damage shall be stated in the estimate.

Authority G.S. 58-2-40; 58-63-65.

11 NCAC 04 .0421 HANDLING OF LOSS AND CLAIM PAYMENTS

~~The commissioner shall consider as prima facie violative of G.S. 58-3-100 and 58-63-15(11) failure by an insurer to adhere to the following procedures concerning loss and claim payments when such failure is so frequent as to indicate a general business practice:~~

(a) The Commissioner shall consider the failure by an insurer to adhere to the procedures in this Rule concerning loss and claim payments as prima facie evidence violation of G.S. 58-63-15(11) when such failure is so frequent as to indicate a general business practice.

(b) When a motor vehicle is damaged and the claim is covered by an insurer, the insurer shall adhere to the following procedures concerning loss and claim payments.

- (1) Loss and claim payments shall be mailed or otherwise delivered within 10 business days after the claim is settled.
- (2) Unless the insured consents, no insurer shall deduct premiums owed by the insured on a policy from a loss or claim payment made under one policy premiums owed by the insured on another policy.
- (3) No insurer shall withhold the entire amount of a loss or claim payment because the insured owes premium or other monies in an amount less than the loss or claim payment.
- (4) If a release or full payment of claim is executed by a claimant, claimant involving a repair to a motor vehicle, it shall not bar the right of the claimant to promptly assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the motor vehicle vehicle, which if the damages were directly caused by the accident and which damages could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair shall be considered promptly asserted vehicle. This claim must be asserted within the statute of limitations set forth in G.S. 1-52(16).
- (5) If a release or full payment of claim is executed by a third-party third-party claimant, claimant involving a repair to a motor vehicle, it shall not bar the right of the third-party third-party claimant to promptly assert a claim for diminished value, which diminished value diminution in fair market value pursuant to G.S.

20-279.21(d1) was directly caused by the accident and which diminished value could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair for diminished value shall be considered promptly asserted. vehicle. This claim must be asserted within the statute of limitations set forth in G.S. 1-52(16).

(c) For purposes of this Rule, "diminution in fair market value" shall be as defined in 11 NCAC 06A .1001.

(d) If a claim for diminution in fair market value is asserted pursuant to this Rule and G.S. 20-279.21(d1), the written appraisal reports prepared by each appraiser shall be exchanged with the other party.

Authority G.S. 58-2-40; 58-3-100; ~~58-63-65~~; 58-63-65; 20-279.2.

11 NCAC 04 .0425 DEFINITIONS

As used in this Section the following terms shall be construed as follows:

- (1) "After market part" means a part made by a nonoriginal manufacturer.
- (2) "Claimant" means a first-party or third-party claimant.
- (3) "Diminution in Fair Market Value," as that term is used in G.S. 20-279.21, means the difference in the fair market value of the vehicle immediately before the accident and after any repairs made to the vehicle as a result of the accident have been completed.
- (4) "Disinterested appraiser," as that term is used in G.S. 20-279.21, means a motor vehicle damage appraiser who:
 - (a) Is not employed by either the claimant or the insurer;
 - (b) Has no financial interest in the outcome of the appraisal; and
 - (c) Did not participate in the original appraisal.
- (5) "First-Party Claimant" means a person that is making a claim on an insurance policy in which they are the insured party.
- ~~(2)(6)~~ "Insurer" means as defined in G.S. 58-1-5(3), and includes any person authorized by the insurer to represent the insurer with respect to a claim and who is acting within the scope of the person's authority.
- ~~(3)(7)~~ "Nonoriginal manufacturer" means any manufacturer other than the original manufacturer of a part.
- ~~(4)(8)~~ "Part" means a sheet metal or plastic part that generally is a component of the exterior of a motor vehicle, including an inner or outer panel, vehicle.
- (9) "Third-Party Claimant" means a person that is making a claim on an insurance policy in which they are not the insured party.

Authority G.S. 58-2-40; 20-279.2; 20-279.21.

CHAPTER 06 - AGENT SERVICES DIVISION

SUBCHAPTER 06A - AGENT SERVICES DIVISION

SECTION .1000 - MOTOR VEHICLE DAMAGE APPRAISERS

11 NCAC 06A .1001 DEFINITIONS

As used in this Section, the following terms shall mean:

- (1) "Claimant" means as defined in 11 NCAC 04 .0425.
- (2) "Motor vehicle damage appraiser" means as defined in G.S. 58-33-10(14).

Authority G.S. 58-2-40.

11 NCAC 06A .1002 ETHICAL STANDARDS

(a) Every licensed motor vehicle damage appraiser, when conducting business, shall:

- (1) identify himself or herself and his or her job title;
- (2) when requested, provide his or her National Producer Number, and the Department's website address and phone number for verification of license status;
- (3) prepare an independent appraisal of damages; and
- (4) comply with all local, State, and federal laws, in the motor vehicle damage appraiser's business affairs.

(b) Every licensed motor vehicle damage appraiser shall refrain from:

- (1) disparaging the professional reputation of a motor vehicle damage appraiser or other persons associated with the claim;
- (2) recommending the utilization of a particular motor vehicle repair service without informing the claimant that he or she is under no obligation to use the recommended repair service and that he or she may use the service of his choice;
- (3) recommending a claimant needing repairs or other services in connection with a loss to any person with whom the motor vehicle damage appraiser has a financial interest or who provides the motor vehicle damage appraiser any compensation for the referral or any resulting business;
- (4) impeding the appraisal process or the settlement of a property damage claim;
- (5) receiving any gratuity or other consideration in connection with his or her appraisal services except from his or her employer or, if self-employed, his or her customer;
- (6) advising or recommending a claimant to obtain or not obtain legal advice or counsel from a particular legal counsel;

- (7) giving legal advice on property damage claims in violation of G.S. 84-4;
- (8) solicit a power of attorney from a consumer that authorizes the motor vehicle damage appraiser to sign insurance-related forms;
- (9) attempting to influence a magistrate in the selection of an umpire pursuant to G.S. 20-279.21(d1), including using influence through a client or claimant;
- (10) engaging in the salvage of automobiles if the salvage is obtained as a result of appraisal services rendered by the motor vehicle damage appraiser; and
- (11) act in any manner outside the scope of a motor vehicle damage appraiser, as set forth in Chapter 58, Article 33 of the General Statutes.

(c) Pursuant to G.S. 58-2-70 and G.S. 58-33-46, the Commissioner may consider the failure of a licensed motor vehicle damage appraiser to comply with this Rule as a basis for administrative action.

Authority G.S. 58-2-40.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to amend the rule cited as 11 NCAC 10 .0602.

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

Proposed Effective Date: April 1, 2020

Public Hearing:

Date: January 14, 2020

Time: 11:00 a.m.

Location: 1st Floor Hearing Room, Room 131 (Albemarle Building) located at 325 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: This rule is being amended to include necessary language regarding Worker's Compensation and Employers' Liability Insurance.

Comments may be submitted to: Loretta Peace-Bunch, NC Department of Insurance, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 807-6004; email loretta.peace-bunch@ncdoi.gov

Comment period ends: February 14, 2020

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

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

CHAPTER 10 - PROPERTY AND CASUALTY DIVISION

SECTION .0600 - CONSENT TO RATE

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

(a) Automobile Physical Damage, Excess Motor Vehicle Liability Coverage and Residential Property With Not More than Four Housing Units. 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) Workers' Compensation and Employers' Liability Insurance. An initial (first time) application to effect consent to rate, pursuant to G.S. 58-36-30(c), for workers' compensation or employers' liability insurance in excess of the rate promulgated by the North Carolina Rate Bureau, shall contain the following:

- (1) a description of the insurance proposed, including primary and excess limits, the amount of coverage, 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 must be explained fully and shall be subject to review and approval of the Commissioner;
- (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 (North Carolina Workers Compensation Insurance Plan), a statement signed by the insured acknowledging that fact must also be executed. This letter shall be retained in the insurer's office and be made available to the Commissioner upon request.

The insurer is not required to obtain the written consent of the insured on any renewal of or endorsement to the policy if the policy renewal or endorsement states that the rates are greater than those rates that are applicable in the State of North Carolina.

~~(e)~~(d) All records generated under G.S. 58-36-30(b), ~~(b1)~~(b1), (c) and this Rule shall be maintained in accordance with the requirements of 11 NCAC 19 .0100.

Authority G.S. 58-2-40(1); 58-36-30(b).

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02N .0406; 02O .0101, .0102, repeal the rules cited as 15A NCAC 02O .0103, .0311-.0316, readopt with substantive changes the rules cited as 15A NCAC 02N .0203, .0301, .0303, .0304, .0504, .0901-.0907; 02O .0203, .0204, .0302, .0304, .0308, .0402, .0503, .0504, readopt without substantive changes the rules cited as 15A NCAC 02N .0201, .0202, .0302, .0401-.0405, .0501-.0503, .0505, .0506, .0601-.0604, .0701-.0708, .0801-.0805, and repeal through readoption the rules cited as 15A NCAC 02O .0201, .0202, .0301, .0303, .0305-.0307, .0401, .0501, and .0502.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-main>

Proposed Effective Date: May 1, 2020

Public Hearing:

Date: January 14, 2020

Time: 6:00 p.m.

Location: Green Square Building, Room 1210, 217 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action: *The rule changes to 15A NCAC 02N are necessary to implement legislative requirements in SL 2018-114, incorporate input from stakeholders, and make technical corrections such as: formatting of rule text; updating websites; adding clarifying language; deleting sampling methods, industry standards and codes of practice, and other standard procedures that were no longer relevant and replacing them with those that are current; deleting unnecessary language and obsolete rules; and correcting grammar, cross-references, inconsistencies, authorities, etc., and as part of the readoption of the 15A NCAC 02N rules as required by G.S. 150B-21.3A (Periodic Review of Existing Rules).*

The rule changes to 15A NCAC 02O are necessary to make technical corrections such as: formatting of rule text; updating websites; adding clarifying language; deleting unnecessary language and obsolete rules; and correcting grammar, cross-references, inconsistencies, authorities, etc. and as part of the readoption of the 15A NCAC 02O rules as required by G.S. 150B-21.3A (Periodic Review of Existing Rules).

Comments may be submitted to: Andria Merritt, NCDEQ/DWM/UST Section, 1646 Mail Service Center, Raleigh, NC 27699-1646; phone (919) 707-8157; fax (919) 715-1117; email andria.merritt@ncdenr.gov

Comment period ends: February 14, 2020

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

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02N - UNDERGROUND STORAGE TANKS

SECTION .0200 - PROGRAM SCOPE AND INTERIM PROHIBITION

**15A NCAC 02N .0201 APPLICABILITY
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02N .0202 INSTALLATION
REQUIREMENTS FOR PARTIALLY EXCLUDED UST
SYSTEMS (READOPTION WITHOUT SUBSTANTIVE
CHANGES)**

15A NCAC 02N .0203 DEFINITIONS

(a) The regulations governing "Definitions" set forth in 40 CFR 280.12 (Subpart A) are hereby incorporated by ~~reference,~~ reference excluding any subsequent amendments and editions, except that:

- (1) ~~40 CFR 280.12~~ "UST system" shall be changed to read "'UST system' or 'Tank system' means an underground storage tank, connected underground piping, underground ancillary equipment, dispenser, and containment system, if any";
- (2) ~~40 CFR 280.12~~ "Class A operator" shall not be incorporated by reference;
- (3) ~~40 CFR 280.12~~ "Class B operator" shall not be incorporated by reference;
- (4) ~~40 CFR 280.12~~ "Class C operator" shall not be incorporated by reference;
- (5) ~~40 CFR 280.12~~ "Replaced" shall not be incorporated by reference; and
- (6) ~~40 CFR 280.12~~ "Secondary containment or secondarily contained" shall not be incorporated by reference.

~~(b) This Rule shall apply throughout this Subchapter except that:~~

- ~~(1) "Implementing agency" shall mean the "Division of Waste Management."~~
- ~~(2) "Division" shall mean the "Division of Waste Management."~~
- ~~(3) "Director" and "Director of the Implementing Agency" shall mean the "Director of the Division of Waste Management."~~

~~(c)~~(b) The following definitions shall apply throughout this Subchapter:

- (1) "De minimis concentration" means the amount of a regulated substance that does not exceed one percent ~~(1%)~~ of the capacity of a tank, excluding piping and vent lines.
- (2) "Director" and "Director of the Implementing Agency" shall mean the "Director of the Division of Waste Management."
- (3) "Division" shall mean the "Division of Waste Management."
- ~~(2)~~(4) "Expediently emptied after use" means the removal of a regulated substance from an emergency spill or overflow containment UST system within 48 hours after use of the UST system has ceased.
- (5) "Implementing agency" shall mean the "Division of Waste Management."

~~(3)~~(6) "Previously closed" means:

- (A) An UST system from which all regulated substances had been removed, the tank had been filled with a solid inert material, and tank openings had been sealed or capped prior to December 22, 1988; or
- (B) An UST system removed from the ground prior to December 22, 1988.

~~(4)~~(7) "Temporarily closed" means:

- (A) An UST system from which the product has been removed such that not more than one inch of product and residue are present in any portion of the tank; or
- (B) Any UST system in use as of December 22, 1988 that complies with the provisions of ~~15A NCAC 02N .0801,~~ Rule .0801 of this Subchapter.

~~(5)~~(8) "Secondary containment" means a method or combination of methods of release detection for UST systems that includes:

- (A) For tank installations or replacements completed prior to November 1, 2007, double-walled construction and external ~~liners (including vaults);~~ liners, including vaults;
- (B) For underground piping installations or replacements completed prior to November 1, 2007, trench liners and double-walled construction;
- (C) For tank installations or replacements completed on or after November 1, 2007, double-walled construction and interstitial release detection monitoring that meet the requirements of Section .0900 of this Subchapter; and
- (D) For all other UST system component installations or replacements completed on or after November 1, 2007, double-walled construction or containment within a liquid-tight sump and interstitial release detection monitoring that meet the requirements of Section .0900 of this Subchapter. Upon written request, the Division shall approve other methods of secondary containment for connected piping that it determines are capable of meeting the requirements of Section .0900 of this Subchapter.

~~(6)~~(9) "Interstitial space" means the opening formed between the inner and outer wall of an UST system with double-walled construction or the opening formed between the inner wall of a containment sump and the UST system component that it contains.

- ~~(7)~~(10) "Replace" means to remove an UST system or UST system component and to install another UST system or UST system component in its place.
- ~~(8)~~(11) "UST system component or tank system component" means any part of an UST system.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h). ~~150B-21-6.~~

SECTION .0300 - UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION

15A NCAC 02N .0301 PERFORMANCE STANDARDS FOR UST SYSTEM INSTALLATIONS OR REPLACEMENTS COMPLETED AFTER DECEMBER 22, 1988 AND BEFORE NOVEMBER 1, 2007

(a) The regulations governing "Performance standards for new UST systems" set forth in 40 CFR 280.20 (Subpart B) are hereby incorporated by ~~reference~~, reference excluding any subsequent amendments and editions, except that:

- (1) 40 CFR 280.20(a)(4) shall not be incorporated by reference;
- (2) 40 CFR 280.20(b)(3) shall not be incorporated by reference; ~~and~~
- (3) UST system or UST system component installations or replacements completed on or after November 1, 2007, shall also meet the requirements of Section .0900 of this ~~Subchapter~~. Subchapter; and
- (4) Note to Paragraph (d) of 40 CFR 280.20 is amended to include Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems."

(b) No UST system shall be installed within 100 feet of a well serving a public water system, as defined in G.S. 130A-313(10), or within 50 feet of any other well supplying water for human consumption.

(c) An UST system existing on January 1, 1991, and located within the area described in Paragraph (b) of this Rule may be replaced with a new tank meeting the performance standards of 40 CFR 280.20 and the secondary containment provisions of 40 CFR 280.42(a) through (d). The replacement UST system shall not be located nearer to the water supply source than the UST system being replaced.

(d) Except as prohibited in Paragraph (b) of this Rule, an UST system shall meet the requirements for secondary containment described at 40 CFR 280.42(a) through (d):

- (1) Within 500 feet of a well serving a public water supply or within 100 feet of any other well supplying water for human consumption; or
- (2) Within 500 feet of any surface water classified as High Quality ~~Water (HQW)~~; Waters (HQW); Outstanding Resource ~~water (ORW)~~; Waters (ORW); ~~WS-I, WS-II or SA~~; Water Supply I – Natural (WS-I); Water Supply II – Undeveloped; Market Shellfishing, Salt Water (SA).

(e) An UST system or UST system component installation completed on or after November 1, 2007, to replace an UST system or UST system component located within the areas described in Paragraphs (b), (c), or (d) of this Rule shall meet the requirements of Section .0900 of this Subchapter.

~~(f) 40 CFR 280.20 Note to paragraph (d) is amended to include Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems."~~

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h). ~~150B-21-6.~~

15A NCAC 02N .0302 UPGRADING OF EXISTING UST SYSTEMS AFTER DECEMBER 22, 1998 AND BEFORE NOVEMBER 1, 2007 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0303 NOTIFICATION REQUIREMENTS

The regulations governing "Notification requirements" set forth in 40 CFR 280.22 (Subpart B) are hereby incorporated by ~~reference~~, reference excluding any subsequent amendments and editions, except that:

- (1) Owners and operators of an UST system shall submit to the Division, on forms provided by the Division, a notice of intent to conduct any of the following activities:
 - (a) notice of installation of a new UST system or UST system component shall be in accordance with Rule .0902 of this Subchapter;
 - (b) notice of installation of a leak detection device installed outside of the outermost wall of the tank and piping, such as vapor detection or groundwater monitoring devices, shall be given at least 30 days before the activity begins. The notice shall be provided on form "UST-8 Notification of Activities Involving Underground Storage Tank Systems," which may be accessed free of charge at <http://deq.nc.gov/about/divisions/waste-management/underground-storage-tanks-section/forms>. Form "UST-8 Notification of Activities Involving Underground Storage Tank Systems" shall include:
 - (i) the same information provided in Appendix I to 40 CFR 280, except that Sections X (2) and (3), and Section XI shall not be included on the form;
 - (ii) operator identification and contact information;
 - (iii) number of tank compartments and tank

- compartment identity, capacity, and product stored;
 - (iv) identity of tanks that are manifold together with piping;
 - (v) stage I Vapor Recovery equipment type and installation date;
 - (vi) corrosion protection methods for metal flexible connectors, submersible pumps, and riser pipes;
 - (vii) UST system and UST system component installation date, manufacturer, model, and leak detection monitoring method;
 - (viii) spill containment equipment installation date, manufacturer, model, and leak detection monitoring method;
 - (ix) overfill prevention equipment installation date, manufacturer, and model; and
 - (x) leak detection equipment manufacturer and model;
 - (c) notice of permanent closure or change-in-service of an UST system shall be given at least 30 days before the activity ~~begins, unless a North Carolina Professional Engineer or North Carolina Licensed Geologist retained by the owner or operator to provide professional services for the tank closure or change in service submits the notice. A North Carolina Professional Engineer or North Carolina Licensed Geologist may submit the notice at least five business days before the activity begins.~~ begins. The notice shall be provided on form "UST-3 Notice of Intent: UST Permanent Closure or Change-in-Service," which may be accessed free of charge at <http://deq.nc.gov/about/divisions/waste-management/underground-storage-tanks-section/forms>. Form "UST-3 Notice of Intent: UST Permanent Closure or Change-in-Service" shall include:
 - (i) owner identification and contact information;
 - (ii) site location information;
 - (iii) site contact information;
 - (iv) contractor and consultant identification and contact information;
 - (v) identity of UST systems to be permanently closed or that will undergo a change-in-service;
 - (vi) for permanent closure, the proposed method of UST System closure – removal or fill in-place;
 - (vii) for a change-in-service, the new contents to be stored;
 - (viii) proposed UST system closure or change-in-service date; and
 - (ix) signature of UST system owner;
 - (d) notice of a change of ownership of a UST system pursuant to 40 CFR 280.22(b) shall be provided on form "UST-15 Change of Ownership of UST System(s)," which may be accessed free of charge at <http://deq.nc.gov/about/divisions/waste-management/underground-storage-tanks-section/forms>. Form "UST-15 Change of Ownership of UST System(s)" shall include:
 - (i) the same information provided in Appendix II to 40 CFR 280;
 - (ii) site location information;
 - (iii) notarized signature of the new owner of an UST system;
 - (iv) name and notarized signature of the previous owner of an UST system; and
 - (v) appended information shall include documentation of an UST system ownership transfer such as a property deed or bill of ~~sale and for a sale. A person signing the form on behalf of another, another shall provide documentation they can legally sign in such capacity,~~ sale. A person signing the form on behalf of another, another shall provide documentation they can legally sign in such capacity, such as an officer of a corporation, administrator of an estate, representative of a public agency, or as having power of ~~attorney; documentation showing that the person can legally sign in such capacity.~~ attorney.
- (2) Owners and operators of UST systems that were in the ground on or after May 8, 1986,

were required to notify the Division in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by the Environmental Protection Agency on November 8, 1985 (50-FR 46602) 46602), unless notice was given pursuant to Section 103(c) of CERCLA. Owners or operators who have not complied with the notification requirements shall complete the appropriate form "UST-8 Notification of Activities Involving Underground Storage Tank Systems" and submit the form to the Division.

- (3) Beginning October 24, 1988, any person who sells a tank intended to be used as an UST shall notify the purchaser of such tank of the owner's notification obligations under Item (1) of this Rule.
- (4) Any reference in 40 CFR Part 280 to the notification form in Appendix I shall refer to the North Carolina notification form "UST-8 Notification of Activities Involving Underground Storage Tank ~~Systems~~". Systems."

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h). ~~150B-21-6.~~

**15A NCAC 02N .0304 IMPLEMENTATION
SCHEDULE FOR PERFORMANCE STANDARDS FOR
NEW UST SYSTEMS AND UPGRADING
REQUIREMENTS FOR EXISTING UST SYSTEMS
LOCATED IN AREAS DEFINED IN RULE .0301(D)**

(a) The following implementation schedule shall apply only to owners and operators of UST systems located within areas described in Rule .0301(d) of this Section. This implementation schedule shall govern tank owners and operators in complying with the secondary containment requirements set forth in Rule .0301(d) of this Section for new UST systems and the secondary containment requirements set forth in Rule .0302(a) of this Section for existing UST systems.

- (1) All new UST systems and replacements to an UST system shall be provided with secondary containment as of April 1, 2001.
- (2) All steel or metal connected piping and ancillary equipment of an UST, regardless of date of installation, shall be provided with secondary containment as of January 1, 2005.
- (3) All fiberglass or non-metal connected piping and ancillary equipment of an UST, regardless of date of installation, shall be provided with secondary containment as of January 1, 2008.
- (4) All UST systems installed on or before January 1, 1991 shall be provided with secondary containment as of January 1, 2008.
- (5) All USTs installed after January 1, 1991, and prior to April 1, 2001, shall be provided with secondary containment as of January 1, 2020. Owners of USTs located within 100 to 500 feet of a public water supply well, if the well serves

only a single facility and is not a community water system, may seek a variance in accordance with Paragraphs (d) through (i) of this Rule.

(b) All owners and operators of UST systems shall implement the following enhanced leak detection monitoring as of April 1, 2001. The enhanced leak detection monitoring shall consist of the following:

- (1) An automatic tank gauging system for each UST;
- (2) An electronic line leak detector for each pressurized piping system;
- (3) One 0.1 gallon per hour (gph) test per month or one 0.2 gph test per week on each UST system;
- (4) A line tightness test capable of detecting a leak rate of 0.1 gph, once per year for each suction piping system. No release detection shall be required for suction piping that is designed and constructed in accordance with 40 CFR 280.41(b)(1)(ii)(A) through (E);
- (5) If the UST system is located within 500 feet of a public water supply well or within 100 feet of any other well supplying water for human consumption, owners or operators shall sample the water supply well ~~at least~~ once per year. The sample collected from the well shall be characterized in accordance with:
 - (A) Standard Method 6200B, Volatile Organic Compounds Purge and Trap Capillary-Column Gas Chromatographic/Mass Spectrometric Method, which is incorporated by reference including subsequent amendments and editions, and may be obtained at <http://www.standardmethods.org/> at a cost of ~~sixty-nine dollars (\$69.00);~~ seventy-five dollars (\$75.00);
 - (B) EPA Method ~~625,~~ 625.1, Base/Neutrals and Acids, which is incorporated by reference including subsequent amendments and editions, and may be accessed free of charge at http://water.epa.gov/scitech/methods/cwa/organics/upload/2007_07_10_methods_method_organics_625.pdf; and
 - (C) If a waste oil UST system is present that does not meet the requirements for secondary containment in accordance with 40 CFR 280.42(b)(1) through (4), the sample shall also be analyzed for lead and chromium using Method ~~6010C,~~ 6010D, Inductively Coupled ~~Plasma-Atomic~~ Plasma-Optical Emission Spectrometry, which is incorporated by reference including subsequent amendments and editions, and may be accessed free of charge at <http://www.epa.gov/epawaste/hazard/>

~~testmethods/sw846/pdfs/6010c.pdf~~
<https://www.epa.gov/sites/production/files/2015-12/documents/6010d.pdf>
or Method ~~6020A~~, 6020B, Inductively Coupled Plasma-Mass Spectrometry, which is incorporated by reference including subsequent amendments and editions, and may be accessed free of charge at <http://www.epa.gov/epawaste/hazard/testmethods/sw846/pdfs/6020a.pdf>; <https://www.epa.gov/sites/production/files/2015-12/documents/6020b.pdf>; and

- (6) The first sample collected in accordance with Subparagraph (b)(5) of this Rule shall be collected and the results received by the Division by October 1, 2000, and yearly thereafter.

(c) An UST system or UST system component installation completed on or after November 1, 2007, to upgrade or replace an UST system or UST system component as required in Paragraph (a) of this Rule shall meet the performance standards of Section .0900 of this Subchapter.

(d) The Environmental Management Commission may grant a variance from the secondary containment requirements in Subparagraph (a)(5) of this Rule for USTs located within 100 to 500 feet of a public water supply well if the well serves only a single facility and is not a community water system. Any request for a variance shall be in writing by the owner of the UST for which the variance is sought. The request for variance shall be submitted to the Director, Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646. The Environmental Management Commission shall grant the variance if the Environmental Management Commission finds facts to support the following conclusions:

- (1) The variance will not endanger human health and welfare or groundwater; and
- (2) UST systems are operated and maintained in compliance with 40 CFR Part 280, Article 21A of G.S. 143B, and the rules in this Subchapter.

(e) The Environmental Management Commission may require the variance applicant to submit such information as the Environmental Management Commission deems necessary to make a decision to grant or deny the variance. Information that may be requested includes the following:

- (1) Water supply well location, depth, construction specifications, and sampling results;
- (2) Groundwater depth and flow direction; and
- (3) Leak detection monitoring and testing results.

(f) The Environmental Management Commission may impose such conditions on a variance as the Environmental Management Commission deems necessary to protect human health and welfare and groundwater. Conditions for a variance may include the following:

- (1) Increased frequency of leak detection and leak prevention monitoring and testing;
- (2) Periodic water supply well sampling; and
- (3) Increased reporting and recordkeeping.

(g) The findings of fact supporting any variance under this Rule shall be in writing and made part of the variance.

(h) The Environmental Management Commission may rescind a variance that was previously granted if the Environmental Management Commission discovers through inspection or reporting that the conditions of the variance are not met or that the facts no longer support the conclusions in Subparagraphs (d)(1) and (2) of this Rule.

(i) An owner of an UST system who is aggrieved by a decision of the Environmental Management Commission to deny or rescind a variance or to conditionally grant a variance may commence a contested case by filing a petition pursuant to G.S. 150B-23 within 60 days after receipt of the decision.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

SECTION .0400 - GENERAL OPERATING REQUIREMENTS

15A NCAC 02N .0401 SPILL AND OVERFILL CONTROL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0402 OPERATION AND MAINTENANCE OF CORROSION PROTECTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0403 COMPATIBILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0404 REPAIRS ALLOWED (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0405 REPORTING AND RECORDKEEPING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0406 PERIODIC TESTING OF SPILL PREVENTION EQUIPMENT AND CONTAINMENT SUMPS USED FOR INTERSTITIAL MONITORING OF PIPING AND PERIODIC INSPECTION OF OVERFILL PREVENTION EQUIPMENT

The regulations governing "Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment" set forth in 40 CFR 280.35 (Subpart C) are hereby incorporated by ~~reference~~, reference excluding any subsequent amendments and editions, except ~~that that~~:

- (1) UST system or UST system component installations or replacements completed on or after November 1, 2007, shall meet the requirements of Section .0900 of this Subchapter.
- (2) 40 CFR 280.35(a)(1)(ii)(C) shall be rewritten as follows: (C) Requirements determined by the US Environmental Protection Agency or the Division to be no less protective of human health and the environment than the

requirements listed in Paragraphs (a)(1)(ii)(A) and (B) of this section.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h). ~~150B-21-6.~~

SECTION .0500 - RELEASE DETECTION

15A NCAC 02N .0501 GENERAL REQUIREMENTS FOR ALL UST SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0502 REQUIREMENTS FOR PETROLEUM UST SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0503 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0504 METHODS OF RELEASE DETECTION FOR TANKS

(a) The regulations governing "Methods of release detection for tanks" set forth in 40 CFR 280.43 (Subpart D) are hereby incorporated by ~~reference~~; reference excluding any subsequent amendments and editions, except that 40 CFR 280.43(f)(3), (f)(4), and (f)(5) shall not be adopted by reference.

(b) Wells used for monitoring or testing for free product in the groundwater shall be:

- (1) ~~Located as follows:~~ located:
 - (A) ~~for new installations, within and at the end of the excavation having the lowest elevation and along piping at intervals not exceeding 50 feet; or~~
 - (B) ~~for existing installations,~~ in the excavation zone or as near to it as technically feasible and installed in a borehole at least four inches larger than the diameter of the casing;
- (2) ~~A a~~ a minimum of two inches in ~~diameter.~~ diameter;
- (3) ~~The number of wells installed shall be sufficient to detect releases from the UST system; installed such that a release from any portion of the UST will be detected;~~
- (~~3~~)(4) ~~Equipped~~ equipped with a screen that extends from two feet below land surface to a depth of 20 feet below land surface or two feet below the seasonal low water level, whichever is shallower. The screen shall be designed and installed to prevent the migration of natural soils or filter pack into the well while allowing the entry of regulated substances into the well under both high and low groundwater level conditions;
- (~~4~~)(5) ~~Surrounded~~ surrounded with clean sand or gravel to the top of the screen, plugged and grouted the remaining distance to finished grade with cement grout;

- (~~5~~)(6) ~~Constructed~~ constructed of a permanent casing and screen material that is inert to the stored substance and is corrosion resistant;
- (~~6~~)(7) ~~Developed~~ developed upon completion of installation until the water is clear and sediment free;
- (~~7~~)(8) ~~Protected~~ protected with a water-tight cover and lockable cap;
- (~~8~~)(9) ~~Labeled~~ labeled as a liquid monitor well; and
- (~~9~~)(10) ~~Equipped~~ equipped with a liquid leak detection device ~~continuously~~ operating on an uninterrupted basis; or
 - (A) For tanks storing petroleum products, tested at least once every 14 days with a device or hydrocarbon-sensitive paste capable of detecting the liquid stored; or
 - (B) For tanks storing hazardous substances, sampled and tested at least once every 14 days for the presence of the stored substance.

(c) Wells used for monitoring or testing for free product in the groundwater at new installations and constructed in accordance with Paragraph (b) of this Rule shall be deemed to be permitted in accordance with the requirements of 15A NCAC 02C .0105.

(d) Any person completing or abandoning any well used for testing of vapors or monitoring for free product in the groundwater shall submit the ~~record~~ report required by 15A NCAC 02C .0114(b).

(e) Wells used for monitoring for the presence of vapors in the soil gas of the excavation zone shall be equipped with a ~~continuously operating~~ vapor detection device operating on an uninterrupted basis or tested at least once every 14 days for vapors of the substance stored.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h). ~~150B-21-6.~~

15A NCAC 02N .0505 METHODS OF RELEASE DETECTION FOR PIPING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0506 RELEASE DETECTION RECORDKEEPING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0600 - RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

15A NCAC 02N .0601 REPORTING OF SUSPECTED RELEASES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0602 INVESTIGATION DUE TO OFF-SITE IMPACTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0603 RELEASE INVESTIGATION AND CONFIRMATION STEPS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0604 REPORTING AND CLEANUP OF SPILLS AND OVERFILLS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0700 - RELEASE RESPONSE AND CORRECTIVE ACTION FOR UST SYSTEMS CONTAINING PETROLEUM OR HAZARDOUS SUBSTANCES

15A NCAC 02N .0701 GENERAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0702 INITIAL RESPONSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0703 INITIAL ABATEMENT MEASURES AND SITE CHECK (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0704 INITIAL SITE CHARACTERIZATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0705 FREE PRODUCT REMOVAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0706 INVESTIGATIONS FOR SOIL AND GROUNDWATER CLEANUP (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0707 CORRECTIVE ACTION PLAN (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0708 PUBLIC PARTICIPATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0800 - OUT-OF-SERVICE UST SYSTEMS AND CLOSURE

15A NCAC 02N .0801 TEMPORARY CLOSURE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0802 PERMANENT CLOSURE AND CHANGES-IN-SERVICE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0803 ASSESSING THE SITE AT CLOSURE OR CHANGE-IN-SERVICE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0804 APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0805 CLOSURE RECORDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0900 - PERFORMANCE STANDARDS FOR UST SYSTEM OR UST SYSTEM COMPONENT INSTALLATION OR REPLACEMENT COMPLETED ON OR AFTER NOVEMBER 1, 2007

15A NCAC 02N .0901 GENERAL REQUIREMENTS

(a) This Section applies to a UST system or UST system component installation or replacement completed on or after November 1, 2007.

(b) A UST system or UST system component shall not be installed or replaced within an area defined ~~at 15A NCAC 02N .0301(b)~~ in Rule .0301(b) of this Subchapter.

(c) A tank shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule.

(d) All UST system components other than tanks including connected piping, underground ancillary equipment, dispensers, line leak detectors, submersible pumps, spill buckets, siphon bars, and remote fill pipes shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule. Spill buckets replaced on tanks installed prior to November 1, 2007 may comply with the interstitial release detection monitoring requirements described in Paragraph (k) of this Rule. Gravity-fed vertical fill pipes, vapor recovery, vent lines, and containment sumps are excluded from the secondary containment requirements in this Rule.

(e) A UST system design is required for installation or replacement of a UST system, UST, or connected piping. If required by G.S. 89C, UST system designs must be prepared by a Professional Engineer licensed by the North Carolina Board of Examiners for Engineers and Surveyors.

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined via letter dated December 20, 1993, that preparation of a UST system design constitutes practicing engineering under G.S. 89C.]

(f) If required by the equipment manufacturer, persons installing, replacing or repairing UST systems or UST system components must be trained and certified by the equipment manufacturer or the equipment manufacturer's authorized representative to install, replace or repair such equipment.

(g) UST systems or UST system components shall be installed, tested, operated, and maintained in accordance with the manufacturer's specifications and the codes of practice, and industry standards described ~~at 15A NCAC 02N .0907~~ in Rule .0907 of this Section.

(h) UST systems or UST system components shall not be installed or replaced in areas where they will be in contact with contaminated soil or free product.

(i) Secondary containment systems shall be designed, constructed, installed and maintained to:

- (1) ~~Detect~~ detect the failure of the inner wall and outer wall for UST system components with double wall construction;
- (2) ~~Contain~~ contain regulated substances released from a UST system until they are detected and removed;

- (3) ~~Prevent~~ prevent a release of regulated substances to the environment outside of the containment system;
 - (4) ~~Direct~~ direct releases to a monitoring point or points;
 - (5) ~~Provide~~ provide a release detection monitoring device or monitoring method for the interstitial space;
 - (6) ~~Continuously~~ on an uninterrupted basis, monitor the inner and outer walls of double-walled tanks for breaches of integrity using pressure, vacuum or hydrostatic monitoring methods or monitor the interstitial space of double-walled tanks for releases using an electronic liquid detecting sensor method along with periodic testing as specified in Rule .0903(f); .0903(f) of this Section;
 - (7) ~~Continuously~~ on an uninterrupted basis, monitor the inner and outer walls of double-walled non-tank components for breaches of integrity using pressure, vacuum, or hydrostatic methods, or monitor a non-tank component for releases by using an electronic liquid detecting sensor placed in a containment sump and in the interstitial space of a double-walled spill bucket along with periodic integrity testing as specified in Rules .0904(h), .0905(f), .0904(f), .0905(g) and .0906(e); .0906(e) of this Section; and
 - (8) ~~Provide~~ provide a printed record of release detection monitoring results and an alarm history for each month.
- (j) Electronic liquid detecting sensors used to monitor the interstitial space of double-walled tanks and non-tank components shall meet the following requirements:

- (1) Electronic liquid detecting sensors used for tanks and spill buckets ~~must~~ shall be located at the lowest point in the interstitial space. Electronic liquid detecting sensors used for containment sumps ~~must~~ shall be located as specified in Rule .0905(d); .0905(d) of this Section.
- (2) A tank ~~must~~ shall have a method to verify that an electronic liquid detecting sensor is located at the lowest point of the interstitial space. Verification of the sensor location ~~must~~ shall be available for inspection.
- (3) Electronic liquid detecting sensors ~~must~~ shall detect the presence of any liquid in the interstitial space and ~~must~~ shall activate an alarm when any type of liquid is detected.
- (4) Any liquid detected in the interstitial space must be removed within 48 hours of discovery.

(k) Spill buckets replaced on tanks installed prior to November 1, 2007 may use mechanical liquid detecting sensors for interstitial leak detection monitoring instead of electronic liquid detecting sensors. If a mechanical liquid detecting sensor is used, then a spill bucket shall comply with all spill bucket requirements of Rule .0906 of this Section except that Subparagraphs (i)(7) and

- (8) of this Rule do not apply. In addition, the following specific requirements shall be met:
- (1) mechanical liquid detecting sensors shall be located at the lowest point in the interstitial space;
 - (2) mechanical liquid detecting sensors shall detect the presence of any liquid in the interstitial space. The presence of liquid shall register on a gauge that can be viewed from within the spill bucket;
 - (3) spill buckets shall be monitored every 30 days. The interstitial leak detection monitoring results shall be documented for each month;
 - (4) any liquid detected in the interstitial space shall be removed within 48 hours of discovery; and
 - (5) spill buckets shall be integrity tested every three years in accordance with Rule .0906(e) of this Section.
- ~~(k)(1)~~ (l) New or replacement dispensers shall be provided with under dispenser containment sumps and shall meet the secondary containment requirements and performance standards of this Rule.
- ~~(4)(m)~~ (m) All release detection monitoring equipment shall be installed, calibrated, operated and maintained in accordance with manufacturer's instructions. All release detection monitoring equipment shall be checked annually for operability, proper operating condition and proper calibration in accordance with the ~~manufacturers~~ manufacturer's written guidelines. The results of the last annual check must be recorded, maintained at the UST site or the tank owner or operator's place of business, and made available for inspection.
- ~~(n)(n)~~ (n) Releases detected in an interstitial space shall be reported in accordance with Rule .0601 of this Subchapter and investigated in accordance with the ~~manufacturers~~ manufacturer's written guidelines. Any changes in the original physical characteristics or integrity of a piping system or a containment sump ~~must~~ shall also be reported in accordance with Rule .0601 of this Subchapter and investigated in accordance with the manufacturer's written guidelines.
- ~~(n)(o)~~ (o) UST systems and UST system components shall also meet all of the installation requirements specified in 40 CFR 280.20(c), (d) and (e). In addition, overfill prevention equipment shall be ~~checked annually~~ inspected at least once every three years for operability, proper operating condition and proper calibration in accordance ~~with the manufacturer's written guidelines.~~ with:
- (1) written requirements developed by the manufacturer;
 - (2) a code of practice developed by a nationally recognized association or independent testing laboratory; or
 - (3) requirements determined by the United States Environmental Protection Agency or the Division to be no less protective of human health and the environment than the requirements listed in Subparagraph (1) or (2) of this Paragraph. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in

§40 CFR 280.20(c)(1)(ii) and will activate when regulated substance reaches that level.

The results of the last ~~annual~~ triennial check ~~must~~ shall be recorded, maintained at the UST site or the tank owner or operator's place of business, and made available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

15A NCAC 02N .0902 NOTIFICATION

(a) Owners and operators ~~must~~ shall provide notification of installation or replacement of an UST system, UST, or connected piping to the Division in accordance with ~~15A NCAC 02N .0303. Rule .0303 of this Subchapter.~~ The notice shall also include:

- (1) An UST system design.
- (2) Equipment to be installed including model and manufacturer and the materials of construction.
- (3) Device or method to be used to allow piping to be located after it is buried underground.
- (4) A site plan drawn to scale showing the proposed location of UST systems relative to buildings and other permanent structures, roadways, utilities, other UST systems, monitoring wells, and water supply wells within 500 feet used for human ~~consumption within 500 feet.~~ consumption.
- (5) A schedule for UST system installation or replacement.

(b) Owners and operators ~~must~~ shall notify the Division at least 48 hours prior to the following stages of construction so that the Division may perform an inspection of the installation:

- (1) ~~Pre-installation~~ pre-installation tightness testing of tanks; and
- (2) ~~Final~~ final tightness testing of piping before it is backfilled.

(c) Documents showing the following information shall be submitted to the Division within 30 days after UST system, UST, or connected piping installation or replacement is completed and shall be maintained at the UST system site or the owner's or operator's place of business for the life of the UST system. These records shall be transferred to a new tank owner at the time of a transfer of tank ownership:

- (1) Certification from the UST system installer containing:
 - (A) ~~The the~~ UST system installer's name, address and telephone number; training and any certification received from the manufacturer of the equipment that was installed or replaced or the equipment manufacturer's authorized representative including any certification number;
 - (B) ~~An an~~ as-built diagram drawn to scale showing: the name and address of the UST system site; the date of UST system, UST, or connected piping installation or replacement; the equipment that was installed including model and manufacturer; the

information described at ~~15A NCAC 02N .0903(b); in Rule .0903(c) of this Section;~~ the method used to anchor a tank in the ground; if the equipment has single-walled or double-walled construction; the year the piping was manufactured and any production code; and the device or method used to allow piping to be located after it is buried underground. The as-built diagram shall also show the location of the installed or replaced UST systems relative to: buildings and other permanent structures, utilities, monitoring wells and other UST systems located at the site; adjacent roadways; and water supply wells used for human consumption within 500 feet;

- (C) ~~A a~~ a listing of the manufacturer's written guidelines, codes of practice, and industry standards used for installation; and
 - (D) ~~A a~~ a statement that the UST system was installed in accordance with the design and the manufacturer's specifications.
- (2) ~~Manufacturer~~ manufacturer warranties;
 - (3) ~~Any any~~ equipment performance claims; and
 - (4) ~~Records~~ records of all tightness testing performed.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

15A NCAC 02N .0903 TANKS

(a) Tanks ~~must~~ shall be protected from external corrosion in accordance with 40 CFR 280.20(a)(1), (2), (3), or (5).

(b) Owners and operators of tanks installed in accordance with 40 CFR 280.20(a)(2) shall comply with all applicable requirements for corrosion protection systems contained in this Subchapter.

(c) The exterior surface of a tank shall bear a permanent marking, code stamp, or label showing the following information:

- (1) ~~The the~~ engineering standard used;
- (2) ~~The the~~ diameter in feet;
- (3) ~~The the~~ capacity in gallons;
- (4) ~~The the~~ materials of construction of the inner and outer walls of the tank, including any external or internal coatings;
- (5) ~~Serial~~ serial number or other unique identification number designated by the tank manufacturer;
- (6) ~~Date~~ date manufactured; and
- (7) ~~Identity~~ identify of manufacturer.

(d) Tanks that will be reused shall be certified by the tank manufacturer prior to re-installation and meet all of the requirements of this Section. Tank owners and operators shall submit proof of certification to the Division along with a notice of intent (~~Rule .0902~~) in accordance with Rule .0902 of this Section.

(e) Tanks shall be tested before and after installation in accordance with the following requirements:

- (1) Pre- Installation Test - Before installation, the primary containment and the interstitial space shall be tested in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma 74101-2380 <https://my.pei.org/productdetails?id=a1Bf4000001yPEBEA2> at a cost of ~~one hundred and ninety-five dollars (\$95.00)~~ (\$195.00). The presence of soap bubbles or water droplets during a pressure test, any change in vacuum beyond the limits specified by the tank manufacturer during a vacuum test, or any change in liquid level in an interstitial space liquid reservoir beyond the limits specified by the tank manufacturer, shall be considered a failure of the integrity of the tank.
- (2) Post-installation Test – The interstitial space shall be checked for a loss of pressure or vacuum, or a change in liquid level in an interstitial space liquid reservoir. Any loss of pressure or vacuum beyond the limits specified by the tank manufacturer, or a change in liquid level beyond the limits specified by the tank manufacturer, shall be considered a failure of the integrity of the tank.
- (3) If a tank fails a pre-installation or post-installation test, tank installation shall be suspended until the tank is replaced or repaired in accordance with the manufacturer's specifications. Following any repair, the tank shall be re-tested in accordance with Subparagraph ~~(e)(1)(1)~~ of this Rule Paragraph if it failed the pre-installation test and in accordance with Subparagraph ~~(e)(2)(2)~~ of this Rule Paragraph if it failed the post-installation test.

(f) The interstitial spaces of tanks that are not monitored using vacuum, pressure, or hydrostatic methods shall be tested for tightness before UST system start-up, between six months and the first anniversary of start-up, and every three years thereafter. The interstitial space shall be tested using an interstitial tank tightness test method that is capable of detecting a 0.10 gallon per hour leak rate with a probability of detection (Pd) of at least 95 percent and a probability of false alarm (Pfa) of no more than ~~5~~ five percent. The test method shall be evaluated by an independent testing laboratory, consulting firm, not-for-profit research organization, or educational institution using the most recent version of the United States Environmental Protection Agency's (EPA's) "Standard Test Procedures for Evaluating Various Leak Detection

Methods." EPA's "Standard Test Procedures for Evaluating Various Leak Detection Methods" is hereby incorporated by reference including subsequent amendments and additions. A copy may be obtained by visiting EPA's Office of Underground Storage Tank website: <http://www.epa.gov/oust/pubs/protocol.htm> <https://www.epa.gov/ust/standard-test-procedures-evaluating-various-leak-detection-methods> and may be accessed free of charge. The independent testing laboratory, consulting firm, not-for-profit research organization, or educational institution shall certify that the test method can detect a 0.10 gallon per hour leak rate with a Pd of at least 95 percent and a Pfa of no more than ~~5~~ five percent for the specific tank model being tested. If a tank fails an interstitial tank tightness test, it shall be replaced by the owner or operator or repaired by the manufacturer or the manufacturer's authorized representative in accordance with manufacturer's specifications. Tank owners and operators shall report all failed interstitial tank tightness tests to the Division within 24 hours. Failed interstitial tank tightness tests shall be reported by fax to the Division of Waste Management, Underground Storage Tank Section, at (919) 715-1117. Following any repair, the tank interstitial space shall be re-tested for tightness. The most recent interstitial tightness test record shall be maintained at the UST site or the tank owner's or operator's place of business and shall be available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

15A NCAC 02N .0904 PIPING

(a) Piping, with the exception of flexible connectors and piping connections, shall be pre-fabricated with double-walled construction. Any flexible connectors or piping connections that do not have double-walled construction shall be installed in containment sumps that meet the requirements of ~~45A NCAC 02N .0905~~ Rule .0905 of this Section.

(b) ~~Piping~~ Piping, with the exception of metal flex connectors and piping connections, shall be constructed of ~~non-corroding materials~~ materials that prevent corrosion and meet the requirements of Subparagraph (1) or (2) of this Paragraph. Metal flexible connectors and piping connections shall be installed in containment sumps that meet the requirements of ~~45A NCAC 02N .0905~~ Rule .0905 of this Section.

(c) ~~Piping shall~~

- (1) ~~Primary and secondary piping are constructed of non-corroding materials and comply with the UL Underwriters Laboratories Standard (UL) 971 standard "Nonmetallic Underground Piping for Flammable Liquids;"~~ Liquids" that is in effect at the time the piping is installed. UL 971 standard "Nonmetallic "Standard for Nonmetallic Underground Piping for Flammable Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 Laboratories at <https://www.shopulstandards.com/PurchasePro>

duct.aspx?UniqueKey=7936 at a cost of four hundred and two dollars (\$402.00).

- (2) Primary piping is constructed of stainless steel and secondary piping is constructed of non-corroding materials and complies with UL 971A "Outline of Investigation for Metallic Underground Fuel Pipe." UL 971A "Outline of Investigation for Metallic Underground Fuel Pipe" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=15373> at a cost of two hundred and twenty-five dollars (\$225.00).

~~(d)(c)~~ Piping that is buried underground shall be constructed with a device or method that allows it to be located once it is installed.

~~(e)(d)~~ Piping that conveys regulated substances under pressure shall also be equipped with an automatic line leak detector that meets the requirements of 40 CFR 280.44(a).

~~(f)(e)~~ At the time of installation, the primary containment and interstitial space of the piping shall be initially tested, monitored during construction, and finally tested in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." The presence of soap bubbles or water droplets or any loss of pressure beyond the limits specified by the piping manufacturer during testing shall be considered a failure of the integrity of the piping. If the piping fails a tightness test, it shall be replaced by the owner or operator or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's written specifications. Following any repair, the piping shall be re-tested for tightness in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems."

~~(g)(f)~~ Piping that is not monitored continuously for releases using vacuum, pressure, or hydrostatic methods, shall be tested for tightness every three years following installation. The primary containment ~~and~~ shall be tested using a piping tightness test method that is capable of detecting a 0.10 gallon per hour leak rate with a probability of detection (Pd) of at least 95 percent and a probability of false alarm (Pfa) of no more than five percent. The test method shall be evaluated by an independent testing laboratory, consulting firm, not-for-profit research organization, or educational institution using the most recent version of the United States Environmental Protection Agency's (EPA's) "Standard Test Procedures for Evaluating Various Leak Detection Methods." EPA's "Standard Test Procedures for Evaluating Various Leak Detection Methods" is hereby incorporated by reference including subsequent amendments and additions. The independent testing laboratory, consulting firm, not-for-profit research organization, or educational institution shall certify that the test method can detect a 0.10 gallon per hour leak rate with a Pd of at least 95 percent and a Pfa of no more than five percent. The interstitial space of the piping shall be tested in accordance with the ~~manufacturers~~ manufacturer's written guidelines and PEI/RP100 "Recommended Practice for Installation of Underground Liquid Storage Systems." or a code of practice

developed by a nationally recognized association or independent testing laboratory. If the piping fails a tightness test, it shall be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the piping shall be re-tested for ~~tightness~~ tightness in accordance with Paragraph (f) of this Rule. The most recent periodic tightness test record shall be maintained at the UST site or the tank owner or operator's place of business and shall be available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

15A NCAC 02N .0905 CONTAINMENT SUMPS

(a) Containment sumps ~~must~~ shall be constructed of non-corroding materials.

(b) Containment sumps ~~must~~ shall be designed and manufactured expressly for the purpose of containing and detecting a release.

(c) Containment sumps ~~must~~ shall be designed, constructed, installed and maintained to prevent water infiltration.

(d) Electronic sensor probes used for release detection monitoring ~~must~~ shall be located no more than two inches above the lowest point of the containment sump.

(e) At installation, containment sumps shall be tested for tightness after construction, but before backfilling. Tightness testing shall be conducted in accordance with the ~~manufacturers~~ manufacturer's written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." ~~Any change in water level shall be considered a failure of the integrity of the sump.~~ Other tightness test methods may be used if they are approved by the Division. In approving a containment sump tightness testing method the Division shall consider the following factors:

- (1) ~~The~~ the inner surface of the sump is tested to at least ~~six~~ four inches above the highest joint or penetration fitting, whichever is higher; and
- (2) ~~The~~ the method is capable of detecting a fracture, perforation or gap in the sump within the specified test period.

(f) If a containment sump fails an installation tightness test, the sump ~~must~~ shall be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following replacement or repair, the containment sump ~~must~~ shall be re-tested for tightness in accordance with Paragraph (e) of this Rule.

~~(g)~~ Containment sumps that are not monitored ~~continuously on an uninterrupted basis~~ for releases using vacuum, pressure or hydrostatic interstitial monitoring methods shall be tested for tightness every three years following installation in accordance ~~with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems."~~ with:

- (1) written requirements developed by the manufacturer;
- (2) a code of practice developed by a nationally recognized association or independent testing laboratory; or
- (3) requirements determined by the United States Environmental Protection Agency or the Division to be no less protective of human

health and the environment than the requirements listed in Subparagraph (1) and (2) of this Paragraph.

If a containment sump fails a periodic tightness test, the sump ~~must~~ shall be replaced in accordance with Paragraphs (a), (b) and (c) of this Rule or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's ~~specifications~~, specifications or a code of practice developed by a nationally recognized association or independent testing laboratory. Following replacement or repair, the containment sump ~~must~~ shall be re-tested for tightness in accordance with Paragraph (e) of this Rule. The last periodic tightness test record ~~must~~ shall be maintained at the UST site or the tank owner or operator's place of business and ~~must~~ shall be ~~readily~~ available for inspection.

~~(g)(h)~~ (h) All containment sumps shall be visually inspected at least annually ~~for the presence of water or regulated substance~~, in accordance with Rule .0407 of this Subchapter. Any water or regulated substance ~~must~~ present in a sump at the time of inspection shall be removed from the sump within 48 hours of discovery. The visual inspection results ~~must~~ shall be documented and ~~must~~ shall be maintained for at least one year at the UST site or the tank owner's or operator's place of business and ~~must~~ shall be ~~readily~~ available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h).

15A NCAC 02N .0906 SPILL BUCKETS

(a) Spill buckets shall be pre-fabricated with double-walled construction.

(b) Spill buckets ~~must~~ shall be protected from corrosion by being constructed of non-corroding materials.

(c) Spill buckets ~~must~~ shall be designed, constructed, ~~installed~~ installed, and maintained to prevent water infiltration.

(d) After installation but before backfilling, the primary containment and interstitial space of the spill bucket shall be tested in accordance with the ~~manufacturers~~ manufacturer's written guidelines ~~and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems."~~ or a code of practice developed by a nationally recognized association or independent testing laboratory. Any change in vacuum during a vacuum test or any change in liquid level in an interstitial space liquid reservoir beyond the limits specified by the equipment manufacturer shall be considered a failure of the integrity of the spill bucket. If the spill bucket fails a tightness test, it ~~must~~ shall be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the spill bucket ~~must~~ shall be re-tested for tightness in accordance with the manufacturers' written guidelines ~~and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems."~~ or a code of practice developed by a nationally recognized association or independent testing laboratory.

(e) Spill buckets that are not monitored ~~continuously~~ on an uninterrupted basis for releases using vacuum, pressure or hydrostatic methods, ~~must~~ shall be tested for tightness every three years following installation. The primary containment and interstitial space of the spill bucket shall be tested in accordance ~~with the manufacturers' written guidelines and PEI/RP100~~

~~"Recommended Practice for Installation of Underground Liquid Storage Systems."~~ with:

- (1) written requirements developed by the manufacturer;
- (2) a code of practice developed by a nationally recognized association or independent testing laboratory; or
- (3) requirements determined by the United States Environmental Protection Agency or the Division to be no less protective of human health and the environment than the requirements listed in Subparagraph (1) and (2) of this Paragraph.

If the spill bucket fails a tightness test, it ~~must~~ shall be replaced and tested in accordance with Paragraphs (a) through (d) of this Rule or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the spill bucket ~~must~~ shall be re-tested for ~~tightness~~, tightness in accordance with Paragraph (d) of this Rule. The last periodic tightness test record ~~must~~ shall be maintained at the UST site or the tank owner or operator's place of business and ~~must~~ shall be ~~readily~~ available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h).

15A NCAC 02N .0907 NATIONAL CODES OF PRACTICE AND INDUSTRY STANDARDS

In order to comply with this Section, owners and operators must comply with ~~either of~~ the following standards:

- (1) The most recent versions of the following national codes of practice and industry standards applicable at the time of UST system installation or replacement shall be ~~used to comply with this Section.~~ used.
- (a) American Concrete Institute (ACI) International ~~224R-89, 224R-01,~~ "Control of Cracking in Concrete Structures." ACI International ~~224R-89, 224R-01,~~ "Control of Cracking in Concrete Structures" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ACI International, P.O. Box 9094, Farmington Hills, Michigan 48333-9094 International at <https://www.concrete.org/store/productdetail.aspx?ItemID=22401&Format=DOWNLOAD&Language=English&Units=US AND METRIC> at a cost of ~~sixty seven~~ seventy-four dollars and fifty cents (~~\$67.50~~). (\$74.50).
- (b) ACI International 350-06, "Environmental Engineering Concrete Structures." ACI International 350-06, "Environmental Engineering Concrete Structures" is hereby incorporated by reference including subsequent amendments and editions. A copy may

- be obtained from ACI International, P.O. Box 9094, Farmington Hills, Michigan 48333-9094 International at <https://www.concrete.org/store/productdetail.aspx?ItemID=35006&Language=English&Units=US Units> at a cost of one hundred ~~sixty-six~~ eighty-one dollars and fifty cents (~~(\$166.50)~~, (\$181.50).
- (c) American Petroleum Institute (API) Standard 570, "Piping Inspection Code: Inspection Repair, Alteration and Re-rating of In-Service Piping Systems." API Standard 570, "Piping Inspection Code: Inspection Repair, Alteration and Re-rating of In-Service Piping Systems" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 Publications at https://www.techstreet.com/api/standards/api-570?product_id=1910713 at a cost of one hundred ~~eight~~ eighty-five dollars (~~(\$108.00)~~, (\$185.00).
- (d) API Recommended Practice 1110, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines." API Recommended Practice 1110, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 Publications at https://www.techstreet.com/api/standards/api-rp-1110-r2018?product_id=1852115 at a cost of ~~fifty-five~~ ninety-eight dollars (~~(\$55.00)~~, (\$98.00).
- (e) API Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems." API Recommended Practice 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 Publications at https://www.techstreet.com/api/standards/api-rp-1615?product_id=1780646 at a cost of ~~one two hundred eight~~ eleven dollars (~~(\$108.00)~~, (\$211.00).
- (f) API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets." API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 Publications at https://www.techstreet.com/api/standards/api-rp-1621-r2012?product_id=14616 at a cost of ~~seventy-three~~ eighty-five dollars (~~(\$73.00)~~, (\$85.00).
- (g) API Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks." API Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 Publications at https://www.techstreet.com/api/standards/api-rp-1631?product_id=913787 at a cost of ~~seventy-six~~ eighty-nine dollars (~~(\$76.00)~~, (\$89.00).
- (h) API Recommended Practice 1637, "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations Gasoline Dispensing Facilities and Distribution Terminals." API Recommended Practice 1637, "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations Gasoline Dispensing Facilities and Distribution Terminals" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112-5776 Publications at https://www.techstreet.com/api/standards/api-rp-1637-r2012?product_id=1274225 at a cost

- of ~~fifty-nine~~ sixty-eight dollars (~~\$59.00~~). (\$68.00).
- (i) American Society of Mechanical Engineers (ASME) International: B31.4-2006, "~~2006 Pipeline~~ Pipeline Transportation Systems for Liquid Hydrocarbons Liquids and other Liquids." Slurries." ASME International: B31.4-2006, "~~2006 Pipeline~~ Pipeline Transportation Systems for Liquid Hydrocarbons Liquids and other Liquids." Slurries" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ASME, 22 Law Drive, Box 2900, Fairfield, NJ 07007-2900 ASME at <https://www.asme.org/codes-standards/find-codes-standards/b31-4-pipeline-transportation-systems-liquids-slurries> at a cost of ~~one~~ two hundred ~~twenty-nine~~ fifteen dollars (~~\$129.00~~). (\$215.00).
- (j) National Fire Protection Association (NFPA) 30, "Flammable and Combustible Liquids Code." NFPA 30, "Flammable and Combustible Liquids Code" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from National Fire Protection Association, ~~1 Batterymarch Park, Quincy, Massachusetts 02169-7471~~ at <https://catalog.nfpa.org/NFPA-30-Flammable-and-Combustible-Liquids-Code-P1164.aspx?icid=D729> at a cost of ~~forty-two dollars and fifty cents~~ (~~\$42.50~~). seventy-five dollars (\$75.00).
- (k) NFPA 30A, "~~Automotive and Marine Service Station Code.~~" "Code for Motor Fuel Dispensing Facilities and Repair Garages." NFPA 30A, "~~Automotive and Marine Service Station Code~~" "Code for Motor Fuel Dispensing Facilities and Repair Garages" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from National Fire Protection Association, ~~1 Batterymarch Park, Quincy, Massachusetts 02169-7471~~ at <https://catalog.nfpa.org/NFPA-30A-Code-for-Motor-Fuel-Dispensing-Facilities-and-Repair-Garages-P1165.aspx?icid=D729> at a cost of ~~thirty-three~~ fifty dollars and fifty cents (~~\$33.50~~). (\$50.50).
- (l) NFPA 329, "~~Handling Underground~~ Recommended Practice for Handling Releases of Flammable and Combustible Liquids." Liquids and Gases." NFPA 329, "~~Handling Underground~~ Recommended Practice for Handling Releases of Flammable and Combustible Liquids." Liquids and Gases" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from National Fire Protection Association, ~~1 Batterymarch Park, Quincy, Massachusetts 02169-7471~~ at <https://catalog.nfpa.org/NFPA-329-Recommended-Practice-for-Handling-Releases-of-Flammable-and-Combustible-Liquids-and-Gases-P1287.aspx?icid=D729> at a cost of ~~thirty-three~~ fifty dollars and fifty cents (~~\$33.50~~). (\$50.50).
- (m) PEI: PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." PEI: PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Petroleum Equipment Institute at https://www.techstreet.com/pei/standards/pei-rp100-17?gateway_code=pei&product_id=1945712 at a cost of one hundred ninety-five dollars (\$195.00).
- (n) PEI: PEI/RP1200, "Recommended Practice for Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities." PEI: PEI/RP1200, "Recommended Practice for Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Petroleum Equipment Institute at https://www.techstreet.com/pei/standards/pei-rp1200-17?product_id=1952629 at a cost of

- one hundred ninety-five dollars (\$195.00).
- (h)(o) Steel Tank Institute (STI) ACT 100 F894, "Specifications for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks." Steel Tank Institute (STI) ACT 100 F894, "Specifications for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Steel Tank Institute, at ~~570 Oakwood Road, Lake Zurich, Illinois 60047~~ <https://www.steeltank.com/Publications/STISPFASStore/ProductDetail/tabid/502/rvdsfpid/act-100-specification-for-external-corrosion-protection-of-frp-composite-steel-usts-f894-2/Default.aspx> at a cost of ~~fifty six~~ fifty six dollars ~~(\$50.00).~~ (\$60.00).
- (e)(p) STI ACT 100-U F961, "Specifications for External Corrosion Protection of Composite Steel Underground Storage Tanks." STI ACT 100-U F961, "Specifications for External Corrosion Protection of Composite Steel Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Steel Tank Institute, ~~570 Oakwood Road, Lake Zurich, Illinois 60047~~ Institute at https://www.steeltank.com/Publications/STISPFASStore/ProductDetail/tabid/502/rvdsfpid/act-100u-specification-for-external-corrosion-protection-of-composite-steel-underground-storage-tanks-f961-250/Default.aspx at a cost of ~~fifty six~~ fifty six dollars ~~(\$50.00).~~ (\$60.00).
- (e)(q) STI ~~922, F922,~~ "Specifications for Permatank." STI ~~922, F922,~~ "Specifications for Permatank" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Steel Tank Institute, ~~570 Oakwood Road, Lake Zurich, Illinois 60047~~ Institute at https://www.steeltank.com/Publications/STISPFASStore/ProductDetail/tabid/502/rvdsfpid/permatank-f922-specification-for-permatank-231/Default.aspx at a cost of ~~fifty six~~ fifty six dollars ~~(\$50.00).~~ (\$60.00).
- (e)(r) Underwriters UL 58, "Steel Underground tanks for Flammable and Combustible Liquids." UL 58, "Steel Underground tanks for Flammable and Combustible Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters ~~Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096~~ Laboratories at https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=33920 at a cost of ~~four five hundred forty-five and two~~ four hundred forty-five dollars ~~(\$445.00).~~ (\$502.00).
- (e)(s) UL 567, "Pipe "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP Gas." UL 567, "Pipe "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings Petroleum Products and LP Gas" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters ~~Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096~~ Laboratories at https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=27791 at a cost of eight hundred ~~eighty five~~ ninety-seven dollars ~~(\$885.00).~~ (\$897.00).
- (t) UL 567A, "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0 – E85)." UL 567A, "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0 – E85)" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=29197> at a cost of six hundred thirty-one dollars (\$631.00).
- (u) UL 567B, "Standard for Emergency Breakaway Fittings, Swivel

- Connectors and Pipe-Connection Fittings for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil." UL 567B, "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=29195> at a cost of four hundred and two dollars (\$402.00).
- (s)(v) UL 971, "Nonmetallic "Standard for Nonmetallic Underground Piping for Flammable Liquids;" Liquids." UL 971, "Standard for Nonmetallic Underground Piping for Flammable Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from UL at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=7936> at a cost of four hundred and two dollars (\$402.00).
- (w) UL 971A, "Outline of Investigation for Metallic Underground Fuel Pipe." UL 971A, "Outline of Investigation for Metallic Underground Fuel Pipe" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from UL at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=15373> at a cost of two hundred and twenty-five dollars (\$225.00).
- (t)(x) UL 1316, "Glass Fiber Reinforced Plastic "Standard for Fibre Reinforced Underground Storage Tanks for Petroleum Products, Alcohols, Flammable and Alcohol Gasoline Mixtures;" Combustible Liquids." UL 1316, "Glass Fiber Reinforced Plastic "Standard for Fibre Reinforced Underground Storage Tanks for Petroleum Products, Alcohols, Flammable and Alcohol Gasoline Mixtures;" Combustible Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=35172> at a cost of four hundred forty-five and two dollars (\$445.00); or (\$402.00).
- (u)(y) UL 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks." UL 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 Laboratories at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=15742> at a cost of eight nine hundred eighty-five ninety-eight dollars (\$885.00); or (\$998.00); and
- (2) Other appropriate codes or standards applicable at the time of UST system installation or replacement may be used provided they are developed by ACI, American National Standards Institute (ANSI), API, ASME, ASTM, NFPA, National Leak Prevention Association (NLPA), PEI, STI and UL.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

SUBCHAPTER 020 - FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

SECTION .0100 - GENERAL CONSIDERATIONS

15A NCAC 020 .0101 GENERAL

- (a) ~~The purpose of this Subchapter is to establish the requirements for financial responsibility for owners~~ Owners and operators of ~~underground storage tanks~~ underground storage tank systems that are subject to regulation pursuant to 40 CFR 280.10 and located in North Carolina. North Carolina, shall comply with the financial responsibility requirements in this Subchapter.
- (b) The Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality (Department), Division of Waste Management (Division) shall administer the underground storage tank financial responsibility compliance program for the State of North Carolina.
- (c) Department staff may conduct inspections ~~as necessary~~ to ensure compliance with this Subchapter.

Authority G.S. 143-215.3(a)(15); 143-215.94H; 143B-282(2)(h); 143B-282(a)(2)(h).

**15A NCAC 020 .0102 COPIES OF REFERENCED
FEDERAL REGULATIONS FINANCIAL
RESPONSIBILITY**

(a) Copies of applicable Code of Federal Regulations sections incorporated in this Subchapter are available for inspection at Department of Environment, Health, and Natural Resources regional offices. They are:

- (1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina 28802;
- (2) Winston Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston Salem, North Carolina 27106;
- (3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;
- (4) Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;
- (5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;
- (6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;
- (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

(b) Copies of such regulations can be made at these regional offices for ten cents (\$0.10) per page. Individual complete copies may be obtained from the U.S. Environmental Protection Agency, Office of Underground Storage Tanks, Post Office Box 6044, Rockville, Maryland 20850 for no charge.

The governing Federal Regulations set forth below are hereby incorporated by reference excluding any subsequent amendments and editions. Copies may be obtained at www.ecfr.gov/cgi-bin/ECFR?page=browse at no cost.

- (1) 40 CFR 280.90, "Applicability";
- (2) 40 CFR 280.91, "Compliance Dates";
- (3) 40 CFR 280.94, "Allowable Mechanisms and Combinations of Mechanisms";
- (4) 40 CFR 280.96, "Guarantee";
- (5) 40 CFR 280.98, "Surety Bond";
- (6) 40 CFR 280.99, "Letter of Credit";
- (7) 40 CFR 280.102, "Trust Fund";
- (8) 40 CFR 280.103, "Standby Trust Fund";
- (9) 40 CFR 289.104, "Local Government Bond Rating Test";
- (10) 40 CFR 280.105, "Local Government Financial Test";
- (11) 40 CFR 280.106, "Local Government Guarantee";
- (12) 40 CFR 280.107, "Local Government Fund";
- (13) 40 CFR 280.108, "Substitution of Financial Assurance Mechanisms by Owner or Operator";

- (14) 40 CFR 280.109, "Cancellation or Nonrenewal by a Provider of Financial Assurance";
- (15) 40 CFR 280.110, "Reporting by Owner or Operator";
- (16) 40 CFR 280.112, "Drawing on Financial Assurance Mechanisms";
- (17) 40 CFR 290.113, "Release from the Requirements".

Authority G.S. 12-3.1(c); 143-215.3(a)(15); 143B-282(2)(h).

15A NCAC 020 .0103 SUBSTITUTED SECTIONS

(a) References to sections of the Federal Regulations incorporated by reference will refer to those sections and any subsequent amendments and editions.

(b) References to 40 CFR 280.93 are to be taken as references to Rule .0204 of this Subchapter, with Paragraph correspondence being: 40 CFR 280.93(a) corresponds to 15A NCAC 2O .0204(a) and (b); 40 CFR 280.93(b) corresponds to 15A NCAC 2O .0204(c) and (d); 40 CFR 280.93(e) and (f) have no correspondence; and 40 CFR 280.93(g), (h), and (i) correspond to 15A NCAC 2O .0204(f), (g), (h), and (i), respectively.

(c) References to 40 CFR 280.95 are to be taken as references to Rule .0302 of this Subchapter, with Paragraph correspondence being: 40 CFR 280.95(a), (e), (f), and (g) correspond to 15A NCAC 2O .0302(a), (e), (d), and (e), respectively; 40 CFR 280.95(b) and (c) correspond to 15A NCAC 2O .0302(b); 40 CFR 280.95(d) corresponds to 15A NCAC 2O .0302(f) and (g).

Authority G.S. 143-215.94H; 143-215.94T; 150B-21.6.

SECTION .0200 - PROGRAM SCOPE

15A NCAC 020 .0201 APPLICABILITY

(a) The provisions for "Applicability" contained in 40 CFR 280.90 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

(b) The Rules contained in this Subchapter apply to all dual usage tanks as defined in Rule .0203 of this Section.

Authority G.S. 143-215.94A; 143-215.94H; 143-215.94T; 150B-21.6.

15A NCAC 020 .0202 COMPLIANCE DATES

The provisions for "Compliance Dates" contained in 40 CFR 280.91 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Authority G.S. 143-215.94A; 143-215.94H; 150B-21.6.

15A NCAC 020 .0203 DEFINITIONS

(a) The definitions contained in 15A NCAC 2N .0203 and 40 CFR 280.92 are hereby incorporated by reference including any subsequent amendments and editions, reference, except for "Director of the Implementing Agency", "Occurrence", and

~~"Financial Reporting Year". Locations where this material is available are specified in Rule .0102 of this Subchapter, as modified below. The federal regulation may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.~~

- (1) ~~"Director of the Implementing Agency" shall mean the Director of the Division of Waste Management.~~
 - (2) ~~"Financial reporting year" shall be modified to allow a compilation report to be used to support a financial test. The compilation report shall be prepared by a Certified Public Accountant (CPA) or Certified Public Accounting Firm (CPA Firm) as defined in 21 NCAC 08A .0301.~~
- (b) The following definitions are defined for the purposes of shall apply throughout this Subchapter:
- (1) ~~"Annual Operating Fee" is an annual fee required to be paid by the owner or operator of each commercial underground storage tank, as defined in G.S. 143-215.94A, in use on or after January 1 of the year, beginning with 1989.~~
 - (2) ~~"Dual Usage Tank" means an underground storage tank which has had varied usage which would cause the tank to be considered an underground storage tank regulated in accordance with 15A NCAC 2N during certain times and an unregulated tank during other times and for which both the regulated and unregulated usages were integral to the operation or existence of the tank.~~
 - (3) ~~"Director of the Implementing Agency" means the Director of the Division of Environmental Management of the Department of Environment, Health, and Natural Resources.~~
 - (4) ~~"Financial reporting year" means the latest consecutive twelve month period for which any of the following reports used to support a financial test is prepared:~~
 - (A) ~~a 10K report submitted to the SEC;~~
 - (B) ~~an annual report of tangible net worth submitted to Dun and Bradstreet;~~
 - (C) ~~annual reports submitted to the Energy Information Administration or the Rural Electrification Administration; or~~
 - (D) ~~a compilation report by a Certified Public Accountant or Certified Public Accounting Firm.~~
 - (5) ~~"Occurrence" means one or more releases which result(s) in a single plume of soil, groundwater, and/or surface water contamination (consisting of free product and/or associated dissolved contaminants exceeding standards established under 15A NCAC 2L .0202 or any other applicable laws, rules, or regulations) emanating from a given site.~~
 - (1) "Independent" Certified Public Accountant or Certified Public Accounting Firm shall mean a CPA or CPA firm that examines the financial

records and business transactions of an owner, operator or guarantor for whom the CPA or CPA firm is not affiliated.

- (2) "Financial assurance" shall mean per occurrence and annual aggregate amounts of financial responsibility, collectively.

Authority G.S. 143-215.94A; 143-215.94H; 150B-21.6.

15A NCAC 020 .0204 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY

~~(a) Owners or operators of petroleum underground storage tanks located in North Carolina must demonstrate financial responsibility for at least one million dollars (\$1,000,000) per occurrence for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.~~

~~(b) Compliance with all laws, rules, and regulations relating to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund shall constitute demonstration of financial responsibility for that amount specified in Paragraph (a) of this Rule which is in excess of the sum of the amounts required to be paid per occurrence by the owner or operator for cleanup and for third party claims.~~

~~(c) Owners or operators of petroleum underground storage tanks located in North Carolina must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:~~

- (1) ~~For owners or operators of one to 100 petroleum underground storage tanks, one million dollars (\$1,000,000); and~~
- (2) ~~For owners or operators of 101 or more petroleum underground storage tanks, two million dollars (\$2,000,000).~~

~~(d) If all laws, rules, and regulations relating to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund are complied with, the owner or operator may meet the financial responsibility requirements of Paragraph (c) of this Rule by providing an annual aggregate financial assurance of at least the sum of the amounts specified in Subparagraphs (d)(1), (2), and (3) of this Rule as follows, in addition to the assurance provided by the Commercial Fund:~~

- (1) ~~The average maximum amount required to be paid by an owner or operator per occurrence for cleanup as determined in accordance with Paragraph (c) of this Rule;~~
- (2) ~~The average maximum amount required to be paid by an owner or operator per occurrence for third party claims as determined in accordance with Paragraph (c) of this Rule; and~~
- (3) ~~Three percent of the multiple of:~~
 - (A) ~~the amount in Subparagraph (d)(1) of this Rule; and~~
 - (B) ~~the number of tanks being covered.~~

~~(e) An owner or operator providing financial assurance for more than one underground storage tank where the various tanks do not all require the same maximum amounts to be paid per occurrence for cleanup and/or third party claims shall calculate an average maximum amount to be paid per occurrence as follows:~~

- ~~(1) Determine the maximum amount to be paid per occurrence for each underground storage tank being assured;~~
- ~~(2) Sum the values determined in Subparagraph (e)(1) of this Rule and divide by the number of underground storage tanks being assured.~~

(a) Pursuant to G.S. 143-215.94H(a)(2), owners or operators shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. The minimum financial responsibility that must be maintained per occurrence is determined by calculating the sum of the following:

- (1) twenty thousand dollars (\$20,000) for taking corrective action to cleanup environmental damage pursuant to G.S. 143-215.94(B)(b)(3);
- (2) one hundred thousand dollars (\$100,000) for compensating third parties for bodily injury and property damage pursuant to G.S. 143-215.94(B)(b)(5); and
- (3) the multiple of six hundred dollars (\$600.00) and the number of petroleum underground storage tanks that an owner or operator owns or operates in the state of North Carolina.

(b) The minimum financial responsibility that shall be maintained as an annual aggregate is equal to the per occurrence amount.

~~(f)(c) Owners or operators shall annually review the amount of aggregate financial assurance provided. The amount of required financial responsibility and annual aggregate assurance shall be adjusted at the time of the review to that required in Paragraphs (a), (b), (c), and (d) of this Rule. All changes in status, including installations and closures, shall be reported to the Department, and all fees due shall be paid in accordance with applicable laws, rules, and regulations. review.~~

(g)(d) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate amount of financial assurance required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

~~(h)(e) The amount \$ of financial assurance required under this Rule exclude \$ legal defense costs.~~

~~(i)(f) The required per occurrence and annual aggregate coverage amounts do amount of financial assurance does not in any way limit the liability of the owner or operator.~~

(j)(g) Assurance Evidence of financial responsibility for petroleum underground storage tanks located in North Carolina must shall be provided separately from that provided for petroleum underground storage tanks not located in North Carolina.

Authority G.S. 143-215.94H; 143-215.94T.

SECTION .0300 - ASSURANCE MECHANISMS

15A NCAC 020 .0301 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS

~~The provisions for "Allowable Mechanisms and Combinations of Mechanisms" contained in 40 CFR 280.94 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter. "Guarantee" and "Surety Bond" are acceptable mechanisms in the State of North Carolina.~~

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0302 SELF INSURANCE

~~(a) Assurance of financial responsibility may be provided by an owner or operator or guarantor as a self insurer if the owner or operator has complied with all of the laws, rules, and regulations relative to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the owner or operator or guarantor either establishes a Trust Fund as set out in Paragraph (h) of this Rule or qualifies to be a self insurer. An owner, operator or guarantor may meet the financial responsibility requirements by passing the financial test specified in Paragraph (b) of this Rule or a financial test of 40 CFR 280.95. of this Rule.~~

~~(b) To qualify as an insurer, an An owner, operator, operator or guarantor, individually or collectively, must shall meet the following criteria based on year-end financial statements for the latest completed fiscal year.~~

- ~~(1) The owner or operator, operator or guarantor, individually or collectively must shall have a total tangible net worth of at least: at least one hundred fifty thousand dollars (\$150,000) and not more than three million dollars (\$3,000,000):~~

~~(A) The sum of the amounts specified in Subparagraphs (b)(1)(A)(i) and (ii) of this Rule as follows, not to exceed three million dollars (\$3,000,000) and not to be less than one hundred fifty thousand dollars (\$150,000):~~

~~(i) the multiple of:~~

- ~~(2) A cleanup cost factor determined by multiplying the following:~~

~~(I) the number of tanks being covered by this mechanism;~~

~~(A) the number of petroleum underground storage tanks that an owner or operator owns and/or operates in the state of North Carolina and that are covered by self-insurance. USTs that are manifolded together are considered separate USTs. A multi-compartment UST is considered one UST;~~

~~(H) the cleanup costs required to be paid by the owner or operator per occurrence in accordance with~~

- operator ——— per
occurrence ——— in
accordance ——— with
G.S.
143-215.94B(b);
- (B) twenty thousand dollars (\$20,000) for taking corrective action to cleanup environmental damage pursuant to G.S. 143-215.94(B)(b)(3);
 ~~(III) — the proportion of the required financial assurance required pursuant to Rule .0204 of this Subchapter being covered by this mechanism; and~~
- (C) the proportion of financial assurance required pursuant to Rule .0204 of this Subchapter being covered by self-insurance; and
 ~~(IV) — a ——— constant representing ——— an average value per tank calculated from 0.05 ——— for ——— each underground storage ——— tank covered by this mechanism which is in compliance with any — performance standards required on December 22, 1998, and 0.18 for each underground storage ——— tank covered by this mechanism which is not in compliance with ——— any performance standards required on December 22, 1998.~~
- (D) a constant equal to 0.05.
 ~~(ii) — two percent of the multiple of;~~
- (3) A third party liability cost factor determined by multiplying the following:
 ~~(I) — the number of tanks being covered by this mechanism;~~
- (A) the number of petroleum underground storage tanks that an owner or operator owns and/or operates in the state of North Carolina and that are covered by self-insurance;
 ~~(II) — the amount for third party ——— claims required to be paid by the owner or~~
- (B) one hundred thousand dollars (\$100,000) for compensating third parties for bodily injury and property damage pursuant to G.S. 143-215.94(B)(b)(5); and
 ~~(III) — the proportion of the required financial assurance required pursuant to Rule .0204 ——— of — the Subchapter being covered by this mechanism;~~
- (C) the proportion of financial assurance required pursuant to Rule .0204 of this Subchapter being covered by self-insurance; and
- (D) a constant equal to 0.02.
- (B) Any amount of tangible net worth used to assure financial responsibility for petroleum underground storage tanks not located in North Carolina;
- (4) The amount of tangible net worth used to assure financial responsibility for petroleum underground storage tanks not located in North Carolina;
- (C) Ten times the sum of the corrective action cost estimates, the current closure and post closure care cost estimates, and amount of liability coverage for Hazardous Waste Management Facilities and Hazardous Waste Storage Facilities for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and
- (5) Ten times the sum of the corrective action cost estimates (40 CFR 264.101(b)), the closure (40 CFR 264.143 and 265.143) and post-closure care (40 CFR 264.145 and 265.145) cost estimates, and amount of liability coverage (40 CFR 264.147 and 265.147) for Hazardous Waste Management Facilities and Hazardous Waste Storage Facilities for which a financial test is used to demonstrate financial responsibility to EPA or to a State implementing agency under a State program authorized by EPA under 40 CFR 271; and

~~(D) Ten times the sum of current plugging and abandonment cost estimates for injection wells for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Part 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.~~

(6) Ten times the sum of current plugging and abandonment cost estimates for injection wells (40 CFR 144.63) for which a financial test is used to demonstrate financial responsibility to the EPA under 40 CFR 144.63 or to a State implementing agency under a State program authorized by EPA under 40 CFR Part 145.

~~(2)(7)~~ In addition to any other requirements of this Section, a Guarantor must guarantor shall have a net worth of at least two hundred thousand dollars (\$200,000) greater than any tangible net worth used by the guarantor in Subparagraph (b)(1) of this Rule. Subparagraph (1) of this Paragraph.

~~(3) The owner or operator, or guarantor, individually or collectively, must each have a letter signed by the chief financial officer, worded as specified in Paragraph (g) of this Rule, and must do one of the following:~~

~~(A) Obtain annually a compilation report issued by an independent certified public accountant or certified public accounting firm;~~

~~(B) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or~~

~~(C) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.~~

(c) The owner or ~~operator~~, operator or guarantor, individually or collectively, ~~must shall~~ each have a letter signed by the chief

financial officer, worded as specified in Paragraph (g) of this Rule, and ~~must shall~~ do one of the following:

(1) Obtain annually a compilation report issued by an independent certified public accountant or certified public accounting firm;

(2) ~~File Pursuant to 40 CFR 280.95(b)(4)(i), file~~ financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(3) ~~Report Pursuant to 40 CFR 280.95(b)(4)(ii), report~~ annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(4) ~~The firm's year end financial statements must be independently compiled and cannot include an adverse accountant's report or a "going concern" qualification.~~

(d) The firm's year-end financial statements cannot include an adverse accountant's report or a "going concern" qualification.

~~(e)(e) If an owner or operator is acting as a self insurer in accordance with Paragraph (b) of this Rule and finds that he or she no longer meets the requirements of the test in Paragraph (b) of this Rule based on the year end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared. 40 CFR 280.95(d), (e), (f) and (g) are incorporated by reference except that "financial test" means the financial test specified in Paragraph (b) of this Rule.~~

(d) The Department may require reports of financial condition at any time from a guarantor and from an owner or operator who is self insuring. If the Department finds, on the basis of such reports or other information, that the owner, operator, or guarantor no longer meets the financial test requirements of Paragraph (b) of this Rule, the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(e) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year end financial statements, or within 30 days of notification by the Department that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.

(f) To demonstrate that it meets the financial test under Paragraph (b) of this Rule, the chief financial officer of each ~~owner or owner~~, operator or guarantor ~~must shall~~ sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as in Paragraph (g) of this Rule, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

(g) LETTER FROM CHIEF FINANCIAL OFFICER

I, [insert: name of chief financial officer], the chief financial officer of [insert: name and address of the ~~owner or operator~~, owner, operator or guarantor] have prepared this letter in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," or "guarantor"]:

[List or attach the following information for each facility: the name and address of the facility where tanks assured by this financial test are ~~located~~, located and facility number(s) assigned by the ~~Department~~, and date(s) of last payment of annual tank operating fee(s).

PROPOSED RULES

Department. If separate mechanisms or combinations of ~~mechanisms, other than the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund mechanisms~~ are being used to assure any of the tanks at this facility, list each tank assured by this financial test.]

[When appropriate, include the following for Hazardous Waste Management Facilities, Hazardous Waste Storage Facilities, and Injection Wells:

A ~~{insert: "financial test," or "guarantee"}~~ [insert: "financial test" or "guarantee"] is also used by this ~~{insert: "owner or operator," or "guarantor"}~~ [insert: "owner, operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations	Amount
Closure (including □264.143 and □265.143) <u>40 CFR 264.143 and 265.143</u>)	\$ _____
Post-Closure Care (including □264.145 and □265.145) <u>40 CFR 264.145 and 265.145</u>)	\$ _____
Liability Coverage (including □264.147 and □265.147) <u>40 CFR 264.147 and 265.147</u>)	\$ _____
Corrective Action (including □264.101(b)) <u>40 CFR 264.101(b)</u>)	\$ _____
Plugging and Abandonment (including □144.63) <u>40 CFR 144.63</u>)	\$ _____
Total	\$ _____]

This ~~[insert: "owner or operator," "owner, operator" or "guarantor"]~~ has not received an adverse report or a "going concern" qualification from an independent accountant on his financial statements for the latest completed fiscal year.

1.
 - a. Number of USTs being covered _____
 - b. Average maximum amount of cleanup costs (Rule .0204(d)(1)) _____
 - c. Average maximum amount of third-party costs (Rule .0204(d)(2)) _____
 - d. Proportion covered _____
 - e. Constant (Rule .0302(b)(1)(A)(i)) _____
 - f. Cleanup Total (a x b x d x e) \$ _____
 - g. Third Party Total (0.02 x a x e x d) \$ _____
 - h. If Guarantor, list \$200,000 \$ _____
2. Tangible assets applied to USTs not in North Carolina \$ _____
3. Ten times the costs for Hazardous Waste Facilities and Injections Wells \$ _____
4. Sum of lines 1f, 1g, 1h, and 2 \$ _____
5. Total tangible assets \$ _____
6. Total liabilities [if any of the amount reported on line 4 is included in total liabilities, you may deduct that amount from this line and add that amount to line 7] \$ _____
7. Tangible net worth [subtract line 6 from line 5] \$ _____
1.
 - a. Number of USTs in North Carolina being covered _____
 - b. Proportion covered _____
 - c. Cleanup cost factor (multiply 0.05 x \$20,000 x #1a and #1b) \$ _____
 - d. Third party liability cost factor (multiply 0.02 x \$100,000 x #1a and #1b) \$ _____
2. Cleanup and third-party liability cost factor total (sum of #1c and #1d) \$ _____
3. Guarantor factor (enter \$200,000, if guarantor) \$ _____
4. Net worth used to assure environmental liabilities for Hazardous Waste Management Facilities, Hazardous Waste Storage Facilities, and Injection Wells multiplied by 10 \$ _____
5. Net worth used to assure environmental liabilities for USTs outside of North Carolina \$ _____
6. Total net worth required to self-insure or to be a guarantor (sum of #2, #3, #4 and #5) \$ _____
7. Total tangible assets \$ _____
8. Total liabilities (if any of the amount reported for #6 is included in total liabilities, you may deduct that amount from this line and add that amount to #9) \$ _____
9. Tangible net worth (subtract #8 from #7) \$ _____
8. 10. Is line 7 9 at least [for an owner or operator: \$150,000; for a guarantor: \$350,000]? Yes No

9. 11. Is line 7 9 equal to or greater than line 4? 6? _____
10. 12. Has a compilation report been issued by an independent certified public accountant or certified public accounting firm? _____
11. 13. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? _____
12. 14. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? _____
13. 15. Have financial statements for the latest fiscal year been filed with the Rural Electrification _____

Administration?

44. 16. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met]

I hereby certify that the wording of this letter is identical to the wording specified in 15A NCAC 02O .0302, as such regulations were constituted on the date shown immediately below, and that the information contained herein is complete and accurate.

[Signature of chief financial officer]

[Name]

[Title]

[Date]

~~(h) The provisions for "Trust Fund" contained in 40 CFR 280.102 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

Authority G.S. 58-2-205; 143-215.94H; 150B-21.6.

15A NCAC 02O .0303 GUARANTEE

~~The provisions for "Guarantee" contained in 40 CFR 280.96 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 02O .0304 INSURANCE AND RISK RETENTION GROUP COVERAGE

~~The provisions for "Insurance and Risk Retention Group Coverage" contained in 40 CFR 280.97 entitled "Insurance and Risk Retention Group Coverage" are hereby incorporated by reference including reference, excluding any subsequent amendments and editions, except that "licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states" in 40 CFR 280.97(b)(1), (b)(2), and (c) is replaced by "licensed, registered, or otherwise authorized to provide insurance in North Carolina". Locations where this material is available are specified in Rule .0102 of this Subchapter. This document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge. The requirements in 40 CFR 280.97 shall be met to demonstrate financial responsibility by insurance pursuant to G.S. 143-215.94H.~~

Authority G.S. 58-2-125; 58-22; 143-215.94H; 150B-21.6.

15A NCAC 02O .0305 SURETY BOND

~~The provisions for "Surety Bond" contained in 40 CFR 280.98 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 02O .0306 LETTER OF CREDIT

~~The provisions for "Letter of Credit" contained in 40 CFR 280.99 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 02O .0307 STANDBY TRUST FUND

~~The provisions for "Standby Trust Fund" contained in 40 CFR 280.103 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 02O .0308 INSURANCE POOLS

(a) Insurance Pools established by owners and operators may be used alone or in combination to demonstrate financial assurance in accordance with ~~Rules .0204 and .0301~~ Rule .0204 of this Subchapter.

(b) To be an eligible ~~mechanism~~, mechanism for demonstrating financial assurance, Insurance Pools ~~must~~ shall comply with the requirements of ~~G.S. 143-215.94I and any other requirements imposed by the Commissioner of Insurance of the State of North Carolina and any relevant law, rule, or regulation.~~ G.S. 143-215.94I.

(c) Each owner and operator ~~provided~~ providing financial assurance through an Insurance Pool ~~must~~ shall maintain a certificate of insurance issued by the Insurance Pool ~~listing, at least, that lists at a minimum the following information:~~

- (1) the name and address of the member;
- (2) the location of the facilities owned by that member where underground storage tanks are being insured by the pool;
- (3) the number of insured underground storage tanks at each facility;
- (4) the capacity of each insured underground storage tank;
- (5) the amount of insurance provided for each underground storage tank; and
- (6) the name, address, and signature of the Administrator of the Insurance Pool.

Authority G.S. 143-215.94H; 143-215.94I.

15A NCAC 020 .0311 LOCAL GOVERNMENT BOND RATING TEST

The regulations governing "Local Government Bond Rating Test" set forth in 40 CFR 280.104 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0312 LOCAL GOVERNMENT FINANCIAL TEST

The regulations governing "Local Government Financial Test" set forth in 40 CFR 280.105 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0313 LOCAL GOVERNMENT GUARANTEE

The regulations governing "Local Government Guarantee" set forth in 40 CFR 280.106 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0314 LOCAL GOVERNMENT FUND

The regulations governing "Local Government Fund" set forth in 40 CFR 280.107 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0315 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS

The regulations governing "Substitution of Financial Assurance Mechanisms by Owners or Operators" set forth in 40 CFR 280.108 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-21 5.94H; 150B-21.6.

15A NCAC 020 .0316 CANCELLATION OR RENEWAL BY A PROVIDER OF ASSURANCE

The regulations governing "Cancellation or Non renewal by a Provider of Financial Assurance " set forth in 40 CFR 280.109 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-21 5.94H; 150B-21.6.

SECTION .0400 - RESPONSIBILITIES OF OWNERS AND OPERATORS

15A NCAC 020 .0401 REPORTING BY OWNER OR OPERATOR

The provisions for "Reporting by Owner or Operator" contained in 40 CFR 280.106 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0402 RECORD KEEPING

(a) The provisions for "Record Keeping" contained in 40 CFR 280.107 280.111 entitled "Record Keeping" are hereby is incorporated by reference including any reference, excluding subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter. This document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.

(b) In addition to the requirements incorporated in Paragraph (a) of this Rule, ~~the following are required as evidence of financial responsibility:~~ an owner or operator using an Insurance Pool as a financial assurance mechanism in accordance with Rule .0308 of this Subchapter, shall maintain a copy of the signed insurance certificate as specified in Rule .0308(c) of this Subchapter.

- (1) ~~An owner or operator using an "Insurance Pool" must maintain a copy of the signed insurance certificate as specified in Rule .0308(c) of this Subchapter.~~
- (2) Each owner or operator must maintain copies of cancelled checks for payment of annual tank operating fees for the preceding three years or any alternate evidence of payment of the annual operating fees supplied by the Department.

Authority G.S. 143-215.94H; 150B-21.6.

SECTION .0500 - CHANGES IN STATUS

15A NCAC 020 .0501 DRAWING ON FINANCIAL ASSURANCE MECHANISMS

The provisions for "Drawing on Financial Assurance Mechanisms" contained in 40 CFR 280.108 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0502 RELEASE FROM THE REQUIREMENTS

The provisions for "Release From the Requirements" contained in 40 CFR 280.109 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0503 INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF ASSURANCE

(a) The provisions for "Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance" contained in 40 CFR 280.110; 280.114 entitled "Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance," except for Subsection 280.110(d), are hereby is incorporated by reference including any reference, excluding subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter. This

document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.

(b) Within 30 days after receipt of notification that the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator ~~must~~ shall obtain financial assurance for the full amounts specified in Rule .0204, Paragraphs (a) and (c), of this Subchapter. 40 CFR 280.93.

(c) ~~Within 30 days after receipt of notification that the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund has become incapable of paying for additional cleanup actions to be undertaken by the Department, any owner or operator or guarantor who self insures or guarantees based on Rule .0302, Paragraph (b), of this Subchapter must obtain financial assurance for at least twice the amount specified in Rule .0204, Paragraph (d), of this Subchapter assured in accordance with Rule .0302, Paragraph (b), of this Subchapter.~~

Authority G.S. 143-215.94H; 143-215.94T; 150B-21.6.

15A NCAC 020 .0504 REPLENISHMENT

(a) ~~The provisions for "Replenishment of Guarantees, Letters of Credit, or Surety Bonds" contained in 40 CFR 280.111 are hereby 280.115 entitled "Replenishment of Guarantees, Letters of Credit, or Surety Bonds" is incorporated by reference including any reference, excluding subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter. This document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.~~

(b) ~~If at any time after a standby trust (40 CFR 280.103) is funded upon the instruction of the Department with funds drawn from a guarantee, guarantee (40 CFR 280.96), letter of credit, credit (40 CFR 280.99), or surety bond, bond (40 CFR 280.98), and the amount in the standby trust is reduced to less than the amount for which the owner or operator is responsible per occurrence for third party claims, the owner or operator shall within 60 days from which the funds were drawn:~~

- (1) ~~Replenish replenish~~ the value of financial assurance to equal the full amount of coverage ~~required, or required pursuant to Rule .0204 of this Subchapter; or~~
- (2) ~~Acquire acquire~~ another financial assurance mechanism for ~~the full amount of coverage provided by the Standby Trust, the amount by which funds in the standby trust fund have been reduced.~~

Authority G.S. 143-215.94H; 143-215.94T; 150B-21.6.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 13A .0101 and .0111.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://deq.nc.gov/about/divisions/waste-management/hw/rules>

Proposed Effective Date: July 1, 2020

Public Hearing:

Date: January 16, 2020

Time: 2:00 p.m.

Location: NCDEQ Green Square Building, 271 West Jones Street, Raleigh, NC 27603, Room 1210

Reason for Proposed Action:

15A NCAC 13A .0101 is proposed for amendment due to a change in a federal regulation: 83 Federal Register (FR) 420 (January 3, 2018) "Electronic Hazardous Waste Manifest System (e-Manifest) User Rule." The amendment will incorporate by reference federal regulations 40 CFR 260.4 and 260.5.

15A NCAC 13A .0111 is proposed for amendment due to a change in a federal regulation: 84 Federal Register (FR) 5816 (February 22, 2019) ("Management Standards for Hazardous Waste Pharmaceuticals Rule"). The amendment will incorporate by reference federal regulations 40 CFR 266 subpart P (40 CFR 266.500 through 266.510).

Comments may be submitted to: Jenny Patterson, NCDEQ/DWM/Hazardous Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646; phone (336) 767-0031; email Jenny.Patterson@ncdenr.gov

Comment period ends: February 14, 2020

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

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

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

SECTION .0100 - HAZARDOUS WASTE

15A NCAC 13A .0101 GENERAL

(a) The Hazardous Waste Section of the Division of Waste Management shall administer the hazardous waste management program for the State of North Carolina.

(b) In applying the federal requirements incorporated by reference throughout this Subchapter, the following substitutions or exceptions shall apply:

When used in any of the federal regulations incorporated by reference throughout this Subchapter, except where the context requires references to remain without substitution (including with regard to forms, publications, and regulations concerning international shipments, variances from land disposal restrictions, and other program areas over which the federal government retains sole authority): "United States" shall mean the State of North Carolina; "Environmental Protection Agency," "EPA," and "Agency" shall mean the Department of Environmental Quality; and "Administrator," "Regional Administrator," "Assistant Administrator," and "Director" shall mean the Secretary of the Department of Environmental Quality. The North Carolina Solid Waste Management Act and other applicable North Carolina General Statutes set forth in G.S. 130A shall be substituted for references to "the Solid Waste Disposal Act," "the Resource Conservation and Recovery Act," and "RCRA" where required by context.

(c) In the event that there are inconsistencies or duplications in the requirements of those Federal rules incorporated by reference throughout this Subchapter and the State rules set out in this Subchapter, the provisions incorporated by reference shall prevail except where the State rules are more stringent.

(d) 40 CFR 260.1 through ~~260.3~~ 260.5 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 260.11, "Incorporation by Reference" is incorporated by reference including subsequent amendments and editions.

(f) Copies of all materials in this Subchapter may be inspected or obtained as follows:

- (1) Persons interested in receiving rule-making notices concerning the North Carolina Hazardous Waste Management Rules shall submit a written request to the Hazardous Waste Section, 1646 Mail Service Center, Raleigh, N.C. 27699-1646. Upon receipt of each request, individuals shall be placed on a mailing list to receive notices.
- (2) Material incorporated by reference in the Federal Register may be obtained electronically free of charge from the United States Environmental Protection Agency website at <http://www.epa.gov/laws-regulations/regulations>.
- (3) All material is available for inspection at the Department of Environmental Quality, Hazardous Waste Section, 217 West Jones Street, Raleigh, NC and at <https://deq.nc.gov/about/divisions/waste-management/hw/rules>.

Authority G.S. 130A-294(c).

15A NCAC 13A .0111 STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES - PART 266

(a) 40 CFR 266.20 through 266.23 (Subpart C), "Recyclable Materials Used in a Manner Constituting Disposal" are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 266.70 (Subpart F), "Recyclable Materials Utilized for Precious Metal Recovery" is incorporated by reference including subsequent amendments and editions. Off-site recycling facilities that receive materials described in 40 CFR 266.70(a) shall mark or label each container and tank holding recyclable materials at off-site precious metal recycling facilities with the words "Recyclable Material."

(c) 40 CFR 266.80 (Subpart G), "Spent Lead-Acid Batteries Being Reclaimed" is incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 266.100 through 266.112 (Subpart H), "Hazardous Waste Burned in Boilers and Industrial Furnaces" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 266.200 through 266.206 (Subpart M), "Military Munitions" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 266.210 through 266.360 (Subpart N), "Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal" are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 266.500 through 266.510 (Subpart P), "Hazardous Waste Pharmaceuticals" are incorporated by reference including subsequent amendments and editions.

~~(g)~~(h) Appendices to 40 CFR Part 266 are incorporated by reference including subsequent amendments and editions.

Authority G.S. 130A-294(c).

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 33 - MIDWIFERY JOINT COMMITTEE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Midwifery Joint Committee intends to amend the rules cited as 21 NCAC 33 .0101- .0103, .0105, and .0110.

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

Proposed Effective Date: April 1, 2020

Public Hearing:

Date: January 17, 2020

Time: 1:00 p.m.

Location: NC Board of Nursing, 4516 Lake Boone Trail, Raleigh, NC 27607

Reason for Proposed Action: *Proposed amendments to 21 NCAC 33 .0101, .0102, .0103 and .0105 update language, clarify definitions, update requirements related to initial applications and annual renewals and updated the process for disciplinary actions. Amendments to .0110 provide additional criteria for reports from the Department of Health and Human Services regarding prescribing practices of midwives.*

Comments may be submitted to: Angela Ellis, PO Box 2129, Raleigh, NC 27602-2129; fax (919) 781-9461; email public.comment@ncbon.com

Comment period ends: February 14, 2020

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

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

SECTION .0100 – MIDWIFERY JOINT COMMITTEE

21 NCAC 33 .0101 ADMINISTRATIVE BODY AND DEFINITIONS

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

(b) Definitions:

- (1) "Primary Supervising Physician" means ~~the a~~ a physician with an active unencumbered license licensed physician with the North Carolina Medical Board who, by signing the ~~certified nurse-midwife~~ midwife application, shall be held accountable for the on-going supervision, consultation, collaboration, and evaluation of the medical acts performed by the ~~certified nurse-midwife, midwife,~~ midwife, as defined in the site specific written clinical practice guidelines. A

physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician. A physician in a graduate medical education program who is also practicing in a non-training situation may supervise a ~~certified nurse-midwife~~ midwife in the non-training situation if he or she is fully licensed.

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

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

Authority G.S. 90-178.4.

21 NCAC 33 .0102 FEES

- (a) The fee for a new application and initial approval shall be one hundred dollars (\$100.00).
- (b) The fee for annual renewal shall be fifty dollars (\$50.00).
- (c) The fee for reinstatement for a ~~lapsed~~ an expired approval shall be five dollars (\$5.00).

Authority G.S. 90-178.4(b).

21 NCAC 33 .0103 APPLICATION AND ANNUAL RENEWAL

- (a) ~~The application to obtain~~ To be eligible for an approval to practice as a midwife is electronically available from the

~~Committee on the North Carolina Board of Nursing website, www.ncbon.com; midwife, an applicant shall:~~

- ~~(1) submit a completed application for approval to practice, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Committee of all information pertaining to the application. Application is posted on the Board of Nursing's website at www.ncbon.com;~~
- ~~(b)(2) The application shall require submit information on the applicant's education, evidence of the applicant's certification by the American College of Nurse Midwives, identification of the physician or physicians who will supervise the applicant, and the sites where the applicant intends to practice midwifery; midwifery;~~
- ~~(3) submit the approval to practice application fee as established in G.S. 90-178.4(b)(1);~~
- ~~(4) have an unencumbered registered nurse license and midwifery license/approval to practice in all jurisdictions in which a license/approval to practice is or has ever been held;~~
- ~~(5) have no pending court conditions as a result of any misdemeanor or felony conviction(s). Applicant shall provide a written explanation and any investigative report or court documents evidencing the circumstances of the crime(s) if requested by the Committee. The Committee may use these documents when determining if an approval to practice should be denied pursuant to G.S. 90-178.6 and G.S. 90-171.37;~~
- ~~(6) submit a written explanation and all related documents if the midwife has ever been listed as a nurse aide and if there have ever been any substantiated findings pursuant to G.S. 131E-255. The Committee may take these findings into consideration when determining if an approval to practice should be denied pursuant to G.S. 90-178.6. In the event findings are pending, the Committee may withhold taking any action until the investigation is completed; and~~
- ~~(7) complete a criminal background check in accordance with G.S. 90-171.48.~~

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

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

- ~~(1) submitting a completed application for renewal, attesting under oath or affirmation that the information on the application is true and complete, and authorizing the release to the Committee of all information pertaining to the~~

application. Applications are located on the Board of Nursing's website at www.ncbon.com; attest to having completed the requirements of the Certificate Maintenance Program of the American College of Nurse Midwives, including continuing education requirements, and submit evidence of completion if requested by the Committee as specified in Rule .0111 of this Section;

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

Authority G.S. 90-178.4(b); 90-178.5.

21 NCAC 33 .0105 DUE-PROCESS DISCIPLINARY ACTION

(a) Denial, revocation, or suspension of an approval to practice midwifery shall be governed by G.S. 90-178.6 and this Chapter. The applicant aggrieved by a decision of the Committee shall be entitled to a hearing pursuant to the provisions of G.S. 150B, Article 3A.

~~(b) Complaints:~~

- ~~(1) A complaint regarding a violation of the Midwifery Practice Act or Rules shall be submitted in writing and document:~~
 - ~~(A) the name of the certified nurse-midwife or other person involved;~~
 - ~~(B) a description of the alleged behavior or incident; and~~
 - ~~(C) the name, mailing address, and phone number of the person filing the complaint.~~
- ~~(2) The complaint shall be delivered to the Committee administrative office by mail, private carrier, facsimile, electronic mail, or in person.~~

~~(c) Action on a Complaint. Action on a complaint shall consist of the following:~~

- ~~(1) The Committee shall receive and acknowledge complaints, open a file, and initiate complaint tracking.~~
- ~~(2) Complaints shall be screened to determine jurisdiction and the type of response appropriate for the complaint.~~
- ~~(3) Investigation:~~
 - ~~(A) If the facts clearly indicate a Midwifery Practice Act violation, the Committee shall commence an investigation.~~
 - ~~(B) A report of each investigation shall be prepared for the Committee's review.~~
- ~~(4) Formal and Informal Hearings:~~
 - ~~(A) The Committee, after review of an investigative file and upon request by a licensee, shall schedule an informal meeting.~~
 - ~~(B) If the matter cannot be resolved informally, then a formal hearing shall be held.~~

~~(C) No Committee member shall participate in more than one of the following steps in the enforcement process:~~

- ~~(i) investigation;~~
- ~~(ii) informal hearing; or~~
- ~~(iii) formal hearing.~~

~~(D) Members of the Committee shall not make ex parte communication with parties to a hearing.~~

~~(5) Final Orders: No later than 60 days after a hearing, the Committee shall issue its final decision, in writing, specifying the date on which it shall take effect. The Committee shall serve one copy of the decision on each party to the hearing.~~

~~(6) Compliance: The Committee Chair shall cause a follow up inquiry to determine that the orders of the Committee are being obeyed.~~

~~(d) Disciplinary Sanctions:~~

~~(1) The following types of disciplinary sanctions may, among others, be used by the Committee when a violation of G.S. 90-178.6(a) is found:~~

- ~~(A) Letter of reprimand;~~
- ~~(B) probation;~~
- ~~(C) suspension of approval;~~
- ~~(D) nonrenewal of approval;~~
- ~~(E) revocation of approval; and~~
- ~~(F) injunction.~~

~~(2) The Committee may request information from professional associations, professional review organizations (PROs), hospitals, clinics, or other institutions in which a certified nurse-midwife performs professional services.~~

~~(3) The Committee shall provide notice of sanction taken by it to other public entities as necessary to ensure that other state Boards and enforcement authorities receive the names of certified nurse-midwives who have been disciplined.~~

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

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

- (1) dismiss the case;
- (2) issue a private letter of concern;
- (3) enter into negotiation for a Consent Order; or
- (4) a disciplinary hearing in accordance with G.S. 150B, Article 3A.

(d) Upon a finding of violation, the Committee may utilize the following range of disciplinary sanctions:

- (1) Public Letter of Concern;
- (2) Letter of Reprimand;
- (3) Probation;
- (4) Suspension of approval;
- (5) Nonrenewal of approval;
- (6) Revocation of approval; and
- (7) Injunction.

Authority G.S. 90-178.6.

21 NCAC 33 .0110 REPORTING CRITERIA

(a) The Department of Health and Human Services ("Department") may report to the Committee information regarding the prescribing practices of those midwives ("prescribers") whose prescribing:

- (1) falls within the top two percent of those prescribing 100 morphine milligram equivalents ("MME") per patient per day; or
- (2) falls within the top two 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 Committee information regarding midwives who have had two or more patient deaths in the preceding 12 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 Committee 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) In addition, the Department may report to the Committee information regarding prescribers who authorize a prescription for opioids to at least one patient where the prescribing meets the following criteria:

- (1) The prescription is for 100 MME or greater;
- (2) The prescription is for 30 or more days;
- (3) The patient has not had a prescription for an opioid from any prescriber dispensed in the six months prior to the prescription in question.

~~(e)~~(e) The Department may submit these reports to the Committee upon request and may include the information described in G.S. 90-113.73(b).

~~(d)(f)~~ The reports and communications between the Department and the Committee shall remain confidential pursuant to G.S. 90-113.74.

Authority G.S. 90-113.74; 90-178.4.

CHAPTER 46 – BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to adopt the rule cited as 21 NCAC 46 .1207, amend the rules cited as 21 NCAC 46 .2102, .2104, and repeal the rule cited as 21 NCAC 46 .2109.

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

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncbop.org/rulemakings.htm

Proposed Effective Date: April 1, 2020

Public Hearing:

Date: February 18, 2020

Time: 10:00 a.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517

Reason for Proposed Action: *The Board proposes to change the method of selection for its Device and Medical Equipment Committee from election to appointment. This will bring the selection method for that committee into line with all other Board committees. It will further (a) eliminate wasteful use of Board and candidate resources to hold elections with extremely low voter turnout; (b) potentially increase the interest in serving on the Device and Medical Equipment Committee, since interested persons would no longer have to run for election; and (c) eliminate term limits for committee members, allowing experienced and contributing members to continue to serve.*

Comments may be submitted to: Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517; fax (919) 246-1056; email jcampbell@ncbop.org

Comment period ends: February 18, 2020 at 10:00 a.m.

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

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

SECTION .1200 - ORGANIZATION OF THE BOARD

21 NCAC 46 .1207 DEVICE AND MEDICAL EQUIPMENT COMMITTEE

(a) The device and medical equipment committee shall consist of the following:

- (1) a representative of the medical equipment suppliers;
- (2) a representative of the medical oxygen suppliers;
- (3) a representative of the rehabilitation technology suppliers; and
- (4) two Board members.

(b) Each of the members of the device and medical equipment committee shall be appointed by the Board and serve at its pleasure. The Board may seek the input of device and medical equipment permit holders in these appointments. The representative must practice in the particular area for which he or she is nominated, but need not practice exclusively in that area. In case of death, resignation or removal from the committee, the Board shall fill the vacancy with a representative who meets the criteria for the position.

Authority G.S. 90-85.6; 90-85.22.

SECTION .2100 - ELECTIONS

21 NCAC 46 .2102 ELIGIBILITY TO VOTE

~~(a) Eligible voters for Board members shall be the pharmacists licensed in North Carolina and residing in North Carolina on October 31 of the year the election begins.~~

~~(b) Eligible voters for the device and medical equipment subcommittee shall be all device and medical equipment permit holders in North Carolina and residing in North Carolina on October 31 of the year the election begins.~~

Authority G.S. 90-85.7.

21 NCAC 46 .2104 COMMITTEE ON NOMINATIONS

The Board may appoint an advisory committee on nominations in September of each year that an election for Board position(s) begins. Members of this committee shall submit at least two names of eligible candidates for each position to be filled on the

Board and on the device and medical equipment subcommittee by October 1 for the next election.

Authority G.S. 90-85.7.

**21 NCAC 46 .2109 DEVICE AND MEDICAL
EQUIPMENT COMMITTEE REPRESENTATIVES**

Authority G.S. 90-85.6; 90-85.22.

**CHAPTER 56 – BOARD OF EXAMINERS FOR
ENGINEERS AND SURVEYORS**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners for Engineers and Surveyors intends to adopt the rule cited as 21 NCAC 56 .0304 and amend the rules cited as 21 NCAC 56 .0303, .0501, .0503, .0601, .0603, .0804, .0902, .1301, .1302, .1403, .1603, .1604, and .1607.

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

Proposed Effective Date: *May 1, 2020*

Public Hearing:

Date: *January 15, 2020*

Time: *9:00 a.m.*

Location: *4601 Six Forks Road, Suite 310, Raleigh, NC 27609*

Reason for Proposed Action:

21 NCAC 56 .0303 – Clarifies process to disperse funds for education programs.

21 NCAC 56 .0304 – Adoption of new rule to address suspension of authority to expend funds pursuant to G.S. 93B-2(d).

21 NCAC 56 .0501 – Clarifies requirements for licensing as a Professional Engineer.

21 NCAC 56 .0503 – Reflects changes to the examination process for licensing as a Professional Engineer.

21 NCAC 56 .0601 – Clarifies requirements for licensing as a Professional Land Surveyor.

21 NCAC 56 .0603 – Reflects changes to the examination process for licensing as a Professional Land Surveyor.

21 NCAC 56 .0804 – Clarifies business (firm) annual renewal and 30-day reporting of violations, criminal convictions, change of address(es), resident professional, company name, officers, directors or owners, or the services being offered.

21 NCAC 56 .0902 – Clarifies the requirements for the business titles to be determined as not misleading.

21 NCAC 56 .1301 – Clarifies and makes revisions to the disciplinary procedures for improper practice by a licensee.

21 NCAC 56 .1302 – Clarifies and makes revisions to the disciplinary procedures for unlawful practice by a non-licensee.

21 NCAC 56 .1403 – Clarifies notice of contemplated action as to applicant for licensure.

21 NCAC 56 .1603 – Clarifies positional accuracy standards for surveys.

21 NCAC 56 .1604 – Clarifies mapping requirements for boundary surveys, deletes reference to repealed control corner statute.

21 NCAC 56 .1607 – Updates the names of the satellite-based global positioning systems.

Comments may be submitted to: *David S. Tuttle, Board Counsel, NC Board of Examiners for Engineers and Surveyors, 4601 Six Forks Road, Suite 310, Raleigh, NC 27609; phone (919) 791-2000 ext. 111; email NCBELSRulesComments@ncbels.org*

Comment period ends: *February 14, 2020*

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

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

SECTION .0300 - INSTRUCTIONAL PROGRAMS

21 NCAC 56 .0303 DISBURSEMENT OF FUNDS

The Board shall disburse Funds funds for educational programs will be allocated and dispensed in the following manner:

- (1) Funds will be dispensed by vote of the The Board shall disburse funds after Board Committees, as organized, study each specific committee related request and recommendation recommend funding, of each specific request by the appropriate committee of the Board.
- (2) The Board will shall consider requests for funds only from the following entities: approved schools or professional organizations, community colleges, public or private institutions of higher learning, State and county boards of education, or governing authorities for any industrial education center.
- (3) Requests will be considered for any use that will directly further engineering or surveying education and competence.

- (3) The Board shall consider educational programs to establish instructional programs for individuals currently licensed and those seeking to become licensed.
- (4) Requests Approved entities for money shall be request funds in writing and provide the following information:
 - (a) The amount needed; needed, or appropriate limits thereof;
 - (b) Intended uses to be made of the requested monies; The intended use of the funds;
 - (c) Subject material to be presented with and qualifications of instructors to be employed;
 - (d) Itemized estimate breakdown of the amount needed and the total expected costs;
 - (e) Source and amount of assistance being given by any other person or organization.

Authority G.S. 89C-10(g). ~~89C-11.~~

21 NCAC 56 .0304 SUSPENSION OF AUTHORITY TO EXPEND FUNDS

In the event that 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 collect all fees set forth in G.S. 89C-14, 89C-17, and 89C-24. The Board shall maintain an escrow account into which any fees tendered during the Board's period of suspension shall be deposited. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

Authority G.S. 89C-10; 89C-11; 93B-2.

SECTION .0500 - PROFESSIONAL ENGINEER

21 NCAC 56 .0501 REQUIREMENTS FOR LICENSING

(a) Education. The Board shall consider the education of an applicant ~~shall be considered~~ in determining eligibility for licensing as a Professional Engineer. The terms used by the Board for the ~~specific~~ educational requirements in G.S. 89C-13(a1) to be eligible to be licensed as a Professional Engineer are defined as follows:

- (1) "Engineering curriculum of four or more years approved by the Board" is defined as a program that has been accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET). This program is incorporated by reference including subsequent amendments and editions. This material is available at www.abet.org/accreditation-criteria-policies-documents/ at no cost, or for inspection at the office of the North Carolina Board of Examiners for Engineers and

Surveyors. Copies may be obtained at the Board office at a cost of five dollars (\$5.00) per copy. "Engineering or related science curriculum of four or more years other than ones approved by the Board" is defined as a curriculum, although not accredited by ABET, of technical courses ~~which that~~ contains engineering or scientific principles.

- (2) "Equivalent education satisfactory to the board" is defined as:

- (A) A graduate degree in Engineering from an institution ~~in which where~~ the same discipline undergraduate engineering program has been accredited by ABET (EAC) shall be considered equivalent to an engineering curriculum of four or more years approved by the Board.
- (B) A bachelor's degree in Engineering Technology, whether or not accredited by the Technology Accreditation Commission (TAC) of ABET, shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
- (C) ~~Until June 30, 2016, an associate degree in an engineering related curriculum with an additional two years of progressive engineering experience shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board and may be used until that date as a basis for admission to the principles and practice of engineering examination. Once admitted to the examination, an applicant may continue to re take the examination until required to submit a new application as set out in Rule .0503 of this Section.~~ After June 30, 2016 an associate degree shall no longer be used as a basis for admission to that examination, unless the individual has passed the fundamentals of engineering examination prior to June 30, 2016, in which case the individual may continue the process to take the principles and practices exam based upon the associate degree and it will not be necessary to qualify for admission to the principles and practice of engineering examination prior to June 30, 2016.
- (D) Foreign degrees ~~are~~ shall be considered equivalent only after receipt of an evaluation report that the

degree is substantially equivalent to an EAC/ABET accredited engineering curriculum from the Center for Professional Engineering Education Services, an affiliate of the National Council of Examiners for Engineering and Surveying (NCEES), or from the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The Board shall equate the degree to an EAC/ABET accredited engineering curriculum of four or more years approved by the Board in Subparagraph (a)(1) of this Rule if it receives a substantially equivalent evaluation.

(b) Experience. The experience of an applicant shall be considered in determining whether an applicant is eligible to be licensed as a Professional Engineer.

(1) Required Experience. In evaluating the work experience required, the Board shall consider the total experience record and the progressive nature of the record. Experience shall be of a progressive engineering nature obtained after graduation from a program that meets the criteria set forth in Paragraph (a) of this Rule. Not less than half of required engineering experience shall be of a professional grade and character, and shall be performed under the responsible charge of a licensed Professional Engineer, or if not, the applicant shall submit a written explanation to the Board explaining why the experience should be considered acceptable. The Board shall approve if it is satisfied of the grade and character of the progressive experience on a case-by-case basis. ~~a written explanation shall be submitted showing why the experience should be considered acceptable and the Board shall approve if satisfied of the grade and character of the progressive experience.~~ Experience gained under the technical supervision of an unlicensed individual shall be considered ~~if the appropriate based upon the engineering education and experience credentials of the unlicensed supervisor are submitted to the Board.~~ Experience gained in the armed services, usually while serving in an engineering or engineering related group, shall be ~~considered if of a character accepted only if substantially equivalent to that which would have been gained in the civilian sector doing similar civilian work.~~

(2) Definition. The word "progressive" in the terms "progressive nature of the record," "progressive engineering experience" experience," "progressive land surveying," "progressive engineering nature," or "progressive experience on engineering projects" ~~mean~~ means that

during the period of time that an applicant ~~has~~ made a practical utilization of acquired knowledge, continuous improvement, growth and development have been shown in the utilization of that knowledge as revealed in the complexity and technical detail of the work product or work record. The applicant shall show continuous assumption of greater individual responsibility for the work product over that period of time. The progressive experience on engineering projects shall be of a grade and a character that ~~indicates~~ shows to the Board that the applicant is competent to practice engineering.

(3) ~~Specific~~ Credit for Experience. In evaluating progressive engineering experience, the Board shall give credit for experience in the following areas of work:

- (A) Graduate schooling or research in an engineering program resulting in award of a master's degree from an institution that offers EAC/ABET-accredited programs – one year;
- (B) Graduate schooling or research in an engineering program resulting in award of an earned doctoral degree in engineering from an institution that offers EAC/ABET-accredited programs – two years, with or without a master's degree, but this includes the one year for the master's degree, if obtained;
- (C) Progressive land surveying - maximum two years; and
- (D) Teaching of engineering subjects at the university level in an engineering program offering a four year or more degree approved by the Board.

The Board shall not accept combinations of the categories in this Subparagraph as fulfilling all the necessary statutory experience requirements. Every applicant for licensure as a Professional Engineer, as part of the total experience requirement, shall show a minimum of one year experience of a progressive engineering nature in industry, government, or under a licensed Professional Engineer offering service to the public.

Full-time engineering faculty members who teach in an engineering program offering a four year or more degree approved by the ~~Board, Board~~ may request and shall be granted waiver of the minimum one year experience in industry, government, or private practice if they demonstrate consulting or research work of at least one year's duration, which was pursued to ~~fruition, completion of the project, and which that~~ is of a progressive engineering nature. The faculty applicant shall document the work and demonstrate to evidence that the work meets the Board's requirement.

(4) An exception to the requirement in Subparagraph (b)(1) of this Rule that experience be obtained after graduation is for

long-established practice of 20 years or more, as provided for in G.S. 89C-13(a3).

- (5) Other experience is considered if it is: shall be:
- (A) Experience obtained prior to graduation as part of an ABET accredited engineering program shown on the transcript, with a maximum credit of one year; or
 - (B) Experience obtained in a foreign country that is performed under direct supervision of a Professional Engineer licensed with a member Board of the National Council of Examiners for Engineering and Surveying (NCEES).

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

21 NCAC 56 .0503 EXAMINATIONS

(a) The Board offers the following examinations that are the national examinations of the National Council of Examiners for Engineering and Surveying (NCEES) with application made directly to NCEES to take the exam:

- (a)(1) Fundamentals of Engineering, Engineering (FE): This examination is designed to test the applicant's proficiency and knowledge of the fundamentals of ~~engineering~~ engineering; and
- (b)(2) Principles and Practice of Engineering, Engineering (PE): This examination is designed to test the applicant's proficiency and knowledge of engineering principles and practices.

~~(c)(b)~~ Examination Aids. Examinees may utilize examination aids as specified and published by the exam preparer, NCEES.

~~(d) Preparation of Examination. The examinations in the fundamentals of engineering and in the principles and practice of engineering are national examinations provided by the National Council of Examiners for Engineering and Surveying (NCEES), of which the Board is a member.~~

~~(e)(c)~~ Examination Sequence. Before the applicant shall be permitted to be examined on the principles and practice of engineering, the applicant shall pass the examination on the fundamentals of engineering, unless the applicant can provide evidence of 20 years of progressive engineering experience, or as is a full-time engineering faculty member, or possesses an earned doctoral degree in engineering to be exempt from taking the fundamentals of engineering exam. engineering. NCEES administers the fundamentals of engineering examination as a computer-based exam. Application shall be made directly to NCEES to take the exam.

~~(f) Examination Filing Deadline. Only those applicants who have met the education requirements as set forth in Rule .0501(b) of this Section, and have passed the FE exam may sit for the PE exam prior to gaining the required experience. Upon gaining the required experience, as set forth in Rule .0501(b) of this Section, an applicant may apply for the PE license. The applicant who wishes to take the principles and practice of engineering examination shall deliver the completed application, including all necessary references, transcripts, and verifications, to the Board~~

~~office prior to August 1 for Fall examinations and January 2 for Spring examinations.~~

~~(g) Seating Notice. After approval of an application the applicant shall be sent a seating notice. This notice shall inform the applicant of the date, time and location of the examination and the seat number assigned.~~

~~(h) Unexcused Absences. After a seating notice has been issued for a scheduled examination by the Board, if the applicant fails to appear, that applicant's record shall reflect "unexcused absence," unless the absence was for jury duty or the applicant was not physically able to be present, as indicated by a doctor's certificate. The examination fee shall be forfeited.~~

~~(i)(d)~~ Re-Examination. A person who failed an examination may apply to take the examination again at the next regularly scheduled examination period after a six month waiting period by making written request and submitting the required exam fee. A person having a combined record of three failures or unexcused absences shall be eligible only after submitting a new application with appropriate application fee, and shall be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year. The applicant shall demonstrate to the Board that actions, such as additional courses of study, have been taken to improve the applicant's chances for passing the exam.

~~(j)(e)~~ Reasonable Accommodation. An applicant may make a written request to NCEES, before the application deadline, for reasonable accommodation for the exam. Reasonable accommodation shall be granted based upon meeting the Guidelines for Requesting Religious and ADA Accommodations published by the National Council of Examiners for Engineering and Surveying (NCEES), which are hereby incorporated by reference, including subsequent amendments and editions. Copies are available at no cost at www.ncees.org.

~~(k)(f)~~ Exam Results. Exam results shall be supplied in writing as pass or fail. No results will be given in any other manner.

~~(l)(g)~~ Review of Failed Exams. An applicant who fails to make a passing score on an exam shall receive an exam analysis by NCEES.

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

SECTION .0600 - PROFESSIONAL LAND SURVEYOR

21 NCAC 56 .0601 REQUIREMENTS FOR LICENSING

(a) Education. The terms used by the Board for the specific education requirements to be eligible to be licensed as a Professional Land Surveyor are defined as follows:

- (1) "B.S. in surveying or other equivalent curriculum." These degrees shall contain a minimum of 45 semester hours, or their quarter-hour equivalents, equivalents, of subjects directly related to the practice of surveying. Of the 45 semester hours, a minimum of 12 semester hours of surveying fundamentals, 12 semester hours of applied surveying practice and 12 semester hours of advanced or theoretical surveying courses are

required. The remainder of the required surveying courses may be elective-type courses ~~directly related to surveying; in any of the categories; and~~

- (2) "Associate degree in surveying technology." This degree shall contain a minimum of 20 semester hours, or quarter-hour equivalents. ~~equivalents, of subjects directly related to the practice of surveying.~~ Courses shall be in surveying fundamentals, applied surveying practice and advanced or theoretical surveying courses, to include, at a minimum, courses in surveying practices, subdivision design and planning, surface drainage, and photogrammetry which must be completed with a passing grade.

(b) Experience:

- (1) Definition. As used in the North Carolina Engineering and Land Surveying Act, the term "progressive practical ~~surveying~~ experience" means that during the period of time in which an applicant has made a practical utilization of the knowledge of the principles of geometry and trigonometry in determining the shape, boundaries, ~~position~~ position, and extent of the earth's surface, such that continuous improvement, growth and development in the utilization of that knowledge have been shown. In addition, the applicant shall show the continuous assumption of greater individual responsibility for the work product over that period of time.
- (2) Required Experience. ~~Experience Accepted.~~ In evaluating the work experience required, the Board shall consider the total experience record and the progressive nature of the record. ~~Half or more~~ Not less than half of the required land surveying experience shall be of a professional grade and character, and shall be performed under the responsible charge of a Professional Land Surveyor. If the work was not under the responsible charge of a Professional Land Surveyor, the applicant shall submit a written explanation to the Board explaining why the experience should be considered ~~acceptable and~~ the ~~The~~ Board shall approve if it is satisfied of the grade and character of the progressive ~~experience.~~ experience on a case by case basis. Experience gained under the technical supervision of an unlicensed individual shall be considered based upon the engineering education and experience credential of the unlicensed supervisor. Experience gained in the armed services, usually while serving in an engineering or surveying related group, shall be accepted only if substantially equivalent to that which would have been gained in civilian work.
- (3) Other Experience. The applicant shall document the nature and details of the work

~~Work~~ done in the following areas ~~requires to~~ evidence to the Board ~~of~~ its equivalency to land surveying:

- (A) construction layout;
(B) engineering surveying; or
(C) part-time surveying work.
- (c) Exhibits, Drawings, ~~Plats:~~ Maps:
- (1) Required Exhibit Before Principles and Practice of Surveying Examination:
- (A) General. The applicant shall submit, along with the application, an actual ~~plat map~~ map of a boundary survey of an actual project prepared ~~by, or~~ under the direct supervision and responsible charge of a Professional Land Surveyor who states that of, the applicant ~~did the preparatory work of the survey; that shows shows, by its conformance, that the applicant is knowledgeable of the contents of the Standards of Practice for Land Surveying in North Carolina as set forth in Section .1600 of this ~~Chapter,~~ Chapter; and that shows that the applicant is able to apply this knowledge by preparing a ~~plat map~~ map in accordance with the various legal and professional requirements of land surveying.~~
- (B) Physical Requirement. The map submitted shall be a clean, clear, legible print of an original map in the file of a Professional Land Surveyor.
- (2) Specific Requirements. The ~~specific~~ details that shall be evaluated are those applicable to the particular project as described in the Standards of Practice for Land Surveying in North Carolina as set forth in Section .1600 of this Chapter, and as described in G.S. 47-30. In addition, the exhibit shall contain a statement that the field work, ~~calculation~~ calculation, and mapping were performed by the applicant under the supervision of a Professional Land Surveyor, attested to by that Professional Land Surveyor.
- (3) Requirements for Comity Applicant. The map submitted by an applicant under comity may be a ~~sample plat~~ representative map of an actual survey of a project or work performed in the state of ~~licensure.~~ licensure that is modified to meet the requirements in Subparagraph (c)(2) of this Rule and ~~It~~ shall be evaluated ~~in accordance with legal requirements of North Carolina~~ the requirements applicable to the particular project as described in the Standards of Practice for Land Surveying in North Carolina as set forth in Section .1600 of this Chapter, and as described in G.S. 47-30.

Authority G.S. 47-30; 89C-10; 89C-13.

21 NCAC 56 .0603 EXAMINATIONS

(a) The Board offers the following examinations that are the national examinations of the National Council of Examiners for Engineering and Surveying (NCEES) with application made directly to NCEES to take the exam:

~~(a)(1)~~ Fundamentals of Surveying. Surveying (FS): This examination is designed to test the applicant's proficiency and knowledge of the fundamentals of surveying. Reference (Reference to Fundamentals of Surveying is the revised name of the national exam that is the Fundamentals of Land Surveying in G.S. 89C-89C); and

~~(b)(2)~~ Principles and Practice of Surveying. This examination is designed to test the applicant's proficiency and knowledge of land surveying practices and procedures generally and specifically within North Carolina.

(b) State-Specific Exam. The state-specific portion of the principles and practice of surveying examination shall be provided by the Board.

(1) Examination Filing Deadline. The applicant who wishes to take the state-specific portion of the principles and practice of surveying examination shall deliver the completed application, including all necessary references, transcripts, and verifications, to the Board office at least 60 days prior to the date for taking the exam.

(2) Unexcused Absences. For the state-specific portion of the principles and practices of surveying examination, after a seating notice for a scheduled examination has been issued, if applicant fails to appear, the applicant's record shall reflect "unexcused absence," unless the absence was for jury duty or the applicant was not physically able to be present, as indicated by a doctor's certificate. The examination fee shall be forfeited if the applicant's record reflects an unexcused absence.

(3) Re-Examination. A person who failed the state-specific portion of the principles and practices of surveying examination may apply to take the examination again at the after a six-month waiting period by making written request and submitting the required exam fee. A person having a combined record of three failures shall be eligible only after submitting a new application with appropriate application fee, and shall be considered by the Board for re-examination at the end of 12 months after the last failure.

(c) Examination Aids. Examinees may utilize examination aids as specified by the national exam preparer.

(d) Preparation of Examination. The examination in the fundamentals of surveying and of the examination in the principles and practice of surveying are national examinations

provided by the National Council of Examiners for Engineering and Surveying (NCEES), of which the Board is a member, or other examinations as adopted by the Board. The North Carolina portion of the principles and practice of surveying examination shall be provided by the Board. NCEES administers the fundamentals of surveying examination and the examination in the principles and practice of surveying as a computer-based exam. exams. Application is shall be made directly to NCEES to take the exam.

~~(e) Examination Filing Deadline. The applicant who wishes to take the principles and practice of surveying examination shall deliver the completed application, including all necessary references, transcripts, and verifications, to the Board office prior to August 1 for Fall examinations and January 2 for Spring examinations.~~

~~(f) Seating Notice. After approval of an application, the applicant shall be sent a seating notice by NCEES. This notice shall inform the applicant of the date, time and location of the examination and the seat number assigned.~~

~~(g) Unexcused Absences. After a seating notice for a scheduled examination has been issued, if applicant fails to appear, the applicant's record shall reflect "unexcused absence," unless the absence was for jury duty or the applicant was not physically able to be present, as indicated by a doctor's certificate. The examination fee shall be forfeited.~~

~~(h) Re-Examination. A person who failed an examination may apply to take the examination again at the next regularly scheduled examination period by making written request and submitting the required exam fee. A person having a combined record of three failures or unexcused absences shall be eligible only after submitting a new application with appropriate application fee, and shall be considered by the Board for re-examination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year. The applicant shall demonstrate to the Board that actions, such as additional courses of study, have been taken to improve the applicant's chances for passing the exam.~~

~~(i)(e)~~ Reasonable Accommodation. An applicant may make a written request, before the application deadline, for reasonable accommodation for the exam. Reasonable accommodation shall be granted based upon meeting the Guidelines for Requesting Religious and ADA Accommodations published by the National Council of Examiners for Engineering and Surveying (NCEES).

~~(j)(f)~~ Exam Results. Exam results shall be supplied in writing as pass or fail. No results shall be given in any other manner.

~~(k)(g)~~ Review of Failed Exams. An applicant who fails to make a passing score on an NCEES exam shall receive an exam analysis. analysis by NCEES. An applicant who fails to make a passing score on the two-hour North Carolina state-specific portion of the exam may request in writing within thirty days of receiving the result to have an opportunity to review that portion of the exam. The review shall be done in the Board Office under supervision of staff and is limited to one hour.

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

SECTION .0800 - FIRM REGISTRATION

21 NCAC 56 .0804 ANNUAL RENEWAL AND 30-DAY REPORTING OF VIOLATIONS AND CHANGE OF ADDRESS

(a) Renewal. The certificate of licensure for a business ~~entity, including a professional corporation, limited liability company, Chapter 87 corporation, or business firm~~ shall be renewed annually.

(b) Expiration. The certificate of licensure expires on the last day of June following its issuance by the Board and becomes invalid on that date unless renewed.

(c) Written Application. ~~Upon~~ The applicant shall submit a written application on a renewal form provided by the Board that requires the physical place of business address and report of disciplinary actions ~~actions~~, accompanied by a fee of seventy-five dollars ~~(\$75.00)~~ (\$75.00), ~~the~~ The Board shall renew the certificate of ~~licensure~~ licensure, providing that the ~~firm~~ business has complied with all Rules of the Board and applicable General Statutes of North Carolina. The form shall be provided to all licensees in good standing no later than June 1st.

(d) Reporting. The ~~licensed entity~~ business shall give notice to the Board of a change of ~~of~~:

- (1) business address and branch locations;
- (2) resident professional (or licensee in responsible charge;
- (3) company name;
- (4) officers, directors or owners; or
- (5) the services being offered within 30 days of ~~the~~ any change.

The ~~firm~~ business shall give notice to the Board of any disciplinary actions or conviction of any crime, in any jurisdiction on any license within 30 days of the disciplinary ~~action~~ action or conviction.

~~(d)(e)~~ (e) If a ~~firm~~ business fails to renew its certificate of licensure within one year of the expiration date, the ~~firm~~ business shall submit a new application for a new certificate of licensure in accordance with all requirements of 21 NCAC 56 .0802.

~~(e)(f)~~ (f) If any business ~~entity~~ that holds a current certificate of licensure ceases business because the professional licensee receives a waiver from paying the individual renewal fee under 21 NCAC 56 .0506 or 21 NCAC 56 ~~.0607~~ .0607, the annual renewal fee for the business shall be waived for the same time period.

Authority G.S. 55B-11; 57C-2-01; 57D-2-01; 89C-10; 89C-14; 89C-17; 89C-24.

SECTION .0900 - BUSINESS ENTITIES: GENERAL

21 NCAC 56 .0902 BUSINESS TITLES OF BUSINESS ENTITIES

(a) Companies, partnerships, corporations, limited liability ~~companies~~ companies, or any other business ~~organization~~ providing professional engineering or land surveying services in North Carolina shall not practice under a name that is misleading. Except as provided ~~below~~, in Paragraph (b), for purposes of this Rule, "misleading" means that the titles of engineering or land surveying companies, partnerships, corporations, limited liability ~~companies~~ companies, or any other business ~~organization~~ organized ~~primarily to provide~~ for the primary purpose of

providing such professional services shall not contain the name of an ~~individual~~ individual:

- (1) not licensed to provide the professional services ~~offered~~ offered in North Carolina; ~~or~~
- (2) who is not eligible for licensure by comity to provide the professional services offered in North Carolina under the provisions of G.S. 89C-13, G.S. 89C-13; or
- (3) is licensed to provide the professional services, offered in North Carolina, in a state where the business (or of a successor to that business or business created to comply with G.S. 55B), is incorporated, organized, or is authorized to transact business.

(b) A ~~firm~~ business may include in its title the name or names of one or more deceased or retired former members of the ~~firm~~ business, or of a successor to that business or a business created to comply with G.S. 55B, provided that the ~~firm~~ business submits a letter of request and explanation with its application to the Board, and that the Board finds as fact that the use of the name is not misleading.

(c) A business ~~organization~~ shall not change its title, or operate under an assumed name, without first applying to the Board for a determination that the proposed title meets the requirements of Paragraph (a) or (b) of this Rule. Requests for name changes shall be made in writing on forms provided by the Board for this purpose.

Authority G.S. 55B-5; 57C-2-01; 57D-2-01; 89C-10; 89C-24.

SECTION .1300 – BOARD DISCIPLINARY PROCEDURES

21 NCAC 56 .1301 IMPROPER PRACTICE BY A LICENSEE

(a) General. ~~Alleged practice~~ Practice that may violate the rules in this Chapter or G.S. 89C by a licensee is subject to Board investigation and disciplinary action by the Board.

(b) Preferring Charges. Any person who believes that any licensed Professional Engineer, Professional Land ~~Surveyor~~ Surveyor, or ~~firm~~ business holding a certificate of ~~authorization~~ licensure is in violation of the provisions of G.S. 89C or the rules in this Chapter may prefer charges against that person or ~~firm~~ business by ~~setting forth in writing those charges and swearing to their authenticity,~~ business, along with providing corroborative evidence, evidence that helps support the charges. A complaint form is provided by the Board to aid in filing the complaint. The charges shall be filed with the Board's office in Raleigh, North Carolina.

(c) Preliminary Review:

- (1) Upon receipt of a properly filed charge, a case shall be opened. Other information indicating that a licensee is in violation of the provisions of G.S. 89C or the rules in this Chapter may be a basis for opening a case by the Board.
- (2) A field investigation may be performed if determined necessary by the Executive ~~Director~~ Director in order to obtain additional information and evidence.

- (3) If the Executive Director determines that the charges are corroborated by evidence, a written notice and explanation of the charge shall be forwarded to the person or firm against whom the charge is made and a response is requested of the person or firm so charged to ~~show~~ show, within 15 days, compliance with ~~all lawful requirements~~ G.S. 89C and the rules in this Chapter for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt request.
- (4) After preliminary evidence has been obtained, the matter shall be referred to the Board's review ~~committee~~ committee, which is made up of the following individuals:
- (A) one member of the Board who is licensed in the respective ~~profession~~, profession;
 - (B) the legal counsel of the ~~Board~~, Board; and
 - (C) the Executive Director of the Board or Assistant Executive Director if designated by the Executive Director.
- (5) Upon review of the ~~available~~ evidence, the review committee ~~shall present to the Board a written recommendation that:~~ shall:
- (A) recommend that the Board dismiss the charge ~~be dismissed~~ as unfounded or trivial;
 - (B) when the charge is admitted as true, recommend that the Board accept the admission of guilt by the person charged and order that person not to commit in the future the specific act or acts admitted and also not to violate any of the provisions of the Board ~~Rules~~ rules or the statutes at any time in the future;
 - (C) the charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or
 - (D) whether the charge is admitted or denied, ~~the Board give written notice to the licensee of a contemplated action as set out in Rule .1403(b) of this Chapter. that:~~
 - (i) sufficient evidence exists which, if not rebutted or explained, would justify the Board in taking an action set out in Rule .1402(4) through (12);
 - (ii) stating the nature of the evidence; and
 - (iii) that unless the licensee, within 20 days after service of said notice, deposits in the mail a certified letter addressed to the Board and containing a request for a hearing or settlement conference, that it will recommend that the Board take the action(s) specified in the notice, set out in Rule .1402(4) through (12).
- (d) Consultant. A consultant to the review committee shall be designated by the Board Chair if a board member is a complainant, ~~witness~~ witness, or respondent in a case. The consultant shall be a licensed professional engineer or professional land surveyor, depending on the nature of the ~~case~~, case, and selected from a list provided by the Executive Director of former Board members or other licensed professionals who are knowledgeable with the Board's processes. The consultant shall review all case materials and make a recommendation for consideration by the review committee as to the merits of the case. The consultant shall review any new information presented in the event of a settlement conference and make a recommendation to the settlement conference committee.
- (e) Board Decision. ~~Notice of the decision by the Board on recommendations of the review committee~~ When the review committee proceeds to any Part of Subparagraph (c)(5) of this Rule shall be given to the party against whom the charges have been brought and the party submitting the charge. ~~Though it is not forbidden to do so, the~~ The Board is not required to notify the parties of the reasons of the Board in making its determination.
- (f) Settlement Conference. When the ~~Board issues a citation for hearing or notice of a contemplated action,~~ review committee proceeds pursuant to Parts (c)(5)(C) or (D) of this Rule, the licensee may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If, after the completion of a settlement conference, the licensee and Board's settlement committee do not agree to a resolution of the dispute for the full Board's consideration, the original administrative proceeding shall commence. During the course of the settlement conference, no sworn testimony shall be ~~taken~~ taken, nor shall any witnesses be cross-examined.
- (1) The Board's settlement committee shall be made up of the following individuals:
 - (A) the member of the Board who served on the review committee or ~~the replacement~~ a replacement member if the member is not ~~available~~, available;
 - (B) one public member from the ~~Board~~, Board;
 - (C) the legal counsel of the ~~Board~~, Board; and
 - (D) the Executive Director of the Board or Assistant Executive Director if designated by the Executive Director.

- (2) Upon review of the ~~available~~ evidence, the settlement committee ~~shall present to the Board a written recommendation that:~~ shall:
- (A) recommend that the Board dismiss the charge be dismissed as unfounded or trivial;
 - (B) when the charge is admitted as true, recommend the Board accept the admission of guilt by the person charged and order the person not to commit in the future the specific act or acts admitted and, also, not to violate any provisions of the Board Rules or the statutes at any time in the future;
 - (C) direct that the charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or
 - (D) ~~whether the charge is admitted or denied, the Board give notice to the licensee of a contemplated action as set out in Rule .1403(b) of this Chapter.~~ recommend that the Board approve a settlement agreed to by the licensee and proposed by the settlement conference committee.

Authority G.S. 89C-10; 89C-21; 89C-22.

21 NCAC 56 .1302 UNLAWFUL PRACTICE BY AN UNLICENSED PERSON

- (a) General. Alleged unlawful practice by an unlicensed person shall be subject to Board investigation and enforcement, to include applying for relief by injunction or referral to an agency of the state for appropriate legal action.
- (b) Preferring Charges. Any person who believes that any person or firm (party) is in violation of the acts specified in G.S. 89C may prefer charges against that person or firm by setting forth in writing those charges ~~and swearing to their authenticity.~~ to the best knowledge and belief, in the form of a complaint, along with providing corroborative evidence. The charges shall be filed ~~at~~ with the Board's office in Raleigh, North Carolina.
- (c) Preliminary or Threshold Determination:
- (1) Upon receipt of a properly filed charge, ~~a case an investigation shall be initiated, opened.~~ Other information indicating that a party is in violation of the provisions of G.S. 89C or the rules in this Chapter may be a basis for opening a case by the Board.
 - (2) At the discretion of the executive director, a field investigation may be performed without notifying any of the parties involved,
 - (3) If the Executive Director determines that charges are corroborated by evidence, a written

notice and explanation of the charge shall be forwarded to the person or firm against whom the charge is made and a response is requested of the person or firm so charged to show compliance with all lawful requirements. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt requested.

- (3)(4) After preliminary evidence has been obtained, the matter shall be referred to the Board's review committee which is made up of the following individuals:
 - (A) one member of the Board;
 - (B) the legal counsel of the Board; and
 - (C) the Executive Director of the Board or Assistant Executive Director if designated by the Executive Director.
- (4) ~~The review committee shall recommend to the Board whether there is probable cause to believe that a party against whom a charge has been brought in fact has violated the provisions of G.S. 89C.~~
- (5) Upon review of the available evidence, the review committee shall make a threshold determination of the charges brought. The review committee shall ~~then present~~ recommend to the Board ~~written recommendations that:~~
 - (A) ~~The the~~ the investigation be continued; continued and the party be notified with an explanation of the charge(s) and given an opportunity to provide a response to show compliance with all lawful requirements;
 - (B) ~~The the~~ charge be dismissed as unfounded or trivial; or
 - (C) a letter be issued informing of the possible violation of G.S. 89C and that further action may be pursued under G.S. 89C-23; or
 - (C)(D) ~~The the~~ matter be referred to an appropriate agency for necessary legal action.

- (d) Board Decision. Notice of decision by the Board on recommendations of the review committee shall be given to the party submitting the charge.

Authority G.S. 89C-10; 89C-23.

SECTION .1400 - CONTESTED CASES

21 NCAC 56 .1403 NOTICE OF CONTEMPLATED BOARD ACTION: ACTION TO APPLICANT; REQUEST FOR HEARING

- (a) When the Board takes an action ~~of a type~~ specified in Subparagraphs (1), (2) or (3) of Rule .1402 of this Section, it shall give ~~to~~ the applicant a written ~~notice containing a~~ statement:

- (1) that the applicant ~~has failed to satisfy the Board of meet~~ the qualifications to be examined or to be issued a license, ~~as the case may be; license;~~
- (2) ~~indicating stating in what respects the applicant has so failed to satisfy the Board; specific deficiencies as to why the applicant failed;~~ and
- (3) that unless the applicant, within 20 days after service of ~~said the~~ notice, deposits in the mail a certified letter addressed to the Board and containing a request for a hearing, the Board's action will become final.

In any Board proceeding involving the denial of a ~~duly made an~~ application to take an examination, or refusal to issue a license after an applicant has taken and passed an examination, the burden of satisfying the Board of the applicant's qualifications shall be upon the applicant.

~~(b) When the Board contemplates taking any action of a type specified in Subparagraphs (4), (5), (6), (7), (8), or (9) of Rule .1402 of this Section, it shall give to the licensee a written notice containing a statement:~~

- ~~(1) that the Board has sufficient evidence which, if not rebutted or explained, will justify the Board in taking the contemplated action;~~
- ~~(2) indicating the general nature of the evidence; and~~
- ~~(3) that unless the licensee, within 20 days after service of said notice, deposits in the mail a certified letter addressed to the Board and containing a request for a hearing or settlement conference, the Board will take the contemplated action.~~

Authority G.S. 89C-10; 89C-21; 89C-22; 150B-38.

SECTION .1600 – STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA

21 NCAC 56 .1603 CLASSIFICATION OF BOUNDARY SURVEYS

General. "Boundary surveys" are defined as surveys made to establish or to retrace a boundary line on the ground, or to obtain data for constructing a map, plat, or report showing a boundary line. For the purpose of this Rule, the term refers to all surveys, including "loan" or "physical" surveys, that involve the determination or depiction of property lines. For the purpose of specifying minimum allowable surveying standards for boundary surveys, the following four general classifications of lands in North Carolina are established from the standpoint of their real value, tax value, or location. Each map shall contain a statement of the calculated ratio of precision before adjustments or a statement of positional accuracy.

- (1) Local Control Network Surveys (Class AA). Local control network surveys are traverse networks utilizing permanent points for the purpose of establishing local horizontal control networks for future use by local surveyors. For Class AA boundary surveys in North Carolina, the angular error of closure shall not exceed ten seconds times the square root of the number of

angles turned. The ratio of precision shall not exceed an error of closure of one foot per 20,000 feet of perimeter of the parcel of land (1:20,000). When using positional accuracy standards for Class AA control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.05 feet or 0.015 meters plus 30 ppm measured relative to the position(s) of the horizontal control points used and referenced on the survey.

- (2) Urban Land Surveys (Class A). Urban surveys include lands that normally lie within a town or city. For Class A boundary surveys in North Carolina, the angular error of closure shall not exceed 20 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 10,000 feet of perimeter of the parcel of land (1:10,000). When using positional accuracy standards for Class A control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.10 feet or 0.030 meters plus 50 ppm measured relative to the position(s) of the horizontal control points or property corners used and referenced on the survey.

- (3) Suburban Land Surveys (Class B). Suburban surveys include lands in or surrounding the urban properties of a town or city. For Class B boundary surveys in North Carolina, the angular error of closure shall not exceed 25 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 7,500 feet of perimeter of the parcel of land (1:7,500). When using positional accuracy standards for Class B control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.12 feet or 0.037 meters plus 90 ppm measured relative to the position(s) of the horizontal control points or property corners used and referenced on the survey.

- (4) Rural and Farmland Surveys (Class C). Rural and farmland surveys include lands located in rural areas of North Carolina and generally outside the suburban properties. For Class C boundary surveys in North Carolina, the angular error of closure shall not exceed 30 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 5,000 feet of perimeter of the parcel of land (1:5,000). When using positional accuracy standards for Class C control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner

shall exceed 0.15 feet or 0.046 meters plus 150 ppm measured relative to the position(s) of the horizontal control points or property corners used and referenced on the survey.

Authority G.S. 89C-10; 89C-20.

21 NCAC 56 .1604 MAPPING REQUIREMENTS FOR BOUNDARY SURVEYS

(a) The size of a map shall be such that all details are legible on a copy.

(b) Any lines that are not actually surveyed shall be indicated on the map and a statement included revealing the source of information from which the line is derived.

(c) All surveys based on the North Carolina grid system shall contain a statement identifying the coordinate system referenced datum used.

(d) All plats (maps), unless marked as "Preliminary Plat - Not for recordation, conveyances, or sales" shall be sealed, ~~signed~~ signed, and dated by the Professional Land Surveyor and shall contain the following:

- (1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina grid ('NAD 83' and realization (date of adjustment of coordinate system) or 'NAD27'), or is referenced to old recorded deed or recorded plat bearings. If the north index is magnetic or referenced to old recorded deed or recorded plat bearings, the date and the source ~~(note if determined)~~ (note if not determined) shall be indicated.
- (2) The azimuth or courses and distances of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required in Rule .1603 of this Section.
- (3) All plat lines shall be horizontal or grid measurements. All lines shown on the plat shall be correctly plotted to the scale shown. Enlargements of portions of a plat ~~are acceptable in the interest of clarity, where shown as inserts, are not required to be to scale.~~ Where the North Carolina grid system is used, the combined grid factor shall be shown on the face of the plat. If grid distances are used, they shall be shown on the plat.
- (4) Where a boundary is formed by a curved line, the following data ~~must~~ shall be given: actual survey data, or ~~as~~ a series of subchords with bearings and distances around the curve. If standard curve data is used, the bearing and distance of the long chord (from point of curvature to point of tangency) ~~must~~ shall be shown on the face of the plat.
- (5) Where a subdivision of land is set out on the plat, all streets and lots shall be accurately

plotted with dimension lines indicating widths and all other information pertinent to retracing all lines in the field. This shall include bearings and distances ~~sufficient~~ to form a continuous closure of the entire perimeter.

- (6) ~~Where control corners have been established in compliance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the location and information as required in the referenced statute shall be shown on the plat. All Control corners, and all other corners that are marked by monument or natural object shall be so identified on all plats, and where practical, all corners of adjacent owners along the boundary lines of the subject tract that are marked by monument or natural object shall be shown.~~
- (7) The surveyor shall show one of the following ~~where they~~ (or note if could not be determined: determined):
 - (A) The names of adjacent land owners;
 - (B) The lot, block, parcel and subdivision designations; or
 - (C) Other legal ~~reference~~ reference ~~where applicable.~~
- (8) All visible and apparent rights-of-way, easements, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.
- (9) Tie lines as required and defined in Rule .1602(g) of this Section shall be accurately shown on the face of the plat, whether or not the plat is to be recorded.
- (10) A vicinity map (location map) shall appear on the face of the plat.
- (11) Each map shall contain:
 - (A) the property designation;
 - (B) the name of owner or prospective owner;
 - (C) the location (including township, county, and ~~state~~); State;
 - (D) the date or dates the survey was conducted;
 - (E) a scale of the drawing listed in words or figures;
 - (F) a bargraph;
 - (G) the title source; and
 - (H) a legend depicting nomenclature or symbols not otherwise labeled.
- (12) Any map not certified for recording under G.S. 47-30, and all reports of survey, shall contain this certificate signed by the Professional Land Surveyor in substantially the following form:

"I certify that this map was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, page _____ or other reference source _____); that the boundaries not surveyed are indicated as drawn from information in Book _____, page _____ or other reference source _____; that

the ratio of precision or positional accuracy is _____; and that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56. 1600)."
This _____ day of _____, 2_____.

Seal _____
Professional Land Surveyor

Authority G.S. 89C-10; 89C-16; 89C-20.

21 NCAC 56 .1607 GLOBAL POSITIONING SYSTEMS SURVEYS

(a) General. ~~Global Positioning Systems (GPS) are defined as the~~ Navigation Satellite Systems (GNSS) is the generic name of navigation and positioning systems with global coverage that ~~is comprise~~ comprised of ~~the Global Navigation Satellite System (GNSS), which includes GPS (Global Positioning System, United States, originally NAVSTAR, Navstar), GLONASS, GLONASS (Global Navigation Satellite System, Russia), GALILEO, Galileo (Europe), COMPASS, BDS (BeiDou Navigation Satellite System, China, also known as COMPASS), and any other satellite-based navigation and positioning systems. systems that provide global coverage.~~

(b) The Professional Land Surveyor in responsible charge of the GPS survey shall certify all prepared documents. When a map or document consists of more than one sheet, only one sheet must contain the certificate and all others must be certified. The certificate or metadata notes shall contain the following information:

- (1) Class of GPS survey as defined in the Standards of Practice (or list the sections);
- (2) Type of GPS field procedure, such as Static, Kinematic, Pseudo-Kinematic, Real-time Kinematic, Real-time Kinematic networks, and Online Position User Service;
- (3) Positional accuracy;
- (4) Dates of survey;
- (5) What datum and epoch coordinates or geographic positions are based on;
- (6) Designation of fixed-control stations and their positional data;
- (7) Geoid model used;
- (8) Combined grid factor(s); and
- (9) Units.

The certificate shall be substantially in the following form:

"I, _____, certify that this map was drawn under my supervision from an actual GPS survey made under my supervision and the following information was used to perform the survey:

- (1) Class of survey: _____
- (2) Positional accuracy: _____
- (3) Type of GPS field procedure: _____
- (4) Dates of survey: _____
- (5) Datum/Epoch: _____
- (6) Published/Fixed-control use: _____
- (7) Geoid model: _____
- (8) Combined grid factor(s): _____
- (9) Units: _____"

(c) GPS surveys ~~performed~~ to provide control networks shall be performed in such a manner that ~~it meets~~ a 95 percent confidence level of the positional accuracy of each point relative to the published positions of the control points used and shall meet the accuracy standards of a Class AA survey as set out in Rule .1603.

(d) GPS surveys performed to provide local horizontal or vertical Grid control on a parcel of land where the boundary or topography of that parcel will be shown relative to NC Grid horizontal or vertical datum shall be performed using techniques that will provide the standards of accuracy for the class of survey being performed while determining the horizontal or vertical positions of objects as set out in Rule .1603 or Rule .1606 as applicable.

(e) Fixed station(s) used for the project shall appear on the map, plat, or report. The minimum data shown for each fixed station shall be station name, horizontal position (northing and easting) or latitude, longitude, elevation (ellipsoid or orthometric), and datum and epoch.

Authority G.S. 89C-10; 89C-20.

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to amend the rules cited as 25 NCAC 01E .0311; and 01J .1306.

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

Proposed Effective Date: April 1, 2020

Public Hearing:

Date: January 7, 2020

Time: 2:00 p.m.

Location: Office of State Human Resources, Department of Administration, 116 Jones Street, Raleigh, NC 27603

SUBCHAPTER 01J - EMPLOYEE RELATIONS

Reason for Proposed Action:

25 NCAC 01E .0311 Separation: Added reference in 25 NCAC 01E .0210 as exception to unused sick leave not being paid out when an employee is separated from state service.

25 NCAC 01J .1306 Back Pay: Revise and clarify the language of 01J .1306 (3) and (11)(g) to require only that the employee provide a sworn statement verifying gross interim income and unemployment compensation, and remove the requirement that the employee provide verification of gross earnings.

Comments may be submitted to: Christine Ryan, Office of State Human Resources, 1331 Mail Service Center, Raleigh, NC 27699-1331; phone (984) 236-0824; email Christine.Ryan@nc.gov

Comment period ends: February 14, 2020

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

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

CHAPTER 01 - OFFICE OF STATE HUMAN RESOURCES

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .0300 - SICK LEAVE

25 NCAC 01E .0311 SEPARATION

(a) Unused sick leave is not paid when an employee separates from state service. service except as provided in 25 NCAC 01E .0210.

(b) If an employee separates and is overdrawn on leave, deductions shall be made from the final salary check.

Authority G.S. 126-4.

SECTION .1300 - EMPLOYEE APPEALS AND GRIEVANCE PROCESS

25 NCAC 01J .1306 BACK PAY

In grievances:

- (1) Back pay may be awarded in all cases in which back pay is warranted by law.
- (2) Full or partial back pay shall not be dependent upon whether reinstatement is ordered.
- (3) Gross back pay shall always be reduced by any gross interim earnings, except that interim earnings from employment that was approved secondary employment prior to dismissal shall not be set off against gross back pay. Any unemployment insurance benefits paid to the employee shall also be deducted from the gross back pay amount due. ~~due if the unemployment insurance benefits were not taxed when received by the employee.~~
- (4) All applicable State and federal withholding taxes, including social security taxes, shall be paid from the reduced gross back pay due. "Reduced gross back pay" is gross back pay due minus interim earnings and unemployment insurance benefits received.
- (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due.
- (6) Back pay shall include payment for all holidays that the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall not be a part of any back pay award.
- (7) Shift pay shall be a part of a back pay award if the grievant would have been entitled to the pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote.
- (8) Employees shall not be entitled to any discretionary pay that may or may not have been awarded to them in the absence of the interruption in employment, including merit increments.
- (9) Back pay shall include any across-the-board compensation that would have been included in the grievant's regular salary except for the interruption in employment. This includes one time "bonuses," and across-the-board legislative pay increases.
- (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment, back pay shall include the difference between the prorated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the

- grievant is reinstated prior to his or her longevity date, no adjustment for longevity pay shall be made in the back pay award. The prorated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.
- (11) Back pay shall be applied for on the Office of State Human Resources form, available on the Office of State Human Resources website, www.oshr.nc.gov. The back pay application form requires the following information:
- (a) agency or university name;
 - (b) division or department or school;
 - (c) employee name;
 - (d) employee social security number;
 - (e) position classification;
 - (f) position number; and
- (g) a notarized sworn statement verifying the following information for a total earnings calculation:
- ~~(i)~~ ~~gross earnings for back pay;~~
 - ~~(ii)(i)~~ ~~gross~~ interim income, not including secondary employment approved prior to adverse action; and
 - ~~(iii)(ii)~~ unemployment compensation. ~~compensation (untaxed).~~
- (12) One component of the decision to award back pay shall be evidence, if any, of the grievant's efforts to obtain available employment following separation from State government. The burden of proof that an employee mitigated his or her lost wages by seeking employment following separation shall be on the employee.

Authority G.S. 126-4(9); 126-34.01; 126 -34.02.

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

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

Rule-making Agency: *Wildlife Resources Commission*

Rule Citation: *15A NCAC 10A .1601*

Effective Date: *January 1, 2020*

Date Approved by the Rules Review Commission: *November 21, 2019*

Reason for Action: *The effective date of a recent act of the General Assembly or of the U.S. Congress. SL 2019-204, Effective August 20, 2019. The Commission was in the process of adopting permanent rules to establish and increase fees in rule per G.S. 113-270.1B(e) when HB 597 was introduced. This bill changed license structure, increased and established several fees, and modified G.S. 113-270.1B(e) by adding permits, stamps, and certifications to the CPI-U increase and giving the Commission the authority to round up on the CPI-U increase to the next whole dollar.*

**SUBCHAPTER 10A - WILDLIFE RESOURCES
COMMISSION**

**SECTION .1600 – WILDLIFE RESOURCES
COMMISSION FEES**

15A NCAC 10A .1601 LICENSE FEES.

(a) License fees established by the Commission in this Rule shall be subject to the requirements of G.S. 113-270.1B(e).

(b) The following fees shall apply to combination hunting and inland fishing licenses issued by the Commission, as set forth in G.S. 113-270.1C:

- (1) Resident Annual Combination Hunting and Inland Fishing License - \$35.00.
- (2) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License - \$11.00.
- (3) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License - \$11.00.

(c) The following fees shall apply to sportsman licenses issued by the Commission, as set forth in G.S. 113-270.1D:

- (1) Annual Sportsman License - \$53.00.
- (2) Infant Lifetime Sportsman License - \$212.00.
- (3) Youth Lifetime Sportsman License - \$371.00.
- (4) Adult Resident Lifetime Sportsman License - \$530.00.
- (5) Nonresident Lifetime Sportsman License - \$1,272.00.

- (6) Age 70 Resident Lifetime Sportsman License - \$16.00.
- (7) Resident Disabled Veteran Lifetime Sportsman License - \$106.00.
- (8) Resident Totally Disabled Lifetime Sportsman License - \$106.00.

(d) The following fees shall apply to hunting licenses issued by the Commission, as set forth in G.S. 113-270.2:

- (1) Resident State Hunting License - \$25.00.
- (2) Lifetime Resident Comprehensive Hunting License - \$265.00.
- (3) Controlled Hunting Preserve Hunting License - \$22.00.
- (4) Resident Annual Comprehensive Hunting License - \$39.00.
- (5) Nonresident State Hunting Licenses:
 - (A) Season License - \$100.00.
 - (B) Ten-Day License - \$80.00.
- (6) Falconry Hunting License - \$25.00.

(e) The following fees shall apply to special activity licenses issued by the Commission, as set forth in G.S. 113-270.3:

- (1) Resident Big Game Hunting License - \$14.00.
- (2) Nonresident Bear Hunting License - \$239.00.
- (3) Bear Management Stamp - \$11.00.
- (4) Nonresident Big Game Hunting License:
 - (A) Season License - \$100.00.
 - (B) Ten-Day License - \$80.00.
- (5) Bonus Antlerless Deer License - \$11.00.
- (6) Game Land License - \$16.00.
- (7) Falconry License - \$11.00.
- (8) Migratory Waterfowl Hunting License - \$14.00.
- (9) Resident American Alligator License - \$250.00.
- (10) Nonresident American Alligator License - \$500.00.
- (11) Resident Elk License - \$500.00.
- (12) Nonresident Elk License - \$1,000.00.

(f) The following fees shall apply to hunting and fishing guide licenses issued by the Commission, as set forth in G.S. 113-270.4:

- (1) Resident Hunting and Fishing Guide License - \$16.00.
- (2) Nonresident Hunting and Fishing Guide License - \$159.00.

(g) The following fees shall apply to trapping licenses issued by the Commission, as set forth in G.S. 113-270.5:

- (1) Resident State Trapping License - \$32.00.
- (2) Resident Lifetime Trapping License - \$300.00.
- (3) Nonresident State Trapping License - \$133.00.

(h) The following fees shall apply to hook-and-line licenses in inland and joint fishing waters issued by the Commission, as set forth in G.S. 113-271:

TEMPORARY RULES

- (1) Resident State Inland Fishing License - \$25.00.
- (2) Lifetime Resident Comprehensive Inland Fishing License - \$265.00.
- (3) Nonresident State Inland Fishing License - \$45.00.
- (4) Short-Term Inland Fishing License:
 - (A) Resident 10-day Inland Fishing License - \$9.00.
 - (B) Nonresident 10-day Inland Fishing License - \$23.00.
- (5) Age 70 Resident Lifetime Inland Fishing License - \$16.00.
- (6) Resident Disabled Veteran Lifetime Inland Fishing License - \$11.00.
- (7) Resident Totally Disabled Lifetime Inland Fishing License - \$11.00.
- (8) Special Landholder and Guest Fishing License - \$106.00.
- (9) Mountain Heritage Trout Waters 3-Day Fishing License - \$8.00.

(i) The following fees shall apply to special device licenses issued by the Commission, as set forth in G.S. 113-272.2:

- (1) Resident Special Device License - \$80.00.
- (2) Nonresident Special Device License - \$530.00.

(j) The fee for a collection license issued by the Commission, as set forth in G.S. 113-272.4 shall be \$10.00.

(k) The following fees shall apply to captivity licenses issued by the Commission, as set forth in G.S. 113-272.5:

- (1) Captivity License for Holding - \$50.00.
- (2) Captivity License for Rehabilitation - \$10.00.

(l) The following fees shall apply to dealer licenses issued by the Commission as set forth in G.S. 113-273:

- (1) Resident Fur-dealer License - \$64.00.
- (2) Nonresident Fur-dealer License - \$318.00.
- (3) Fur-dealer Station License - \$128.00.
- (4) Controlled Hunting Preserve Operator License - \$100.00.
- (5) Game Bird Propagation License - \$10.00.
- (6) Furbearer Propagation License - \$27.00.
- (7) Taxidermy License - \$50.00.
- (8) Taxidermy Cervid Certification - \$5.00.
- (9) Wildlife Control Agent License - \$50.00.
- (10) Alligator Control Agent Certification - \$25.00.

(m) The following fees shall apply to permits issued by the Commission, as set forth in G.S. 113-274:

- (1) Possession Permit - \$10.00.
- (2) Exportation or Importation Permit - \$10.00.
- (3) Trophy Wildlife Sale Permit - \$10.00.
- (4) Endangered Species Permit - \$10.00.
- (5) Field Trial Permit - \$10.00.

(n) Unified hunting and fishing licenses issued by the Commission, as set forth in G.S. 113-351:

- (1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License - \$69.00.
- (2) Annual Resident Unified Inland/Coastal Recreational Fishing License - ~~\$43.00~~, \$41.00.
- (3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses:

(A) Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$292.00.

(B) Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$477.00.

(C) Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$716.00.

(D) Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$1,643.00.

(E) Resident Age 70 Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$32.00.

(F) Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$117.00.

(G) Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$117.00.

(4) Resident Lifetime Unified Inland/Coastal Recreational Fishing License - \$477.00.

(o) The following fees shall apply to Coastal Recreational Fishing Licenses issued by the Commission, as set forth in G.S. 113-174.2:

(1) Annual Resident Coastal Recreational Fishing License - \$16.00.

(2) Annual Nonresident Coastal Recreational Fishing License - \$32.00.

(3) Ten-Day Resident Coastal Recreational Fishing License - \$6.00.

(4) Ten-Day Nonresident Coastal Recreational Fishing License - \$11.00.

(5) Infant Lifetime Coastal Recreational Fishing License - \$106.00.

(6) Youth Lifetime Coastal Recreational Fishing License - \$159.00.

(7) Resident Adult Lifetime Coastal Recreational Fishing License - \$265.00.

(8) Nonresident Adult Lifetime Coastal Recreational Fishing License - \$530.00.

(9) Resident Age 70 Lifetime Coastal Recreational Fishing License - \$16.00.

(10) Resident Disabled Veteran Coastal Recreational Fishing License - \$11.00.

(11) Resident Totally Disabled Coastal Recreational Fishing License - \$11.00.

*History Note: Authority G.S. 113-270.1B(e);
Temporary Adoption Eff. January 1, 2020.*

Rule-making Agency: *NC Wildlife Resources Commission*

Rule Citation: *15A NCAC 10L .0101*

Effective Date: *December 3, 2019*

Date Approved by the Rules Review Commission: *November 21, 2019*

Reason for Action: *The effective date of a recent act of the General Assembly or of the U.S. Congress. SL 2019-95, Effective June 25, 2018 – The section of Bill Rule is based on became effective for taxable years beginning on or after July 1, 2019. The Commission is required to adopt rules needed to administer the4 activities mandated for creating and maintaining land as a wildlife reserve for hunting, fishing, shooting, wildlife observation or wildlife activities. This rule lists qualifying habitat types and defines qualifying activities for land created and maintained to propagate a sustaining breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine, or recreation.*

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10L – WILDLIFE CONSERVATION LAND PROGRAM

15A NCAC 10L .0101 WILDLIFE RESERVE

(a) A wildlife reserve is a type of wildlife conservation land that meets the size and ownership requirements in G.S. 105-277.15 and where the conditions in Paragraphs (b) and (c) of this Rule are met and maintained by the owner under a written Wildlife Habitat Conservation Agreement with the NC Wildlife Resources Commission that is submitted by the landowner to the county where an application for reduced property tax assessment is requested.

(b) Qualifying habitat shall be planned for or exist as, and be maintained as one or more of the following natural community types:

- (1) aquatic and wetland communities communities:
 - (A) coldwater systems less than 20°C;
 - (B) coolwater systems greater than 20°C, less than 25°C;
 - (C) warmwater systems greater than 25°C;
 - (D) headwaters and small creek communities less than 40 square mile drainage area;
 - (E) large creeks and small river communities 40 to 200 square mile drainage area;
 - (F) medium river communities 200 to 3,800 square mile drainage area;
 - (G) large river communities greater than 3,800 square mile drainage area;
 - (H) stream swamp systems;
 - (I) natural lakes;
 - (J) reservoirs and impoundments;
 - (K) groundwater, springs, and subterranean water;
 - (L) estuarine aquatic communities;
 - (M) bogs and fens;
 - (N) estuarine wetland communities;

- (O) floodplains - blackwater, brownwater, or inland systems;
- (P) freshwater tidal wetlands;
- (Q) nonalluvial mineral wetlands;
- (R) pocosins;
- (S) upland pools and depressions;
- (T) upland seepages and spray cliffs; or
- (U) wet pine savannas.
- (2) upland communities communities:
 - (A) caves and mines;
 - (B) cove forests;
 - (C) dry coniferous woodlands including loblolly and slash pine timberlands;
 - (D) dry longleaf pine communities;
 - (E) grass and heath balds;
 - (F) high-elevation cliffs and rock outcrops;
 - (G) low elevation flatrocks, cliffs, and rock outcrops;
 - (H) mafic glades and barrens;
 - (I) maritime forests;
 - (J) maritime grasslands;
 - (K) mesic forests;
 - (L) oak and mixed hardwood and pine forests;
 - (M) montane oak forests;
 - (N) northern hardwood forests;
 - (O) sand, shell, and wrack shorelines;
 - (P) spruce - fir forests; or
 - (Q) herbaceous, shrub, and woody successional communities.

(c) At least three of the following activities shall be maintained on the land as agreed upon in the written Wildlife Habitat Conservation Agreement:

- (1) "supplemental food" is annual or perennial noninvasive plantings that provide a direct or indirect source of food or nutrition for wildlife resources.
- (2) "supplemental water" includes natural and artificial water features or sources that are created or installed for the benefit of wildlife resources.
- (3) "supplemental shelter" is natural or artificial structures that are created or installed to provide shelter from the weather, nesting sites, nesting sites, shelter from the weather, or escape cover from predators. Supplemental shelter may include the addition of natural or artificial structures into aquatic habitats.
- (4) "habitat control" is managing upland, wetland, riparian, or aquatic vegetation or physical aquatic habitat using practices to establish, restore, enhance, or maintain the natural community type(s) listed in Paragraph (b) of this Rule.
- (5) "erosion control" is the implementation of practices to prevent, reduce, or minimize soil erosion. Practices may include streambank and in-stream channel stabilization. Practices

- (6) established for erosion control shall not be known to harm wildlife or include invasive plant species.
- (7) "predator control" is a practice implemented to reduce the abundance of a species or suite of species that preys on any life stage of wildlife species for which the land is managed. Predator control includes removal of invasive animal species to manage or protect wildlife or wildlife habitats.
- (7) "census of animal population on the land" is conducting or participating in periodic surveys and inventories to determine the presence, number, composition, biological condition, or human use of wildlife.

*History Note: Authority G.S. 105-277.15;
Temporary Adoption Eff. December 3, 2019.*

Rule-making Agency: *Commission for Public Health*

Rule Citation: *15A NCAC 18A .2508 and .2543*

Effective Date: *December 3, 2019*

Date Approved by the Rules Review Commission: *November 21, 2019*

Reason for Action: *The effective date of a recent act of the General Assembly or of the U.S. Congress. SL 2019-88, effective July 8, 2019 directs the Commission for Public Health (CPH) to adopt rules governing the construction and operation of artificial swimming lagoons by December 1, 2019. Artificial swimming lagoon is defined as any body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant that results in a disinfectant residual in the swimming zone that is protective of the public health.*

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2500 - PUBLIC SWIMMING POOLS

15A NCAC 18A .2508 DEFINITIONS

The following definitions apply throughout this Section:

- (1) "Department" means North Carolina Department of Health and Human Services.
- (2) "Equipment replacement" means replacement of individual components of the hydraulic and disinfection systems such as pumps, filters, and automatic chemical feeders.
- (3) "Public swimming pool" means public swimming pool as defined in G.S. 130A-280. Public swimming pools are divided into five types:

- (a) "Swimming pools" are public swimming pools used primarily for swimming.
- (b) "Spas" are public swimming pools designed for recreational and therapeutic use that are not drained, cleaned, or refilled after each individual use. Spas may include units designed for hydrojet circulation, hot water, cold water mineral bath, air induction bubbles, or any combination thereof. Common terminology for spas includes "therapeutic pool," "hydrotherapy pool," "whirlpool," "hot spa," and "hot tub."
- (c) "Wading pools" are public swimming pools designed for use by children, including wading pools for toddlers and children's activity pools designed for casual water play ranging from splashing activity to the use of interactive water features placed in the pool.
- (d) ~~"Specialized water "~~"Water recreation attractions" are pools designed for special purposes that differentiate them from swimming pools, wading pools and spas. They include:
- (i) water slide plunge pools and run out lanes, which transfer the kinetic energy of the users' velocity through friction to the slide;
 - (ii) wave pools;
 - (iii) rapid rides;
 - (iv) lazy rivers;
 - (v) interactive play attractions that incorporate devices using sprayed, jetted, or other water sources contacting the users and that do not incorporate standing or captured water as part of the user activity ~~area; and area;~~
 - (vi) training pools deeper than a 24 inch deep wading pool and shallower than a 36 inch deep swimming ~~pool; pool;~~ and
 - (vii) artificial swimming lagoons as defined in G.S. 130A-280.
- (e) "Special purpose and therapy pools" are pools designed and used for therapeutic treatments or physical training and fitness outside of a licensed medical facility or practice of a licensed physical therapist. They include:

- (i) float tanks used for float therapy in a salt brine solution;
- (ii) swim spa training pools which use jetted water for stationary swimming against a water current;
- (iii) exercise therapy and treadmill pools equipped for water resistance exercise therapy; and
- (iv) scuba pools designed and used for training swimmers to use self-contained underwater breathing apparatus.

~~(3)~~(4) "Registered Design Professional" means an individual who is registered or licensed to practice engineering as defined by G.S. 89C or architecture as defined by G.S. 83A.

~~(4)~~(5) "Remodeled" means renovated in a manner requiring disruption of the majority of the pool shell or deck, changes in the pool profile, or redesign of the pool hydraulic system.

~~(5)~~(6) "Repair" means returning existing equipment to working order, replastering or repainting of the pool interior, replacement of tiles or coping and similar maintenance activities. This term includes replacement of pool decks where the Department has determined that no changes are needed to underlying pipes or other pool structures.

~~(6)~~(7) "Safety vacuum release system" means a system or device capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to suction outlet flow blockage.

~~(7)~~(8) "Splash zone" means the area of an interactive play attraction that sheds water to a surge tank or container to be recirculated.

~~(8)~~(9) "Unblockable drain" means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

(10) "Water feature" means any component within a public swimming pool that pumps, jets, or sprays water above the waterline.

15A NCAC 18A .2543 WATER RECREATION ATTRACTIONS

(a) Water recreation attractions including water slides, wave pools, rapid rides, lazy rivers, ~~artificial swimming lagoons,~~ and other similar features can deviate from the requirements of this Section with respect to pool profile, depth, freeboard, flow dynamics and surface skimming systems. The designing engineer or equipment manufacturer shall provide the Department with ~~information design plans and technical specifications to justify such deviation deviation, as necessary for the proper function of the attraction.~~ Water recreation attractions shall meet all other requirements of this Section.

(b) Water slide landing pools with a capacity of less than 60,000 gallons shall have a circulation and filtration system capable of turning over the entire pool capacity every two hours. Where automatic chemical controllers are used the turnover time shall be no more than three hours. Landing pool dimensions shall be consistent with the slide manufacturer's recommendation.

(c) When waterfalls are incorporated in water recreation attractions, they shall be constructed with no handholds or footholds to a height of four feet to discourage climbing.

(d) Interactive play attractions shall be constructed and operated in accordance with the ~~rules of this section~~ rules of this Section and shall comply with the following:

(1) The recirculation system shall contain a water capacity equal to at least three minutes of maximum flow of all feature pumps and filter circulation pumps combined and shall not be less than 1,000 gallons. Where the water capacity exceeds 10,000 gallons, the minimum capacity shall be based on the lesser of three minutes of maximum feature flow or 7.5 gallons per square foot of splash zone watershed drained to the surge container.

(2) Access shall be provided to the surge water container.

(3) A filter circulation system shall be provided and shall be separate from the feature pump system except that both systems can draw water from a common drain pipe if the drain and pipe are sized to handle the flow of all pumps without exceeding the flow velocities specified in Rule .2518 of this Section.

(4) The filter circulation system shall draw water from the surge container through a variable height surface skimmer and a bottom drain located no more than 6 inches from the bottom of the container. ~~Custom skimming systems that do not comply with ANSI/NSF Standard 50 shall be approved where the operational requirements make it necessary to deviate from that standard.~~

(5) The filter circulation system shall filter and return the entire water capacity in no more than 30 minutes and shall operate 24 hours a day.

(6) Automatic chemical controllers shall be provided to monitor and adjust the disinfectant residual and pH of the water contained in the system.

History Note: Authority G.S. 130A-280; 130A-282; S.L. 2019-88;

Eff. May 1, 1991;

Temporary Amendment Eff. June 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. April 1, 2013; May 1, 2010; March 1, 2004; April 1, 1999; January 1, 1996; October 1, 1994;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019;

Temporary Amendment Eff. December 3, 2019.

- (7) The disinfectant residual in interactive play attractions shall be maintained at a level of at least two parts per million of free chlorine. Chlorine feeders shall be capable of producing 12 parts per million of free chlorine in the filter circulation piping.
 - (8) Valves shall be provided to control water flow to the features in accordance with the manufacturers' specifications.
 - (9) Splash zones shall be sloped to drains sized and located to remove all feature water to the surge tank without water accumulating on the surface.
 - (10) Deck or walkway space is not required outside the splash zone.
 - (11) Dressing and sanitary facilities shall be provided.
 - (12) Interactive play features shall not be required to have a fence except the wading pool fence requirements shall apply to interactive play features located inside a swimming pool enclosure.
 - (13) The safety provisions of Rule .2530 of this Section shall not apply except a sign shall be posted prohibiting pets and glass containers.
 - (14) Interactive play attractions built prior to April 1, 2004, that do not comply with these design and construction requirements shall be permitted to operate as built if no water quality or safety violations occur.
- (e) Training pools shall meet the requirements for swimming pools with the following exceptions:
- (1) Training pools shall be equipped with a filter circulation system that filters and returns the entire pool capacity in no more than two hours.
 - (2) The free chlorine residual in training pools shall be maintained at no less than two parts per million.
- (f) Artificial swimming lagoons shall meet the requirements for public swimming pools except as specified in this Rule:
- (1) Pool shells shall not be required. Liners shall meet the requirements of Rule .2514 of this Section.
 - (2) Underwater components of the artificial swimming lagoon or float lines with openings greater than one-half inch shall not be allowed in swimming zones.
 - (3) All swimming zone float rope components shall be a color contrasting with the pool liner. The location of the float rope may vary from the requirements of Rule .2523(e) of this Section regarding breakpoint and slope. A contrasting color band shall not be required on the liner under the rope.
 - (4) Each swimming zone and water feature shall meet water quality standards as required in Rule .2535 of this Section. If the water quality of a swimming zone or water feature does not meet the requirements of Rule .2535 of this Section, the operator shall close the swimming zone or water feature and post a sign at the entrance of the swimming zone with legible letters of at least four inches (10 cm) in height stating "ATTENTION: THE SWIMMING ZONE IS CLOSED. SWIMMING IN THIS AREA IS NOT PERMITTED AT THIS TIME". The swimming zone or water feature shall remain closed until the water quality in the swimming zone or water feature complies with the requirements of Rule .2535 of this Section.
- (5) All non-swimming zones shall be maintained so the bottom of the lagoon is visible in all areas.
 - (6) A sign shall be posted at all entrances with legible letters of at least four inches (10 cm) in height stating "NOTICE – NO SWIMMING ALLOWED OUTSIDE OF DESIGNATED SWIMMING ZONES".
 - (7) Signage shall be provided indicating swimming zones.
 - (8) Depth markings and no diving markers shall be provided on decks in swimming zones as required in Rule .2523 of this Section. Signs shall be posted at all entrances to swimming zones with legible letters of at least four inches (10cm) in height stating "NO DIVING" and stating the maximum depth of the swimming zone in Arabic numerals and shall include the word "feet" or the symbol "ft" to indicate the unit of measure.
 - (9) Decks may vary from the minimum deck area requirements in Rule .2522 of this Section at zero entry areas located within swimming zones. Access to swimming zones shall be provided for emergency vehicles and personnel. No decks shall be required in non-swimming zones.
 - (10) Swimming zones shall meet all safety provisions as set out in Rule .2530 of this Section. Where swimming zones are separated by more than 75 feet, each swimming zone shall separately meet all safety provisions. Non-swimming zones are exempt from the requirements in Rule .2530 of this Section.
 - (11) A water treatment system that does not meet the requirements of Rules .2518 and .2519 of this Section shall be approved by the Environmental Health Section of the Department's Division of Public Health when the treatment system performs in a manner equal or superior to the systems described in Rules .2518 and .2519 of this Section in terms of water clarification, disinfection, and removal of debris, and results in a measurable disinfectant level residual and pH level as required in Subparagraph (f)(4) of this Rule.
 - (12) The requirements of Rule .2526(e) – (h) of this Section shall not apply. Sanitary facility requirements shall comply with the 2018 North Carolina State Building Code: Plumbing Code.

- which is incorporated by reference, including ~~any reference with subsequent changes or amendments or editions~~ and available free of charge at: <https://codes.iccsafe.org/content/NCPC2018>.
- (13) Bacteriological samples (~~enterococcus~~) shall be collected by the operator in non-swimming zones and tested weekly. One sample shall be collected for every 250 feet of shoreline, with no more than 300 feet and no less than 25 feet between any two sampling locations. The samples shall be collected at least one foot below the surface, in at least three feet of water. The samples shall be analyzed by a laboratory accredited by the National Environmental Laboratory Accreditation Program. The test results shall be maintained as part of the records required in Rule .2535(11) of this Section.
- (14) When the result of any test required by Subparagraph (f)(13) of this Rule exceeds the standards in Rule .3402(a) of this Subchapter, the operator shall:
- (A) notify the permitting agency and resample the water within 24 hours of receipt of the result from the laboratory; and
- (B) close all non-swimming zones and post a sign at all non-swimming zone entrances with legible letters of at least four inches (10 cm) in height stating "ATTENTION: ALL NON-SWIMMING ZONES ARE CLOSED. RECREATIONAL ACTIVITIES IN THIS AREA ARE NOT PERMITTED AT THIS TIME". This sign shall remain posted until resampling determines that bacterial levels do not exceed the standards in Rule .3402(a) of this Subchapter.
- (15) Non-swimming zones shall not be required to comply with the lighting requirements of Rule .2524 of this Section. When night swimming is allowed, the operator shall provide lighting in swimming zones as required for public swimming pools.

History Note: Authority G.S. 130A-280; 130A-282; S.L. 2019-88; Eff. April 1, 1999; Amended Eff. March 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20, 2019; Temporary Amendment Eff. December 3, 2019.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISISONS

CHAPTER 58 - REAL ESTATE COMMISSION

Rule-making Agency: *Real Estate Commission*

Rule Citation: *21 NCAC 58A .0305*

Effective Date: *December 3, 2019*

Date Approved by the Rules Review Commission: *November 21, 2019*

Reason for Action: *The proposed adoption of 21 NCAC 58A .0305 would establish a process for individuals who wish to file a petition for a predetermination of whether the individual's criminal history will likely disqualify them from obtaining a real estate license. 21 NCAC 58A .0305 is in response to the recently approved S.L. 2019-91, specifically Section 4, that is effective October 1, 2019.*

SUBCHAPTER 58A – REAL ESTATE BROKERS

SECTION .0300 – APPLICATION FOR LICENSE

21 NCAC 58A .0305 PETITION FOR PREDETERMINATION

- (a) An individual who wishes to file a petition for a predetermination of whether the individual's criminal history will likely disqualify the individual from obtaining a real estate license shall submit a petition on the Commission's website.
- (b) The petition shall include the petitioner's:
- (1) legal name;
 - (2) mailing, physical, and email addresses;
 - (3) social security number;
 - (4) date of birth;
 - (5) telephone number;
 - (6) places of residence for the past seven years;
 - (7) employment history during the last three years or since the date of the crime was committed; petitioner's last criminal conviction, whichever is greater;
 - (8) criminal record report prepared by the Commission's approved independent vendor pursuant to G.S. 93B-8.1 no more than 60 days prior to the date of petition;
 - (9) written statement describing the circumstances surrounding the commission of the crime(s);
 - (10) written statement of any rehabilitation efforts, if applicable;
 - (11) rehabilitative drug or alcohol treatments, if applicable;
 - (12) Certificate of Relief granted pursuant to G.S. 15A-173.2, if applicable;
 - (13) affidavits or other written documents, including character ~~references, that the petitioner intends to submit for review;~~ references;
 - (14) ~~certification;~~ certification that the information is true and accurate; and
 - (15) signature.
- (c) The fee for a petition for predetermination shall be forty-five dollars (\$45.00).

*History Note: Authority G.S. 93A-4; 93B-8.1;
Temporary Adoption Eff. December 3, 2019.*

This Section contains information for the meeting of the Rules Review Commission November 21, 2019 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jeff Hyde (Chair)
Robert A. Bryan, Jr.
Margaret Currin
Brian P. LiVecchi
W. Tommy Tucker, Sr.

Appointed by House

Jeanette Doran (1st Vice Chair)
Andrew P. Atkins
Anna Baird Choi (2nd Vice Chair)
Paul Powell
Garth Dunklin

COMMISSION COUNSEL

Amber Cronk May (919) 431-3074
Amanda Reeder (919) 431-3079
Ashley Snyder (919) 431-3081

RULES REVIEW COMMISSION MEETING DATES

December 19, 2019 January 16, 2020
February 20, 2020 March 19, 2020

**RULES REVIEW COMMISSION MEETING
MINUTES****November 21, 2019**

The Rules Review Commission met on Thursday, November 21, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were Andrew Atkins, Anna Baird Choi, Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Brian LiVecchi, Paul Powell, and Tommy Tucker.

Staff members present were Commission Counsel Amber Cronk May, Ashley Snyder, and Amanda Reeder; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 9:02 a.m. with Vice-Chair Doran presiding.

Vice-Chair Doran read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Vice-Chair Doran asked for any discussion, comments, or corrections concerning the minutes of the October 17, 2019 meeting. There were none and the minutes were approved as distributed.

The Vice-Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Temporary Rules for the State Board of Education.

FOLLOW UP MATTERS**Department of Administration**

01 NCAC 05B .1520 was unanimously approved.

Board of Elections

The agency is addressing the objection for 08 NCAC 10B .0103. No action was required by the Commission.

Commission for the Blind

The agency is addressing the objections for 10A NCAC 63C .0203, .0204, .0403, and .0601. No action was required by the Commission.

Department of Justice

12 NCAC 02I .0306 was withdrawn at the request of the agency. No action was required by the Commission.

Private Protective Services Board

14B NCAC 16 .0804 was unanimously approved.

Environmental Management Commission

The agency is addressing the technical change requests from the October meeting for 15A NCAC 02B .0229, .0232, .0234, .0235, .0236, .0237, .0238, .0239, .0240, .0255, .0256, .0257, .0258, .0701, and .0730 - No action was required by the Commission.

Environmental Management Commission

15A NCAC 02B .0402, .0403, .0404, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0508, .0511; 02H .0101, .0102, .0103, .0105, .0106, .0107, .0108, .0109, .0111, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0120, .0121, .0124, .0125, .0127, .0138, .0139, .0140, .0141, .0142, .0143, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .1201, .1202, .1203, .1204, .1205, and .1206 - The agency is addressing the objections from the July meeting. The Commission renewed its objection.

Commissioner Bryan joined the meeting during the discussion of the rules from the Environmental Management Commission.

Board of Dietetics/Nutrition

21 NCAC 17 .0101 and .0303 were unanimously approved.

Commissioner LiVecchi joined the meeting during the discussion of the rules from the Board of Dietetics/Nutrition.

Board of Funeral Service

21 NCAC 34A .0201 was unanimously approved.

21 NCAC 34B .0310; 34C .0305; 34D .0105, .0203, and .0303 were withdrawn at the request of the agency. No action was required by the Commission.

Prior to the review of the rules from the Board of Funeral Service, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represented the Board at the time the rules were submitted.

State Board of Opticians

21 NCAC 40 .0104, .0109, .0209, .0314, .0319, 0323, and .0325 were unanimously approved.

21 NCAC 40 .0321 - The agency is addressing the objections and requests for technical changes from the September meeting.

Prior to the review of the rules from the State Board of Opticians, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm represents the Board and assists the Board with rulemaking.

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

All rules were unanimously approved.

Department of Health and Human Services

All rules were unanimously approved.

Sheriffs' Education and Training Standards Commission

All rules were unanimously approved.

Alcoholic Beverage Control Commission

All rules were unanimously approved with the following exceptions:

The Commission extended the period of review for 14B NCAC 15A .1406 in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency additional time to prepare a response to a staff opinion issued on the rule.

14B NCAC 15A .1101 was withdrawn at the request of the agency. No action was required by the Commission.

Real Estate Commission

All rules were unanimously approved.

Prior to the review of the rules from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rules because he practices before the Commission.

Building Code Council

All rules were unanimously approved with the following exceptions:

Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; and Energy Conservation Code R406.2. – The Commission voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget and Management to determine if the above-referenced rules have a substantial economic impact and therefore require a fiscal note. A response to this request pursuant to G.S. 150B-21.9 will assist the Commission in determining whether the agency adopted the rules in accordance with the Administrative Procedure Act.

These Rules will remain under the Commission's review until after review by OSBM and subsequent action by the agency pursuant to G.S. 150B-21.12.

LOG OF FILINGS (TEMPORARY RULES)**Wildlife Resources Commission**

15A NCAC 10A .1601 and 10L .0101 were approved with Commissioner Tucker voting against.

Michael Smallwood, with the agency, addressed the Commission.

Commission for Public Health

15A NCAC 18A .2508 and .2543 were unanimously approved.

State Board of Education

16 NCAC 06C .0326, .0329, .0334, .0335, .0336, .0337, .0338, .0339, .0340, .0341, .0342, .0343, .0344, .0345, and .0346.

The Commission found that the statements of the findings of need as provided in the Temporary Findings of Need Forms did not meet the criteria set forth in G.S. 150B-21.1(a) and also that the rules did not meet the standards set forth in G.S. 150B-21.9.

The Temporary Findings of Need Forms for these Rules indicate that the agency engaged in temporary rulemaking as a result of a recent act of the General Assembly, specifically S.L. 2019-149. Box 7 of the Forms state that "the General Assembly directed the State Board of Education to adopt by October 1, 2019, a rule required by N.C. Gen. Stat. 115C-269.45(c1)." Box 5 of the Forms indicate that the State Board of Education did not adopt these Rules until November 7, 2019. The Commission did not approve these Rules because the adoption date of these Rules was after October 1, 2019 and therefore, the State Board of Education lacked the statutory authority for temporary rule making.

In addition, the Commission objected to all rules except for .0340, which specifically addresses the small group exception referenced by Section 2 of S.L. 2019-149, for lack of statutory authority. The Commission found that the remaining rules are beyond the limited and narrow scope of the mandate provided in the Section 2 of S.L. 2019-149 as referenced on the Findings of Need Forms.

The Commission also objected to 16 NCAC 06C .0339 and .0342 through .0346 for clarity. The Commission determined that it was unclear whether these Rules create sanctions in addition to those provided in G.S. 115C-269.45(a)(1) through (3) or whether the intent is to address the "performance measures" as referenced by the same.

Finally, the Commission objected to 16 NCAC 06C .0346 for lack of statutory authority, finding that this Rule as filed directly contradicts G.S. 115C-269.45. Specifically, Paragraph (b) of this Rule allows for “an EPP on revoked status” to “continue to admit students...”; however, G.S. 115C-269.45(b)(2) states “upon assignment of revoked status of EPP approval, the EPP shall not admit new students.” Further, Paragraph (c) of this Rule provides an EPP the ability to recommend students for licensure for two years once it is placed on revoked status; however, G.S. 115C-269.45(a)(3) states that “an EPP shall be assigned revoked status and its approval to recommend students for educator licensure revoked...” when specific requirements are met.

Commissioner LiVecchi voted against the objections.

Eric Snider, the rulemaking coordinator with the agency, addressed the Commission.

Real Estate Commission

21 NCAC 58A .0305 was unanimously approved.

Prior to the review of the rule from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rule because he practices before the Commission.

EXISTING RULES REVIEW

Department of Revenue

17 NCAC 07 – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than December 31, 2023 pursuant to G.S. 150B-21.3A(d)(2).

COMMISSION BUSINESS

The Commission reviewed the 2020 RRC meeting dates.

The meeting adjourned at 10:37 a.m.

The next regularly scheduled meeting of the Commission is Thursday, December 19, 2019 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeff Hyde, Chair

November 21, 2019

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
Susan Broadwell	NC Dept of Revenue
Virginia Niehaus	IVE DHHS, PPH
Hannah Jennigan	NCDOT
Heidi Martin	SBE
Janice Davidson	NC DOR
ANDREW SIOBERG	SBE
KIM EVANS	SBE
Diane Konojima	DOJ- Sheriff's Stds.
Cheryl Osley	DHHS
M. Smallwood	NC WRC
Eric Snider	State Board of Ed.
Sue Hodgins	State Board of Opticians
Larry Mitchell	NCDHHS
Rob Patrick	NCREC
Meissa Wotto	NCREC
Shannon Gerger	NC DOA
Martha Turner-Orest	NCPA
WALKER REAGAN	ABC Commission
Marian Street	NC DWCR
John Barkley	DOJ for CPD, DHHS
Joel Johnson	DHHS

RULES REVIEW COMMISSION

November 21, 2019

Rules Review Commission
Meeting
Please Print Legibly

[illegible]



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

November 21, 2019

Janice Davidson, Rulemaking Coordinator
Department of Revenue, Sales and Use Tax Division
PO Box 871
Raleigh, NC 27602

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 17 NCAC 07

Dear Ms. Davidson:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the November 21, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than December 31, 2023.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
March 21, 2019
APO Review: May 25, 2019
Total: 96**

Revenue, Department of

Rule	Determination
17 <u>NCAC 07B .0104</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0106</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0108</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0112</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0115</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0117</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0121</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0801</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0901</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0902</u>	Necessary with substantive public interest
17 <u>NCAC 07B .0904</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1101</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1123</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1202</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1301</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1302</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1303</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1305</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1404</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1601</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1602</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1605</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1701</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1702</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1704</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1705</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1801</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1905</u>	Necessary with substantive public interest
17 <u>NCAC 07B .1907</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2001</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2002</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2101</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2102</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2105</u>	Necessary with substantive public interest
17 <u>NCAC 07B .2201</u>	Necessary with substantive public interest

17	<u>NCAC 07B .2204</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2205</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2209</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2210</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2212</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2213</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2301</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2401</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2603</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2604</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2605</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2701</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2702</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2801</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2802</u>	Necessary with substantive public interest
17	<u>NCAC 07B .2901</u>	Necessary with substantive public interest
17	<u>NCAC 07B .3004</u>	Necessary with substantive public interest
17	<u>NCAC 07B .3009</u>	Necessary with substantive public interest
17	<u>NCAC 07B .3101</u>	Necessary with substantive public interest
17	<u>NCAC 07B .3106</u>	Necessary with substantive public interest
17	<u>NCAC 07B .3107</u>	Necessary with substantive public interest
17	<u>NCAC 07B .3301</u>	Necessary with substantive public interest
17	<u>NCAC 07B .3302</u>	Necessary with substantive public interest
17	<u>NCAC 07B .3801</u>	Necessary with substantive public interest
17	<u>NCAC 07B .3804</u>	Necessary with substantive public interest
17	<u>NCAC 07B .3907</u>	Necessary with substantive public interest
17	<u>NCAC 07B .3910</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4102</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4105</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4106</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4109</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4201</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4202</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4203</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4204</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4205</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4206</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4210</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4301</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4302</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4401</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4403</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4404</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4406</u>	Necessary with substantive public interest

17	<u>NCAC 07B .4411</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4413</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4415</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4503</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4510</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4609</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4614</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4701</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4707</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4708</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4716</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4801</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4802</u>	Necessary with substantive public interest
17	<u>NCAC 07B .4803</u>	Necessary with substantive public interest
17	<u>NCAC 07B .5001</u>	Necessary with substantive public interest
17	<u>NCAC 07B .5002</u>	Necessary with substantive public interest
17	<u>NCAC 07B .5004</u>	Necessary with substantive public interest

LIST OF APPROVED PERMANENT RULES

November 21, 2019 Meeting

ADMINISTRATION, DEPARTMENT OF

<u>Debarment</u>	01 NCAC 05B .1520
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NATURAL AND CULTURAL RESOURCES, DEPARTMENT OF

<u>Permissible Activities</u>	07 NCAC 15 .0104
<u>Permission for Use</u>	07 NCAC 15 .0105
<u>Lethal Instruments</u>	07 NCAC 15 .0401
<u>Pets</u>	07 NCAC 15 .0504
<u>Photographs</u>	07 NCAC 15 .0603

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

<u>Nondiscrimination Procedures</u>	10A NCAC 01E .0101
<u>Complaints</u>	10A NCAC 01E .0102
<u>Investigation</u>	10A NCAC 01E .0103
<u>Written Determination</u>	10A NCAC 01E .0104
<u>Reconsideration</u>	10A NCAC 01E .0105
<u>Records</u>	10A NCAC 01E .0106
<u>Other Remedies</u>	10A NCAC 01E .0107
<u>Construction</u>	10A NCAC 01E .0108
<u>Applicability and Scope</u>	10A NCAC 01E .0201
<u>Complaints</u>	10A NCAC 01E .0202
<u>Investigation</u>	10A NCAC 01E .0203
<u>Written Determination</u>	10A NCAC 01E .0204
<u>Reconsideration</u>	10A NCAC 01E .0205
<u>Records</u>	10A NCAC 01E .0206
<u>Other Remedies</u>	10A NCAC 01E .0207
<u>Construction</u>	10A NCAC 01E .0208
<u>Applicability and Scope</u>	10A NCAC 01E .0301
<u>Complaints</u>	10A NCAC 01E .0302
<u>Investigation</u>	10A NCAC 01E .0303
<u>Resolution of Matters</u>	10A NCAC 01E .0304
<u>Reconsideration</u>	10A NCAC 01E .0305

SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Certification and Training for School Resources Officers</u>	12 NCAC 10B .0510
<u>Minimum Training Requirements</u>	12 NCAC 10B .2005

ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Maintenance of Working Capital</u>	14B NCAC 15A .0902
<u>Deposits</u>	14B NCAC 15A .0903
<u>Daily Deposits</u>	14B NCAC 15A .0905
<u>Annual Independent Financial Audit</u>	14B NCAC 15A .0907
<u>Employment Age Requirement</u>	14B NCAC 15A .1003
<u>Personnel Manual</u>	14B NCAC 15A .1006
<u>Local Rules</u>	14B NCAC 15A .1102
<u>Cost of Audit</u>	14B NCAC 15A .1103

<u>Approval of New Stores</u>	14B NCAC 15A .1203
<u>New Stores Prohibited in Certain Areas</u>	14B NCAC 15A .1204
<u>Storage: Deliveries: Security</u>	14B NCAC 15A .1301
<u>Commercial Transportation: Permit and Bond Required</u>	14B NCAC 15A .1302
<u>Direct Shipments</u>	14B NCAC 15A .1304
<u>Commemorative Bottles</u>	14B NCAC 15A .1404
<u>Record Required</u>	14B NCAC 15A .1405

PRIVATE PROTECTIVE SERVICES BOARD

<u>Investigation/Armed Security Guard Firearm Registration P...</u>	14B NCAC 16 .0804
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DIETETICS/NUTRITION, BOARD OF

<u>Definitions and Acronyms</u>	21 NCAC 17 .0101
<u>Supervision</u>	21 NCAC 17 .0303

FUNERAL SERVICE, BOARD OF

<u>Fees and Other Payments</u>	21 NCAC 34A .0201
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OPTICIANS, STATE BOARD OF

<u>Information and Application</u>	21 NCAC 40 .0104
<u>Election of Members</u>	21 NCAC 40 .0109
<u>Display of Registration and License</u>	21 NCAC 40 .0209
<u>Apprenticeship and Internship Requirements: Registration</u>	21 NCAC 40 .0314
<u>Applicants from Other States</u>	21 NCAC 40 .0319
<u>Affidavit of Applicant</u>	21 NCAC 40 .0323
<u>Licensure for Military-Trained Applicant; Licensure for M...</u>	21 NCAC 40 .0325

REAL ESTATE COMMISSION

<u>Attendance and Participation Requirements</u>	21 NCAC 58A .1705
<u>Broker-in-Charge Course</u>	21 NCAC 58A .1712

BUILDING CODE COUNCIL

<u>2018 NC Building code</u>	Table 602
<u>2018 NC Building Code/Membrane Penetrations</u>	714.4.2
<u>2018 NC Residential Code/Group R</u>	903.2.8
<u>2018 NC Residential Code/Foundation Anchorage</u>	R403.1.6
<u>2018 NC Residential Code/Support by Steel Angle</u>	R703.8.2.1
<u>2018 NC Residential Code/Freezing</u>	P2603.5
<u>2018 NC Residential Code/Tracer Wire</u>	P2604.1.4
<u>2018 NC Plumbing Code/Freezing</u>	305.4
<u>2018 NC Plumbing Code/Tracer Wire</u>	306.2.4
<u>2018 NC Fire Prevention Code/Suite/Room Identification</u>	505.1.1
<u>2018 NC Fire Prevention Code/Group R</u>	903.2.8
<u>2017 NC Electrical Code/Other than Dwelling Units</u>	210.8(B)
<u>2017 NC Electrical Code/Arc-Fault Interrupters</u>	406.4(D)(4)
<u>2017 NC Electrical Code/Definitions</u>	695.2
<u>2017 NC Electrical Code/Power Source(s) for Electric Moto...</u>	695.3

LIST OF APPROVED TEMPORARY RULES
November 21, 2019 Meeting

WILDLIFE RESOURCES COMMISSION

License Fees 15A NCAC 10A .1601

Wildlife Reserve 15A NCAC 10L .0101

PUBLIC HEALTH, COMMISSION FOR

Definitions 15A NCAC 18A .2508

Water Recreation Attractions 15A NCAC 18A .2543

REAL ESTATE COMMISSION

Petition for Predetermination 21 NCAC 58A .0305

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
Selina Malherbe
J. Randolph Ward
David Sutton

Don Overby
J. Randall May
David Sutton
Tenisha Jacobs

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>Published</u>			
19	DHR	02708	10/9/2019	Deborah Washington	v.	North Carolina Division of Health Benefits Glana Surles	Malherbe
19	DHR	03473	10/15/2019	Karla Collard	v.	NC Department of Health and Human Services, Division of Social Services	Jacobs
19	DHR	04712	10/17/2019	Ali Alsaras owner Saras Inc D/B/A University Market	v.	NC Department of Health and Human Services	Ward
19	DOJ	01687	10/16/2019	Derrick Demond Lee	v.	NC Sheriffs Education and Training Standards Commission	Overby
19	DOJ	02981	10/30/2019	Shawn Brian Morris	v.	NC Sheriffs Education and Training Standards Commission	Sutton
19	DOJ	03749	10/15/2019	Shelly Lashawn Morales	v.	NC Private Protective Services Board	Bawtinhimer
19	DOJ	04702	10/15/2019	Douglas Earl Martin	v.	NC Private Protective Services Board	Bawtinhimer
18	DST	07704	10/28/2019	Ritchie Darnell Longworth	v.	State Treasurer of North Carolina Retirement Systems Division	May
				<u>Unpublished</u>			
19	ABC	04313	10/22/2019	NC Alcoholic Beverage Control Commission	v.	Jensen Restaurant Ventures LLC T/A Edenton Oyster Bar	Overby
19	ABC	04553	10/16/2019	NC Alcoholic Beverage Control Commission	v.	Wachdi R Khamis Awad T/A Brothers in the Hood	Overby
19	CSE	02932	10/22/2019	Jeremiah Hightower	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward

CONTESTED CASE DECISIONS

19	CSE	04087	10/1/2019	Joe Roswech	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Jacobs
19	DHR	02931	10/15/2019	The Moses H Cone Memorial Hospital and MC Kernersville LLC d/b/a Triad Surgery Center	v.	North Carolina Department of Health and Human Services, Division of Health Service Regulation, Health Care Planning & Certificate of Need	May
19	DHR	02954	10/18/2019	Marie Blamoh Teah	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Malherbe
19	DHR	04140	10/9/2019	Ilene Knox	v.	NC Department of Health and Human Services, Division of Health Service Regulation	May
19	DHR	04634	10/28/2019	Kasey Ross	v.	Department of Health and Human Services, Division of Health Service Regulation Adult Care Licensure Section	May
19	DHR	04665	10/28/2019	Valerie A Hernandez	v.	NC Department of Health and Human Services, Division of Health Service Regulation	May
19	DHR	04718	10/24/2019	NOA Human Service(Nena Ikwechegh)	v.	NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification	May
19	DHR	05155	10/16/2019	Cindy Locklear	v.	Health Care Registry	Overby
19	DHR	05427	10/25/2019	Antoinette H Rochelle	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Lassiter
17	DOJ	04844	10/8/2019	S&M Brands, Inc	v.	North Carolina Department of Justice	Overby
19	DOJ	04336	10/8/2019	Anthony Clyde Fleener	v.	North Carolina Alarm Systems Licensing Board	Bawtinhimer
19	DOJ	04337	10/7/2019; 10/8/2019	Peggy Sue Dove	v.	NC Private Protective Services Board	Bawtinhimer
19	DOJ	04700	10/7/2019; 10/8/2019	Dwight Denorris Cox	v.	NC Private Protective Services Board	Bawtinhimer
19	DOJ	04701	10/8/2020	Michael Gray Parsons	v.	NC Private Protective Services Board	Bawtinhimer
19	EDC	03665	10/28/2019	Robert Marshall Hooks	v.	NC Departmetn of Public Instruction	May
19	EHR	04370	10/28/2019	DSF of NC Inc Javed Warriach	v.	NCDEQ	May
19	INS	04662	10/22/2019	Phyllis Charlene Dority	v.	NC Health Plan for Teachers and State Employees	Bawtinhimer
19	INS	04908	10/25/2019	Carolyn Lasater	v.	State Health Plan of NC Retirement Division	Malherbe
19	OSP	03050	10/4/2019	Andre Tyron Caldwell	v.	North Carolina Cental University	Jacobs

CONTESTED CASE DECISIONS

19	OSP	03990	10/3/2019; 10/4/2019	Kelly Butler Inman	v.	County of Alamance Alamance County Dept of Social Services	Ward
19	OSP	04217	10/9/2019	Susan Bunch	v.	Mount Airy School Board of Education	May