

NORTH CAROLINA REGISTER

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February 3, 2020

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

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NORTH CAROLINA REGISTER
Publication Schedule for January 2020 – December 2020

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
34:13	01/02/20	12/06/19	01/17/20	03/02/20	03/20/20	04/16/20	05/01/20	09/28/20
34:14	01/15/20	12/19/19	01/30/20	03/16/20	03/20/20	04/16/20	05/01/20	10/11/20
34:15	02/03/20	01/10/20	02/18/20	04/03/20	04/20/20	05/21/20	06/01/20	10/30/20
34:16	02/17/20	01/27/20	03/03/20	04/17/20	04/20/20	05/21/20	06/01/20	11/13/20
34:17	03/02/20	02/10/20	03/17/20	05/01/20	05/20/20	06/18/20	07/01/20	11/27/20
34:18	03/16/20	02/24/20	03/31/20	05/15/20	05/20/20	06/18/20	07/01/20	12/11/20
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34:22	05/15/20	04/24/20	05/30/20	07/14/20	07/20/20	08/20/20	09/01/20	02/09/21
34:23	06/01/20	05/08/20	06/16/20	07/31/20	08/20/20	09/17/20	10/01/20	02/26/21
34:24	06/15/20	05/22/20	06/30/20	08/14/20	08/20/20	09/17/20	10/01/20	03/12/21
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35:02	07/15/20	06/23/20	07/30/20	09/14/20	09/21/20	10/15/20	11/01/20	04/11/21
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35:06	09/15/20	08/24/20	09/30/20	11/16/20	11/20/20	12/17/20	01/01/21	06/12/21
35:07	10/01/20	09/10/20	10/16/20	11/30/20	12/21/20	01/21/21	02/01/21	06/28/21
35:08	10/15/20	09/24/20	10/30/20	12/14/20	12/21/20	01/21/21	02/01/21	07/12/21
35:09	11/02/20	10/12/20	11/17/20	01/04/21	01/20/21	02/18/21	03/01/21	07/30/21
35:10	11/16/20	10/23/20	12/01/20	01/15/21	01/20/21	02/18/21	03/01/21	08/13/21
35:11	12/01/20	11/05/20	12/16/20	02/01/21	02/22/21	03/18/21	04/01/21	08/28/21
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EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State 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.

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 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rules cited as 14B NCAC 17 .0201, .0204, and .0301.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdps.gov/dps-services/permits-licenses/alarm-system-licensing-board>

Proposed Effective Date: June 1, 2020

Public Hearing:

Date: February 18, 2020

Time: 2:00 p.m.

Location: Conference Room, ASLB Office, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609

Reason for Proposed Action:

14B NCAC 17 .0201 - The amendment will allow applicants to submit required fingerprints via an online fingerprint scanning system.

14B NCAC 17 .0204 - The amendment addresses the process for a license holder to reinstate an expired license.

14B NCAC 17 .0301 - The amendment will allow applicants to submit required fingerprints via an online fingerprint scanning system.

Comments may be submitted to: Paul Sherwin, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609

Comment period ends: April 3, 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 17 - ALARM SYSTEMS LICENSING BOARD

SECTION .0200 – PROVISIONS FOR LICENSEES

14B NCAC 17 .0201 APPLICATION FOR LICENSE

(a) Each applicant for a license shall submit an online application on the website provided by the Board. When this online application is submitted, it shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigation or one set of classifiable fingerprints on an F.B.I. fingerprint card provided by the Board and mailed separately to the Board's office;
- (2) one head and shoulders digital photograph of the applicant in JPG format of sufficient quality for identification, taken within six months prior to the online submission, and uploaded with the application submission;
- (3) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceeding 60 months; and
- (4) the applicant's application fee, along with a four dollar (\$4.00) convenience fee charged by the third-party vendor and credit card transaction fee charged by the applicant's credit card provider and collected online.

(b) Each applicant shall upload evidence of high school graduation either by diploma, G.E.D. certificate, or other equivalent documentation.

(c) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee, the Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74D and the administrative rules in this Chapter during the personal meeting. The applicant shall sign a form provided by the Board stating that the applicant has reviewed the information with the Board's representative and that the applicant understands G.S. 74D and the administrative rules in this Chapter.

(d) Each applicant for a branch office license shall submit an online application on the website provided by the Board. This ~~form~~ online application shall be accompanied by the branch office application fee.

Authority G.S. 74D-2; 74D-2.1; 74D-3; 74D-5; 74D-7; 74D-8.

**14B NCAC 17 .0204 RENEWAL OR
REINSTATEMENT OF LICENSE**

(a) Each applicant for a license renewal shall submit an online renewal application on the website provided by the Board. This online application shall be submitted not less than 30 days prior to expiration of the applicant's current license and shall be accompanied by:

- (1) statements of the result of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1 for any state where the applicant has resided within the preceeding 24 months;
- (2) the applicant's renewal fee as set forth in .0203(a)(2); and
- (3) proof of liability insurance pursuant to G.S. 74D-9.

(b) Applications for renewal shall be submitted not less than 30 days before the expiration date of the license. No renewal shall be granted more than 90 days after the date of expiration of a license.

(c) Applications for renewal submitted after the expiration date of the license shall be accompanied by the late renewal fee established by Rule .0203 of this Section and shall be submitted not later than 90 days after the expiration date of the license.

(d) If a licensee has maintained a license at least two years and then allows the license to expire, the license may be re-issued if application is made within one year of the expiration date by submitting an online reinstatement of an expired license application accompanied by the Subparagraphs (a)(1) through (3) of this Rule and the late fee required by Paragraph (c) of this Rule. The Board retains the right to discipline a licensee for activity during the period of lapse.

~~(d)(e)~~ The Director shall review and approve or recommend denial of an application for ~~renewal~~ renewal or reinstatement. All denials shall be submitted to the Board for a final Board decision.

~~(e)(f)~~ Members of the armed forces whose licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall be granted the same extension of time to pay the license renewal fee and to complete the continuing education requirements prescribed in Section .0500 of this Chapter. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

Authority G.S. 74D-2(a); 74D-5; 74D-7; 93B-15.

SECTION .0300 – PROVISIONS FOR REGISTRANTS

**14B NCAC 17 .0301 APPLICATION FOR
REGISTRATION**

(a) Each licensee or qualifying agent shall submit an online application for the registration of his or her employee on the website provided by the Board. When this online application is submitted, it shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigation or one set of classifiable fingerprints on a standard F.B.I.

fingerprint card mailed separately to the Board's office;

- (2) one original signed S.B.I. release of information form uploaded online and the original mailed separately to the Board's office;
- (3) one head and shoulders digital photograph of the applicant of acceptable quality for identification, taken within six months prior to online submission, and uploaded with the application submission;
- (4) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceeding 60 months;
- (5) the registration fee required by Rule .0302 of this Section, along with a four dollar (\$4.00) convenience fee charged by the third-party provider and credit card transaction fee charged by the applicant's credit card provider and collected online; and
- (6) a completed affidavit form and public notice statement form.

(b) The employer of an applicant who is currently registered with another alarm business shall complete an online application form provided by the Board. This form shall be accompanied by the applicant's multiple registration fee along with a four dollar (\$4.00) convenience fee charged by the third-party provider and credit card transaction fee charged by the applicant's credit card provider and collected online. This online application shall be accompanied by a completed affidavit form and public notice statement form.

(c) The employer of each applicant for registration shall print and retain a copy of the applicant's online application in the individual applicant's personnel file in the employer's office.

Authority G.S. 74D-2.1; 74D-5; 74D-8.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02D .0546 and amend the rule cited as 15A NCAC 02D .1104.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>

Proposed Effective Date: July 1, 2020

Public Hearing:

Date: March 17, 2020

Time: 6:00 p.m.

Location: DEQ Green Square Office Building, 1st Floor Training Room (#1210), 217 West Jones Street, Raleigh, NC 27603

Date: March 18, 2020

Time: 6:00 p.m.

Location: Cape Fear Community College, Union Station, 502 N. Front St., Wilmington, NC 28401

Reason for Proposed Action: To receive comments on the adoption of the Control of Emissions from Log Fumigation Operations rule and the amendment of the Toxic Air Pollutant Guidelines rule. Also, to receive comment on the accompanying revised fiscal note for the proposed adoption and amendment.

The Division of Air Quality identified that the general public adjacent to log fumigation operations may experience both short-term acute toxicity exposures, as well as longer-term chronic toxicity exposures to certain concentrations of methyl bromide as a result of these operations. Neurological and respiratory toxicological effects are of greatest concern from exposure to certain concentrations of methyl bromide. To protect the health of all persons that may live or work in areas subject to airborne releases of methyl bromide from those operations, the Environmental Management Commission (EMC) is proposing to adopt a rule that regulates these emissions using an Acceptable Ambient Level (AAL), which limits the air concentration of methyl bromide or other fumigants beyond the fence line of a facility.

On May 9, 2019, the EMC approved proceeding to public comment on an AAL value of 0.005 mg/m³ with a 24-hour averaging time for methyl bromide. In addition, the EMC requested comment on a value within a range of AALs from 0.005 mg/m³ to 0.078 mg/m³ with a 24-hour averaging time for methyl bromide. The 0.005 mg/m³ value is based on the US EPA Integrated Risk Information System (IRIS) chronic reference concentration (RfC). The 0.078 mg/m³ value is based on the minimal risk level (intermediate) from the April 2018 Draft for Public Comment Toxicological Profile for Bromomethane prepared by the federal Centers for Disease Control's Agency for Toxic Substances and Disease Registry (ATSDR). A copy of this assessment can be found at: <https://www.atsdr.cdc.gov/ToxProfiles/tp.asp?id=822&tid=160>. During the initial public comment period, (North Carolina Register Volume 33, Issue 24), the EMC received support for the 0.005 mg/m³ value; however, some commenters expressed concerns that the 24-hour averaging time was not appropriate for a chronic RfC. The Secretaries' Science Advisory Board (SAB) agreed that a longer averaging time for a chronic RfC is appropriate; however, they also agreed an acute value is necessary to protect the public from short-term exposures to certain concentrations of methyl bromide. Therefore, the SAB recommended using 0.078 mg/m³ with a 24-hour averaging time as an acute AAL paired with a chronic AAL of 0.005 mg/m³ with an annual averaging time.

The proposed rule and amendment are as follows:

15A NCAC 02D .0546-Control of Emissions from Log Fumigation Operations. This rule is proposed for adoption to establish emission control requirements for hazardous air pollutant and toxic air pollutant emissions from bulk, chamber, and container log fumigation operations; and

15A NCAC 02D .1104-Toxic Air Pollutant Guidelines. In addition to the AAL value of 0.005 mg/m³ with a 24-hour averaging time for methyl bromide originally proposed, the EMC seeks public comment on an additional regulatory option: AALs

for methyl bromide of 0.078 mg/m³ with a 24-hour averaging time and 0.005 mg/m³ with an annual averaging time.

In addition, the EMC also requests public comment on an acute AAL value for methyl bromide within a range of 0.078 mg/m³ to 1.29 mg/m³ with a 24-hour averaging time. These AAL values would be paired with a chronic AAL of 0.005 mg/m³ with an annual averaging time. The acute toxicity value of 1.29 mg/m³ is included in the Draft Human Risk Assessment for Registration Review for methyl bromide, a Federal Insecticide, Rodenticide, Fungicide (FIFRA) pesticide re-registration review document prepared by the U.S. EPA Office of Chemical Safety and Pollution Prevention. A copy of this assessment can be found at <https://www.regulations.gov/document?D=EPA-HQ-OPP-2013-0269-0030>.

The text of the rules and fiscal note are available on the DAQ website: <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>.

Comments may be submitted to: Patrick Knowlson, 217 West Jones St., 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8711; fax (919) 715-0717; email daq.publiccomments@ncdenr.gov (Please type "Revised Log Fumigation Rule" in subject line)

Comment period ends: April 3, 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 (>= \$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

15A NCAC 02D .0546 CONTROL OF EMISSIONS FROM LOG FUMIGATION OPERATIONS

(a) Purpose. The purpose of this Rule is to establish emission control requirements for hazardous air pollutants and toxic air pollutants from log fumigation operations.

(b) Definitions. For the purpose of this Rule, the following definitions and definitions in this Subchapter or 15A NCAC 02Q apply:

- (1) "Bulk or tarpaulin log fumigation" means the fumigation of logs that are placed in piles on an impermeable surface and covered with a weighted-down tarpaulin.
- (2) "Chamber log fumigation" means the fumigation of logs inside a sealed building or structure that is specifically used for fumigation. Chambers used for fumigation may be either atmospheric or vacuum type.
- (3) "Container log fumigation" means the fumigation of logs inside a container and where the doors of the container are closed and sealed.
- (4) "Fumigant" means the hazardous air pollutant or toxic air pollutant that is used to eliminate the pests within the logs.
- (5) "Fumigation operation" means the period of time that the fumigant is injected and retained in the container or chamber for the purposes of treating the logs for insects and other pests to prevent the transfer of exotic organisms.
- (6) "Hazardous air pollutant" means any pollutant listed under Section 112(b) of the federal Clean Air Act.
- (7) "Public right-of-way" means an access area where people can reasonably be expected to be present for any or all parts of a 24-hour period.
- (8) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 02D .1104.

(c) Applicability. This Rule applies to new, existing, and modified bulk, chamber, and container log fumigation operations that use a hazardous air pollutant or toxic air pollutant as a fumigant.

(d) Emission Control Requirements. The owner or operator of a log fumigation operation shall comply with the Toxic Air Pollutant Guidelines specified in 15A NCAC 02D .1104 and follow the procedures specified in 15A NCAC 02D .1106, 15A NCAC 02Q .0709, and .0710.

(e) The owner or operator shall post signs notifying the public of fumigation operations. The signs shall be visible and legible at the fence or property line closest to any public right-of-way. The signs shall remain in place at all times and shall conform to the format for placards mandated by the federally approved fumigant label.

(f) Monitoring, Recordkeeping and Reporting. The owner or operator of a bulk, chamber, or container log fumigation operation shall comply with the requirements pursuant to 15A NCAC 02D .0600.

- (1) The owner or operator shall send an initial notification of commencement of operations to

the appropriate Division of Air Quality regional office within 15 days of initial fumigation start-up.

- (2) The owner or operator shall submit a quarterly summary report, with the original signature of the Permittee or the authorized responsible official, of the monitoring and recordkeeping activities postmarked no later than 30 days after the end of each calendar year quarter. The report shall contain the following:

- (A) company name, address, and facility ID number;
- (B) calendar year quarter represented by the report;
- (C) daily and total fumigant usage in pounds for each quarter;
- (D) a summary of the monitoring data required by the permit that was collected during the quarter; and
- (E) a summary of exceedances from the levels established in the permit that occurred during the quarter of any monitoring parameters.

(g) Compliance Schedule. The owner or operator of an existing log fumigation operation subject to this Rule shall achieve compliance within 60 days after the Rule is effective or in accordance with an alternate compliance schedule approved by the Director. In establishing an alternate compliance schedule, the Director shall consider whether the compliance approach chosen by the facility involves the purchase and installation of a control device. New and modified facilities shall achieve compliance with this Rule upon start-up.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS

15A NCAC 02D .1104 TOXIC AIR POLLUTANT GUIDELINES

A facility shall not emit any of the following toxic air pollutants in such quantities that may cause or contribute beyond the facility's premises to any significant ambient air concentration that may adversely affect human health, except as allowed pursuant to 15A NCAC 02Q .0700. In determining these significant ambient air concentrations, the Division shall be governed by the following list of acceptable ambient levels in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure, except for asbestos:

PROPOSED RULES

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m ³) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
acetaldehyde (75-07-0)				27
acetic acid (64-19-7)				3.7
acrolein (107-02-8)				0.08
acrylonitrile (107-13-1)		0.03	1	
ammonia (7664-41-7)				2.7
aniline (62-53-3)			1	
arsenic and inorganic arsenic compounds	2.1 x 10 ⁻⁶			
asbestos (1332-21-4)	2.8 x 10 ⁻⁶ fibers/ml			
aziridine (151-56-4)		0.006		
benzene (71-43-2)	1.2 x 10 ⁻⁴			
benzidine and salts (92-87-5)	1.5 x 10 ⁻⁸			
benzo(a)pyrene (50-32-8)	3.3 x 10 ⁻⁵			
benzyl chloride (100-44-7)			0.5	
beryllium (7440-41-7)	4.1 x 10 ⁻⁶			
beryllium chloride (7787-47-5)	4.1 x 10 ⁻⁶			
beryllium fluoride (7787-49-7)	4.1 x 10 ⁻⁶			
beryllium nitrate (13597-99-4)	4.1 x 10 ⁻⁶			
bioavailable chromate pigments, as chromium (VI) equivalent	8.3 x 10 ⁻⁸			
bis-chloromethyl ether (542-88-1)	3.7 x 10 ⁻⁷			
bromine (7726-95-6)				0.2
1,3-butadiene (106-99-0)	4.4 x 10 ⁻⁴			
cadmium (7440-43-9)	5.5 x 10 ⁻⁶			
cadmium acetate (543-90-8)	5.5 x 10 ⁻⁶			
cadmium bromide (7789-42-6)	5.5 x 10 ⁻⁶			
carbon disulfide (75-15-0)		0.186		
carbon tetrachloride (56-23-5)	6.7 x 10 ⁻³			
chlorine (7782-50-5)		0.0375		0.9
chlorobenzene (108-90-7)		2.2		
chloroform (67-66-3)	4.3 x 10 ⁻³			
chloroprene (126-99-8)		0.44	3.5	
cresol (1319-77-3)			2.2	
p-dichlorobenzene (106-46-7)				66
di(2-ethylhexyl)phthalate (117-81-7)		0.03		
dimethyl sulfate (77-78-1)		0.003		
1,4-dioxane (123-91-1)		0.56		
epichlorohydrin (106-89-8)	8.3 x 10 ⁻²			
ethyl acetate (141-78-6)			140	
ethylenediamine (107-15-3)		0.3	2.5	
ethylene dibromide (106-93-4)	4.0 x 10 ⁻⁴			
ethylene dichloride (107-06-2)	3.8 x 10 ⁻³			
ethylene glycol monoethyl ether (110-80-5)		0.12	1.9	
ethylene oxide (75-21-8)	2.7 x 10 ⁻⁵			
ethyl mercaptan (75-08-1)			0.1	
fluorides		0.016	0.25	
formaldehyde (50-00-0)				0.15
hexachlorocyclopentadiene (77-47-4)		0.0006	0.01	

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m ³) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
hexachlorodibenzo-p-dioxin (57653-85-7)	7.6 x 10 ⁻⁸			
n-hexane (110-54-3)		1.1		
hexane isomers except n-hexane				360
hydrazine (302-01-2)		0.0006		
hydrogen chloride (7647-01-0)				0.7
hydrogen cyanide (74-90-8)		0.14	1.1	
hydrogen fluoride (7664-39-3)		0.03		0.25
hydrogen sulfide (7783-06-4)		0.12		
maleic anhydride (108-31-6)		0.012	0.1	
manganese and compounds		0.031		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.0006		
manganese tetroxide (1317-35-7)		0.0062		
mercury, alkyl		0.00006		
mercury, aryl and inorganic compounds		0.0006		
mercury, vapor (7439-97-6)		0.0006		
methyl bromide (74-83-9)				
Option 1		0.005		
Option 2		0.078		
Option 3	0.005 ^a	0.078		
methyl chloroform (71-55-6)		12		245
methylene chloride (75-09-2)	2.4 x 10 ⁻²		1.7	
methyl ethyl ketone (78-93-3)		3.7		88.5
methyl isobutyl ketone (108-10-1)		2.56		30
methyl mercaptan (74-93-1)			0.05	
nickel carbonyl (13463-39-3)		0.0006		
nickel metal (7440-02-0)		0.006		
nickel, soluble compounds, as nickel		0.0006		
nickel subsulfide (12035-72-2)	2.1 x 10 ⁻⁶			
nitric acid (7697-37-2)				1
nitrobenzene (98-95-3)		0.06	0.5	
n-nitrosodimethylamine (62-75-9)	5.0 x 10 ⁻⁵			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	8.3 x 10 ⁻⁸			
pentachlorophenol (87-86-5)		0.003	0.025	
perchloroethylene (127-18-4)	1.9 x 10 ⁻¹			
phenol (108-95-2)			0.95	
phosgene (75-44-5)		0.0025		
phosphine (7803-51-2)				0.13
polychlorinated biphenyls (1336-36-3)	8.3 x 10 ⁻⁵			
soluble chromate compounds, as chromium (VI) equivalent		6.2 x 10 ⁻⁴		
styrene (100-42-5)			10.6	
sulfuric acid (7664-93-9)		0.012	0.1	
tetrachlorodibenzo-p-dioxin (1746-01-6)	3.0 x 10 ⁻⁹			
1,1,2,2-tetrachloroethane (79-34-5)	6.3 x 10 ⁻³			

Acceptable Ambient Levels (AAL) in Milligrams per Cubic Meter (mg/m ³) Except Where Noted				
Pollutant (CAS Number)	Annual (Carcinogens)	24-hour (Chronic Toxicants)	1-hour (Acute Systemic Toxicants)	1-hour (Acute Irritants)
toluene (108-88-3)		4.7		56
toluene diisocyanate, 2,4- (584-84-9) and 2,6- (91-08-7) isomers		0.0002		
trichloroethylene (79-01-6)	5.9 x 10 ⁻²			
vinyl chloride (75-01-4)	3.8 x 10 ⁻⁴			
vinylidene chloride (75-35-4)		0.12		
xylene (1330-20-7)		2.7		65

^a This compound has not been defined as a carcinogen.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 143B-282.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 58 - REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Real Estate Commission intends to amend the rules cited as 21 NCAC 58A .0616, .1708, .1710, .1711, .1904; 58H .0101, .0201-.0210, .0301-.0305, .0401-.0404, and repeal the rules cited as 21 NCAC 58A .1903; 58H .0211-.0215, and .0405-.0414.

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.ncrec.gov

Proposed Effective Date: July 1, 2020

Public Hearing:

Date: March 18, 2020

Time: 9:00 a.m.

Location: NC Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609

Reason for Proposed Action: The rule changes and repeals to Subchapters 58A and 58H are necessary to implement legislative requirements in S.L. 2019-195 that groups licensed schools and continuing education sponsors together as one term "certified education providers" and to allow online real estate education classes. The rule changes are also necessary to make technical corrections such as: formatting rule text, clarifying language, deleting unnecessary language, and correcting cross-references, inconsistencies, and authorities. 21 NCAC 58A .1903 is proposed to repeal extensions of time to complete Postlicensing education.

Comments may be submitted to: Melissa Vuotto, PO Box 17100, Raleigh, NC 27619; email Public.Comment@ncrec.gov

Comment period ends: April 5, 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

SUBCHAPTER 58A – REAL ESTATE BROKERS

SECTION .0600 – REAL ESTATE COMMISSION HEARINGS

21 NCAC 58A .0616 PROCEDURES FOR REQUESTING HEARINGS WHEN APPLICANT'S CHARACTER IS IN QUESTION

(a) When the moral character of an applicant for licensure or approval is in question, the applicant shall not be licensed or approved until the applicant has affirmatively demonstrated that

the applicant possesses the requisite honesty, truthfulness, integrity, good moral character, and general fitness, including mental and emotional fitness, necessary to protect the public interest and promote public confidence in the real estate brokerage business. For the purposes of this Rule, applicant means any person or entity making application for licensure as a real estate broker or for licensure or approval as ~~a prelicensing or continuing education instructor, director, coordinator, school or sponsor, an instructor.~~

(b) When the applicant is an entity, it shall be directed and controlled by persons who possess the requisite honesty, truthfulness, integrity, good moral character, and general fitness, including mental and emotional fitness, necessary to protect the public interest and promote public confidence in the real estate brokerage business.

(c) When the character of an applicant is in question, the Commission shall defer action upon the application until the applicant is notified by letter. The letter informing the applicant that his or her moral character is in question shall be sent by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this letter to request a hearing before the Commission. If the applicant fails to request a hearing within this time or if a properly addressed letter is returned to the Commission undelivered, applicant's right to a hearing shall be considered waived and the application shall be deemed denied. If the applicant makes a timely request for a hearing in accordance with the provisions of this Rule, the Commission shall provide the applicant with a Notice of Hearing and hearing as required by G.S. 150B, Article 3A.

(d) Nothing in this Rule shall be interpreted to prevent an unsuccessful applicant from reapplying for licensure or approval if such application is otherwise permitted by law.

Authority G.S. 93A-4.

SECTION .1700 – MANDATORY CONTINUING EDUCATION

21 NCAC 58A .1708 EQUIVALENT CREDIT

(a) The Commission shall award a broker continuing education credit for teaching a Commission Update Course. A broker seeking continuing education credit for teaching a Commission Update Course shall submit a form, available on the Commission's website, that requires the broker to set forth the:

- (1) broker's name, license number, instructor number, address, telephone number, and email address;
- (2) Update Course number;
- (3) ~~sponsor's~~ education provider's name and number;
- (4) ~~sponsor's~~ education provider's address; and
- (5) date the course was taught.

(b) The Commission shall award a broker continuing education elective credit for teaching a Commission approved continuing education elective for the first time any given continuing education elective is taught. A broker seeking continuing education credit under this Paragraph shall submit a form,

available on the Commission's website, that requires the broker to set forth the:

- (1) broker's name, license number, address, telephone number, and email address;
- (2) course title;
- (3) course number;
- (4) ~~sponsor's~~ education provider's name and number;
- (5) ~~sponsor's~~ education provider's address; and
- (6) date the course was taught.

(c) The Commission may award continuing education elective credit for completion of an unapproved course that the Commission finds equivalent to the elective course component of the continuing education requirement set forth in 21 NCAC 58H .0402. The broker shall submit a course completion certificate issued by the ~~course sponsor,~~ education provider, a copy of the course description or course outline, and a fifty dollar (\$50.00) fee for each course for which the broker seeks credit. A broker seeking continuing education credit for a course that is not approved by the Commission shall submit a form, available on the Commission's website, that requires the broker to set forth the:

- (1) broker's name, license number, address, telephone number, and email address;
- (2) course title;
- (3) number of instructional hours;
- (4) course instructor's name; and
- (5) ~~course sponsor's~~ education provider's name, address, telephone number, and email address.

(d) The Commission may award continuing education elective credit for developing a continuing education elective course that is approved by the Commission pursuant to 21 NCAC 58H .0401. However, a broker shall only receive credit for the year in which the continuing education elective is approved. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the broker shall submit the course title, the course number, the date of the course approval, and a fifty dollar (\$50.00) fee for each course for which the broker seeks credit.

(e) The Commission may award continuing education elective credit for authoring a real estate textbook. However, a broker shall receive credit for any single textbook only once. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the broker shall submit the title page of the textbook, showing the title, publisher, and publication date, the table of contents, and a fifty dollar (\$50.00) fee for each textbook for which the licensee seeks credit.

(f) The Commission may award continuing education elective credit for authoring of a scholarly article on a real estate topic published in a professional journal or periodical. A broker shall receive credit for any single article only once. A broker seeking continuing education credit under this Paragraph shall submit a form, available on the Commission's website, that requires the broker to set forth the broker's name, license number, address, telephone number, and email address. Along with the form, the

broker shall submit a copy of the article, proof of publication, and a fifty dollar (\$50.00) fee for each article for which the broker seeks credit.

(g) In order for any application for equivalent credit to be considered and credits applied to the current licensing period, a complete application, the appropriate fee, and all supporting documents shall be received by the Commission no later than 5:00 p.m. on June 17.

(h) Any equivalent continuing education credit awarded under this Rule shall be applied first to make up any continuing education deficiency for the previous license period and then to satisfy the continuing education requirement for the current license period; however, credit for an unapproved course or educational activity, other than teaching an approved elective course, that was completed during a previous license period shall not be applied to a subsequent license period.

Authority G.S. 93A-3(c); ~~93A-4.1~~; 93A-38.5.

21 NCAC 58A .1710 DENIAL OR WITHDRAWAL OF CONTINUING EDUCATION CREDIT

(a) The Commission shall deny continuing education credit claimed by a broker or reported by ~~a course sponsor~~ an education provider for a broker, and shall withdraw continuing education credit previously awarded by the Commission to a broker upon finding that the broker:

- (1) ~~or course sponsor~~ education provider provided incorrect or incomplete information to the Commission concerning continuing education completed by the broker;
- (2) failed to comply with the attendance requirement established by Rule .1705 of this Section; or
- (3) was mistakenly awarded continuing education credit due to an administrative error.

(b) If an administrative error or an incorrect report by ~~a course sponsor~~ an education provider results in the denial or withdrawal of continuing education credit for a broker, the Commission shall, upon the written request of the broker, grant the broker an extension of time to satisfy the continuing education requirement.

(c) A broker who obtains or attempts to obtain continuing education credit through misrepresentation of fact, dishonesty, or other improper conduct shall be subject to disciplinary action pursuant to G.S. 93A-6.

Authority G.S. 93A-3(c); ~~93A-4.1~~; 93A-38.5.

21 NCAC 58A .1711 CONTINUING EDUCATION REQUIRED OF NONRESIDENT BROKERS

(a) To be considered a nonresident for continuing education purposes, a real estate broker licensed in North Carolina shall not have a North Carolina business address, mailing address, or residence address at the time he or she applies for license renewal if he or she seeks to renew his or her license on active status. A nonresident North Carolina broker who wishes to renew his or her license on active status may satisfy the continuing education requirement by any one of the following means:

- (1) A nonresident broker may, at the time of license renewal, hold a real estate license on active

status in another state and certify on a form prescribed by the Commission that the broker holds such license. If at any time after renewal there is a change in the status of the out-of-state license, the nonresident broker shall notify the Commission within 10 days and request that his or her North Carolina license be placed on inactive status, or provide evidence to the Commission that he or she has satisfied ~~either~~ Subparagraph (a)(2) ~~or (a)(3)~~ of this Rule or the requirements of Rule .1702 of this Section.

(2) A nonresident broker may, within one year preceding license expiration, complete the Commission-prescribed Update course plus one Commission-approved continuing education elective course, or complete two Commission-approved continuing education elective courses.

(3) ~~A nonresident broker may, within one year preceding license expiration, complete eight classroom hours in courses approved for continuing education credit by the real estate licensing agency in the broker's state of residence or in the state where the course was taken. To obtain credit for a continuing education course completed in another state and not approved by the Commission, the broker must submit a written request for continuing education credit accompanied by a fee of fifty dollars (\$50.00) per request and evidence that the course was completed and that the course was approved for continuing education credit by the real estate licensing agency in the broker's state of residence or in the state where the course was taken.~~

(4) ~~A nonresident broker may obtain eight hours equivalent credit for a course or courses not approved by the Commission or for related educational activities as provided in Rule .1708 of this Section. The maximum amount of continuing education credit the Commission will award a nonresident broker for an unapproved course or educational activity shall be eight hours.~~

~~(b) When requesting to change an inactive license to active status, or when applying for reinstatement of a license expired for not more than six months, a nonresident broker may satisfy the continuing education requirements described in Rules .0505 and .1703 of this Subchapter by complying with any of the options described in Paragraph (a) of this Rule, except that the requirements in Subparagraphs (a)(2) and (a)(3) of this Rule restricting the taking of courses to one year preceding license expiration shall not be applicable.~~

(b) When a nonresident broker's license has been on inactive status for more than two years and the broker is satisfying the requirements of Rule .1703(c) of this Subchapter, if a distance education Postlicensing course is unavailable, a nonresident broker may apply for equivalent education credit for a Postlicensing course by submitting a written request that includes

a course completion certificate or transcript evidencing the completion of an education program in another state that:

- (1) consisted of at least 30 hours of instruction;
- (2) was completed within six months prior to application; and
- (3) is parallel to the topics and timings described in the Commission's Postlicensing course syllabi.

(c) No carry-over credit to a subsequent license period shall be awarded for a course taken in another state that has not been approved by the North Carolina Real Estate Commission as an elective course pursuant to 21 NCAC 58H .0406.

Authority G.S. 93A-3(c); ~~93A-4-1~~; 93A-38.5.

SECTION .1900 – POST-LICENSING EDUCATION

21 NCAC 58A .1903 EXTENSIONS OF TIME TO COMPLETE POSTLICENSING EDUCATION

Authority G.S. 93A-4.

21 NCAC 58A .1904 DENIAL OR WITHDRAWAL OF POSTLICENSING EDUCATION CREDIT

(a) The Commission may deny Postlicensing education credit claimed by a provisional broker or reported by a school an education provider for a provisional broker, and may withdraw Postlicensing education credit previously awarded by the Commission to a provisional broker and make appropriate license status changes for that broker upon finding ~~that~~ that the provisional broker:

- (1) ~~the provisional broker or school education provider~~ provided incorrect or incomplete information to the Commission concerning Postlicensing education completed by the provisional broker;
- (2) failed to comply with the attendance requirement pursuant to 21 NCAC 58H .0207;
or
- ~~(2)(3) the provisional broker was mistakenly awarded Postlicensing education credit due to an administrative error; or error.~~
- (3) ~~the provisional broker attended a Postlicensing course while concurrently attending a different Postlicensing course at the same school or a different school if such concurrent attendance in the two courses resulted in the provisional broker participating in Postlicensing course sessions for more than 30 instructional hours in any given seven day period.~~

(b) When Postlicensing education credit is denied or withdrawn by the Commission under Paragraph (a) of this Rule, the provisional broker shall remain responsible for satisfying the Postlicensing education requirement in G.S. 93A-4(a1).

(c) A broker who obtains or attempts to obtain Postlicensing education credit through misrepresentation of fact, dishonesty or other improper conduct is subject to disciplinary action pursuant to G.S. 93A-6.

Authority G.S. 93A-4.

SUBCHAPTER 58H - REAL ESTATE EDUCATION

SECTION .0100 – GENERAL

21 NCAC 58H .0101 DEFINITIONS

The following definitions apply throughout this Subchapter and to all forms prescribed pursuant to this Chapter:

- ~~(1) "Instructional hour" means 50 minutes of instruction and 10 minutes of break time.~~
- (1) "Blended learning" means a combination of Distance education and in-person methods of instruction.
- (2) "Branch location" means any location in addition to the principal address of an education provider that offers Prelicensing or Postlicensing Courses.
- (3) "Continuing Education" means a continuing education elective or Update Course.
- ~~(2)(4)~~ (4) "Distance education" means a method of instruction accomplished through the use of media whereby teacher and student are separated by distance or time.
- (3) ~~"End of course evaluation" means a student evaluation of the course and the instructor's performance that shall be administered during the class period before administration of the end of course examination.~~
- ~~(4)(5)~~ (5) "End-of-course examination" means an examination administered at the conclusion of a course that tests students' knowledge and mastery of all course subjects mandated by the Commission prescribed course syllabus.
- (5) ~~"Mid course evaluation" means a student evaluation of the course and the instructor's performance given at the midpoint of the course.~~
- (6) "Instructional hour" means 50 minutes of instruction and 10 minutes of break time.
- ~~(6)(7)~~ (7) "Instructor development program" means courses of instruction designed to assist real estate instructors in the performance of Prelicensing, Postlicensing, or Continuing Education instructor duties or in the development of teaching skills.
- ~~(7)(8)~~ (8) "License Examination Performance Record" means the percentage of an instructor's or school's students who, within 30 days of completing a Prelicensing course pursuant to 21 NCAC 58H .0210(a), take and pass the license examination, as defined in 21 NCAC 58A .0402, on their first attempt.
- ~~(8)(9)~~ (9) "Postlicensing course" means any one of the courses comprising the 90 hour Postlicensing education program pursuant to G.S. 93A-4(a1) and 21 NCAC 58A .1902.
- ~~(9)(10)~~ (10) "Prelicensing course" means a single course consisting of at least 75 hours of instruction on subjects prescribed by the Commission pursuant to G.S. 93A-4(a).

- (10) ~~"Private real estate school" means any real estate educational entity that is privately owned and operated by an individual, partnership, corporation, limited liability company, or association, and that conducts, for a profit or tuition charge, Prelicensing or Postlicensing courses.~~
- (11) ~~"Public real estate school" education provider" means any proprietary business or trade school licensed by the State Board of Community Colleges under G.S. 115D-90 or approved by the Board of Governors of the University of North Carolina that conducts Prelicensing or Postlicensing approved real estate courses.~~
- (12) ~~"Schools" mean licensed private and approved public real estate schools.~~
- (13)(12) ~~"Update Courses" mean the General Update Course and the Broker-in-Charge Update Course.~~

Authority G.S. 93A-4; 93A-4.1; 93A-32; 93A-33; 93A-38.5.

SECTION .0200 - REAL ESTATE SCHOOLS EDUCATION PROVIDERS

21 NCAC 58H .0201 APPLICABILITY

~~This Section applies to all real estate schools offering approved Prelicensing and Postlicensing courses. Public real estate schools offering approved Prelicensing and Postlicensing courses shall be exempt from rules in this Section unless a Rule specifically requires compliance.~~

This Section applies to all real estate education providers offering approved real estate courses. Public education providers shall be exempt from the rules in this Section unless the Rule specifically requires compliance.

Authority G.S. 93A-4; 93A-33.

21 NCAC 58H .0202 APPLICATION FOR ORIGINAL APPROVAL OF A PUBLIC REAL ESTATE SCHOOL EDUCATION PROVIDER CERTIFICATION

~~(a) Any entity seeking original approval as a public real estate school to conduct Prelicensing or Postlicensing courses shall apply to the Commission on a form available on the Commission's website and shall set forth the:~~

- (1) ~~school name;~~
- (2) ~~school director name and contact information;~~
- (3) ~~school address;~~
- (4) ~~school telephone number;~~
- (5) ~~school website address;~~
- (6) ~~type of public institution;~~
- (7) ~~Prelicensing or Postlicensing courses to be offered by the school;~~
- (8) ~~Update courses to be offered by the school; and~~
- (9) ~~a signed certification by the school director that courses shall be conducted in compliance with the rules of this Subchapter.~~

~~(b) Public real estate schools offering Prelicensing or Postlicensing courses pursuant to Paragraph (a) of this Rule shall~~

~~be eligible to offer Update courses and continuing education courses.~~

~~(c) Approval shall extend only to the courses included in the application for school approval.~~

(a) Any community college, junior college, or university located in this State and accredited by the Southern Association of Colleges and Schools seeking education provider certification shall apply to the Commission on a form available on the Commission's website and shall set forth the:

- (1) education provider's name;
- (2) education director's name and contact information;
- (3) education director's email address;
- (4) education provider's address;
- (5) education provider's telephone number;
- (6) education provider's website address;
- (7) type of public institution;
- (8) Prelicensing, Postlicensing, and Continuing Education courses to be offered by the applicant; and
- (9) a signed certification by the education director that courses shall be conducted in compliance with the rules of this Subchapter.

(b) Any other person or entity seeking education provider certification shall apply to the Commission on a form available on the Commission's website and shall set forth the following criteria in addition to the requirements in G.S. 93A-34(b1):

- (1) the website, physical and mailing address, and telephone number of the principal office of the education provider;
- (2) the education director's license number, if applicable, email and mailing address, and telephone number;
- (3) the North Carolina Secretary of State Identification Number, if applicable;
- (4) the physical address of each proposed branch location, if applicable;
- (5) the type of ownership entity;
- (6) a signed Consent to Service of Process and Pleadings form available on the Commission's website, if a foreign entity;
- (7) the Prelicensing, Postlicensing, and Continuing Education courses to be offered by the applicant; and
- (8) a signed certification by the education director that courses shall be conducted in compliance with the Rules of this Subchapter.

(c) The certification application fee for an education provider applying under Paragraph (b) of this Rule shall be two hundred dollars (\$200.00) for each proposed education provider location. Provided however, education providers shall not be required to obtain a certification for every location a Continuing Education course is offered.

(d) If any education provider relocates any location or opens additional branch locations during any licensing period, the education director shall submit an original application for certification of that location pursuant to this Rule.

(e) In the event that any education provider shall advertise or operate in any manner using a name different from the name under

which the education provider is certified, the education provider shall first file an assumed name certificate in compliance with G.S. 66-71.4 and shall notify the Commission in writing of the use of such an assumed name. An education provider shall not advertise or operate in any manner that would mislead a consumer as to the education provider's actual identity.

Authority G.S. 93A-4; 93A-34.

21 NCAC 58H .0203 APPLICATION FOR ORIGINAL LICENSURE OF A PRIVATE REAL ESTATE SCHOOL EDUCATION DIRECTOR

(a) Any entity seeking original licensure as a private real estate school to conduct Prelicensing or Postlicensing courses shall apply to the Commission on a form available on the Commission's website and shall set forth the following criteria in addition to the requirements in G.S. 93A-34(b):

- (1) the physical, website, and email addresses and telephone number of the principal office of the school;
- (2) the proposed school director's legal name, real estate license number, if any, email and mailing address, and telephone number;
- (3) the type of school ownership entity and the name, title, real estate license number, if any, mailing address, and ownership percentage of each individual or entity holding at least 10% ownership in the entity;
- (4) the North Carolina Secretary of State Identification Number;
- (5) the criminal history and history of occupational license disciplinary actions of individual school owner(s);
- (6) the physical address of each proposed school location;
- (7) the source of real estate examinations to be used for each course offered;
- (8) a copy of a criminal background check for the previous seven years on the proposed school director;
- (9) a signed Consent to Service of Process and Pleadings form available on the Commission's website, if a foreign entity;
- (10) the Prelicensing or Postlicensing courses to be offered by the school;
- (11) the Update courses to be offered by the school; and
- (12) the signature and certification of the school owner(s).

(b) Private real estate school names shall contain the words "Real Estate" and other words identifying the entity as a school, such as "school," "academy," or "institute" that are distinguishable from other licensed private real estate schools and from continuing education course sponsors approved by the Commission.

(c) The school name shall be used in all school publications and advertising.

(d) Each school shall certify that its facilities and equipment are in compliance with all applicable local, state and federal laws and

regulations regarding health, safety, and welfare, including the Americans with Disabilities Act.

(e) The original license application fee shall be two hundred dollars (\$200.00) for each proposed school location.

(f) The initial fee for a school to offer a Prelicensing or Postlicensing course at any of its locations during the licensing period shall be forty dollars (\$40.00) per Prelicensing or Postlicensing course.

(g) Private real estate schools offering Prelicensing or Postlicensing courses pursuant to Paragraph (a) of this Rule shall be eligible to offer Update courses and continuing education courses.

(h) If a school relocates any location during any licensing period, the school owner shall submit an original application for licensure of that location pursuant to this Rule.

(a) All education providers shall designate an education director, who shall:

- (1) supervise all education provider operations related to the conduct of offering Prelicensing, Postlicensing, and Continuing Education courses;
- (2) ensure that each approved instructor meets the requirements of Rule .0302 of this Subchapter;
- (3) ensure that each continuing education elective course instructor meets the requirements of Rule .0402(a)(5) of this Subchapter;
- (4) ensure each course utilizes course materials pursuant to Rule .0205 of this Section;
- (5) sign course completion certificates;
- (6) submit to the Commission all required fees, rosters, reports, and other information;
- (7) submit to the Commission the name and the instructor number of each course instructor within 10 days of employment;
- (8) ensure compliance with all statutory and rule requirements governing the certification and operation of the education provider;
- (9) take steps to protect the security and integrity of course examinations at all times; and
- (10) act as the education provider's liaison to the Commission.

(b) Public education providers shall designate one permanent employee to serve as the education director.

(c) The education director shall approve a guest lecturer prior to the guest lecturer teaching a course session. Education directors shall ensure that all guest lecturers possess experience related to the particular subject area the guest lecturer is teaching. Guest lecturers may be utilized to teach collectively up to one-fourth of any Prelicensing or Postlicensing course.

(d) The education director shall ensure all instructors that teach Prelicensing or Postlicensing courses by methods other than distance education are observed at least once annually for a minimum of one hour of live uninterrupted instruction by either the education director or a Commission-approved Prelicensing or Postlicensing instructor present in the classroom. Education directors who are also instructors may, upon written request to the Commission, be evaluated by a Commission monitor. The evaluation shall be based on the instructor's teaching abilities pursuant to Rule .0304 of this Subchapter. The instructor shall

receive the written evaluation of his or her instructional performance within 30 days of observation.

(e) The education director for any education provider shall view the Commission's Education Director video electronically within 30 days of initial designation and annually within 45 days immediately preceding expiration of education provider certification.

(f) Education providers shall notify the Commission within 10 days of any change in education director during the certification period.

(g) The education director shall admit any Commission authorized representative to monitor any class or provide access to a distance education course without prior notice. Such representatives shall not be required to register or pay any fee and shall not be reported as having completed the course.

(h) An education director shall dismiss a student from the course who is found to have cheated in any manner on a course examination and shall not award a passing grade or any partial completion of the course. The education director shall report the cheating incident in writing to the Commission within 10 days.

Authority G.S. 93A-4; 93A-33; 93A-34.

21 NCAC 58H .0204 SCHOOL DIRECTOR POLICIES AND PROCEDURES DISCLOSURE

(a) All schools shall designate a school director, who shall

- (1) supervise all school operations related to the conduct of Prelicensing and Postlicensing courses;
- (2) ensure compliance with all statutory and rule requirements governing the licensing and operation of the school; and
- (3) act as the school's liaison to the Commission.

(b) Public real estate schools shall designate one permanent employee to serve as the school director.

(c) The school director for a private real estate school shall satisfy one of the following qualification standards:

- (1) hold a baccalaureate or higher degree;
- (2) have at least two years full-time experience within the past 10 years as an instructor or school administrator; or
- (3) possess qualifications that the Commission finds to be equivalent to those described in Subparagraph (1) or (2) of this Rule, such as:
 - (A) a transcript demonstrating completion of 120 semester hours of education at an institution accredited by any college accrediting body recognized by the U. S. Department of Education;
 - (B) currently holding or having held within the past 15 years a military pay grade of an E-8 level, O-1 level, or higher; or
 - (C) a current Distinguished Real Estate Instructor (DREI) designation granted by the Real Estate Educators' Association.

(d) The school director shall approve a guest lecturer prior to the guest lecturer teaching a course session. School directors shall

ensure that all guest lecturers possess experience related to the particular subject area the guest lecturer is teaching. Guest lecturers may be utilized to teach collectively up to one-fourth of any Prelicensing or Postlicensing course.

(e) The school director shall ensure that each instructor meets the requirements of Rule .0302 of this Subchapter.

(f) The school director shall ensure each course utilizes a textbook currently approved by the Commission pursuant to Rule .0206 of this Section.

(g) Schools shall notify the Commission within 10 days of any change in school director during the licensing period.

(a) An education provider shall publish a Policies and Procedures Disclosure.

(b) In addition to the information required by G.S. 93A-34(c)(5), an education provider's Policies and Procedures Disclosure shall include:

- (1) the name and address of the Commission, along with a statement that any complaints concerning the education provider or its instructors should be directed to the Commission;
- (2) a statement that the education provider shall not discriminate in its admissions policy or practice against any person on the basis of age, sex, race, color, national origin, familial status, handicap status, or religion;
- (3) the education provider's most recent annual License Examination Performance Record and the Annual Summary Report data as published by the Commission;
- (4) the all-inclusive tuition and fees for a particular course;
- (5) a written course cancellation and refund policy; and
- (6) a signed certification acknowledging the student's receipt of the Policies and Procedures Disclosure prior to payment of any portion of tuition or registration fee without the right to a full refund.

Authority G.S. 93A-4; 93A-33; 93A-34.

21 NCAC 58H .0205 PRIVATE REAL ESTATE SCHOOL BULLETIN COURSE MATERIALS

(a) A private real estate school shall publish a single bulletin addressing Prelicensing and Postlicensing courses offered. The same bulletin shall be used by all locations of a private real estate school.

(b) In addition to the information required by G.S. 93A-34(c)(5), a school's bulletin shall:

- (1) describe the purpose of Prelicensing and Postlicensing courses;
- (2) describe the school's policies and procedures;
- (3) include the name and address of the Commission, along with a statement that any complaints concerning the school or its instructors should be directed to the Commission;

- (4) ~~include a statement that the school shall not discriminate in its admissions policy or practice against any person on the basis of age, sex, race, color, national origin, familial status, handicap status, or religion;~~
- (5) ~~contain the following prescribed text: "NOTICE: Pursuant to North Carolina Real Estate Commission Rule 21 NCAC 58A .1904, the Commission may deny or withdraw credit for a Postlicensing course that a provisional broker begins taking while already enrolled in another Postlicensing course at the same school or a different school if participating in the two courses concurrently results in the provisional broker attending Postlicensing course sessions that total more than 30 instructional hours in any given seven day period;" and~~
- (6) ~~include a signed certification that a student received a copy of the bulletin prior to payment of any portion of tuition or registration fee without the right to a full refund.~~

~~(e) A private real estate school may provide in its bulletin information about courses that are not approved by the Commission and shall state that such courses are not approved or sanctioned by the Commission.~~

~~(d) A private real estate school may not include in its bulletin any promotional information for a particular real estate broker, firm, franchise, or association, even if the entity being promoted owns the school.~~

~~(e) A private real estate school shall retain the signed certification required by Paragraph (b)(6) of this Rule pursuant to Rule .0212 of this Section. The certification shall include:~~

- ~~(1) the student's name;~~
- ~~(2) the date;~~
- ~~(3) the title of the course(s) for which the student is enrolling;~~
- ~~(4) the course schedule, including the beginning and end date, and meeting days and times;~~
- ~~(5) the amount of tuition and other required fees being paid by the particular student;~~
- ~~(6) a provision whereby the school certifies that the school's bulletin has been provided to the student and that the student acknowledges receipt of the bulletin;~~
- ~~(7) any provisions needed to address special accommodations or arrangements applicable to a particular student; and~~
- ~~(8) the signatures of both the student and a school official.~~

(a) Course materials shall cover current North Carolina real estate related laws, rules, and practices. The nature and depth of subject matter coverage shall be consistent with the competency and instructional levels prescribed by the Commission for the course for which approval is sought.

(b) Postlicensing courses shall utilize the current edition of the North Carolina Real Estate Manual.

Authority G.S. 93A-4(a); 93A-4(d); 93A-33; 93A-34.

21 NCAC 58H .0206 APPROVAL OF TEXTBOOKS ADVERTISING AND RECRUITMENT ACTIVITIES

~~(a) A request for approval of a proposed textbook shall be submitted in writing to the Commission along with two copies of the proposed textbook. The criteria for approval shall be:~~

- ~~(1) the textbook shall cover current North Carolina real estate related laws, rules, and practices;~~
- ~~(2) the text shall be grammatically correct; and~~
- ~~(3) the nature and depth of subject matter coverage shall be consistent with the competency and instructional levels prescribed by the Commission for the course for which approval is sought.~~

~~(b) Approval of a textbook shall only apply to the edition reviewed by the Commission. A request for approval of a new or updated edition of a previously approved textbook shall be submitted in writing to the Commission, along with two copies of the proposed textbook, and shall include a list with specific page references of all significant changes from the previously approved edition.~~

~~(c) Approval of a textbook shall terminate four years after the initial approval or upon the approval of a new edition of a previously approved textbook.~~

(a) Any education provider utilizing its License Examination Performance Record or Annual Summary Report for advertising or promotional purposes shall only use the most recent annual License Examination Performance Record or Annual Summary Report as published on the Commission's website in a manner that is not misleading or false.

(b) Education providers shall not make or publish, by way of advertising or otherwise, any false or misleading statement regarding employment opportunities that may be available as a result of completion of a course offered by that education provider or acquisition of a real estate license.

(c) Education providers shall not use endorsements or recommendations of any person or organization for advertising or otherwise unless such person or organization has consented in writing to the use of the endorsement or recommendation. In no case shall any person or organization be compensated for an endorsement or recommendation.

(d) Education providers shall not offer Postlicensing courses only for brokers affiliated with a particular real estate broker, firm, franchise, or association.

(e) Education providers may offer and advertise courses in addition to those approved by the Commission pursuant to this Subchapter provided that references to such courses are not made or published in a manner that implies approval by the Commission.

(f) Instructional time and materials shall be utilized for instructional purposes only.

(g) All Continuing Education course advertisements and promotional materials shall specify the number of Continuing Education credit hours to be awarded by the Commission for the course.

(h) The education provider name shall be used in all publications and advertising.

Authority G.S. 93A-4; 93A-33.

21 NCAC 58H .0207 SCHOOL ADVERTISING AND RECRUITMENT ACTIVITIES COURSE COMPLETION CERTIFICATES AND REPORTS

(a) ~~Any school utilizing its license examination performance record for advertising or promotional purposes shall only use data that:~~

- ~~(1) are limited to the annual examination performance data for the particular school and for all examination candidates in the State;~~
- ~~(2) include the time period covered, the number of first time candidates examined, and either the number or percentage of first time candidates passing the examination; and~~
- ~~(3) are presented in a manner that is not misleading or false.~~

~~(b) Schools shall not make or publish, by way of advertising or otherwise, any false or misleading statement regarding employment opportunities that may be available as a result of completion of a course offered by that school or acquisition of a real estate license.~~

~~(c) Schools shall not use endorsements or recommendations of any person or organization of advertising or otherwise unless such person or organization has consented in writing to the use of the endorsement or recommendation. In no case shall any person or organization be compensated for an endorsement or recommendation.~~

~~(d) Schools may offer and advertise courses in addition to those approved by the Commission pursuant to this Subchapter provided that references to such courses are not made or published in a manner that implies approval by the Commission.~~

~~(e) Instructional time and materials may be utilized for instructional purposes only.~~

~~(f) Schools shall not offer Postlicensing courses only for brokers affiliated with a particular real estate broker, firm, franchise, or association, even if the entity whose affiliated brokers would benefit from the closed course is the school owner.~~

(a) For each Prelicensing course taught, an education provider shall provide a course completion certificate signed by the education director to each student that:

- (1) attends at least 80 percent of all scheduled instructional hours; and
- (2) obtains a grade of at least a 75 percent on the end-of-course examination.

(b) For each Postlicensing course taught, an education provider shall provide a course completion certificate signed by the education director to each student that:

- (1) attends at least ninety percent of all scheduled instructional hours; and
- (2) obtains a grade of at least a 75 percent on the end-of-course examination.

(c) The end-of-course examination shall be proctored. Students shall not use textbooks or notes on the end-of-course examination.

(d) For each Continuing Education course taught, an education provider shall provide a course completion certificate signed by the education director to each student that meets the requirements of 21 NCAC 58A .1705.

(e) The course completion certificate shall identify the course, date of completion, student, and instructor.

(f) An education director shall submit a Course Completion Report within seven calendar days of any student completing any real estate course pursuant to the education provider's Policies and Procedures Disclosure. The Course Completion Report shall include:

- (1) each student's legal name;
- (2) each student's email address and telephone number;
- (3) each student's unique identification number, if reporting a Prelicensing course;
- (4) each student's real estate broker license number, if applicable;
- (5) the course completion date;
- (6) the education provider's name and number;
- (7) the course number; and
- (8) the instructor's name and number;

(g) For each Prelicensing or Postlicensing course taught, an education director shall submit a Summary Report no later than the fifth day of the month. The Summary Report shall contain the previous month's data. The Summary Report shall include the:

- (1) name of the instructor(s);
- (2) title of course(s);
- (3) number of students who paid tuition in each course and did not receive a refund;
- (4) number of students who met all course requirements pursuant to Paragraph (a) and (b) of this Rule; and
- (5) number of students who satisfied Subparagraph (a)(1) and (b)(1) of this Rule but did not satisfy Subparagraph (a)(2) and (b)(2) of this Rule.

(h) Education providers shall electronically submit the per student fee prescribed by G.S. 93A-4(a2) and G.S. 93A-38.5(d).

Authority G.S. 93A-4(d); 93A-33; 93A-34.

21 NCAC 58H .0208 PRELICENSING AND POSTLICENSING COURSE SCHEDULING AND NOTIFICATION EDUCATION PROVIDER RECORDS

~~(a) All Prelicensing and Postlicensing courses shall have fixed beginning and ending dates. Schools shall not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment shall be permitted only if the enrolling student can satisfy the minimum attendance requirement set forth in Rule .0210 of this Section.~~

~~(b) Schools shall notify the Commission of all scheduled Prelicensing and Postlicensing course offerings not later than 10 days prior to a scheduled course beginning date.~~

~~(c) The notice required by Paragraph (b) of this Rule shall include:~~

- ~~(1) the school name;~~
- ~~(2) the school code number; and~~
- ~~(3) for each scheduled course:~~
 - ~~(A) the name and course code number;~~
 - ~~(B) the scheduled beginning and ending dates;~~
 - ~~(C) the course meeting days and times, including any scheduled lunch breaks; and~~

~~(D) the name of the instructor and instructor number.~~

~~(d) If there is a change or cancellation within five days of the scheduled course date, then the school director shall provide notice to the Commission within 24 hours of the change or cancellation.~~

~~(e) Class meetings shall not exceed seven and a half instructional hours per day and shall not exceed 30 instructional hours over any seven day period.~~

All education provider records shall be retained for three years by the education provider and be made available to the Commission during an investigation or application process. Education provider records shall include:

- (1) enrollment and attendance records;
- (2) each student's end-of-course examination with grade and graded answer sheet;
- (3) a master copy of each end-of-course examination with its answer key, course title, course dates and name of instructor;
- (4) all instructor evaluations pursuant to Rule .0203(d) of this Section;
- (5) advertisements;
- (6) ARELLO or IDECC certifications;
- (7) bulletins, catalogues, Policies and Procedures Disclosure, and other official publications;
- (8) course schedules;
- (9) student course materials;
- (10) signed certifications pursuant to Rule .0204(b)(6) of this Section; and
- (11) statements of consent pursuant to Rule .0206(c) of this Section.

Authority G.S. 93A-4.

21 NCAC 58H .0209 POSTLICENSING COURSE ENROLLMENT EXPIRATION AND RENEWAL OF EDUCATION PROVIDER CERTIFICATION

~~A school shall not enroll an individual in a Postlicensing course if:~~

- ~~(1) the first day of the Postlicensing course occurs while the individual is enrolled in a Prelicensing course; or~~
- ~~(2) the first day of the Postlicensing course occurs while the individual is taking another Postlicensing course at the same school or a different school if such enrollment results in the individual being in class for more than 30 instructional hours in any given seven day period.~~

(a) All education provider and public education provider certifications shall expire annually on June 30 following certification.

(b) An education provider or a public education provider shall file an electronic application for renewal of its certification within 45 days immediately preceding expiration of certification on a form available on the Commission's website. The certification renewal application form shall include:

- (1) the education provider or public education provider's:

(A) name;

(B) number;

(C) mailing address;

(D) telephone number; and

(E) website address, if applicable; and

(2) the education director's name and signature;

(3) all approved real estate courses offered;

(4) a copy of the education provider's Policies and Procedures Disclosure, if applicable;

(5) proof of bond as required in G.S. 93A-36, if applicable.

(c) Public education providers shall not be charged any fees to renew the education provider certification or course renewal.

(d) The education provider certification renewal fee shall be one hundred dollars (\$100.00) for each education provider location.

(e) The renewal fee for an education provider to offer a Prelicensing or Postlicensing course at any of its locations during the licensed period shall be twenty-five dollars (\$25.00) per Prelicensing or Postlicensing course.

(f) The renewal fee for an education provider to renew an approved continuing education elective course shall be fifty dollars (\$50.00) per elective course.

(g) The materials fee for an education provider to renew an Update course approval shall be one hundred dollars (\$100.00).

(h) If an education provider or public education provider certification has expired, the education provider shall submit an application for original certification pursuant to Rule .0202 of this Subchapter.

(i) Commission approval of all Continuing Education courses shall expire on June 30. In order to obtain approval for an expired Continuing Education course, an education provider shall submit an original application pursuant to Rule .0401 of this Subchapter.

(j) If an education provider transfers an aggregate of 50 percent or more of the ownership interest, the education provider shall notify the Commission in writing within 10 days of the transfer.

Authority G.S. 93A-4(a1); 93A-4; 93A-33; 93A-34(b); 93A-35(b); 93A-36.

21 NCAC 58H .0210 PRELICENSING AND POSTLICENSING COURSE COMPLETION STANDARDS DENIAL, WITHDRAWAL, OR TERMINATION OF EDUCATION PROVIDER CERTIFICATION

~~(a) To complete a Prelicensing course, a student shall, at a minimum:~~

- ~~(1) attend at least eighty percent of all scheduled credit hours for the course; and~~
- ~~(2) obtain a grade of at least seventy five percent on the end of course examination.~~

~~(b) To complete a Postlicensing course, a student shall, at a minimum:~~

- ~~(1) attend at least ninety percent of all scheduled credit hours for the course; and~~
- ~~(2) obtain a grade of at least seventy five percent on the end of course examination.~~

~~(c) The end of course examination shall be completed in the classroom and proctored by the instructor or another school staff~~

~~member. Students shall not use textbooks or notes on the end of course examination.~~

~~(d) Prelicensing end of course examinations may be provided by the Commission for use by a licensed or approved school. If the Commission does not provide such end of course examination, or if a school elects not to use a Commission provided examination, the school shall use an examination that tests students' knowledge and mastery of the course subject matter. Upon the request of the Commission during an application or investigation, the school shall provide a copy of its end of course examination.~~

~~(e) Postlicensing end of course examinations shall be provided by the Commission for use by a licensed or approved school.~~

~~(f) A school may, within 30 days of the course ending date, allow a Prelicensing or Postlicensing course student opportunities to make up a missed end of course examination or to retake a failed end of course examination without repeating the course. Postlicensing students shall be allowed at least one retake examination opportunity. Any make up or repeat end of course examination shall consist of a different form of the examination than any previously administered in the student's course. If the examination used is not provided by the Commission, at least seventy five percent of the questions shall be different from those previously included on any end of course examination used earlier in the student's course.~~

~~(g) Schools, school directors, and instructors shall take steps to protect the security and integrity of course examinations at all times. These steps shall include:~~

- ~~(1) maintaining examinations and answer keys in a secure place, such as a locked area, accessible only to the instructor or school officials;~~
- ~~(2) prohibiting students from retaining copies of examinations, answer sheets, and scratch paper containing notes or calculations, or any material that may jeopardize examination security;~~
- ~~(3) monitoring students at all times when examinations are being administered; and~~
- ~~(4) prohibiting students from reviewing examinations, answer sheets, scratch paper, or any material used during the examination after students have completed the examination.~~

~~(h) Any student who is found to have cheated in any manner on any course examination shall be dismissed from the course and shall not be awarded a passing grade for the course or any credit for partial completion of the course. The school shall report the cheating incident in writing to the Commission within 10 days.~~

~~(a) The Commission may deny or withdraw certification of an education provider or suspend, revoke, or deny renewal of the certification of an education provider upon finding that an education provider:~~

- ~~(1) official was found by a court or government agency of competent jurisdiction to have violated any state or federal law;~~
- ~~(2) made any false statements or presented any false, incomplete, or incorrect information in connection with an application;~~
- ~~(3) failed to provide or provided false, incomplete, or incorrect information in connection with any report the education provider is required to submit to the Commission;~~

(4) presented to its students or prospective students false or misleading information relating to its instructional program, to the instructional programs of other institutions, or related to employment opportunities;

(5) collected money from students but refused or failed to provide the promised instruction;

(6) failed to submit the per student fee as required by G.S. 93A-4(a2) or 93A-38.5(d);

(7) refused at any time to permit authorized representatives of the Commission to inspect the education provider's facilities or audit its courses;

(8) or education director violated the rules of this Subchapter or was disciplined by the Commission under G.S. 93A-6;

(9) obtained or used, or attempted to obtain or use, in any manner or form, North Carolina real estate license examination questions;

(10) failed to provide to the Commission a written plan describing the changes the education provider made or intends to make in its instructional program including instructors, course materials, methods of student evaluation, and completion standards to improve the performance of the education provider's students on the license examination within 30 days of the Commission's request during an investigation or application process;

(11) provided the Commission a fee that was dishonored by a bank or returned for insufficient funds;

(12) Certificate of Authority was revoked, subject to a revenue suspension, or subject to administrative dissolution by the NC Secretary of State;

(13) failed to utilize course materials pursuant to Rule .0205 of this Section;

(14) failed to submit reports pursuant to Rule .0207 of this Section;

(15) provided false, incomplete, or misleading information relating to real estate licensing, education matters, or the broker's education needs or license status; or

(16) refused or failed to comply with the provisions of this Subchapter.

(b) A broker shall be subject to discipline pursuant to G.S. 93A-6 if the broker engages in dishonest, fraudulent, or improper conduct in connection with the operations of an education provider if that broker:

(1) has an ownership interest in the education provider;

(2) is the education director; or

(3) is an instructor for an education provider.

(c) The Commission shall withdraw an education provider's certification when its annual License Examination Performance Record fails to exceed 40 percent in each of the previous two license years. Following withdrawal, the education provider shall be ineligible to apply for certification for a period of one year.

(d) When ownership of a certified education provider is transferred and the education provider ceases to operate as the certified entity, the certification is not transferable and shall terminate on the effective date of the transfer. All courses shall be completed by the effective date of the transfer. The transferring owner shall report course completion(s) to the Commission. The new entity shall obtain an original certification for each location where the education provider will conduct courses as required by G.S. 93A-34 and Rule .0202 of this Section prior to advertising courses, registering students, accepting tuition, conducting courses, or otherwise engaging in any education provider operations.

Authority G.S. 93A-4; 93A-33; 93A-4(d); 93A-34(c); 93A-35(c); 93A-38.

21 NCAC 58H .0211 PRELICENSING AND POSTLICENSING ROSTER REPORTING
21 NCAC 58H .0212 SCHOOL RECORDS
21 NCAC 58H .0213 EVALUATIONS OF INSTRUCTOR PERFORMANCE
21 NCAC 58H .0214 EXPIRATION AND RENEWAL OF A SCHOOL APPROVAL OR LICENSE
21 NCAC 58H .0215 DENIAL, WITHDRAWAL, OR TERMINATION OF SCHOOL APPROVAL OR LICENSE

Authority G.S. 93A-4; 93A-33; 93A-34; 93A-35; 93A-36; 93A-38.

SECTION .0300 – APPROVED INSTRUCTORS

21 NCAC 58H .0301 PRELICENSING, POSTLICENSING, AND UPDATE COURSE INSTRUCTOR APPROVAL

(a) Approval of an instructor to teach Prelicensing and Postlicensing courses shall authorize the instructor to teach courses only in conjunction with and at ~~schools approved or licensed by the Commission~~ certified education providers pursuant to Rule .0202 or .0203 of this Subchapter to conduct such courses.

(b) An instructor approved to teach Prelicensing and Postlicensing courses may elect to also teach Update courses upon initial approval, renewal, or any time while holding such approval.

(c) Approved instructors may teach Update courses for any ~~approved Update course sponsor pursuant to Rule .0402~~ certified education provider pursuant to Rule .0202 of this Subchapter. An approved instructor may not independently conduct an Update course unless the instructor has also obtained ~~approval as an Update course sponsor.~~ certification as an education provider.

Authority G.S. 93A-4(d); 93A-33; 93A-34.

21 NCAC 58H .0302 APPLICATION AND CRITERIA FOR ORIGINAL PRELICENSING, POSTLICENSING, OR UPDATE COURSE INSTRUCTOR APPROVAL

(a) An individual seeking original instructor approval shall submit an application on a form available on the Commission's website that shall require the instructor applicant to indicate the course(s) for which he or she is seeking approval and set forth the instructor applicant's:

- (1) legal name, address, email address, and telephone number;
- (2) real estate license number and instructor number, if any, assigned by Commission;
- (3) criminal and occupational licensing history, including any disciplinary actions;
- (4) education background, including specific real estate education;
- (5) experience in the real estate business;
- (6) real estate teaching experience, if any;
- (7) a signed Consent to Service of Process and Pleadings for nonresident applicants; and
- (8) signature.

(b) An instructor applicant shall demonstrate that he or she possesses good reputation and character pursuant to G.S. 93A-34(c)(9) and has:

- (1) a North Carolina real estate broker license that is not on provisional status;
- (2) completed continuing education sufficient to activate a license under ~~21 NCAC 58A .1702;~~ 21 NCAC 58A .1703;
- (3) completed 60 semester hours of college-level education at an institution accredited by any college accrediting body recognized by the U.S. Department of Education;
- (4) completed the New Instructor Seminar within the previous six months; and
- (5) within the previous seven years has either:
 - (A) two years full-time experience in real estate brokerage with at least one year in North Carolina;
 - (B) three years of instructor experience at a secondary or post-secondary level;
 - (C) real estate Prelicensing or Postlicensing instructor approval in another jurisdiction; or
 - (D) qualifications found to be equivalent by the Commission, including a current North Carolina law license and three years' full time experience in commercial or residential real estate transactions or representation of real estate brokers or firms.

(c) In order to complete the New Instructor Seminar, a broker shall:

- (1) attend at least ninety percent of all scheduled hours; and
- (2) demonstrate the ability to teach a 15-minute block of a single Prelicensing topic in a manner consistent with the course materials.

~~(e) Instructors approved prior to July 1, 2019 shall be exempt from the New Instructor Seminar requirement pursuant to Paragraph (b)(4) of this Rule.~~

~~(e)(d)~~ Prior to teaching any Update course, an approved instructor shall take the Commission's annual Update Instructor Seminar for the current license period. The Update Instructor Seminar shall not be used to meet the requirement in Rule .0306(b)(4) of this Section.

Authority G.S. 93A-3(f); 93A-4; 93A-10; 93A-33; 93A-34.

21 NCAC 58H .0303 DENIAL OR WITHDRAWAL OF INSTRUCTOR APPROVAL

(a) The Commission may deny or withdraw approval of any instructor applicant or approved instructor upon finding that the instructor or instructor applicant:

- (1) has failed to meet the criteria for approval described in Rule .0302 of this Section or the criteria for renewal of approval described in Rule .0306 of this Section at the time of application or at any time during an approval period;
- (2) made any false statements or presented any false, incomplete, or incorrect information in connection with an application for approval or renewal of approval or any report that is required to be submitted to the Commission;
- (3) has failed to submit to the Commission any report, course examination, or video recording required by these Rules;
- (4) has failed to demonstrate the ability to teach a Prelicensing, Postlicensing, or Update course in a manner consistent with the course materials;
- ~~(5) taught a Prelicensing course and compiled a license examination performance record for first-time examination candidates that is below 60 percent passing for two or more of the previous five annual reporting periods;~~
- ~~(6)(5) taught a Prelicensing course and failed to provide to the Commission a written plan describing the changes the instructor has made or intends to make in his or her instructional program to improve the performance of the instructor's students on the license examination within 30 days of the Commission's request during an investigation, application process, or following an instructor's attainment of a licensing examination record for first-time examination candidates that is below sixty percent passing for the previous annual reporting period; investigation or application process;~~
- ~~(7)(6)~~ has been convicted of, pleaded guilty to, or pleaded no contest to, a misdemeanor or felony violation of state or federal law by a court of competent jurisdiction;
- ~~(8)(7)~~ has been found by a court or government agency of competent jurisdiction to have violated any state or federal regulation prohibiting discrimination;
- ~~(9)(8)~~ has obtained, used, or attempted to obtain or use, in any manner or form, North Carolina real estate license examination questions;
- ~~(10)(9)~~ has failed to take appropriate steps to protect the security of end-of-course examinations pursuant to Rule .0210(g) of this Subchapter; examinations;

- ~~(11)(10)~~ failed to take any corrective action set out in the plan described in Item (5) of this Rule or as otherwise requested by the Commission;
- ~~(12)(11)~~ engaged in any other improper, fraudulent, or dishonest conduct; ~~or~~
- ~~(12)~~ failed to utilize course materials pursuant to Rule .0205 of this Subchapter;
- ~~(13)~~ failed to comply with any other provisions of this Subchapter.

(b) The Commission shall withdraw an instructor's approval when their annual License Examination Performance Record fails to exceed 40 percent in each of the previous two license years. Following withdrawal, the instructor shall be ineligible to apply for approval for a period of one year.

Authority G.S. 93A-4; 93A-33; 93A-34.

21 NCAC 58H .0304 INSTRUCTOR CONDUCT AND PERFORMANCE

(a) All instructors shall ensure that class sessions are conducted at the scheduled time and for the full amount of time that is scheduled or required. Instructors shall conduct courses in accordance with the Commission's rules, and any applicable course syllabi, instructor guide, or course plan. Instructors shall conduct classes demonstrating the ability to:

- (1) state student learning objectives at the beginning of the course and present accurate and relevant information;
- (2) communicate correct grammar and vocabulary;
- (3) utilize a variety of instructional techniques that require students to analyze and apply course content, including teacher-centered approaches, such as lecture and demonstration, and student-centered approaches, such as lecture discussion, reading, group problem solving, case studies, and scenarios;
- (4) utilize instructional aids, such as:
 - (A) whiteboards;
 - (B) sample forms and contracts;
 - (C) pictures;
 - (D) charts; and
 - (E) videos.
- (5) utilize assessment tools, such as:
 - (A) in-class or homework assignments, and
 - (B) quizzes and midterm examinations for Prelicensing and Postlicensing courses.
- (6) avoid criticism of any other person, agency, or organization;
- (7) identify key concepts and correct student misconceptions; and
- (8) maintain control of the class.

~~(b) Instructors teaching Prelicensing, Postlicensing, or Update courses shall interact with students either in person in a classroom setting or through an interactive telecommunication system, or comparable system, that permits continuous mutual audio and visual communication between the instructor and students. The~~

~~school shall provide monitoring and technical support for the instructors or students.~~

~~(e) Instructors teaching Prelicensing or Postlicensing courses shall:~~

- ~~(1) safeguard and protect the security of course examinations;~~
- ~~(2) not allow students to review or retain copies of end of course examinations and any materials used during the examination; and~~
- ~~(3) only use guest lecturers that have been approved by the school director pursuant to Rule .0204(d) of this Section.~~

~~(d)(b)~~ Instructors shall not obtain, use, or attempt to obtain or use, in any manner or form, North Carolina real estate license examination questions.

Authority G.S. 93A-4; 93A-33; 93A-34.

21 NCAC 58H .0305 DIGITAL VIDEO RECORDINGS

(a) Upon request of the Commission during an investigation, an ~~education provider or~~ approved instructor shall submit a digital video recording ~~of the instructor teaching specified topics of a course, as identified by the Commission which the instructor is approved to teach.~~ depicting an instructor teaching a specified course topic.

~~(b) Upon the request of the Commission during an investigation, a continuing education sponsor shall submit a digital video recording depicting a particular Update Course instructor, as designated by the Commission, teaching the Update course.~~

~~(c)(b)~~ Any digital video recording submitted to the Commission shall:

- (1) have been made within 12 months of the date of submission;
- (2) be recorded either on a digital video disc (DVD), USB drive, or similar medium;
- (3) be unedited;
- (4) display a visible date and time stamp during the entire video recording;
- (5) include a label identifying the instructor, the course title, subject being taught, ~~student materials used,~~ and dates of the video instruction;
- (6) include student materials used in the production of the video recording;
- ~~(6)(7)~~ have visual and sound quality to allow reviewers to see and hear the instructor; and
- ~~(7)(8)~~ show at least a portion of the students present in a live audience.

~~(d)(c)~~ The deadline for any digital video recording requested during an investigation shall be 30 days after the date of the next scheduled course, but no later than 120 days after the Commission's request.

Authority G.S. 93A-4; 93A-33; 93A-34.

SECTION .0400 - CONTINUING EDUCATION REAL ESTATE COURSES

21 NCAC 58H .0401 APPLICABILITY APPROVAL OF A REAL ESTATE EDUCATION COURSE

This Section shall apply to the application, renewal, and conduct of continuing education sponsors, continuing education elective courses, and Update Courses.

(a) Prior to obtaining the Commission's written approval of a real estate education course, education providers shall not offer, advertise, or otherwise represent that any real estate education course is, or may be, approved for credit in North Carolina.

(b) An education provider seeking original approval of a proposed course shall complete an application on a form available on the Commission's website that requires the applicant to set forth the:

- (1) title of the proposed course;
- (2) education provider's legal name, address, and telephone number;
- (3) education director's legal name;
- (4) education provider's number;
- (5) credit hours awarded for completing the course;
- (6) subject matter of the course;
- (7) identity of the course owner;
- (8) written permission of the course owner, if other than the applicant;
- (9) identity of prospective instructors;
- (10) a description of the method by which the education provider will proctor the end-of-course examination for Prelicensing and Postlicensing courses; and
- (11) education director's signature.

(c) The application for original approval shall be accompanied by a copy of the course guide, which shall include:

- (1) course objectives;
- (2) learning objectives for each topic;
- (3) a timed outline;
- (4) instructional methods and aids to be employed; and
- (5) all materials that will be provided to students.

(d) An applicant seeking approval to offer a distance education or blended learning course shall submit an application for original approval as well as:

- (1) a full copy of the course on the medium to be utilized for instruction;
- (2) a description of the method by which the education provider will verify and record student attendance;
- (3) a list of hardware and software or other equipment necessary to both offer and complete the course;
- (4) the contact information for the technical support service for the course;
- (5) a copy of the student orientation and course tutorial information;
- (6) a copy of the primary ARELLO or IDECC certification except for public education providers; and
- (7) all hardware and software necessary to review the submitted course at the expense of the applicant.

(e) An education provider seeking approval to offer an already approved course shall complete an application on a form available on the Commission's website that requires the applicant to set forth the:

- (1) title of the course;
- (2) applicant's legal name, address, and telephone number;
- (3) applicant's education director's legal name;
- (4) applicant's education provider number;
- (5) identity of the course owner;
- (6) written permission of the course owner, if other than the applicant;
- (7) identity of prospective instructors, if applicable;
- (8) a copy of the secondary ARELLO or IDECC certification except for public education providers;
- (9) certification that the originally approved course will not be altered; and
- (10) education director's signature.

(f) An education provider shall submit a one hundred dollar (\$100.00) fee for each application submitted pursuant to Paragraph (e) of this Rule for any continuing education course. The application shall be deemed approved ten business days after the Commission has received the application and fee, unless the Commission notifies the applicant otherwise.

(g) An education provider shall submit a forty dollar (\$40.00) fee per Prelicensing or Postlicensing course offered at any of its branch locations. No fee shall be required for public education providers or an agency of federal, state, or local government.

(h) An education provider shall submit a one hundred dollar (\$100.00) fee per elective course. No fee shall be required for public education providers or an agency of federal, state, or local government.

(i) Any distance education course approved by the Commission on or before July 1, 2020, shall not have to obtain ARELLO or IDECC certification until July 1, 2022.

Authority G.S. 93A-3(c); 93A-4; 93A-33; 93A-34; 93A-38.5.

21 NCAC 58H .0402 APPLICATION FOR ORIGINAL APPROVAL OF CONTINUING EDUCATION SPONSOR CONTINUING EDUCATION ELECTIVE COURSE REQUIREMENTS

(a) Only continuing education sponsors approved by the Commission shall be eligible to offer continuing education courses, including elective courses and Update Courses.

(b) Any entity seeking original approval to be a continuing education sponsor shall make application on a form available on the Commission's website that requires the applicant to set forth:

- (1) the legal name of applicant and any assumed business name;
- (2) the applicant's mailing address, telephone number, and email address;
- (3) the legal name of the individual who will serve as the applicant's continuing education coordinator as defined in Rule .0403 of this Section;
- (4) the applicant's form of business entity;

- (5) the SOSID issued by the NC Secretary of State, if applicable;
- (6) the legal name(s) of the sponsor's owner(s);
- (7) a record of any criminal convictions for all individuals listed as owner(s), manager(s), or partner(s);
- (8) a record of any discipline related to a professional license for all individuals listed as owner(s), manager(s), or partner(s); and
- (9) the signature of the applicant.

(c) Any foreign or out of state entity or person applying for original approval shall submit a signed Consent to Service of Process and Pleadings form as required by G.S. 93A-10.

(d) The name of any course sponsor shall not be identical to the name of any other approved continuing education course sponsor or licensed private real estate school.

(e) Continuing education sponsors shall notify the Commission in writing within 10 days of any change in business name, ownership interest, continuing education coordinator, address, business telephone number, or email address.

(a) Continuing education elective courses shall:

- (1) cover subject matter related to real estate brokerage practice and offer knowledge or skills that will enable brokers to better serve real estate consumers and the public interest;
- (2) consist of at least four hours of instruction;
- (3) offer four continuing education credit hours;
- (4) include handout materials for students that provide the information to be presented in the course; and
- (5) be taught only by an instructor who possesses at least one of the following:
 - (A) a baccalaureate or higher degree in a field directly related to the subject matter of the course;
 - (B) three years' full-time work experience within the previous 10 years that is directly related to the subject matter of the course;
 - (C) three years' full-time experience within the previous 10 years teaching the subject matter of the course; or
 - (D) education or experience or both found by the Commission to be equivalent to one of the above standards.

(b) Education providers shall obtain approval from the Commission before making any changes in the content of an elective course. Requests for approval of changes shall be in writing. However, changes in course content that are technical in nature do not require approval during the approval period, but shall be reported at the time the education provider requests renewal of course approval.

Authority G.S. 93A-3(c); 93A-4.1; 93A-10; 93A-34; 93A-38.5.

21 NCAC 58H .0403 CONTINUING EDUCATION COORDINATOR COMMISSION CREATED UPDATE COURSES

(a) ~~Continuing education sponsors shall designate in writing to the Commission one person to serve as the continuing education coordinator. The continuing education coordinator shall serve as the official contact person for the sponsor and shall be responsible for:~~

- ~~(1) supervising the sponsor's continuing education courses;~~
- ~~(2) ensuring continuing education elective courses are taught by instructors complying with Rule .0407 of this Section;~~
- ~~(3) ensuring elective courses are taught according to the course materials approved by the Commission;~~
- ~~(4) ensuring only approved instructors who have taken the Update Course Seminar for the current license period teach Update Courses;~~
- ~~(5) ensuring students are furnished with the approved course materials pursuant to Rule .0406 of this Section;~~
- ~~(6) signing course completion certificates;~~
- ~~(7) submitting to the Commission all required fees, rosters, reports, and other information; and~~
- ~~(8) submitting to the Commission the name and the instructor number of each elective course instructor within 10 days of employment.~~

~~(b) Each continuing education coordinator shall view the Commission's Continuing Education Coordinator video electronically within 30 days of initial designation and annually within 45 days immediately preceding expiration of sponsor approval.~~

~~(a) The Commission shall annually develop Update courses and shall produce instructor and student materials for use by education providers.~~

~~(b) An education provider shall submit a one hundred dollar (\$100.00) materials fee to offer the Update course.~~

~~(c) An education provider seeking approval to offer a modified Update course pursuant to Paragraph (f) of this Rule shall also submit the written permission of each of the course owners, if other than the applicant.~~

~~(d) Education providers shall use the Commission-developed course materials to conduct Update courses. Education providers shall provide a copy of the course materials to each broker taking an Update course.~~

~~(e) All Update course materials developed by the Commission are the sole property of the Commission and are subject to the protection of federal copyright laws. Violation of the Commission's copyright with regard to these materials shall be grounds for disciplinary action or other action as permissible by law.~~

~~(f) With advance approval from the Commission, education providers and approved instructors may make modifications to the Update course when the Update course is being promoted to and conducted for a group of brokers that specialize in a particular area of real estate brokerage. Such modifications shall relate to the same general subject matter addressed in the prescribed Update course and the Update course as modified shall achieve~~

the same educational objectives as the unmodified Update course. Where certain subject matter addressed in the prescribed Update course is not directly applicable to the group of brokers who specialize in the particular area of real estate brokerage being targeted, different subject matter and education objectives may be substituted with the prior written consent of the Commission. All modified Update course materials shall be the joint property of the Commission and the education provider or approved instructor approved to make such modifications, or as otherwise determined by written agreement. Violation of the Commission's copyright with regard to these materials shall be grounds for disciplinary action or other action as permitted by law.

Authority G.S. 93A-3; 93A-4.1; 93A-38.5.

21 NCAC 58H .0404 RENEWAL OF SPONSOR APPROVAL COURSE SCHEDULING

~~(a) Commission approval of all continuing education sponsors shall expire annually on June 30 following issuance of approval.~~

~~(b) In order to ensure continuous sponsor approval, an approved sponsor shall file an electronic application for renewal of approval within the 45 days immediately preceding expiration of approval. The sponsor approval renewal application shall require the sponsor to set forth:~~

- ~~(1) the legal name of sponsor and any assumed business name;~~
- ~~(2) the sponsor number assigned by the Commission;~~
- ~~(3) the sponsor's mailing address, telephone number, and email address;~~
- ~~(4) the continuing education coordinator's legal name;~~
- ~~(5) any criminal convictions or occupational licensure disciplinary action taken against any individual listed as owner(s) of the sponsor since last approval;~~
- ~~(6) the name and course number of each continuing education elective course approved pursuant to Rule .0406 of this Section the applicant wishes to renew;~~
- ~~(7) a certification that the continuing education coordinator has completed the Commission's video training pursuant to Rule .0403(b) of this Section;~~
- ~~(8) a certification that its facilities and equipment are in compliance with all applicable local, state, and federal laws and regulations regarding health, safety, and welfare, including the Americans with Disabilities Act; and~~
- ~~(9) the signature of the sponsor.~~

~~(e) A continuing education sponsor also licensed or approved as a school may renew its continuing education sponsor approval on its school renewal form pursuant to Rule .0214 of this Subchapter.~~

~~(d) Continuing education sponsors shall submit a fifty dollar (\$50.00) fee for each continuing education elective course the sponsor wishes to renew. No fee is required if the entity making application is a public school or is an agency of federal, state or local government.~~

~~(e) Continuing education sponsors shall submit a one hundred dollar (\$100.00) materials fee if the sponsor wishes to renew approval to offer Update courses. No fee is required if the entity making application is a public real estate school or is an agency of federal, state, or local government.~~

~~(a) Continuing Education courses shall be scheduled and conducted in a manner that limits class sessions to a maximum of eight instructional hours in any given day. The maximum permissible class session without a break shall be 90 minutes. Courses scheduled for more than four instructional hours in any given day shall include a meal break of at least one hour.~~

~~(b) An education provider shall not offer, conduct, or allow a student to complete any continuing education course and offer continuing education credit between June 11 and June 30, inclusive.~~

~~(c) An education provider offering a distance education Continuing Education course shall require students to complete the course within 30 days of the date of registration or the date the student is provided the course materials and permitted to begin work, whichever is the later date. An education provider shall not offer, conduct, or allow a student to complete any course for continuing education credit between June 11 and June 30, inclusive.~~

~~(d) Education providers shall not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course. Late enrollment shall be permitted only if the enrolling student can satisfy the minimum attendance requirement set forth in Rule .0207 of this Subchapter.~~

~~(e) Education providers shall notify the Commission of all scheduled course offerings no later than 10 days prior to a scheduled course beginning date.~~

~~(f) The notice required by Paragraph (e) of this Rule shall include:~~

- ~~(1) the education provider name;~~
- ~~(2) the education provider number; and~~
- ~~(3) for each scheduled course:~~
 - ~~(A) the name and course number;~~
 - ~~(B) the scheduled beginning and ending dates, if applicable;~~
 - ~~(C) the course meeting days and times, including any scheduled lunch breaks; and~~
 - ~~(D) the name of the instructor and instructor number.~~

~~(g) If there is a change or cancellation within five days of the scheduled course date, then the education director shall provide notice to the Commission within 24 hours of the change or cancellation.~~

Authority G.S. 93A-3; ~~93A-4.1~~; 93A-38.5.

21 NCAC 58H .0405 DENIAL OR WITHDRAWAL OF SPONSOR APPROVAL
21 NCAC 58H .0406 APPROVAL AND RENEWAL OF ELECTIVE COURSE
21 NCAC 58H .0407 CONTINUING EDUCATION ELECTIVE COURSE REQUIREMENTS
21 NCAC 58H .0408 COMMISSION CREATED UPDATE COURSES

21 NCAC 58H .0409 RECORDS AND COMMISSION REVIEW
21 NCAC 58H .0410 CONTINUING EDUCATION COURSE SCHEDULING AND NOTIFICATION
21 NCAC 58H .0411 CONTINUING EDUCATION COURSE ATTENDANCE
21 NCAC 58H .0412 CONTINUING EDUCATION ROSTER REPORTS AND CERTIFICATES
21 NCAC 58H .0413 CONTINUING EDUCATION COURSE COST, CANCELLATION, AND REFUNDS
21 NCAC 58H .0414 ADVERTISING

Authority G.S. 93A-3(c); 93A-4.1; 93A-6(a)(15).

CHAPTER 58 - REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Real Estate Commission intends to adopt the rule cited as 21 NCAC 58A .0305 and amend the rules cited as 21 NCAC 58A .0110, .0302, and .0506.

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

Proposed Effective Date: July 1, 2020

Public Hearing:

Date: March 18, 2020

Time: 9:00 a.m.

Location: NC Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609

Reason for Proposed Action:

21 NCAC 58A .0110 - BROKER-IN-CHARGE

Amend this Rule to clarify that a broker-in-charge of a sole proprietorship can be someone other than the sole proprietor, delete "Subchapter S corporation" from Paragraph (c)(2) and replace it with "pass-through business," and require brokers to complete the Commission's Basic Trust Account Procedures course no later than 120 days after opening a trust account.

21 NCAC 58A .0302 – LICENSE APPLICATION AND FEE

Amend this Rule to reduce the time provided to an applicant to respond to a request for additional information before the application is cancelled from 90 to 45 days.

21 NCAC 58A .0305 – PETITION FOR PREDETERMINATION

Adopt this Rule to replace the temporary rule. This Rule 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.

21 NCAC 58A .0506 – PROVISIONAL BROKER TO BE SUPERVISED BY BROKER

Amend this Rule to allow provisional brokers to be supervised by the broker-in-charge of a team and firm with which the team is affiliated.

Comments may be submitted to: *Melissa Vuotto, PO Box 17100, Raleigh, NC 27619; email Public.Comment@ncrec.gov*

Comment period ends: *April 5, 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**

SUBCHAPTER 58A – REAL ESTATE BROKERS

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) Every real estate firm shall designate one BIC for its principal office and one BIC for each of its branch offices. No office of a firm shall have more than one designated BIC. A BIC shall not serve as BIC for more than one office unless each of those offices share the same physical office space and delivery address.

(b) Every ~~broker who is a sole proprietor~~ proprietorship shall designate ~~himself or herself as~~ a BIC if the ~~broker~~ sole proprietorship:

- (1) engages in any transaction where ~~the a~~ broker is required to deposit and maintain monies belonging to others in a trust account;
- (2) engages in advertising or promoting ~~his or her~~ services as a broker in any manner; or
- (3) has one or more other brokers affiliated with ~~him or her~~ the sole proprietorship in the real estate business.

(c) A licensed real estate firm shall not be required to have a BIC if it:

- (1) is organized for the sole purpose of receiving compensation for brokerage services furnished

by its qualifying broker through another firm or broker;

- (2) is treated for tax purposes as a ~~Subchapter S corporation~~ pass-through business by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no licensed person associated with it other than its qualifying broker.

(d) A broker who maintains a trust or escrow account for the sole purpose of holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not be required to be a BIC.

(e) In order for a broker to designate as a BIC for a sole proprietor, real estate firm, or branch office, a broker shall apply for BIC Eligible status by submitting an application on a form available on the Commission's website. The BIC Eligible status form shall include the broker's:

- (1) name;
- (2) license number;
- (3) telephone number;
- (4) email address;
- (5) criminal history and history of occupational license disciplinary actions;
- (6) certification of compliance with G.S. 93A-4.2, including that:
 - (A) his or her broker license is on active status;
 - (B) the broker possesses at least two years of full-time or four years of part-time real estate brokerage experience within the previous five years or shall be a North Carolina licensed attorney with a practice that consisted primarily of handling real estate closings and related matters in North Carolina for three years immediately preceding application; and
 - (C) the broker completed the 12-hour Broker-in-Charge Course no earlier than one year prior to application and no later than 120 days after application; and

(7) signature.

(f) A broker who holds BIC Eligible status shall submit a form to become the designated BIC for a sole proprietor, real estate firm, or branch office. The BIC designation form shall include:

- (1) the broker's:
 - (A) name;
 - (B) license number;
 - (C) telephone number;
 - (D) email address; and
 - (E) criminal history and history of occupational license disciplinary actions; and
- (2) the firm's:
 - (A) name; and
 - (B) license number, if applicable;

(g) A designated BIC shall:

- (1) assure that each broker employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) notify the Commission of any change of firm's business address or trade name and the registration of any assumed business name adopted by the firm for its use;
- (3) be responsible for the conduct of advertising by or in the name of the firm at such office;
- (4) maintain the trust or escrow account of the firm and the records pertaining thereto;
- (5) retain and maintain records relating to transactions conducted by or on behalf of the firm, including those required to be retained pursuant to Rule .0108 of this Section;
- (6) supervise provisional brokers associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
- (7) supervise all brokers employed at the office with respect to adherence to agency agreement and disclosure requirements; ~~and~~
- (8) notify the Commission in writing that he or she is no longer serving as BIC of a particular office within 10 days following any such ~~change~~ change; and
- (9) shall complete the Commission's Basic Trust Account Procedures Course within 120 days of opening a trust account in accordance with G.S. 93A-6(g).

(h) A broker holding BIC Eligible status shall take the Broker-in-Charge Update Course during the license year of designation, unless the broker has satisfied the requirements of Rule .1702 of this Subchapter prior to designation.

- (i) A broker's BIC Eligible status shall terminate if the broker:
- (1) made any false statements or presented any false, incomplete, or incorrect information in connection with an application;
 - (2) fails to complete the 12-hour Broker-in-Charge Course pursuant to Paragraph (e) of this Rule;
 - (3) fails to renew his or her broker license pursuant to Rule .0503 of this Subchapter, or the broker's license has been suspended, revoked, or surrendered; or
 - (4) fails to complete the Broker-in-Charge Update Course and a four credit hour elective course pursuant to Rules .1702 and .1711 of this Subchapter, if applicable.

(j) In order to regain BIC Eligible status after a broker's BIC Eligible status terminates, the broker shall complete the 12-hour Broker-in-Charge Course prior to application and then submit a BIC Eligible status form pursuant to Paragraph (e) of this Rule.

(k) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-4.1; 93A-4.2; 93A-9.

SECTION .0300 – APPLICATION FOR LICENSE

21 NCAC 58A .0302 LICENSE APPLICATION AND FEE

- (a) The fee for an original application of a broker or firm license shall be one hundred dollars (\$100.00).
- (b) An applicant shall update information provided in connection with a license application in writing to the Commission or submit a new application form that includes the updated information without request by the Commission to ensure that the information provided in the application is current and accurate. Failure to submit updated information prior to the issuance of a license may result in disciplinary action against a broker or firm in accordance with G.S. 93A-6(b)(1). Upon the request of the Commission, an applicant shall submit updated information or provide additional information necessary to complete the application within ~~90~~ 45 days of the request or the license application shall be canceled.
- (c) The license application of an individual shall be canceled if the applicant fails to:
 - (1) pass a scheduled license examination within 180 days of filing a complete application pursuant to Rule .0301 of this Section; or
 - (2) appear for and take any scheduled examination without having the applicant's examination postponed or absence excused pursuant to Rule .0401 of this Subchapter.

Authority G.S. 93A-4; 93A-6(b)(1); 93A-9.

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 since the date the crime was committed;
 - (8) criminal record report prepared 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;
 - (14) certification; and
 - (15) signature.

(c) The fee for a petition for predetermination shall be forty-five dollars (\$45.00).

Authority G.S. 93A-4; 93B-8.1.

SECTION .0500 - LICENSING

21 NCAC 58A .0506 PROVISIONAL BROKER TO BE SUPERVISED BY BROKER-IN-CHARGE

(a) A provisional broker may engage in or hold himself or herself out as engaging in activities requiring a real estate license only while his or her license is on active status pursuant to Rule .0504 of this Section and he or she is supervised by the broker-in-charge of the real estate firm or office with which the provisional broker is affiliated. A provisional broker shall be supervised by only one broker-in-charge at a ~~time~~. time except that a provisional broker may be supervised by no more than two brokers-in-charge of two licensed affiliated firms located in the same physical location and acting as co-listing or co-selling agents in real estate transactions. When a provisional broker is supervised by more than one broker-in-charge, both brokers-in-charge shall bear all supervision responsibility at all times.

(b) Upon a provisional broker's affiliation with a real estate broker or brokerage firm, the broker-in-charge of the office where the provisional broker will be engaged in the real estate business shall file with the Commission a License Activation and Broker Affiliation form that sets forth the:

- (1) provisional broker's:
 - (A) name;
 - (B) license number, type of license, and current license status;
 - (C) physical, mailing, and emailing addresses;
 - (D) public and private phone numbers;
 - (E) completed Postlicensing courses, if necessary;

- (F) completed continuing education courses, if necessary; and
 - (G) signature.
- (2) broker-in-charge's:
- (A) name;
 - (B) license number;
 - (C) firm's name and license number;
 - (D) physical, mailing, and emailing addresses;
 - (E) public and private phone numbers; and
 - (F) signature.

(c) Upon the submission of the License Activation and Broker Affiliation form, the provisional broker may engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however, if the provisional broker and broker-in-charge do not receive from the Commission a written acknowledgment of the provisional broker supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the form, the provisional broker shall cease all real estate brokerage activities pending receipt of the written acknowledgment from the Commission.

(d) A broker-in-charge shall supervise the provisional broker in a manner that assures that the provisional broker performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a provisional broker as prescribed in this Rule may be subject to disciplinary action ~~by the~~ pursuant to Rule .0110 of this Subchapter.

(e) Upon the termination of the supervisory relationship between a provisional broker and his or her broker-in-charge, the provisional broker and the broker-in-charge shall provide written notification of the date of termination to the Commission not later than 10 days following the termination.

Authority G.S. 93A-2(b); 93A-3; 93A-9.

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

Rules approved by the Rules Review Commission at its meeting on December 19, 2019 Meeting.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

MEDICAL CARE COMMISSION

<u>Definitions</u>	10A NCAC 13C .1401	33:24 NCR
<u>List of Referenced Guidelines, Codes, Standards, and Regu...</u>	10A NCAC 13C .1402	33:24 NCR
<u>General and Emergency</u>	10A NCAC 13C .1403*	33:24 NCR
<u>Equivalency and Conflicts with Requirements</u>	10A NCAC 13C .1404	33:24 NCR
<u>Mechanical Requirements</u>	10A NCAC 13C .1405	33:24 NCR
<u>Plumbing and Other Piping Systems</u>	10A NCAC 13C .1406	33:24 NCR
<u>Electrical Requirements</u>	10A NCAC 13C .1407	33:24 NCR
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<u>Application of Physical Plant Requirements</u>	10A NCAC 13C .1410	33:24 NCR
<u>Persons not Eligible for New Adult Care Home Licenses</u>	10A NCAC 13F .0203	33:24 NCR
<u>Change of License</u>	10A NCAC 13F .0207*	33:24 NCR
<u>Suspension of Admissions</u>	10A NCAC 13F .0214	33:24 NCR
<u>Marketing</u>	10A NCAC 13F .1206	33:24 NCR
<u>Change of Licensee</u>	10A NCAC 13G .0207*	33:24 NCR
<u>Suspension of Admissions</u>	10A NCAC 13G .0214	33:24 NCR
<u>Marketing</u>	10A NCAC 13G .1207	33:24 NCR

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<u>Definitions</u>	10A NCAC 43D .0202*	34:05 NCR
<u>Waiting List</u>	10A NCAC 43D .0408*	34:05 NCR
<u>Supplemental Foods</u>	10A NCAC 43D .0501*	34:05 NCR
<u>The North Carolina Automated WIC System</u>	10A NCAC 43D .0701*	34:05 NCR
<u>Issuance of Food Benefits</u>	10A NCAC 43D .0702*	34:05 NCR
<u>Use of Food Benefits</u>	10A NCAC 43D .0703*	34:05 NCR
<u>Validity of Food Instruments and Cash-Value Vouchers</u>	10A NCAC 43D .0704	34:05 NCR
<u>Payment of WIC Food Benefits</u>	10A NCAC 43D .0705*	34:05 NCR
<u>Vendor Peer Groups</u>	10A NCAC 43D .0706*	34:05 NCR
<u>Vendor Applicants</u>	10A NCAC 43D .0707*	34:05 NCR
<u>Authorized Vendors</u>	10A NCAC 43D .0708*	34:05 NCR
<u>Vendor Violations and Sanctions</u>	10A NCAC 43D .0710*	34:05 NCR
<u>Notice of Hearing</u>	10A NCAC 43D .0908*	34:05 NCR

ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Payment</u>	14B NCAC 15A .1406*	34:02 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Neuse River Basin-Nutrient Sensitive Waters Management St...</u>	15A NCAC 02B .0236	33:16 NCR
<u>Best Management Practice Cost-Effectiveness Rate</u>	15A NCAC 02B .0237	33:16 NCR
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<u>Tar-Pamlico River Basin-Nutrient Sensitive Waters Managem...</u>	15A NCAC 02B .0255	33:16 NCR
<u>Tar-Pamlico River Basin-Nutrient Sensitive Waters Managem...</u>	15A NCAC 02B .0257	33:16 NCR
<u>Nutrient Strategies Definitions</u>	15A NCAC 02B .0701*	33:16 NCR
<u>Neuse Nutrient Strategy: Purpose and Scope</u>	15A NCAC 02B .0710*	33:16 NCR
<u>Neuse Strategy: Stormwater</u>	15A NCAC 02B .0711*	33:16 NCR
<u>Neuse Nutrient Strategy: Agriculture</u>	15A NCAC 02B .0712*	33:16 NCR
<u>Neuse River Basin-Nutrient Sensitive Waters Management St...</u>	15A NCAC 02B .0713*	33:16 NCR
<u>Tar-Pamlico Nutrient Strategy: Purpose and Scope</u>	15A NCAC 02B .0730*	33:16 NCR
<u>Tar-Pamlico Nutrient Strategy: Stormwater</u>	15A NCAC 02B .0731*	33:16 NCR
<u>Tar-Pamlico Nutrient Strategy: Agriculture</u>	15A NCAC 02B .0732*	33:16 NCR
<u>Tar-Pamlico Nutrient Strategy: New and Expanding Wastewat...</u>	15A NCAC 02B .0733*	33:16 NCR

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TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13C .1401 DEFINITIONS

In addition to the definitions set forth in G.S. 131E-146, the following definitions shall apply in Section .1400 of this Subchapter:

- (1) "Addition" means an extension or increase in floor area or height of a building.
- (2) "Alteration" means any construction or renovation to an existing building other than construction of an addition.
- (3) "Construction documents" means final building plans and specifications for the construction of a facility that a governing body submits to the Construction Section for approval as specified in Rule .0202 of this Subchapter.
- (4) "Construction Section" means the Construction Section of the Division of Health Service Regulation.
- (5) "Division" means the Division of Health Service Regulation of the North Carolina Department of Health and Human Services.
- (6) "Facility" means an ambulatory surgical facility as defined in G.S. 131E-146.
- (7) "FGI Guidelines" means the Guidelines for Design and Construction of Outpatient Facilities that is incorporated by reference in Rule .1402 of this Section.

History Note: Authority G.S. 131E-145; 131E-146; 131E-149;

Eff. October 14, 1978;

Amended Eff. December 24, 1979;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;

Amended Eff. January 1, 2020.

10A NCAC 13C .1402 LIST OF REFERENCED GUIDELINES, CODES, STANDARDS, AND REGULATION

(a) The FGI Guidelines are incorporated herein by reference, including all subsequent amendments and editions; however, the following chapters of the FGI Guidelines shall not be incorporated herein by reference:

- (1) Chapter 2.3;
- (2) Chapter 2.4;
- (3) Chapter 2.5;
- (4) Chapter 2.6;
- (5) Chapter 2.8;
- (6) Chapter 2.10;
- (7) Chapter 2.11;
- (8) Chapter 2.12;
- (9) Chapter 2.13; and
- (10) Chapter 2.14.

Copies of the FGI Guidelines may be purchased from the Facility Guidelines Institute online at <https://www.fgiguideines.org/guideines-main/purchase/> at a

cost of two hundred dollars (\$200.00) or accessed electronically free of charge at <https://www.fgiguideines.org/guideines-main/>.

(b) For the purposes of the rules of this Section, the following codes, standards, and regulation are incorporated herein by reference including subsequent amendments and editions. Copies of these codes, standards, and regulation may be obtained or accessed from the online addresses listed:

- (1) the North Carolina State Building Codes with copies that may be purchased from the International Code Council online at <https://shop.iccsafe.org/> at a cost of six hundred sixty-six dollars (\$666.00) or accessed electronically free of charge at <https://shop.iccsafe.org/state-and-local-codes/north-carolina.html>;
- (2) the following National Fire Protection Association standards, codes, and guidelines with copies of these standards, codes, and guidelines that may be accessed electronically free of charge at <https://www.nfpa.org/Codes-and-Standards/All-Codes-and-Standards/List-of-Codes-and-Standards> or may be purchased online at <https://catalog.nfpa.org/Codes-and-Standards-C3322.aspx> for the costs listed:
 - (A) NFPA 22, Standard for Water Tanks for Private Fire Protection for a cost of fifty-four dollars (\$54.00);
 - (B) NFPA 53, Recommended Practice on Materials, Equipment, and Systems Used in Oxygen-Enriched Atmospheres for a cost of fifty-three dollars (\$53.00);
 - (C) NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas for a cost of fifty-four dollars (\$54.00);
 - (D) NFPA 99, Health Care Facilities Code for a cost of seventy-seven dollars (\$77.00);
 - (E) NFPA 101, Life Safety Code for a cost of one hundred and five dollars and fifty cents (\$105.50);
 - (F) NFPA 255, Standard Method of Test of Surface Burning Characteristics of Building Materials for a cost of forty-two dollars (\$42.00);
 - (G) NFPA 407, Standard for Aircraft Fuel Servicing for a cost of forty-nine dollars (\$49.00);
 - (H) NFPA 705, Recommended Practice for a Field Flame Test for Textiles and Films for a cost of forty-two dollars (\$42.00);
 - (I) NFPA 780, Standard for the Installation of Lightning Protection Systems for a cost of sixty-three dollars and fifty cents (\$63.50);

- (J) NFPA 801, Standard for Fire Protection for Facilities Handling Radioactive Materials for a cost of forty-nine dollars (\$49.00); and
 - (K) Fire Protection Guide to Hazardous Materials for a cost of one hundred and thirty-five dollars and twenty-five cents (\$135.25).
- (3) 42 CFR Part 416.54 Condition of participation: Emergency preparedness with copies of this regulation that may be accessed free of charge at <https://www.gpo.gov/fdsys/pkg/CFR-2017-title42-vol5/xml/CFR-2017-title42-vol5-sec482-15.xml> or purchased online at <https://bookstore.gpo.gov/products/cfr-title-42-pt-482-end-code-federal-regulationspaper-201-7> for a cost of seventy-seven dollars (\$77.00).

History Note: Authority G.S. 131E-149;

Eff. October 14, 1978;

Amended Eff. December 24, 1979;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;

Amended Eff. January 1, 2020.

10A NCAC 13C .1403 GENERAL AND EMERGENCY PREPAREDNESS

(a) A new facility or any addition or alterations to an existing facility whose construction documents were approved by the Construction Section on or after July 1, 2020 shall meet the requirements set forth in:

- (1) the rules of this Section; and
- (2) the FGI Guidelines.

(b) An existing facility whose construction documents were approved by the Construction Section prior to July 1, 2020 shall meet those standards established in the rules of this Section that were in effect at the time the construction documents were approved by the Construction Section. Previous versions of the rules of this Section can be accessed online at <https://info.ncdhhs.gov/dhsr/const/index.html>.

(c) The facility shall develop and maintain an emergency preparedness program as required by 42 CFR Part 416.54 Condition of Participation: Emergency Preparedness. The emergency preparedness program shall be developed with input from the local fire department and local emergency management agency. Documentation required to be maintained by 42 CFR Part 416.54 shall be maintained at the facility for at least three years and shall be made available to the Division during an inspection upon request.

(d) Any existing building converted from another use to a new facility shall meet the requirements of Paragraph (a) of this Rule.

History Note: Authority G.S. 131E-149; 42 CFR Part 416.54; *Eff. October 14, 1978;*

Amended Eff. April 1, 2003;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;

Amended Eff. January 1, 2020.

10A NCAC 13C .1404 EQUIVALENCY AND CONFLICTS WITH REQUIREMENTS

(a) The Division may grant an equivalency to allow an alternate design or functional variation from the requirements in the rules contained in this Section. The equivalency may be granted by the Division if a governing body submits a written equivalency request to the Division that indicates the following:

- (1) the rule citation and the rule requirement that will not be met;
- (2) the justification for the equivalency;
- (3) how the proposed equivalency meets the intent of the corresponding rule requirement; and
- (4) a statement by the governing body that the equivalency request will not reduce the safety and operational effectiveness of the facility design and layout.

The governing body shall maintain a copy of the approved equivalence issued by the Division.

(b) If the rules, codes, or standards contained in this Subchapter conflict, the most restrictive requirement shall apply.

History Note: Authority G.S. 131E-149;

Eff. October 14, 1978;

Amended Eff. November 1, 1989; December 24, 1979;

Readopted Eff. January 1, 2020.

10A NCAC 13C .1405 MECHANICAL REQUIREMENTS

10A NCAC 13C .1406 PLUMBING AND OTHER PIPING SYSTEMS

10A NCAC 13C .1407 ELECTRICAL REQUIREMENTS

History Note: Authority G.S. 131E-149;

Eff. October 14, 1978;

Amended Eff. April 1, 2003; December 24, 1979;

Repealed Eff. January 1, 2020.

10A NCAC 13C .1408 GENERAL

10A NCAC 13C .1409 LIST OF REFERENCED CODES AND STANDARDS

History Note: Authority G.S. 131E-149;

Eff. April 1, 2003;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;

Repealed Eff. January 1, 2020.

10A NCAC 13C .1410 APPLICATION OF PHYSICAL PLANT REQUIREMENTS

History Note: Authority G.S. 131E-149;

Eff. April 1, 2003;

Repealed Eff. January 1, 2020.

10A NCAC 13F .0203 PERSONS NOT ELIGIBLE FOR NEW ADULT CARE HOME LICENSES

History Note: Authority G.S. 131D-2.4; 131D-2.5; 131D-4.5; 131D-2.16; 143B-165;

*Temporary Adoption Eff. December 1, 1999;
Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. June 1, 2004;
Repealed Eff. January 1, 2020.*

10A NCAC 13F .0207 CHANGE OF LICENSEE

Prior to the sale of an adult care home business, the current and prospective licensee shall meet the requirements of this Rule.

- (1) The current licensee shall provide written notification of a planned change of licensee to the Division of Health Service Regulation, the county department of social services, and the residents or their responsible persons at least 30 days prior to the date of the planned change of licensee.
- (2) If the prospective licensee plans to purchase the building, the prospective licensee shall provide the Healthcare Planning and Certificate of Need Section of the Division of Health Service Regulation with prior written notice as required by G.S. 131E-184(a)(8) prior to the purchase of the building.
- (3) The prospective licensee shall submit the following license application material to the Division of Health Service Regulation:
 - (a) the Change Licensure Application for Adult Care Home (7 or more Beds) that is available on the internet website, <https://info.ncdhhs.gov/dhsr/acls/pdf/acchgapp.pdf> at no cost and includes the following:
 - (i) facility administrator and building owner information;
 - (ii) operation disclosure including new licensee information and management company, if any; and
 - (iii) ownership disclosure including new owners, principles, affiliates, shareholders, and members;
 - (b) a fire and building safety inspection report from the local fire marshal dated within the past 12 months;
 - (c) a sanitation report from the sanitation division of the county health department dated within the past 12 months; and
 - (d) a nonrefundable license fee as required by G.S. 131D-2.5.

*History Note: Authority G.S. 131D-2.4; 131D-2.5; 131D-2.16; 143B-165;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. April 1, 1984;
Temporary Amendment Eff. September 1, 2003; July 1, 2003;*

*Amended Eff. June 1, 2004;
Readopted Eff. January 1, 2020.*

10A NCAC 13F .0214 SUSPENSION OF ADMISSIONS

*History Note: Authority G.S. 131D-2.7;
Eff. January 1, 1982;
Repealed Eff. January 1, 2020.*

10A NCAC 13F .1206 MARKETING

An adult care home may market provided:

- (1) the name used is as it appears on the license;
- (2) only the services and accommodations for which the home is licensed are used; and
- (3) the home is classified by licensure status.

*History Note: Authority G.S. 131D-2.1; 131D-2.16; 143B-165;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. July 1, 2004;
Readopted Eff. January 1, 2020.*

10A NCAC 13G .0207 CHANGE OF LICENSEE

Prior to the sale of a family care home business, the current and prospective licensee shall meet the requirements of this Rule.

- (1) The current licensee shall provide written notification of a planned change of licensee to the Division of Health Service Regulation, the county department of social services, and the residents or their responsible persons at least 30 days prior to the date of the planned change of licensee.
- (2) The prospective licensee shall submit the following license application material to the Division of Health Service Regulation:
 - (a) the Change Licensure Application for Family Care Home (2 to 6 Beds) that is available on the internet website, <https://info.ncdhhs.gov/dhsr/acls/pdf/fcchgapp.pdf> at no cost and includes the following:
 - (i) facility, administrator and building owner information;
 - (ii) operation disclosure including new licensee information and management company, if any; and
 - (iii) ownership disclosure including new owners, principles, affiliates, shareholders, and members;
 - (b) a fire and building safety inspection report from the local fire marshal dated within the past 12 months;
 - (c) a sanitation report from the sanitation division of the county health

- department dated within the past 12 months; and
- (d) a nonrefundable license fee as required by G.S. 131D-2.5.

History Note: Authority G.S. 131D-2.4; 131D-2.16; 143B-165;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. July 1, 1990; April 1, 1984;
Temporary Amendment Eff. September 1, 2003;
Amended Eff. June 1, 2004;
Readopted Eff. January 1, 2020.

10A NCAC 13G .0214 SUSPENSION OF ADMISSIONS

History Note: Authority G.S. 131D-2.7;
Eff. January 1, 1982;
Amended Eff. July 1, 1990;
Repealed Eff. January 1, 2020.

10A NCAC 13G .1207 MARKETING

A family care home may market provided:

- (1) the name used is as it appears on the license;
- (2) only the services and accommodations for which the home is licensed are used; and
- (3) the home is classified by licensure status.

History Note: Authority G.S. 131D-2.1; 131D-2.16; 143B-165;
Eff. January 1, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. April 1, 1984;
Readopted Eff. January 1, 2020.

10A NCAC 41C .0701 DEFINITION

The following definitions apply in this Section:

- (1) "Elevated blood lead level" means a blood lead of > 0 µg/dL.
- (2) "Non-elevated blood lead level" means all blood lead levels that are 0 µg/dL or an undetectable amount.

History Note: Authority G.S. 130A-455;
Eff. January 4, 1994;
Readopted Eff. January 1, 2020.

10A NCAC 41C .0702 REPORTABLE DISEASES, ILLNESSES, AND INJURIES

(a) The following named diseases, illnesses, and injuries are declared to be dangerous to the public health and shall be reported by a physician within the time period specified after the disease, illness, and injury is diagnosed:

- (1) asbestosis - 15 business days;
- (2) silicosis - 15 business days;
- (3) elevated blood lead levels for persons aged 16 years of age and above - 15 business days;

- (4) injuries caused by tractors, farm equipment, or farm machinery that occur while working on a farm and require medical care – 15 business days;

- (5) carbon monoxide poisoning - 15 business days.

(b) All laboratories providing diagnostic service in North Carolina shall report to the Occupational and Environmental Epidemiology Branch within the Division of Public Health elevated blood lead levels for persons aged 16 years of age and above.

(c) Physicians shall not be required to report elevated blood lead levels for persons aged 16 years of age and above when a laboratory providing diagnostic service in North Carolina reports elevated blood lead levels.

(d) Non-elevated blood lead levels shall be reported in same manner as elevated blood lead levels under Subparagraph (a)(3) for surveillance purposes.

History Note: Authority G.S. 130A-29(b); 130A-455; 130A-456; 130A-457; 130A-458;
Eff. January 4, 1994;
Amended Eff. December 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019;
Amended Eff. January 1, 2020.

10A NCAC 41C .0703 METHOD OF REPORTING

(a) When a physician makes a report of a disease, illness, injury, or elevated blood lead level for persons aged 16 years of age and above pursuant to G.S. 130A-456 or a medical facility makes such a report pursuant to G.S. 130A-457, the report shall be made to the Occupational and Environmental Epidemiology Branch as follows:

- (1) The report shall be made on the surveillance forms provided by the Occupational and Environmental Epidemiology Branch and shall include the following information:
 - (A) The name, address, telephone number, date of birth, race, ethnicity, gender, and job title of the person;
 - (B) The name, address, telephone number, and type of business of the person's employer;
 - (C) The name of the disease, illness, or injury being reported; and
 - (D) The name, address, and telephone number of the physician, laboratory, or medical facility.

- (2) Surveillance forms are available from the Occupational and Environmental Epidemiology Branch, Epidemiology Section, Division of Public Health, N.C. Department of Health and Human Services, 1912 Mail Service Center, Raleigh, NC 27699-1912. The form can also be requested by calling (919) 707-5900.

(b) When a laboratory providing diagnostic service in North Carolina reports laboratory findings related to occupational disease or illness pursuant to G.S. 130A-458, the report shall include:

- (1) the specimen collection date;
- (2) the person's name, date of birth, gender, race, and ethnicity;
- (3) the submitting physician/employer name, address, and telephone number; and
- (4) the name, address, and telephone number of the laboratory.

History Note: Authority G.S. 130A-455; 130A-456; 130A-458;
Eff. January 4, 1994;
Readopted Eff. January 1, 2020.

10A NCAC 43D .0202 DEFINITIONS

(a) For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and editions, with the following additions and modifications:

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC vendor, or WIC vendor applicant may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii), and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement, as set forth in 7 C.F.R. 246.12(h)(3).
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.
- (5) An "Electronic Benefit Transfer (EBT) Processor" is an entity contracted by a government agency for the implementation, maintenance, and operation of the State WIC agency's WIC EBT system that acts as the agent of the State WIC agency to process and settle EBT transactions.
- (6) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a State or local agency action that results in a claim against the individual for repayment of the cash value of issued benefits by which the individual is not eligible or results in the individual's denial of participation or disqualification from the WIC Program, as set forth in Rule .0410 of this Subchapter. This process must be complied with prior to requesting a contested case hearing in accordance with G.S. 150B, as set forth in 7 CFR 246.9.
- (7) "First date to spend" means "first date of use" as defined in 7 C.F.R. 246.12, hereby incorporated by reference with all subsequent amendments and editions.
- (8) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- (9) "Food benefits" are the prescribed amounts of WIC authorized foods and formulas or a fixed dollar amount prescribed to WIC customers to receive fruits and vegetables.
- (10) "Food benefit balance" means the unspent food benefits for the current month that are available to use by the cardholder.
- (11) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.
- (12) "Last date to spend" means "last date of use" as defined in 7 C.F.R. 246.12, hereby incorporated by reference with all subsequent amendments and editions.
- (13) The "local WIC agency" is the local agency that enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
- (14) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch.
- (15) "New authorized WIC vendor" is an authorized WIC vendor that has been approved to accept WIC for the first time and does not include vendors that have a previous WIC authorization history.
- (16) A "personal identification number" (PIN) is a numeric password selected and used by a WIC participant to authenticate the participant to the EBT system.
- (17) A "point of sale terminal" (POS) is an electronic device used to process EBT card payments at authorized vendor locations.
- (18) A "predominantly WIC vendor" is an "above-50-percent vendor" as defined in 7 C.F.R. 246.2.
- (19) A "product look-up (PLU) code" is an identification number placed on produce sold at authorized vendor locations.
- (20) "Redeemed food benefits" means the benefits that have been used by the WIC customer.
- (21) "Redemption" is the process by which a vendor receives payment from the State agency or its

- financial agent for food benefits transacted at that vendor location.
- (22) "Shelf price" is the price listed on the shelf for the WIC supplemental food.
- (23) "SNAP-eligible food sales" means "food sales" as defined in 7 C.F.R. 246.2, which are those foods that can be purchased with Supplemental Nutrition Assistance Program ("SNAP") benefits.
- (24) The "State agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, North Carolina Department of Health and Human Services.
- (25) "Store" means a food retailer or free-standing pharmacy operating at a single, fixed location.
- (26) "Supplemental food" or "WIC supplemental food" is a food that satisfies the requirements of 10A NCAC 43D .0501.
- (27) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- (28) "Transaction" is the process by which a WIC customer tenders food benefits at an authorized vendor in exchange for authorized supplemental foods.
- (29) "Universal Product Code (UPC)" means an identification code printed on the packaging of WIC approved foods sold at WIC authorized vendor locations.
- (30) "Vendor applicant" is a store that has submitted an application to become an authorized WIC vendor but is not yet authorized.
- (31) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- (32) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.
- (33) "WIC customer" means a WIC participant, parent, or caretaker of an infant or child participant, proxy for the eligible participant, or compliance investigator who transacts food benefits at a vendor in exchange for WIC supplemental food.
- (34) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

(b) A copy of 7 C.F.R. Part 246 is available free of charge at <https://www.ecfr.gov>.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246.2; 7 C.F.R. 246.9; 7 C.F.R. 246.12; 7 C.F.R. 246.18; 42 U.S.C. 1786; Eff. July 1, 1981;

Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989;
Temporary Amendment Eff. May 17, 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. August 1, 2004;
Temporary Amendment Eff. July 1, 2006;
Amended Eff. October 1, 2017; February 1, 2013; October 1, 2009; April 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;
Amended Eff. March 1, 2020.

10A NCAC 43D .0408 WAITING LIST

- (a) A waiting list shall be established in accordance with 7 C.F.R. 246.7(f), which is incorporated by reference with all subsequent amendments and editions.
- (b) Local WIC agencies maintaining a waiting list shall continue to provide WIC program benefits to all individuals enrolled in the program until the expiration of their certification period.
- (c) Local WIC agencies shall enroll individuals in a manner which ensures that applicants in a higher priority level are first given an opportunity to receive food benefits in accordance with 7 C.F.R. 246.7(e)(4) which is incorporated by reference with all subsequent amendments and editions.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246.7; Eff. July 1, 1981;
Amended Eff. October 1, 2009; November 1, 1990; July 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;
Amended Eff. March 1, 2020.

10A NCAC 43D .0501 SUPPLEMENTAL FOODS

- (a) The foods that may be provided to WIC program participants are specified in 7 C.F.R. 246.10, which is incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Health and Human Services, Division of Public Health, 5601 Six Forks Road, Raleigh, North Carolina 27609 and may be obtained from Nutrition Services at no cost.
- (b) The following exclusions from the food package have been adopted by the North Carolina WIC Program:
- (1) mackerel and sardines;
 - (2) goat milk; and
 - (3) dried fruits and vegetables.
- (c) The State agency may exclude foods other than those described in Paragraph (b) of this Rule if it determines such foods to be inappropriate for provision as supplemental foods through the WIC Program as a result of their cost, nutritional composition, packaging, statewide availability, participant redemption data, or promotion in a manner which is contrary to the purpose of the program as contained in 7 C.F.R. 246.1.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246.10; 42 U.S.C. 1786;
Eff. July 1, 1981;
Amended Eff. October 1, 1993; October 1, 1990; July 1, 1989;
October 1, 1988;

*Temporary Amendment Eff. July 1, 2002;
Amended Eff. October 1, 2009; August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. December 23, 2017;
Amended Eff. March 1, 2020.*

**10A NCAC 43D .0701 THE NORTH CAROLINA
AUTOMATED WIC SYSTEM**

The WIC program shall provide supplemental foods through a uniform EBT retail distribution system in accordance with 7 C.F.R. 246.12. Local agencies shall use an automated data processing system to promote the provision of and accounting for food benefits issued to participants.

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.12;
Eff. July 1, 1981;
Amended Eff. October 1, 2009; April 1, 2001;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. December 23, 2017;
Amended Eff. March 1, 2020.*

10A NCAC 43D .0702 ISSUANCE OF FOOD BENEFITS

(a) Local WIC agencies shall issue WIC program food benefits to program participants in a manner which ensures that participants can receive the supplemental foods that have been prescribed for them in accordance with 7 C.F.R. 246.10, which is incorporated by reference with all subsequent amendments and editions.

(b) Local WIC agencies shall issue food benefits and shall retain documentation of issuance. The documentation of issuance shall include the dated signature of the authorized individual receiving the food benefits, as set out in Subparagraph (c) of this Rule.

(c) Food benefits shall be issued only to the participant, the participant's parent, the participant's caretaker, a proxy, or a representative of the program completing a compliance buy.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246.2; 7 C.F.R. 246.10; 42 U.S.C. 1786;
Eff. July 1, 1981;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. October 1, 2009; August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. December 23, 2017;
Amended Eff. March 1, 2020.*

10A NCAC 43D .0703 USE OF FOOD BENEFITS

(a) Participants may transact food benefits on any day on or between the "First Date to Spend" and "Last Date to Spend" for their certification period, as defined in 7 C.F.R. 246.7(g), which is incorporated by reference with all subsequent amendments and editions.

(b) Food benefits shall be transacted only at authorized WIC vendors in accordance with the terms of the signed WIC Vendor Agreement and WIC program rules, regulations, and statutes. Authorized WIC vendors shall not be reimbursed for food benefits that are not properly transacted as set forth in Rule .0708 of this Section.

(c) Authorized WIC vendors shall have their bank account credited with payments for completed EBT transactions. Food benefits shall not be assigned, transferred, sold, or otherwise negotiated.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246.7; 7 C.F.R. 246.12; 42 U.S.C. 1786;
Eff. July 1, 1981;
Amended Eff. April 1, 2001; November 1, 1990; July 1, 1989;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. October 1, 2017; October 1, 2009; August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. December 23, 2017;
Amended Eff. March 1, 2020.*

**10A NCAC 43D .0704 VALIDITY OF WIC FOOD
INSTRUMENTS AND CASH-VALUE VOUCHERS**

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;
Eff. July 1, 1981;
Amended Eff. July 1, 1989; July 1, 1985;
Temporary Amendment Eff. May 17, 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. October 1, 2009; August 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. December 23, 2017;
Repealed Eff. March 1, 2020.*

**10A NCAC 43D .0705 PAYMENT OF WIC FOOD
BENEFITS**

The State of North Carolina shall:

- (1) accept EBT transactions for North Carolina WIC food benefits through the Federal Reserve and commercial banking systems;
- (2) provide payment for all valid WIC food benefits. To the extent that funds are available in the WIC disbursing account, payment shall be provided by the Department of Health and Human Services.

*History Note: Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246.12;
Eff. July 1, 1981;
Amended Eff. October 1, 2009; April 1, 2001;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. December 23, 2017;
Amended Eff. March 1, 2020.*

10A NCAC 43D .0706 VENDOR PEER GROUPS

Vendor applicants and authorized vendors shall be placed into peer groups in accordance with as follows:

- (1) When annual WIC supplemental food sales are not yet available due to a vendor being newly authorized, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies,

shall be placed into peer groups based on the number of cash registers in the store and the geographic location of the store until annual WIC supplemental food sales become available.

WIC sales figures of new authorized WIC vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (\$25,000) shall be placed in a peer group based on redemption.

- (2) Authorized vendors for which annual WIC supplemental food sales are available, including chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer groups, as set forth in 7 CFR 246.12(g)(4) and 7 CFR 246.12(h)(3), which is adopted and incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.ecfr.gov/>.
- (3) "Annual WIC supplemental food sales" is the dollar amount an authorized vendor redeems in WIC food benefits within a 12-month period.
- (4) In determining a vendor's peer group designation based on annual WIC supplemental food sales, the State agency shall look at the most recent 12-month period of redemption data.
- (5) If the State agency determines that a vendor applicant is expected to be a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor application shall be denied. The store must wait 90 days to reapply for vendor authorization. The State agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(E) for determining whether a vendor applicant is expected to be a predominantly WIC vendor.
- (6) If at any time during a vendor's authorization the State agency determines that the vendor has become a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor's WIC Vendor Agreement shall be terminated. The store shall wait 90 days to reapply for vendor authorization. The State agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(F) for determining whether an authorized vendor has become a predominantly WIC vendor.
- (7) A vendor applicant previously authorized in a peer group based on annual WIC supplemental food sales that is being reauthorized following the nonrenewal or termination of its agreement or disqualification or withdrawal from the WIC Program shall be placed into the same peer group the vendor applicant was previously in, provided that no more than one year has passed

since the nonrenewal, termination, disqualification or withdrawal. If more than one year has passed, the vendor applicant shall be placed into a peer group using criteria for new vendor applicants as set forth in Item (1) of this Rule.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246.12; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990; Temporary Amendment Eff. June 23, 2000; May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. September 1, 2002; July 1, 2002; Amended Eff. November 1, 2005; August 1, 2004; Temporary Amendment Eff. July 1, 2006; Amended Eff. February 1, 2013; October 1, 2009; February 1, 2008; April 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017; Amended Eff. March 1, 2020.

10A NCAC 43D .0707 VENDOR APPLICANTS

To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) A vendor applicant shall complete a WIC Vendor Application, as set forth in Item (20) of this Rule, a WIC Price List, as set forth in Item (4) of this Rule, and a WIC Vendor Agreement, as set forth in 7 C.F.R. 246.12(h)(3). A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List, as set forth in Item (4) of this Rule.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC agency, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the State agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.
- (3) A vendor applicant shall purchase all infant formula, exempt infant formula, and WIC-eligible nutritionals directly from:
 - (a) The sources specified in 42 U.S.C 1786(h)(8)(A)(ix), which is incorporated by reference with all subsequent amendments and editions;

- (b) Retail food stores that purchase directly from the sources referenced in Sub-item (3)(a) of this Item; or
- (c) A source on another state's list of approved infant formula sources as verified by that state's agency.

A vendor applicant shall make available to the State or local WIC agency invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible nutritionals. Receipts and invoices shall satisfy the requirements of Sub-items (24)(a) through (24)(c) of Rule .0708 of this Section. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for failure to purchase infant formula, exempt infant formula, or WIC-eligible nutritionals from the sources specified in this Item. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for providing infant formula, exempt infant formula, or WIC-eligible nutritionals to WIC customers that was not purchased from the sources specified in this Item.

- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List shall not exceed the maximum price set by the State agency for each supplemental food within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item. The maximum price for each supplemental food shall be established as follows:

- (a) The most recent prices submitted through the EBT system by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be two standard deviations above the average current highest shelf price of each supplemental food within a vendor peer group. The State agency shall reassess the maximum price set for each supplemental food at least four times a year.
- (b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the State agency for that applicant's peer group, the State agency shall send the applicant written notice. Within 30 days of the date of receipt of the written notice, the vendor applicant may resubmit price(s) that it will charge the State WIC Program for those foods that exceeded the

maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the State agency, the vendor applicant shall be deemed to have met the requirements of Item (4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the State agency, or the vendor applicant does not resubmit prices within 30 days of the date of receipt of the written notice, the agency shall send the applicant a written notice of denial. The vendor applicant shall wait 90 days from the date of receipt of the written denial to reapply for authorization.

- (5) A vendor applicant shall pass an announced monitoring review by the local WIC agency to determine whether the store has minimum inventory of supplemental foods as specified in Item (17) of Rule .0708 of this Section. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
- (6) A vendor applicant shall either attend, or cause a manager or another authorized store representative to attend, WIC Vendor Training provided by the local WIC agency prior to vendor authorization and ensure that the vendor applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be at a single, fixed location within North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site where WIC supplemental foods are selected by the WIC customer.
- (9) A vendor applicant shall use point of sale (POS) terminals to support the WIC Program that are deployed in accordance with the minimum lane coverage provisions of 7 C.F.R. 246.12(z)(2)(ii).
- (10) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (11) The store shall not use the acronym "WIC" or the WIC logo, including facsimiles, in total or

- in part, in the official name under which the business is registered or in the name under which it does business.
- (12) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading information.
- (13) The owner(s), officer(s), or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the State WIC program, or the local WIC program serving the county where the vendor applicant conducts business. A vendor applicant shall not have an employee who handles or transacts WIC food benefits who is employed, or has a spouse, child, or parent who is employed by the State WIC program or the local WIC program serving the county where the vendor applicant conducts business. Such situations present a conflict of interest.
- (14) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice, as set out in 7 C.F.R 246.12(g)(3)(ii). For purposes of this Item, "convicted" or "conviction" includes:
- (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or adjudicating body, tribunal, or official, either civilian or military;
 - (c) a plea of no contest, nolo contendere, or the equivalent; or
 - (d) entry of a prayer for judgment continued following a conviction as defined in this Item is the same as a conviction for purposes of this Item.
- (15) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.
- (16) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
- (a) a SNAP vendor that is disqualified from participation in SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, has not expired; or
 - (b) another WIC vendor that is disqualified from participation in the WIC Program or has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 of this Section as the result of violation of Paragraphs (a) or (b) of Rule .0710 of this Section and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, has not expired.
- The requirements of this Item shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Item shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Sub-item (16)(a) of this Item ends the disqualification period applicable to that SNAP vendor earlier than the disqualification period otherwise would have expired. The requirements of this Item shall apply until the time the SNAP vendor disqualification otherwise would have expired.
- (17) A vendor applicant, excluding free-standing pharmacies, shall have SNAP authorization for the store as a prerequisite for WIC vendor authorization and shall provide its SNAP authorization number to the State agency.
- (18) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired. A vendor applicant shall not be authorized as a WIC vendor if any of the vendor applicant's owner(s), officer(s) or manager(s) currently has or previously had a financial interest in a WIC vendor that was assessed a claim by the WIC Program and the claim has not been paid in full.
- (19) A vendor applicant shall enter into contract with the State WIC Program's EBT processor or a certified third party processor prior to WIC authorization and comply with all requirements detailed in the EBT or third party processor's Vendor Agreement.

- (20) A WIC Vendor Application shall include the following information:
- (a) The store name, physical address, and hours of operation;
 - (b) The type of ownership under which the vendor operates;
 - (c) The names and contact information of owners or officers;
 - (d) Annual food sales data and percentages for the following tender types: cash, credit, debit, SNAP, and WIC;
 - (e) The store's SNAP authorization number and history of SNAP participation, if a retail grocery store; and
 - (f) Other information that the store is required to provide to the State agency in accordance with 7 C.F.R. 246.12.

For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement shall be signed by the vendor, the local WIC agency, and the State agency. If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 7 C.F.R. 246.12(g)(3); 7 C.F.R. 246.12(g)(3)(ii); 7 C.F.R. 246.12(h)(3)(xix); 7 C.F.R. 246.12(t); 42 U.S.C. 1786; Eff. February 1, 2013;
Amended Eff. October 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;
Amended Eff. March 1, 2020.

10A NCAC 43D .0708 AUTHORIZED VENDORS

By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC Program food benefits in accordance with the terms of the WIC Vendor Agreement and 42 U.S.C. 1786, 7 C.F.R. 246.1-246.28, and the rules of this Subchapter;
- (2) Accept WIC Program food benefits in exchange for WIC supplemental foods. Supplemental foods are those foods that satisfy the requirements of 10A NCAC 43D .0501;
- (3) Provide to the WIC customer only the approved supplemental foods, fruits, and vegetables contained in the authorized product list (APL) after it has been determined that the WIC customer has an available balance on the date of the transaction. The WIC customer is not required to get all of the supplemental foods listed on his or her food benefit balance. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of his or her cash-value benefit if the WIC customer pays the difference, as set forth in 7 C.F.R. 246.12(h)(3)(xi);

- (4) Transmit only the current shelf price of all WIC-approved supplemental foods purchased in the correct sizes, quantities, and the total dollar amount of all WIC-approved supplemental foods purchased in the EBT system and shall not charge or collect sales taxes for the supplemental food provided;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the State WIC Program only up to the maximum price set by the State agency for each supplemental food within that vendor's peer group. The maximum price for each supplemental food shall be based on the maximum prices set by the State agency for each supplemental food, as described in Sub-item (4)(a) of Rule .0707 of this Section. A request for payment submitted over the maximum price allowed by the State agency will only be paid up to the maximum price for that supplemental food;
- (7) Accept payment from the State WIC Program only up to the full dollar value of the cash-value benefit;
- (8) Not charge the State WIC Program more than the maximum price set by the State agency under Item (4)(a) of Rule .0707 of this Section for each supplemental food within the vendor's peer group;
- (9) Provide to WIC customers infant formula, exempt infant formula, and WIC eligible nutritionals purchased only from the sources specified in Item (3) of Rule .0707 of this Section. Providing infant formula, exempt infant formula, or WIC eligible nutritionals that has not been purchased from the sources specified in Item (3) of Rule .0707 of this Section shall result in termination of the WIC Vendor Agreement;
- (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible nutritionals;
- (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store shall wait 180 days to reapply for authorization;
- (12) Ensure that a personal identification number (PIN) is used by the WIC customer to complete the EBT transaction in lieu of a signature;
- (13) Ensure that the WIC customer enters the PIN to initiate the EBT transaction. The vendor shall not enter the PIN for the WIC customer;

- (14) Not transact food benefits in whole or in part for cash, credit, unauthorized foods, or non-food items;
- (15) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food benefits, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An "identical authorized supplemental food" means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;

- (16) Notify the local WIC agency of misuse (attempted or actual) of WIC Program food benefits;
- (17) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. Free-standing pharmacies are not required to maintain a minimum inventory of supplemental foods. The following items and sizes constitute the minimum inventory of supplemental foods for vendors:

Food Item	Type of Inventory	Quantities Required
Milk	Whole fluid: gallon	2 gallons
	-and- Skim/lowfat fluid: gallon	6 gallons
Cheese	1 pound package	2 packages
Cereals	2 types: whole grain (minimum package size 12 ounce)	6 packages total
Eggs	Grade A, large, white: 1 dozen size carton	2 dozen
Juices	Single strength:	
	48 ounce container 64 ounce container	4 containers 4 containers
Dried Peas and Beans	1 pound package	2 packages
Peanut Butter	16 to 18 ounce container	2 containers
Tuna	5 to 6 ounce can	6 cans
Bread/Tortillas	16 ounce loaf of bread or package of tortillas	2 loaves or 2 packages OR 1 loaf and 1 package
Rice	14 to 16 ounce package	2 packages
Infant Cereal	8 ounce box	6 boxes
Infant Fruits and Vegetables	3.5 to 4 ounce container 1 type of fruit and 1 type of vegetable	64 ounces
Infant Formula	milk-based powder; 11.0 to 14.0 ounce	8 cans
	-and- soy-based powder; 11.0 to 14.0 ounce Brands must be the primary contract infant formulas	4 cans
Fruits	14 to 16 ounce can: 2 varieties	10 cans total
Vegetables	14 to 16 ounce can: 2 varieties	10 cans total

(Excludes foods in Dried Peas and Beans category)		
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All vendors, except free-standing pharmacies, shall supply milk or soy-based infant formula in 32 ounce ready-to-feed or powder within 48 hours of request by the State or local WIC agency. Free-standing pharmacies shall only supply exempt infant formula or WIC-eligible nutritionals. Free-standing pharmacies shall supply exempt infant formula or WIC-eligible nutritionals within 48 hours of a request;

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| <p>(18) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;</p> <p>(19) Permit the purchase of supplemental food without requiring other purchases;</p> <p>(20) Comply with the following EBT provisions:</p> <p style="padding-left: 20px;">(a) Sign the WIC Vendor Agreement of the EBT Processor selected by the State WIC Program or a third-party processor that has been certified according to criteria established by the EBT Processor selected by the State WIC Program. Failure by a vendor to sign and retain a WIC Vendor Agreement with the State WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor shall result in termination of the WIC Vendor Agreement. Vendors shall notify the WIC Program within 24 hours of any periods of time during which they do not maintain an Agreement with the State WIC Program's EBT Processor or a third-party processor that has been certified by the State WIC Program's EBT Processor;</p> <p style="padding-left: 20px;">(b) Process EBT transactions in accordance with the terms of the North Carolina WIC Vendor Agreement, WIC Program State Rules, federal regulations, and statutes;</p> <p style="padding-left: 20px;">(c) Maintain Point of Sale (POS) terminals used to support the WIC Program in accordance with the minimum lane provisions of 7 C.F.R. 246.12(z)(2);</p> <p style="padding-left: 20px;">(d) Maintain a North Carolina EBT Processor certified in-store EBT system that is available for WIC redemption processing during all hours the store is open;</p> <p style="padding-left: 20px;">(e) Request the North Carolina EBT Processor re-certify its in-store system if the vendor alters or revises the system in any manner that impacts the EBT redemption or claims processing system after initial certification is completed;</p> <p style="padding-left: 20px;">(f) For vendors with integrated systems, obtain EBT card readers to support</p> | <p>EBT transactions within their store(s). The vendor shall ensure that the EBT card readers they obtain meets all EBT and North Carolina EBT Processor requirements;</p> <p>(g) Require an owner, manager, or other authorized store representative to complete training on WIC EBT procedures. The vendor shall ensure that all cashiers and staff are trained on WIC EBT requirements, including training in the acceptance and processing of WIC EBT transactions;</p> <p>(h) Require the WIC customer to approve the WIC transaction. Vendors shall ensure that the vendor's staff does not approve the WIC transactions for WIC customers under any circumstances;</p> <p>(i) Release supplemental food to WIC customers when the transaction has been completed to include receipt of transaction approval by the EBT processing system, printing of the receipt, and updated balance of the WIC customer's account;</p> <p>(j) Scan or manually enter Universal Product Codes (UPC) only from approved supplemental foods being purchased by the WIC customer in the types, sizes, and quantities available on the WIC customer's EBT account. The vendor shall not scan codes from UPC codebooks or reference sheets;</p> <p>(k) Return any EBT card found on the vendor's property and unclaimed for 24 hours to the WIC Program. The vendor shall not hold or use a WIC customer's EBT card and PIN for any purpose whatsoever;</p> <p>(l) Connect the vendor's in-store system for each outlet covered by the WIC Vendor agreement to the State's WIC EBT system at least once each 24-hour period to download reconciliation files and the WIC Authorized Product UPC/Product Look-Up (PLU) list.</p> | <p>(21) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local WIC agency. Failure to attend annual vendor training by September 30 of each year shall result in termination of the WIC Vendor Agreement;</p> |
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- (22) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (23) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (24) Allow monitoring and inspection by State and local WIC Program staff of the store premises and procedures to ensure compliance with the agreement and State, and federal WIC Program rules, regulations, and applicable law. This includes providing access to all program-related records, including access to all WIC food instruments and cash-value vouchers at the store; vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies of purchase orders, and any other proofs of purchase; federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns; and books and records of all financial and business transactions. These records shall be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Notwithstanding any other provision of this Rule and Rules .0707 and .0710 of this Section, failure or inability to provide these records for an inventory audit or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (a)(1) of Rule .0710 of this Section. Invoices, receipts, purchase orders, and any other proofs of purchase for WIC supplemental foods shall include:
 - (a) the name of the seller and be prepared entirely by the seller without alteration by the vendor or on the seller's business letterhead;
 - (b) the date of purchase and the date the authorized vendor received the WIC supplemental food at the store if different from the date of purchase; and
 - (c) a description of each WIC supplemental food item purchased, including brand name, unit size, type or form, and quantity;
- (25) Maintain a record of all SNAP-eligible food sales and provide to the State agency upon request a statement of the total amount of revenue derived from SNAP-eligible food sales and written documentation to support the amount of sales claimed by the vendor, such as sales records, financial statements, reports, tax documents, or other verifiable documentation;
- (26) Submit a current completed WIC Price List when signing this agreement, and within two weeks of any written request by the State or local WIC agency;
- (27) Reimburse the State agency in full or agree to a repayment schedule with the State agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor. Failure to reimburse the State agency in full or agree to a repayment schedule within 30 days of written notification of a claim shall result in termination of the WIC Vendor Agreement. Payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under Rule .0710 of this Section for the vendor violation(s);
- (28) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the State agency or for WIC food benefits not paid or partially paid by the State agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food benefits;
- (29) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food benefits;
- (30) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in store location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in store location of more than three miles from the store's previous location, cessation of operations, withdrawal from the WIC Program, or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the State agency. Change of ownership, change in store location, ceasing operations, withdrawal from the WIC Program, or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
- (31) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same courtesies, as set forth in 7 C.F.R. 246.12(h)(3)(iii), offered to other customers or requiring separate WIC lines;
- (32) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store shall reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor peer group criteria set forth in 7 CFR 246.12(g)(4), 7 CFR 246.12(h)(3), and the vendor selection criteria of Rule .0707 of this Section; and
- (33) Comply with all the requirements for vendor applicants of Items (3), (4), and (7) through

(17), and (19) of Rule .0707 of this Section throughout the term of authorization. The State agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The State agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Items (3), (4), (8), (9), (10), (11), (12), (13), (14), (16), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization, and terminate the agreement of or sanction or both any vendor that fails to comply with Items (7), (15), (17), or (19) of Rule .0707 of this Section during the vendor's period of authorization.

- (34) Permit the State agency to reassess the peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the State agency determines that the vendor is no longer in the appropriate peer group.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246.12; 42 U.S.C. 1786;
Eff. March 1, 2013;
Amended Eff. October 1, 2017;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;
Amended Eff. March 1, 2020; July 1, 2018.

10A NCAC 43D .0710 VENDOR VIOLATIONS AND SANCTIONS

(a) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions. In accordance with 7 C.F.R. 246.12(l)(1)(i), the State agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 CFR 246.12 (l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv)(A), shall be established as follows:

- (1) claiming reimbursement for the sale of an amount of a specific supplemental food item that exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Item (24) of Rule .0708 of this Section for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and this Subparagraph;
- (2) two occurrences of vendor overcharging within a 12-month period;
- (3) two occurrences of receiving, transacting, or redeeming food benefits outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;

- (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
- (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food benefits within a 12-month period; or
- (6) three occurrences of providing unauthorized food items in exchange for food benefits, including charging for supplemental food provided in excess of those listed on the food benefit balance within a 12-month period.

(b) Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following State-established violations in accordance with the number of occurrences and sanctions set forth below:

- (1) One year for two occurrences within a 12-month period of discrimination on the basis of WIC participation as referenced in Item (31) of Rule .0708. Each date this violation is detected is a separate occurrence;
- (2) One year for three occurrences within a 12-month period of failure to properly transact WIC food benefits by manually entering the EBT card number or entering the PIN into the POS instead of the WIC participant, scanning the UPC or PLU codes from UPC codebooks or reference sheets when completing a WIC participant's EBT transaction, not entering the correct quantity and item price, or not providing the WIC participant with a receipt that shows the items purchased and the participant's remaining food benefit balance. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each improper transaction is a separate occurrence;
- (3) One year for three occurrences within a 12-month period of requiring a cash purchase to transact WIC food benefits. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each transaction requiring a cash purchase is a separate occurrence;
- (4) 270 days for three occurrences within a 12-month period of contacting a WIC customer in an attempt to recoup funds for food benefits or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food benefits. Each contact with any WIC customer is a separate occurrence, whether each contact is with the same or different WIC customers;
- (5) 180 days for three occurrences within a 12-month period of failure to provide program-related records referenced in Item (24) of Rule .0708 when requested by WIC staff, except as provided in Item (24) of Rule .0708 and

Subparagraph (a)(1) of this Rule for failure or inability to provide records for an inventory audit. Each request for records is a separate occurrence, whether each request is for the same or different records;

- (6) 180 days for three occurrences within a 12-month period of failure to provide the information referenced in Item (25) of Rule .0708 when requested by WIC staff. Each request for information is a separate occurrence, whether each request is for the same or different information;
- (7) 180 days for three occurrences within a 12-month period of failure to stock the minimum inventory specified in Item (17) of Rule .0708. Each date this violation is detected is a separate occurrence;
- (8) 90 days for three occurrences within a 12-month period of stocking WIC supplemental foods outside of the manufacturer's expiration date. Each date this violation is detected is a separate occurrence;
- (9) 90 days for three occurrences within a 12-month period of failure to allow monitoring of a store by WIC staff. Each attempt to monitor the store is a separate occurrence;
- (10) 90 days for five occurrences within a 12-month period of failure to submit a WIC Price List as required by Item (26) of Rule .0708. Each written request by the State or local WIC agency for submission of a WIC Price List is a separate occurrence, whether each request is for the same or different WIC Price Lists;
- (11) 60 days for three occurrences within a 12-month period of failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case. Each date this violation is detected is a separate occurrence;
- (12) 60 days for five occurrences within a 12-month period of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each transaction requiring the purchase of a specific brand when more than one WIC supplemental food brand is available is a separate occurrence;
- (13) 180 days for three occurrences within a 12-month period of failure to make EBT point of sale equipment accessible to WIC customers to ensure that EBT transactions are completed in accordance with Rule .0708; and
- (14) 90 days for three occurrences within a 12-month period of failure to comply with minimum lane coverage criteria required by 7 CFR 246.12(z)(2) and Rule .0708(20)(c) of this Section;

If during the course of a single investigation the State agency determines that a vendor has committed multiple State-

established violations, the disqualification periods shall be cumulative, provided that the total period of disqualification shall not exceed one year for State-established violations investigated as part of a single investigation, as defined in Paragraph (c) of this Rule.

(c) For investigations pursuant to this Section, a single investigation is:

- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
 - (A) buying or selling food benefits for cash (trafficking);
 - (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food benefits;
 - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food benefits;
 - (D) vendor overcharging;
 - (E) receiving, transacting, or redeeming food benefits outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
 - (F) charging for supplemental food not received by the WIC customer;
 - (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food benefits;
 - (H) providing unauthorized food items in exchange for food benefits, including charging for supplemental food provided in excess of those listed on the food benefit balance;
 - (I) failure to properly transact WIC food benefits by manually entering the EBT card number or entering the PIN into the POS instead of the WIC participant, scanning the UPC or PLU codes from UPC codebooks or reference sheets when completing a WIC participant's EBT transaction, not entering the correct quantity and item price, or not providing the WIC participant with a receipt that shows the items purchased and the participant's remaining food benefit balance;
 - (J) requiring a cash purchase to transact WIC food benefits; or
 - (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.

- (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
 - (A) failure to stock the minimum inventory specified in Item (17) of Rule .0708;
 - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
 - (C) failure to allow monitoring of a store by WIC staff;
 - (D) failure to provide program-related records referenced in Item (24) of Rule .0708 when requested by WIC staff;
 - (E) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case;
 - (F) unauthorized use of the "WIC" acronym or the logo, as defined in WIC Policy Memo #2009-1, which is hereby incorporated by reference, including subsequent amendments and editions, and available free of charge at <https://www.fns.usda.gov/wic/clarification-use-wic-acronym-and-logo>;
 - (G) failure to ensure that EBT point of sale equipment is accessible to the WIC customer; or
 - (H) failure to comply with minimum lane coverage criteria required by 7 CFR 246.12(z)(2) and Rule .0708(20)(c) of this Section.
 - (3) Any other method used by the State or local agency to detect the following violations by a vendor within a 12-month period:
 - (A) failure to attend annual vendor training;
 - (B) failure to submit a WIC Price List as required by Item (26) of Rule .0708;
 - (C) discrimination on the basis of WIC participation as referenced in Item (31) of Rule .0708.
 - (D) contacting a WIC customer in an attempt to recoup funds for food benefits or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food benefits;
 - (E) nonpayment of a claim assessed by the State agency;
 - (F) providing false, erroneous, or misleading information to the State or local WIC agency;
 - (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Item (24) of Rule .0708 for an inventory audit;
 - (H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods from the sources specified in Item (3) of Rule .0707; or
 - (I) providing WIC customers infant formula, exempt infant formula, or WIC eligible medical food that was not purchased from the sources specified in Item (3) of Rule .0707.
- (d) The SNAP disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.
- (e) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (f)(3)(A), (f)(3)(B) or (f)(3)(C) of this Rule shall show adequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Parts. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.
- (f) The following provisions apply to monetary and civil money penalties assessed in lieu of disqualification of a vendor:
- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(l)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
 - (2) The State agency may also impose monetary penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the State-established violations listed in Paragraph (b) of this Rule when the State agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (f)(3) of this Paragraph.
 - (3) In determining whether to disqualify a WIC vendor for the State-established violations listed in Paragraph (b) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which show lack of hardship, are found to exist:
 - (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-1(2), and another WIC vendor is located within seven miles of the noncomplying vendor;

- (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-1(2), and another WIC vendor is located within three miles of the noncomplying vendor; or
- (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants are certified to receive WIC food benefits.

- (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions. These provisions also apply to a vendor that fails to pay a monetary penalty imposed under G.S. 130A-22(c1).

(g) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.

(h) The provisions of 42 USC 1786 (f)(26) and 7 CFR 246.12(l)(3) regarding vendor notification of violations are incorporated by reference with all subsequent amendments and editions.

(i) The State agency may offset payments to an authorized vendor if the vendor fails to reimburse the State agency in accordance with Item (27) of Rule .0708.

(j) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors under the rules of this Section do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal or State law.

(k) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246.12; 7 C.F.R. 246.18; 42 U.S.C. 1786;

Eff. February 1, 2013;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;

Amended Eff. March 1, 2020; January 1, 2018.

10A NCAC 43D .0908 NOTICE OF HEARING

(a) The local or State agency official shall notify the appellant, or his or her representative, the local WIC agency, and the Nutrition Services Branch in writing that a request for a hearing has been received.

(b) Notice of the date, time, and place of the hearing shall be given to all parties at least 10 days in advance of the hearing.

(c) The notice to the appellant, or his or her representative, shall include a stamped envelope with the return address of the agency official with a request that it be returned indicating whether the date, time, and place for the hearing is satisfactory. If a response

is not received at least 72 hours prior to the time proposed for the hearing, it shall be assumed that the date, time, and place are satisfactory.

(d) The notice shall contain:

- (1) an explanation of the procedure for the hearing;
- (2) a statement of the date, hour, place and nature of the hearing;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a statement of the factual allegations.

(e) If the appellant, or his or her representative, indicates that he or she desires another time and date, the agency official shall set a new time and date for the hearing. The hearing shall be accessible to the appellant, or his or her representative.

(f) The hearing shall be held within 21 days from the date the agency official receives the request.

History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;

Eff. July 1, 1981;

Amended Eff. November 1, 1990;

Temporary Amendment Eff. July 1, 2002;

Amended Eff. July 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 23, 2017;

Amended Eff. March 1, 2020.

TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

14B NCAC 15A .1406 PAYMENT

(a) Local boards shall remit full payment of the Contractor's statement of account pertaining to the bailment charge within 30 days of receipt of the statement.

(b) Local boards shall remit full payment of the Contractor's statement of account pertaining to the bailment surcharge within 30 days of receipt of the statement.

(c) Local boards shall remit full payment of the distiller's invoice within 30 days of delivery of the liquor.

(d) Local boards that obtain spirituous liquor from another local board pursuant to 14B NCAC 15A .1301(e) shall remit full payment within 15 days of the transaction.

History Note: Authority G.S. 18B-100; 18B-203(a)(14) and (15); 18B-207; 18B-702(u);

Eff. May 1, 1984;

Amended Eff. November 1, 2010; July 1, 1992;

Transferred and Recodified from 04 NCAC 02R .1407 Eff. August 1, 2015;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015;

Amended Eff. January 1, 2020.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

**15A NCAC 02B .0236 NEUSE RIVER BASIN-
NUTRIENT SENSITIVE WATERS MANAGEMENT
STRATEGY: AGRICULTURAL NITROGEN LOADING
REDUCTION**

*History Note: Authority G.S. 143.214.1; 143.214.7;
143.215.3(a)(1);
Eff. August 1, 1998;
Repealed Pending Delayed Eff. Date.*

**15A NCAC 02B .0237 BEST MANAGEMENT
PRACTICE COST-EFFECTIVENESS RATE**

*History Note: Authority G.S. 143-214.1;
Eff. April 1, 1997;
Repealed Pending Delayed Eff. Date.*

**15A NCAC 02B .0239 NEUSE RIVER BASIN:
NUTRIENT SENSITIVE WATERS MANAGEMENT
STRATEGY: NUTRIENT MANAGEMENT**

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-
215.3(a)(1);
Eff. August 1, 1998;
Repealed Pending Delayed Eff. Date.*

**15A NCAC 02B .0255 TAR-PAMLICO RIVER BASIN -
NUTRIENT SENSITIVE WATERS MANAGEMENT
STRATEGY: AGRICULTURAL NUTRIENT LOADING
GOALS**

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-
215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;
Eff. April 1, 2001;
Repealed Pending Delayed Eff. Date.*

**15A NCAC 02B .0257 TAR-PAMLICO RIVER BASIN -
NUTRIENT SENSITIVE WATERS MANAGEMENT
STRATEGY: NUTRIENT MANAGEMENT**

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-
215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-
282(d);
Eff. April 1, 2001;
Repealed Pending Delayed Eff. Date.*

**15A NCAC 02B .0701 NUTRIENT STRATEGIES
DEFINITIONS**

In this Section, the following terms shall mean:

- (1) "Agricultural uses" include the use of waters for stock watering, irrigation, and other farm purposes.
- (2) "Allocation" means the mass quantity, as of nitrogen or phosphorus that a discharger, group of dischargers, or other source is potentially allowed to release into surface waters. Allocations may be expressed as delivered or discharge quantities. Possession of allocation does not authorize the discharge of nutrients but

- is prerequisite to such authorization in an NPDES permit.
- (3) "Best Management Practice" or "BMP" means the same as defined in Rule .0202 of this Subchapter.
- (4) "Buffer" means the same as defined in Rule .0202 of this Subchapter.
- (5) "Built-upon area" means the same as defined in G.S. 143-214.7(b2).
- (6) "Concentration(s)" means the same as defined in Rule .0202 of this Subchapter.
- (7) "Contiguous" means the same as defined in Rule .0202 of this Subchapter.
- (8) "Critical area" means the same as defined in Rule .0202 of this Subchapter.
- (9) "Cropland" means agricultural land that is used for growing corn, grains, oilseed crops, cotton, forages, tobacco, beans, or other vegetables or fruits.
- (10) "Delivered" as in delivered allocation, load, or limit, means that portion of the allocation, load, or limit that is estimated to be transported from a nutrient source or discharge to a waterbody. A delivered value equals the corresponding discharge value multiplied by its assigned transport or delivery factor.
- (11) "Development" means the same as defined in G.S. 143-214.7.
- (12) "Director" means the Director of the Division.
- (13) "Discharge" as in discharge allocation, load, or limit means the allocation, load, or limit that is measured at the point of discharge into surface waters. A discharge value is equivalent to a delivered value divided by the transport factor for that discharge location.
- (14) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.
- (15) "DMS" means the N.C. Division of Mitigation Services. DMS, as administrator of the Riparian Buffer Restoration Fund, is the only in-lieu fee program to which rules of this Section apply.
- (16) "Estuarine Nutrient Strategy" means the Neuse Nutrient Strategy as enumerated in Rule .0710 of this Section and the Tar-Pamlico Nutrient Strategy as set forth in Rule .0730 of this Section.
- (17) "Estuary allocation" means the mass loading of total nitrogen or total phosphorus at the estuary that is reserved for a discharger or group of dischargers. A discharger's or group's estuary allocation is equivalent to its discharge allocation multiplied by its assigned transport factor.
- (18) "Existing development" means structures and other land modifications resulting from development activities, other than those associated with agricultural or forest

- management activities, that meet the following criteria:
- (a) For projects that do not require a State permit, they are in place or have established a vested right to construct relative to the effective date of the applicable local stormwater ordinance implemented pursuant to a new development stormwater rule of this Section; and
 - (b) For projects that require a State permit, they are in place before the effective date established in the applicable State and federal entities stormwater rule of this Section.
- (19) "Fertilizer" means the same as defined in Rule .0202 of this Subchapter.
 - (20) "Industrial discharge(s)" for the purpose of the nutrient strategy rules of this Section, means the discharge of industrial process treated wastewater or wastewater other than sewage. Stormwater shall not be considered to be an industrial wastewater unless it is contaminated with industrial wastewater. Industrial discharge includes:
 - (a) Wastewater resulting from any process of industry or manufacture, or from the development of any natural resource; or
 - (b) Wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants.
 - (21) "Land-disturbing activity" means the same as defined in Rule .0202 of this Subchapter.
 - (22) "Load" means the mass quantity of a nutrient or pollutant released into surface waters over a given time period. Loads may be expressed in terms of pounds per year and may be expressed as "delivered load" or an equivalent "discharge load."
 - (23) "Load allocation" means the same as set forth in 40 CFR 130.2(g), which is incorporated herein by reference, including subsequent amendments and editions. A copy of the most current version of the regulations is available free of charge on the internet at <http://www.gpo.gov/fdsys/>.
 - (24) "Local government" means the same as defined in Rule .0202 of this Subchapter.
 - (25) "MGD" means million gallons per day.
 - (26) "Nitrogen" means total nitrogen unless specified otherwise.
 - (27) "Nonpoint source load allocation" is that portion of an approved total maximum daily load (TMDL) or calibrated nutrient response model assigned to all other nitrogen sources in the basin other than individually permitted wastewater facilities and represents the maximum allowable load of total nitrogen or total phosphorus to a waterbody from these nonpoint sources.
 - (28) "Nonpoint source pollution" means the same as defined in Rule .0202 of this Subchapter.
 - (29) "Non-wasting endowment" is a fund that generates enough interest to cover the cost of perpetual monitoring and enforcement of a nutrient reduction by a perpetual steward.
 - (30) "NPDES" means National Pollutant Discharge Elimination System, and includes the permitting process required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.
 - (31) "Nutrients" means the combination of total nitrogen and total phosphorus for the purpose of the nutrient rules of this section.
 - (32) "Nutrient Offset Bank" is a site at which a nutrient offset project is implemented by a provider and approved for nutrient offset credit by the Division through execution of a nutrient offset banking instrument. This term does not include nutrient offset projects associated with an in-lieu fee program.
 - (33) "Nutrient Offset Banking Instrument" is a written legal agreement between the Division and the provider that governs the establishment, operation, and use of a nutrient offset bank.
 - (34) "Nutrient Offset Project" is a nutrient reduction project that is implemented for the purpose of generating nutrient offset credit.
 - (35) "Nutrient Reduction Practice" is any project type or type of programmatic effort that generates a quantifiable or estimated decrease in nutrient loading, and for which practice design standards and load reduction estimation methods have been approved in rule or by the Division.
 - (36) "Nutrient Reduction Project" is a site-specific installation and implementation of a nutrient reduction practice or combination of practices.
 - (37) "Nutrient Sensitive Waters" means the same as defined or classified in Rule .0223 of this Subchapter.
 - (38) "Permanent Nutrient Offset Credit" is a nutrient load reduction credit that does not automatically expire. Permanent nutrient offset credits account for permanent nutrient load reductions resulting from permanently installed and maintained nutrient reduction practices. Permanent nutrient offset credits may be used for compliance with new development stormwater rules of this Subchapter and may also satisfy other nutrient load reduction requirements as described in this Subchapter.

- Nutrient offset credits are expressed in pounds of total nitrogen or total phosphorus per year.
- (39) "Perpetual Steward" means an entity that provides oversight for a permanent nutrient offset project. "Oversight" for the purposes of this Item includes monitoring and enforcement responsibilities assumed by the steward and approved by the Division as a condition of granting permanent nutrient offset credit.
- (40) "Phosphorus" means total phosphorus unless specified otherwise.
- (41) "Provider" means any public or private person or entity that implements a nutrient reduction project and seeks nutrient offset credit for sale, lease, or conveyance in exchange for remuneration, including DMS.
- (42) "Release" of nutrient offset credits means the Division approves and acknowledges the generation of nutrient offset credits. Nutrient offset bank providers may sell, transfer, or use credits upon release. DMS may debit credits upon project institution but credits will still be subject to final approval and release by DWR.
- (43) "Residuals" means the same as defined in Rule .0202 of this Subchapter.
- (44) "Stormwater Collection System" means the same as defined in 15A NCAC 02H .1002.
- (45) "Stormwater Control Measure" or "SCM" means the same as defined in 15A NCAC 02H .1002.
- (46) "Surface waters" means all waters of the State as defined in G.S. 143-212, except underground waters.
- (47) "Term Nutrient Offset Credit" is a nutrient load reduction credit that accounts for annual nutrient load for a finite period of time. Temporary nutrient offset credits are expressed in pounds of total nitrogen or total phosphorus.
- (48) "Total Maximum Daily Load," or "TMDL," means the same as set forth in federal regulations 40 CFR 130.2(i) and 130.7(c)(1), which are incorporated herein by reference, including subsequent amendments and editions. A copy of the most current version of the regulations is available free of charge on the internet at <http://www.gpo.gov/fdsys/>.
- (49) "Total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater.
- (50) "Total phosphorus" means the sum of the orthophosphate, polyphosphate, and organic forms of phosphorus in a water or wastewater.
- (51) "Transportation facility" means the existing road surface, road shoulders, fill slopes, ferry terminal fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly associated with the road.
- (52) "Transport factor" means the fraction of a discharged nitrogen or phosphorus load that is

delivered from the discharge point to a waterbody as established in an approved TMDL or other Division publication.

- (53) "Wasteload allocation" is that portion of a nitrogen or phosphorus TMDL assigned to individually permitted wastewater facilities and represents the maximum allowable load of total nitrogen or total phosphorus to the estuary from these point source dischargers.

History Note: Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.8B; 143B-282(c); 143B-282(d);
Eff. Pending Delayed Eff. Date.

15A NCAC 02B .0232 .0710 NEUSE NUTRIENT STRATEGY: PURPOSE AND SCOPE

(a) **PURPOSE.** The purpose of this Rule and Rules .0711 through .0715 of this Section is to attain the designated uses of the Neuse River estuary with respect to meeting nutrient-related water quality standards pursuant to the Environmental Management Commission's authority under the Clean Water Responsibility and Environmentally Sound Policy Act, S.L. 1997-458. All waters of the Neuse River Basin are supplementally classified as Nutrient Sensitive Waters (NSW) pursuant to 15A NCAC 02B .0223. The rules enumerated in Paragraph (d) of this Rule together constitute the Neuse nutrient strategy, and shall be implemented in accordance with 15A NCAC 02B .0223.

(b) **SCOPE AND LIMITATION.** The Neuse nutrient strategy rules require controls to reduce nitrogen loads from significant sources of this nutrient throughout the Neuse Basin. These Rules do not address sources for which there is insufficient scientific knowledge to base regulation.

(c) **GOAL.** To achieve the purpose of the Neuse nutrient strategy, the Commission established in the initial Neuse nutrient strategy rules, enacted in August 1998, the goal of reducing the average annual load of nitrogen delivered to the Neuse estuary from point and nonpoint sources by a minimum of 30 percent below the average annual load for the period 1991 through 1995 and thereafter maintaining it at or below that level. This amended strategy continues that goal.

(d) **RULES ENUMERATED.** The rules of the Neuse nutrient strategy, in addition to this one, are titled as follows:

- (1) Rule .0711 for stormwater;
- (2) Rule .0712 for agriculture;
- (3) Rule .0713 for wastewater discharges;
- (4) Rule .0233 for riparian buffer protection; and
- (5) Rule .0241 for riparian buffer program delegation

(e) **ADAPTIVE MANAGEMENT.** The Division shall evaluate the basin's nutrient dynamics to inform and guide adaptive management. This evaluation shall utilize all sources of available information, including stakeholder input, and shall consider drivers, character, and shifts in the impairment with time, trends, and character of loading delivered to the estuary, and distribution and character of loading inputs to the basin and changes to those inputs over time. The evaluation shall address the extent to which the reduction goals identified in Paragraph (c) of this Rule have been achieved and shall provide recommendations on

management needs. The Division shall complete the evaluation within three years of the effective date of this Rule and shall distribute the findings upon completion. The Division shall also report biannually to the Water Quality Committee of the Commission on implementation progress and reductions achieved by sources subject to the Neuse nutrient strategy.

(f) **GEOGRAPHIC APPLICABILITY.** The Neuse nutrient strategy shall apply in all areas draining to NSW waters within the Neuse River Basin unless individual Neuse strategy rules describe other boundaries.

(g) **PENALTIES.** Failure to meet requirements of the Neuse nutrient strategy rules may result in imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); 143B-282; S.L. 1995-572;

Eff. August 1, 1998;

Readopted Pending Delayed Eff. Date.

15A NCAC 02B .0235 .0711 NEUSE NUTRIENT STRATEGY: STORMWATER

The following is the stormwater management strategy for the Neuse River Basin:

- (1) **PURPOSE.** The purpose of this Rule is to achieve and maintain the nitrogen loading reduction goal established for the Neuse River Estuary in Rule .0710 of this Section from an undeveloped condition on lands in the Neuse River Basin on which development occurs. Nothing in this Rule preempts the requirements of 15A NCAC 02B .0277 for projects subject to the Falls Reservoir Nutrient Strategy or prevents local governments from implementing requirements that are more restrictive than those set forth in this Rule.
- (2) **APPLICABILITY.** The following local governments shall implement the stormwater management requirements of this Rule, except as noted in Sub-Item (3)(a) of this Rule where the Department shall implement them. Municipalities shall implement this Rule throughout their corporate limits and extraterritorial jurisdictions within the basin, while counties shall implement throughout their territorial jurisdictions within the basin. Counties named in this Item may implement this Rule within municipalities not named in this Item in accordance with G.S. 160A-360(d).
 - (a) Local governments designated under this Rule effective August 1998:
 - (i) Cary;
 - (ii) Durham;
 - (iii) Garner;
 - (iv) Goldsboro;
 - (v) Havelock;
 - (vi) Kinston;
 - (vii) New Bern;

- (viii) Raleigh;
- (ix) Smithfield;
- (x) Wilson;
- (xi) Durham County;
- (xii) Johnston County;
- (xiii) Orange County;
- (xiv) Wake County; and
- (xv) Wayne County.

(b) The following additional local governments as of the effective date of this readoption:

- (i) Apex;
- (ii) Clayton;
- (iii) Fuquay Varina;
- (iv) Greenville;
- (v) Holly Springs;
- (vi) Knightdale;
- (vii) Morrisville;
- (viii) Rolesville;
- (viii) Wake Forest;
- (ix) Wendell;
- (x) Winterville;
- (xi) Craven County;
- (xii) Nash County;
- (xiii) Pitt County; and
- (xiv) Wilson County.

(3) **LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS.** All local governments subject to this Rule shall implement stormwater management programs approved by the Commission following the timeframes set out in Item (6) of this Rule, or any subsequent modifications to those plans approved by the Director, according to the following requirements and the standards contained in Item (5) of this Rule:

- (a) The requirement for local government approval of a stormwater plan for all proposed development projects not excluded under Item (4) of this Rule. To the extent permitted by federal law, including 33 USC 26, and where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government program does not review a development project proposed by a State or federal entity for the requirements of this Rule, the entity shall obtain Department review and approval.
- (b) A plan to ensure maintenance of SCMs implemented to comply with this Rule for the life of the development;
- (c) A plan to ensure enforcement and compliance with the provisions in Item (5) of this Rule for the life of the development;

- (d) A public education program to inform citizens how to reduce nutrient pollution and to inform developers about the nutrient requirements set forth in Item (5) of this Rule;
 - (e) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers; and
 - (f) A program to identify and remove illegal discharges.
- (4) **DEVELOPMENT EXCLUDED.** The following development activities shall not be subject to this Rule:
- (a) Projects disturbing less than:
 - (i) one acre for single family and duplex residential property and recreational facilities; and
 - (ii) one-half acre for commercial, industrial, institutional, multifamily residential, or local government land uses with the following exception: Projects below one-half acre that would replace or expand existing structures on a parcel, resulting in a cumulative built-upon area for the parcel exceeding twenty-four percent, shall be subject to Item (5) of this Rule;
 - (b) Development of an individual single-family or duplex residential lot that:
 - (i) Is not part of a larger common plan of development or sale as defined in 15A NCAC 02H .1002; and
 - (ii) Does not result in greater than five percent built upon area on the lot;
 - (c) Projects subject to requirements of the Falls Nutrient Strategy New Development Stormwater rule, 15A NCAC 02B .0277;
 - (d) Existing development as defined in 15A NCAC 02H .1002;
 - (e) Redevelopment as defined in G.S. 143-214.7(a1)(2); and
 - (f) Activities subject to requirements of the Neuse Agriculture rule, 15A NCAC 02B .0712.
- (5) **DEVELOPMENT PROJECT REQUIREMENTS.** A proposed development project not excluded under Item (4) of this Rule shall be approved by a subject local government for the purpose of this Rule when the applicable requirements of Item (3) of this Rule and the following criteria are met.
- (a) The project, as defined in State stormwater rule 15A NCAC 02H .1002, shall meet either a nitrogen loading rate target of 3.6 pounds/acre/year or "runoff volume match" as defined in that Rule. Proposed development projects that would replace or expand existing structures and result in a net increase in built-upon area shall meet one of these options for the project less any existing built-upon area.
 - (b) Regarding stormwater treatment and other onsite post-construction elements, projects not subject to more stringent standards under one of the following State stormwater rules or a local ordinance shall meet 15A NCAC 02H .1003, which includes specifications for low- and high-density designs, vegetated setbacks, and stormwater outlets for all projects. Such projects shall use a high-density treatment threshold of twenty four percent or greater built-upon area and a storm depth of one inch for SCM design:
 - (i) Water Supply Watershed Protection rules, 15A NCAC 02B .0620 through .0624;
 - (ii) Coastal Counties stormwater rule 15A NCAC 02H .1019; or
 - (iii) Non-Coastal County HWQs and ORWs rule 15A NCAC 02H .1021.
 - (c) The following are exceptions to the onsite requirements of Sub-Item (b) of this Item:
 - (i) Proposed development projects may utilize an offsite SCM that is dedicated to treating an area encompassing the project, provided the SCM is designed to meet all applicable requirements identified in Sub-Item (b) of this Item; and
 - (ii) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface

- Transportation Board, may meet the loading rate target of this Item entirely through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section.
- (d) Where in satisfying the onsite requirements of Sub-Item (b) of this Item, a project does not meet the loading rate target of this Item, it may do so through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons doing so shall provide proof of credit acquisition to the permitting authority prior to approval of the development plan.
 - (e) Untreated nutrient loading rates from the project area shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or through an alternative method that meets or exceeds the following criteria, as determined by the Division:
 - (i) Provides site-scale estimates of annual precipitation-driven total nitrogen load;
 - (ii) From all land cover types on a project site at build-out;
 - (iii) Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual runoff volume; and
 - (iv) Is supported by the weight of evidence from available, current, and applicable research.
 - (f) Nutrient loading rate reductions resulting from the use of SCMs shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or through an alternative method that meets or exceeds the following criteria, as determined by the Division:
 - (i) Provides project site loading reduction estimates from the installation of Department of Energy, Mineral and Land Resources (DEMLR) approved SCMs;
 - (ii) Reductions apply to the portion of the project's runoff volume that is directed to the SCMs;
 - (iii) The method partitions the runoff volume processed by the SCM among hydrologic fates and assigns nutrient concentrations to each of those fates; and
 - (iv) The method is supported by the weight of evidence from available, current, and applicable research.
 - (g) Proposed development projects shall demonstrate compliance with the riparian buffer protection requirements set forth in 15A NCAC 02B .0233.
- (6) **RULE IMPLEMENTATION**
- (a) Within eight months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Items (3) through (5) of this Rule to the Commission for approval. The Division shall work with subject local governments in developing this model program.
 - (b) Local governments designated pursuant to Sub-Item (2)(a) of this Rule and additional local governments designated pursuant to Sub-Item (2)(b) of this Rule shall submit a local stormwater program for approval by the Commission within six months and 12 months, respectively, of the Commission's approval of the model local program. These local programs shall meet or exceed the requirements in Items (3) through (5) of this Rule.
 - (c) The Division shall provide recommendations to the Commission regarding proposed local programs. The Commission shall approve programs or require changes based on the standards set out in Items (3) through (5) of this Rule. Should the Commission require changes, the applicable local government shall have three months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions.
 - (d) Within six months after the Commission's approval of a local program, the local government shall complete adoption of and implement its local stormwater program.
 - (e) Local governments administering a stormwater program shall submit annual reports in electronic format to the Division documenting their progress regarding each

implementation requirement in Item (3) of this Rule and net changes to nitrogen load by October 30th of each year. Annual reports shall also include as appendices all data utilized by nutrient calculation tools for each development stormwater plan approved in accordance with this Rule.

- (f) Any significant modifications to a local program following its approval pursuant to the requirements of this Item shall be submitted to the Director for approval.
- (7) **COMPLIANCE.** A local government's authority to approve development stormwater plans for compliance with this Rule pursuant to Item (5) of this Rule shall be contingent upon maintaining its own compliance with this Rule. A local government that fails to submit an acceptable local stormwater program within the timeframe established in this Rule, fails to implement an approved program, or fails to comply with annual reporting requirements shall be in violation of this Rule.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-214.26; 143-215.1; 143-215.3(a)(1); 143-215.8B; 143B-282; S.L. 1995, c. 572;

Eff. August 1, 1998;

Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010);

Readopted Pending Delayed Eff. Date.

15A NCAC 02B .0238 .0712 NEUSE NUTRIENT STRATEGY: AGRICULTURE

This Rule sets forth a process by which agricultural operations in the Neuse River Basin will collectively limit their nitrogen loading to the Neuse estuary, as set forth in in Rule .0710 of this Section. Nothing in this Rule preempts the requirements of 15A NCAC 02B .0280 for agricultural operations subject to the Falls Reservoir Nutrient Strategy.

- (1) **PURPOSE.** The purpose of this Rule is to maintain or exceed the percentage reduction goal defined in Rule .0710 of this Section on the collective loss of nitrogen from agricultural operations as defined in Item (2) of this Rule, as estimated by best available accounting practices meeting the criteria set forth in Item (6) of this Rule from its 1991-1995 baseline level.
 - (a) **PROCESS.** This Rule requires agricultural producers in the Basin to implement land management practices that collectively, on a basin-wide basis, will achieve the nutrient goals.
 - (b) **LIMITATION.** This Rule may not fully address the agricultural nitrogen reduction goal of the Neuse Nutrient Sensitive Waters Strategy in that it

does not address atmospheric sources of nitrogen to the Basin, including atmospheric emissions of ammonia from sources located both within and outside of the Basin, and the Commission may undertake separate rule making to address atmospheric sources at a later date.

- (2) **AGRICULTURAL OPERATIONS DEFINED.** For the purposes of this Rule, "agricultural operations," are activities, and "agricultural producers" are persons engaging in those activities, that relate to any of the following pursuits:

- (a) The commercial production of crops or horticultural products other than trees. As used in this Rule, "commercial" shall mean activities conducted primarily for financial profit.
- (b) Research activities in support of commercial production.
- (c) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:
 - (i) 5 or more horses;
 - (ii) 20 or more cattle;
 - (iii) 20 or more swine not kept in a feedlot, or 150 or more swine kept in a feedlot;
 - (iv) 120 or more sheep;
 - (v) 130 or more goats;
 - (vi) 650 or more turkeys;
 - (vii) 3,500 or more chickens; or
 - (viii) Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.

- (3) **APPLICABILITY.** This Rule shall apply to all agricultural producers engaging in agricultural operations in the geographic area subject to the Neuse nutrient strategy as described in Rule .0710 of this Section. This Rule applies to livestock and poultry operations set forth in Sub-Item (2)(c) of this Rule in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry operation below the size thresholds in this Item.

- (4) **IMPLEMENTATION PROCESS.** A Basin Oversight Committee, as set forth in Item (5) of this Rule, and county-level Local Advisory

Committees, as set forth in Item (7) of this Rule, shall coordinate activities and account for progress. Accounting for nitrogen load-reducing actions on agricultural operations within the basin shall follow requirements set forth in Item (6) of this Rule. Agricultural producers may be eligible to obtain cost share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' ongoing nitrogen reductions. Committee activity shall be guided by the following:

- (a) **OPTIONS FOR INDIVIDUAL OPERATIONS.** Agricultural producers subject to this Rule may elect to implement practices meeting the standards identified in Item (8) of this Rule that contribute to maintenance of collective local compliance with the goal identified in Item (1) of this Rule, but are not required to implement any specific practices provided their basin collectively maintains compliance with the goal.
- (b) **MAINTENANCE OF GOAL.** Accounting shall annually demonstrate maintenance or exceedence of the nitrogen reduction goal on a basin basis. Where three sequential annual reports show that the basin did not meet its nitrogen reduction goal, the Basin Oversight Committee shall work with the Division of Soil and Water Conservation and Local Advisory Committees, particularly those representing counties not meeting the goals, to seek reduction actions by operations to bring agriculture collectively back into compliance, and shall report on their efforts in subsequent annual reports. Should subsequent annual reports not reverse the trend of noncompliance, the Commission may conduct additional rulemaking to require a more specific implementation plan from the Basin Oversight Committee, which may include an assessment of need for specific action by the Commission.
- (5) **BASIN OVERSIGHT COMMITTEE.** The Basin Oversight Committee shall have the following membership, role, and responsibilities:
 - (a) **MEMBERSHIP.** The Director of the Division of Water Resources shall be responsible for maintaining the following membership composition.

Until such time as the Commission determines that long-term compliance with this Rule is assured, the Director shall solicit one nomination for membership on this Committee from each agency or interest in Sub-Items (a)(i) through (a)(viii) of this Item. The Director shall confirm nominees in writing or request alternative nominations. The Director may appoint a replacement at any time for an interest in Sub-Items (a)(vi) through (a)(viii) of this Item upon request of representatives of that interest or by the request of the Commissioner of Agriculture for Sub-Item (vii):

- (i) Division of Soil and Water Conservation;
- (ii) United States Department of Agriculture- Natural Resources Conservation Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee);
- (iii) North Carolina Department of Agriculture and Consumer Services;
- (iv) North Carolina Cooperative Extension Service;
- (v) Division of Water Resources;
- (vi) Up to two environmental interests;
- (vii) Up to two general farming interest; and
- (viii) Scientific community with experience related to water quality problems in the Neuse River Basin.
- (b) **ROLE.** The Basin Oversight Committee shall:
 - (i) Continue to review, approve, and summarize local nitrogen loss annual reports to ensure ongoing implementation of the accounting method approved by the Commission under the original version of this Rule effective August 1998, as conforming to the requirements of Item (6) of this Rule. The Committee shall submit these reports as initiated in 2002, to the Director;
 - (ii) Take actions set forth in Sub-Item (4)(b) of this Rule to

- (iii) address maintenance of the nitrogen reduction goal; and

(iii) Identify and implement refinements to the accounting methodology to reflect advances in scientific understanding, including establishment or refinement of nutrient reduction efficiencies for BMPs.

(6) **ACCOUNTING METHODOLOGY.** The requirements of Item (1) of this Rule shall be gauged by estimating percentage changes in nitrogen loss from agricultural operations in the Neuse Basin. The Basin Oversight Committee shall develop, maintain, and update as set forth in this Item, accounting methods that meet the following requirements:

(a) The nitrogen method shall estimate baseline and annual total nitrogen losses from agricultural operations in each county and for the entire Neuse Basin;

(b) The nitrogen method shall include a means of tracking implementation of BMPs, including number, type, and area affected;

(c) The nitrogen method shall include a means of estimating incremental nitrogen loss reductions from implementation of BMPs that conform to requirements of Item (8) of this Rule and of evaluating progress toward and maintenance of the nutrient goal from changes in BMP implementation, fertilization, and changes in individual crop acres; and

(d) The nitrogen method shall be refined as research and technical advances allow.

(7) **LOCAL ADVISORY COMMITTEES.** The Directors of the Division of Water Resources and Division of Soil and Water Conservation shall maintain Local Advisory Committees initially established in February and March, 1999, as follows:

(a) **MEMBERSHIP.** For each county or watershed specified by the Basin Oversight Committee within the Neuse River Basin, the Directors shall jointly maintain membership on the Local Advisory Committee from each of the following local entities:

(i) Soil and Water Conservation District;

(ii) United States Department of Agriculture-Natural Resources Conservation Service;

(iii) North Carolina Department of Agriculture;

(iv) North Carolina Cooperative Extension Service;

(v) North Carolina Division of Soil and Water Conservation; and

(vi) At least two agricultural producers that reside in the county.

(b) **ROLE.** Local Advisory Committees shall:

(i) Continue to submit annual reports to the Basin Oversight Committee estimating total crop production on agricultural operations for the preceding calendar year, summarizing land use changes in the county and making recommendations to the Basin Oversight Committee on the need for updates to the accounting methodology. Reports shall include documentation on the BMPs implemented, including type and location, that satisfy the requirements in Item (8) of this Rule and documentation of any expired contracts for BMPs; and

(ii) Take actions called for under Sub-Item (4)(b) of this Rule to address maintenance of the nitrogen reduction goal.

(8) **PRACTICE STANDARDS.** To receive nutrient reduction credit, a BMP shall be included in the accounting method set forth in Item (6) of this Rule, or in a subsequent revision to that method identified in annual reporting, and it shall be implemented according to the applicable nutrient-related standards identified by the Basin Oversight Committee and established by the NC Soil and Water Conservation Commission or the USDA-Natural Resources Conservation Service in North Carolina.

**15A NCAC 02B .0234 .0713 NEUSE RIVER BASIN -
NUTRIENT SENSITIVE WATERS MANAGEMENT
STRATEGY: WASTEWATER DISCHARGE
REQUIREMENTS**

The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management strategy for the Neuse River Basin:

- (1) Purpose. The purpose of this Rule is to establish minimum nutrient control requirements for point source discharges in the Neuse River Basin in order to maintain or restore water quality in the Neuse River Estuary and protect its designated uses.
- (2) Applicability. This Rule applies to all discharges from wastewater treatment facilities in the Neuse River Basin that receive nitrogen-bearing wastewater and are required to obtain individual NPDES permits. Discharges in the Falls Lake watershed are subject to additional nutrient control requirements under the Falls Water Supply Nutrient Strategy Rules of this Subchapter.

Facility Name	NPDES No.	Permitted Flow (MGD)
Benson	NC0020389	3.00
Goldsboro	NC0023949	16.80
Kenly	NC0064891	0.63
Snow Hill	NC0020842	0.50
Wilson	NC0023906	14.00

- (4) This Item specifies the nitrogen wasteload allocation for point sources.
 - (a) In accordance with the Nitrogen TMDL for the Neuse River Estuary, approved in 1999 by the US Environmental Protection Agency (EPA), the nitrogen wasteload allocation for point sources shall not exceed 1.64 million pounds per calendar year. The nitrogen wasteload allowance for point sources shall not exceed the nitrogen wasteload allocation plus any nutrient offset credits obtained in accordance with G.S. 143-214.26 and Rule .0703 of this Section.
 - (b) The Commission shall order future revisions in the Nitrogen TMDL and nitrogen wasteload allocation whenever necessary to ensure that water quality in the estuary meets all applicable standards in 15A NCAC 02B .0200 or to conform with applicable State or federal requirements.
- (5) This Item specifies the initial distribution of nitrogen discharge allocations for point sources.

- (3) Definitions. The terms used in this Rule shall be as defined in Rule .0701 of this Section and as follows:

- (a) In regard to point source dischargers, treatment facilities, wastewater flows or discharges, or like matters:
 - (i) "Existing" means that which obtained an NPDES permit on or before December 31, 1995.
 - (ii) "Expanding" means that which increases beyond its permitted flow as defined in Sub-Item (3)(b) of this Rule.
 - (iii) "New" means that which had not obtained an NPDES permit on or before December 31, 1995.
- (b) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 31, 1995, with the following exceptions:

- (a) Until revised as provided elsewhere in this Rule, the following group and individual discharge allocations for total nitrogen shall apply in order to comply with the nitrogen wasteload allocation for point sources in Item (4) of this Rule:
 - (i) Dischargers with permitted flows less than 0.5 MGD shall be assigned collectively an annual discharge allocation of 138,000 pounds of total nitrogen.
 - (ii) Dischargers upstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 443,700 pounds of total nitrogen.
 - (iii) Municipal dischargers downstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of

- 2,021,400 pounds of total nitrogen.
 - (iv) Industrial dischargers downstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 396,900 pounds of total nitrogen.
 - (v) Within each group in Sub-Items (i) - (iv) of this Item, each individual discharger shall be assigned an individual discharge allocation and the equivalent estuary allocation. Each discharger's discharge allocation shall be calculated as its permitted flow divided by the total permitted flow of the group, multiplied by the group discharge allocation.
 - (b) In the event that the nitrogen TMDL and its wasteload allocation for point sources are revised, as provided in Item (4) of this Rule, the Commission shall apportion the revised load among the existing facilities and shall revise discharge allocations as needed. The Commission may consider such factors as:
 - (i) fate and transport of nitrogen in the river basin;
 - (ii) technical feasibility and economic reasonableness of source reduction and treatment methods;
 - (iii) economies of scale;
 - (iv) nitrogen control measures already implemented;
 - (v) probable need for growth and expansion; and
 - (vi) incentives for nutrient management planning, utilities management, resource protection, and cooperative efforts among dischargers.
- (6) This Item specifies nutrient controls for existing facilities.
 - (a) Beginning with calendar year 2003, each discharger with a permitted flow equal to or greater than 0.5 MGD shall be subject to a total nitrogen permit limit equal to the sum of its active individual discharge allocation, pursuant to Item (5) of this Rule and
 - any active allocation or nutrient offset credits acquired pursuant to Rule .0703 of this Section.
 - (b) All existing facilities below Falls Lake Dam with permitted flows greater than or equal to 0.5 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.
 - (c) The Director shall modify an existing facility's permit to establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (7) This Item specifies nutrient controls for new facilities.
 - (a) New facilities proposing to discharge wastewater shall evaluate all practical alternatives to surface water discharge pursuant to 15A NCAC 02H .0105(c)(2) prior to submitting an application to discharge.
 - (b) New facilities submitting an application shall acquire, or demonstrate contractual agreement to acquire prior to authorization to discharge, nitrogen allocation from existing dischargers or nitrogen offset credits pursuant to Rule .0703 of this Section for the proposed discharge. The allocation and offset credits shall be sufficient for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(c).
 - (c) The Director shall not issue a permit authorizing discharge from a new facility unless the applicant has satisfied the requirements of Sub-Items (a), (b), and (e) of this Item. If a new facility's permit contains tiered flow limits for expansion, the Director shall not authorize an increased discharge unless the applicant has satisfied the requirements of Sub-Items (a), (b), and (e) of this Item for that discharge.
 - (d) The nitrogen discharge limit for a new facility shall not exceed the nitrogen load equivalent to its active allocation and offset credits, or the following technology-based mass limit, whichever is less:
 - (i) For facilities treating municipal or domestic wastewaters, the mass load equivalent to a concentration

- of 3.5 mg/L at the monthly average flow limit in the facility's NPDES permit; and
 - (ii) For facilities treating industrial wastewaters, the mass load equivalent to the best available technology economically achievable, calculated at the monthly average flow limit in the facility's NPDES permit.
 - (e) Subsequent applications for permit renewal or, where an existing permit contains tiered limits, requests to discharge at an increased flow shall demonstrate that the facility has sufficient nitrogen allocation or offset credits to meet its effluent nutrient limitations for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate.
 - (f) New dischargers shall meet a monthly average total phosphorous limit of 1.0 mg/L.
 - (g) The Director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (8) This Item specifies nutrient controls for expanding facilities.
 - (a) Expanding facilities shall evaluate all practical alternatives to surface water discharge, pursuant to 15A NCAC 02H .0105(c)(2) prior to submitting an application to discharge.
 - (b) Facilities submitting application for increased discharge or, where an existing permit contains tiered limits, for authorization to discharge at an increased flow, shall acquire, or demonstrate contractual agreement to acquire prior to authorization to discharge at the increased flow, nitrogen allocation from existing dischargers or nitrogen offset credits pursuant to Rule .0703 of this Section, or both, for the proposed discharge. The allocation and offset credits shall be sufficient for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(c).
 - (c) The Director shall not issue a permit authorizing increased discharge from an existing facility unless the applicant has satisfied the requirements of Sub-Items (a), (b), and (e) of this Item. If a facility's permit contains tiered flow limits for expansion, the Director shall not authorize discharge at an increased flow unless the applicant has satisfied the requirements of Sub-Items (a), (b), and (e) of this Item.
 - (d) The nitrogen discharge limit for an expanded facility shall not exceed the nitrogen load equivalent to its active allocation and offset credits, or the following technology-based mass limit, whichever is less:
 - (i) For facilities treating municipal or domestic wastewaters, the mass equivalent to a concentration of 3.5 mg/L at the monthly average flow limit in the facility's modified NPDES permit, except that the limit shall be no less than the facility's original allocation per Item (5) of this Rule; and
 - (ii) For facilities treating industrial wastewaters, the mass equivalent to the best available technology economically achievable, calculated at the monthly average flow limit in the facility's modified NPDES permit.
 - (e) Subsequent applications for permit renewal or, where an existing permit contains tiered limits, requests to discharge at an increased flow shall demonstrate that the facility has sufficient nitrogen allocation or offset credits to meet its effluent nutrient limitations for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate.
 - (f) Expanding facilities shall meet a monthly average total phosphorous limit of 1.0 mg/L unless they are a co-permittee member of a group compliance association described in Item (9) of this Rule, in which case they shall meet a quarterly average total phosphorus limit of 2.0 mg/L.
 - (g) The Director shall modify an expanding facility's permit to establish more stringent limits for nitrogen or phosphorus upon finding that such

- limits are necessary to protect water quality standards in localized areas.
- (9) This Item describes the option for dischargers to join a group compliance association to collectively meet nitrogen load limits.
- (a) Any or all facilities within the basin may form a group compliance association to meet nitrogen limits collectively. Any such association shall apply for and shall be subject to an NPDES group permit that establishes the effective total nitrogen limits, expressed as loads delivered to the estuary, for the association and for its members. More than one group compliance association may be established. No facility may be a co-permittee member of more than one association formed pursuant to this Rule at any given time.
- (b) No later than 180 days prior to coverage under a new NPDES group permit, or expiration of an existing group permit, the association and its members shall submit an application for an NPDES permit for the discharge of total nitrogen to the surface waters of the Neuse River Basin. The NPDES group permit shall be issued to the association and its members as co-permittees.
- (c) An association's estuary limit of total nitrogen shall be the sum of its members' individual estuary allocations and nutrient offset credits plus any other estuary allocation and offset credits obtained by the association or its members pursuant to this strategy.
- (d) An association and its members may reapportion their individual estuary allocations and nutrient offset credits on an annual basis. The NPDES group permit shall be modified to reflect the revised individual estuary allocations and limits.
- (e) If an association does not meet its estuary limit in any year, it shall obtain nutrient offset credits in accordance with G.S. 143-214.26 to offset its mass exceedance no later than May 1 of the following year.
- (f) Association members shall be deemed compliant with the permit limits for total nitrogen contained in their individually issued NPDES permits while they are members in an association. Association members shall be deemed compliant with their

individual estuary limits in the NPDES group permit in any year in which the association is in compliance with its estuary limit. If the association exceeds its group limit, the association and any members that exceed their individual estuary limits in the NPDES group permit shall be deemed to be out of compliance with the group permit.

- (10) If an NPDES-permitted discharger or group of dischargers accepts wastewater from another NPDES-permitted treatment facility in the Neuse River Basin and that acceptance results in the elimination of the discharge from the treatment facility, the eliminated facility's total nitrogen estuary allocation shall be transferred and added to the accepting discharger's estuary allocation.

History Note: Authority G.S. 143-214.1; 143-215; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572; Temporary Adoption Eff. January 22, 1998; Eff. August 1, 1998; Temporary Amendment Eff. March 15, 2000; Temporary Amendment Expired on December 10, 2000; Amended Eff. April 1, 2003; Readopted Pending Delayed Eff. Date.

15A NCAC 02B .0730 TAR-PAMLICO NUTRIENT STRATEGY: PURPOSE & SCOPE

PURPOSE. The purpose of this Rule and Rules 15A NCAC 02B .0731 through .0736 of this Section is to attain the designated uses of the Pamlico River estuary with respect to meeting nutrient-related water quality standards pursuant to the Environmental Management Commission's authority under the Clean Water Responsibility and Environmentally Sound Policy Act, S.L. 1997-458. The estuary and waters of the Tar-Pamlico River Basin are classified as Nutrient Sensitive Waters (NSW) pursuant to Rule 15A NCAC 02B .0223 of this Subchapter. The rules enumerated in Item (3) of this Rule together constitute the Tar-Pamlico nutrient strategy, and shall be implemented in accordance with Rule .0223 of the Subchapter.

- (1) **SCOPE AND LIMITATION.** The Tar-Pamlico nutrient strategy rules require controls to reduce nitrogen and phosphorus loads from significant sources of these nutrients throughout the Tar-Pamlico Basin. These Rules do not address sources for which there is insufficient scientific knowledge to base regulation.
- (2) **GOALS.** To achieve the purpose of the Tar-Pamlico nutrient strategy, the Commission established in the initial Tar-Pamlico nutrient rules, enacted in 2000 and 2001, goals of reducing the average annual load of nitrogen delivered to the Pamlico River Estuary from nutrient sources to a level 30 percent below a 1991 baseline, and thereafter maintaining it at or below that level, and of reducing average

annual phosphorus load to 1991 baseline level and thereafter maintaining it at or below that level. This Tar-Pamlico nutrient strategy continues these goals.

- (3) **RULES ENUMERATED.** The rules of the Tar-Pamlico nutrient strategy are titled as follows:
 - (a) Rule .0730 Purpose and Scope;
 - (b) Rule .0731 Stormwater Management for New Development;
 - (c) Rule .0732 Agriculture;
 - (d) Rule .0733 Non-Association Dischargers;
 - (e) Rule .0259 Riparian Buffer Protection; and
 - (f) Rule .0261 Buffer Program Delegation.
- (4) **ADAPTIVE MANAGEMENT.** The Division shall evaluate the basin's nutrient dynamics to inform and guide adaptive management. This evaluation shall utilize all sources of available information, including stakeholder input, and shall consider drivers, character, and shifts in the impairment with time, trends, and character of loading delivered to the estuary, and distribution and character of loading inputs to the basin and changes to those inputs over time. The evaluation shall address the extent to which the reduction goals identified in Item (2) of this Rule have been achieved and shall provide recommendations on management needs. The Division shall complete the evaluation within three years of the effective date of this Rule and shall distribute the findings upon completion. The Division shall also report biannually to the Water Quality Committee of the Commission on implementation progress and reductions achieved by sources subject to the Tar-Pamlico nutrient strategy.
- (5) **GEOGRAPHIC APPLICABILITY.** The Tar-Pamlico nutrient strategy shall apply in all areas draining to waters within hydrologic units 03020101, 03020102, 03020103, 03020104, and portions of 03020105 located on the Albemarle-Pamlico peninsula unless individual Tar-Pamlico strategy rules describe other boundaries.
- (6) **PENALTIES.** Failure to meet the requirements of the Tar-Pamlico nutrient strategy rules may result in imposition of enforcement measures as authorized by G.S. 143-215.6A, G.S. 143-215.6B, and G.S. 143-215.6C.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.8B; 143B-282;
Eff. Pending Delayed Eff. Date.

15A NCAC 02B .0258 .0731 TAR-PAMLICO

NUTRIENT STRATEGY: STORMWATER

(a) **PURPOSE.** The purpose of this Rule is to achieve and maintain the nitrogen and phosphorus loading reduction goals for the Tar-Pamlico River Estuary set out in Rule .0730 of this Section from an undeveloped condition on lands in the Tar-Pamlico River Basin on which development occurs. Nothing in this Rule preempts local governments from implementing requirements that are more restrictive than those set forth in this Rule.

(b) **APPLICABILITY.** The following local governments shall implement the stormwater management requirements of this Rule, except as noted in Subparagraph (c)(1) of this Rule where the Department shall implement them. Municipalities shall implement this Rule throughout their corporate limits and extraterritorial jurisdictions within the basin, while counties shall implement throughout their territorial jurisdictions within the basin. Counties named in this Paragraph may implement this Rule within municipalities not named in accordance with G.S. 160A-360(d).

- (1) Local governments designated under this Rule effective April 2001:

- (A) Greenville;
- (B) Henderson;
- (C) Oxford;
- (D) Rocky Mount;
- (E) Tarboro;
- (F) Washington;
- (G) Beaufort County;
- (H) Edgecombe County;
- (I) Franklin County;
- (J) Nash County; and
- (K) Pitt County.

- (2) As of the effective date of this readoption, Wilson County.

(c) **LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS.** All local governments subject to this Rule shall implement stormwater management programs approved by the Commission following the timeframes set out in Paragraph (f) of this Rule, or any subsequent modification to those plans approved by the Director, according to the following requirements and the standards contained in Paragraph (d) of this Rule:

- (1) The requirement for local government approval of a stormwater plan for all proposed development projects not excluded under Paragraph (d) of this Rule. To the extent permitted by federal law, including 33 USC 26, and where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government program does not review a development project proposed by a State or federal entity for the requirements of this Rule, the entity shall obtain Department review and approval.
- (2) A plan to ensure maintenance of SCMs implemented to comply with this Rule for the life of the development;
- (3) A plan to ensure enforcement and compliance with the provisions in Paragraph (e) of this Rule for the life of the development;

- (4) A public education program to inform citizens how to reduce nutrient pollution and to inform developers about the nutrient requirements set forth in Paragraph (e) of this Rule;
- (5) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers; and
- (6) A program to identify and remove illegal discharges.

(d) **DEVELOPMENT EXCLUDED.** The following development activities shall not be subject to this Rule:

- (1) Projects disturbing less than:
 - (A) one acre for single family and duplex residential property and recreational facilities; and
 - (B) one-half acre for commercial, industrial, institutional, multifamily residential, or local government land uses with the following exception: Projects below one-half acre that would replace or expand existing structures on a parcel, resulting in a cumulative built-upon area for the parcel exceeding twenty-four percent, shall be subject to Paragraph (e) of this Rule;
- (2) Development of an individual single-family or duplex residential lot that:
 - (A) Is not part of a larger common plan of development or sale as in 15A NCAC 02H .1002; and
 - (B) Does not result in greater than five percent built upon area on the lot;
- (3) Existing development as defined in rule 15A NCAC 02H .1002;
- (4) Redevelopment as defined in G.S. 143-214.7(a1)(2); and
- (5) Activities subject to requirements of the Tar-Pamlico Agriculture rule, 15A NCAC 02B .0732.

(e) **DEVELOPMENT PROJECT REQUIREMENTS.** A proposed development project not excluded under Paragraph (d) of this Rule shall be approved by a subject local government for the purpose of this Rule when the applicable requirements of Paragraph (c) of this Rule and the following criteria are met:

- (1) The project, as defined in 15A NCAC 02H .1002, shall meet either a nitrogen loading rate target of 4.0 pounds/acre/year and a phosphorus loading rate target of 0.8 pounds/acre/year, or "runoff volume match" as defined in that Rule. Proposed development projects that would replace or expand existing structures and result in a net increase in built-upon area shall meet one of these options for the project less any existing built-upon area.
- (2) Regarding stormwater treatment and other onsite post-construction elements, projects not subject to more stringent standards under one of

the following State stormwater rules or a local ordinance shall meet 15A NCAC 02H .1003, which includes specifications for low- and high-density designs, vegetated setbacks, and stormwater outlets for all projects. Such projects shall use a high-density treatment threshold of 24 percent or greater built-upon area and a storm depth of one inch for SCM design:

- (A) Water Supply Watershed Protection rules, 15A NCAC 02B .0620 through .0624;
- (B) Coastal Counties stormwater rule 15A NCAC 02H .1019; or
- (C) Non-Coastal County HWQs and ORWs rule 15A NCAC 02H .1021.

(3) The following are exceptions to the onsite requirements of Subparagraph (2) of this Paragraph:

- (A) Proposed development projects may utilize an offsite SCM that is dedicated to treating an area encompassing the project, provided the SCM is designed to meet all applicable requirements identified in Subparagraph (2) of this Paragraph; and
- (B) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet the loading rate target of this Paragraph entirely through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section.

(4) Where in satisfying the onsite requirements of Subparagraph (2) of this Paragraph, a project does not meet the loading rate target of this Paragraph, it may do so through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons doing so shall provide proof of credit acquisition to the permitting authority prior to approval of the development plan.

(5) Untreated nutrient loading rates from the project area shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or through an alternative method that meets or exceeds the following criteria, as determined by the Division:

- (A) Provides site-scale estimates of annual precipitation-driven total nitrogen and total phosphorus load;
- (B) From all land cover types on a project site at build-out;

- (C) Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual runoff volume; and
- (D) Is supported by the weight of evidence from available, current, and applicable research.
- (6) Nutrient loading rate reductions resulting from the use of SCMs shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or through an alternative method that meets or exceeds the following criteria, as determined by the Division:
 - (A) Provides project site loading reduction estimates from the installation of DEMLR-approved SCMs;
 - (B) Reductions apply to the portion of the project's runoff volume that is directed to the SCMs;
 - (C) The method partitions the runoff volume processed by the SCM among hydrologic fates and assigns nutrient concentrations to each of those fates; and
 - (D) The method is supported by the weight of evidence from available, current, and applicable research.
- (7) Proposed development projects shall demonstrate compliance with the riparian buffer protection requirements set forth in 15A NCAC 02B .0259.

(f) RULE IMPLEMENTATION

- (1) Within eight months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Paragraphs (c) through (e) of this Rule to the Commission for approval. The Division shall work with subject local governments in developing this model program.
- (2) Local governments designated pursuant to Subparagraph (b)(1) of this Rule and additional local governments designated pursuant to Subparagraph (b)(2) of this Rule shall submit a local stormwater program for approval by the Commission within six months and 12 months, respectively, of the Commission's approval of the model local program. These local programs shall meet or exceed the requirements in Paragraphs (c) through (e) of this Rule.
- (3) The Division shall provide recommendations to the Commission regarding proposed local programs. The Commission shall approve programs or require changes based on the standards set out in Paragraphs (c) through (e) of this Rule. Should the Commission require changes, the applicable local government shall have three months to submit revisions, and the Division shall provide follow-up

- recommendations to the Commission within two months after receiving revisions.
- (4) Within six months after the Commission's approval of a local program, the local government shall complete adoption of and implement its local stormwater program.
- (5) Local governments administering a stormwater program shall submit annual reports in electronic format to the Division documenting their progress regarding each implementation requirement in Paragraph (c) of this Rule and net changes to nitrogen load by October 30th of each year. Annual reports shall also include as appendices all data utilized by nutrient calculation tools for each development stormwater plan approved in accordance with this Rule.
- (6) Any significant modifications to a local government's program shall be submitted to the Director for approval.

(g) COMPLIANCE. A local government's authority to approve development stormwater plans for compliance with this Rule pursuant to Paragraph (e) of this Rule shall be contingent upon maintaining its own compliance with this Rule. A local government that fails to submit an acceptable local stormwater program within the timeframe established in this Rule, fails to implement an approved program, or fails to comply with annual reporting requirements shall be in violation of this Rule.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-214.26; 143-215.1; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143 B -282(d); 143-215.8B; S.L. 1997-458; S.L. 2006-246;

Eff. April 1, 2001;

Readopted Pending Delayed Eff. Date.

**15A NCAC 02B ~~.0256~~ .0732 TAR-PAMLICO
NUTRIENT STRATEGY: AGRICULTURE**

(a) PURPOSE. The purpose of this Rule is to maintain or exceed the percentage reduction goals defined in Rule .0730 of this Section for the collective agricultural loading of nitrogen and phosphorus from the 1991 baseline levels, to the extent that best available accounting practices will allow, on agricultural operations as defined in Paragraph (b) of this Rule. This Rule requires persons engaging in agricultural operations in the basin to implement land management practices that will collectively, on a basin basis, achieve and maintain strategy nutrient reduction goals of a 30 percent reduction in nitrogen loading from 1991 levels and no increase in phosphorus loading from 1991 levels. Local committees and a Basin Oversight Committee shall coordinate activities and account for progress.

- (1) PROCESS. This Rule requires agricultural producers in the basin to implement land management practices that collectively, on a basin-wide basis, will achieve the nutrient goals.
- (2) LIMITATION. This Rule may not fully address the agricultural nitrogen reduction goal of the Tar-Pamlico Nutrient Sensitive Waters

Strategy in that it does not address atmospheric sources of nitrogen to the Basin, including atmospheric emissions of ammonia from sources located both within and outside of the Basin, and the Commission may undertake separate rule making to address atmospheric sources at a later date.

(b) **APPLICABILITY.** This Rule shall apply to all agricultural producers engaging in agricultural operations in the geographic area subject to the Tar-Pamlico nutrient strategy as described in Rule .0730 of this Section. This Rule applies to livestock and poultry operations set forth in Subparagraph (b)(3) of this Rule in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry operation below the size thresholds in this Paragraph. For the purposes of this Rule, "agricultural operations," are activities, and "agricultural producers" are persons engaging in those activities, that relate to any of the following pursuits:

- (1) The commercial production of crops or horticultural products other than trees. As used in this Rule, "commercial" shall mean activities conducted primarily for financial profit.
- (2) Research activities in support of commercial production.
- (3) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:
 - (A) 20 or more horses;
 - (B) 20 or more cattle;
 - (C) 150 or more swine;
 - (D) 120 or more sheep;
 - (E) 130 or more goats;
 - (F) 650 or more turkeys;
 - (G) 3,500 or more chickens; or
 - (H) Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.
- (4) Certain tree-harvesting activities described and defined as follows.
 - (A) The one-time harvest of trees on land within a riparian buffer described in Rule .0259 that was open farmland on September 1, 2001. This one-time harvest of trees may be conducted within one tree cropping interval only under a verifiable farm plan that received final approval from a local agricultural agency on or after September 1, 2001 and that expressly allowed the harvest of trees no earlier than 10 years after the trees are established and the return of the land to another agricultural pursuit.

- (B) The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B .0259 that had trees established under an agricultural incentive program as of September 1, 2001.
- (C) All tree harvesting described in Parts (A) and (B) of this Subparagraph shall comply with 02 NCAC 60C. The nutrient removal functions that were provided by trees prior to their harvest shall be replaced by other measures that are implemented by the owner of the land from which the trees are harvested.
- (D) The following definitions shall apply to terms used in Parts (A) and (B) of this Subparagraph:
 - (i) "Agricultural incentive program" means any of the following programs and any predecessor program to any of the following programs:
 - (I) Agriculture Cost Share Program for Nonpoint Source Pollution Control established by G.S. 106-850.
 - (II) Conservation Reserve Enhancement Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition) and 15A NCAC 06G .0101 through 15A NCAC 06G .0106.
 - (III) Conservation Reserve Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition).
 - (IV) Environmental Quality Incentives Program established by 7 C.F.R. Part 1466 (January 1, 2001 Edition).
 - (V) Wetlands Reserve Program established by 7 C.F.R. Part 1467 (January 1, 2001 Edition).
 - (VI) Wildlife Habitat Incentives Program established by 7

C.F.R. Part 636 (January 1, 2001 Edition).

(VII) The CFRs in this Subparagraph are incorporated by reference, including subsequent amendments and editions, and may be accessed free of charge at www.gpo.gov.

(ii) "Local agricultural agency" means the North Carolina Cooperative Extension Service, the Farm Services Agency of the United States Department of Agriculture, the Natural Resources Conservation Service of the United States Department of Agriculture, a Soil and Water Conservation District created pursuant to G.S. 139-5, or their successor agencies.

(iii) "Open farmland" means the footprint of land used for pasture or for crops or horticultural products other than trees. Open farmland may contain scattered trees if an open canopy existed on September 1, 2001 as determined from the most recent aerial photographs taken prior to September 1, 2001 for the Farm Services Agency of the United States Department of Agriculture.

(iv) "Tree" means a woody plant with a diameter equal to or greater than five inches when measured at a height of four and one-half feet above the ground.

(v) "Tree cropping interval" means the time required to establish and grow trees that are suitable for harvesting. The tree-cropping interval shall be set out in the farm plan and shall be no less than 10 years after the trees are established.

(c) **IMPLEMENTATION PROCESS.** A Basin Oversight Committee, as set forth in Paragraph (d) of this Rule, and county-level Local Advisory Committees, as set forth in Paragraph (e) of this Rule, shall coordinate activities and account for progress.

Accounting for nutrient-reducing actions on agricultural operations within the basin shall follow requirements set forth in Subparagraph (d)(3) of this Rule. Agricultural producers may be eligible to obtain cost share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' ongoing nutrient reductions. Committee activity shall be guided by the following:

(1) **OPTIONS FOR INDIVIDUAL OPERATIONS.** Agricultural producers subject to this Rule may elect to implement practices meeting the standards identified in Paragraph (f) of this Rule that contribute to maintenance of collective local compliance with the goal identified in Paragraph (a) of this Rule, but are not required to implement any specific practices provided their basin collectively maintains compliance with the goal.

(2) **MAINTENANCE OF GOAL.** Accounting shall annually demonstrate maintenance or exceedence of the nitrogen reduction goal for the basin. Where three sequential annual reports show that the basin did not meet its nitrogen and phosphorus reduction goals, the Basin Oversight Committee shall work with the Division of Soil and Water Conservation and Local Advisory Committees, particularly those representing counties not meeting the goals, to seek reduction actions by operations to bring agriculture collectively back into compliance, and shall report on their efforts in subsequent annual reports. Should subsequent annual reports not reverse the trend of non-compliance, the Commission may conduct additional rulemaking to require a more specific implementation plan from the Basin Oversight Committee, which may include an assessment of need for specific action by the Commission.

(d) **BASIN OVERSIGHT COMMITTEE.** The Basin Oversight Committee shall have the following membership, role, and responsibilities:

(1) **MEMBERSHIP.** The Director of the Division of Water Resources shall be responsible for maintaining the following membership composition. Until such time as the Commission determines that long-term compliance with this Rule is assured, the Director shall solicit one nomination for membership on this Committee from each agency or interest in Parts (A) through (J) of this Subparagraph. The Director shall confirm nominees in writing or request alternative nominations. The Director may appoint a replacement at any time for an interest in Parts (F) through (J) of this Subparagraph upon request of representatives of that interest or by the request of the Commissioner of Agriculture for Part (G):

(A) Division of Soil and Water Conservation;

- (B) United States Department of Agriculture-Natural Resources Conservation Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee);
 - (C) North Carolina Department of Agriculture and Consumer Services;
 - (D) North Carolina Cooperative Extension Service;
 - (E) Division of Water Resources;
 - (F) Up to two environmental interests;
 - (G) Basinwide farming interests;
 - (H) Pasture-based livestock interests;
 - (I) General farming interests; and
 - (J) The scientific community with experience related to water quality problems in the Tar-Pamlico River Basin.
- (2) **ROLE.** The Basin Oversight Committee shall:
- (A) Continue to review, approve, and summarize local nitrogen and phosphorus reduction annual reports to ensure ongoing implementation of the accounting methods approved by the Commission under the original version of this Rule in October 2002 for nitrogen and November 2005 for phosphorus as conforming to the requirements of Subparagraph (3) of this Paragraph. The Committee shall present these reports as initiated in 2002, to the Director;
 - (B) Take actions set forth in Subparagraph (c)(2) of this Rule to address maintenance of the nitrogen and phosphorus reductions goals;
 - (C) Identify and implement future refinements to the accounting methodology to reflect advances in scientific understanding, including establishment of nutrient reduction efficiencies for BMPS;
 - (D) Reassemble as needed a phosphorus technical advisory committee to update the qualitative phosphorus method approved by the Commission in October 2005, titled Accounting Method for Tracking Relative Changes in Agricultural Phosphorus Loading to the Tar-Pamlico River, in order to revise phosphorus baseline values and annual changes in factors affecting agricultural phosphorus loss.
- (3) **ACCOUNTING METHODOLOGY.** The requirements of Paragraph (a) of this Rule shall be gauged by estimating percentage changes in nitrogen loss from agricultural operations in the Tar-Pamlico Basin and by evaluating broader

trends in indicators of phosphorus loss from agricultural lands in the Tar-Pamlico Basin. The Basin Oversight Committee shall develop, maintain, and update as set forth in this Paragraph, accounting methods that meet the following requirements:

- (A) The nitrogen method shall estimate baseline and annual total nitrogen losses from agricultural operations in each county and for the entire Tar-Pamlico Basin;
- (B) The nitrogen and phosphorus methods shall include a means of tracking implementation of BMPs, including number, type, and area affected;
- (C) The nitrogen method shall include a means of estimating incremental nitrogen loss reductions from implementation of BMPs that conform to requirements of Paragraph (f) of this Rule and of evaluating progress toward and maintenance of the nutrient goals from changes in BMP implementation, fertilization, and changes in individual crop acres;
- (D) The nitrogen and phosphorus methods shall be refined as research and technical advances allow; and
- (E) The phosphorus method shall quantify baseline values for and annual changes in factors affecting agricultural phosphorus loss as identified in the report by the phosphorus technical advisory committee described in Part (d)(2)(D).

(e) **LOCAL ADVISORY COMMITTEES.** The Local Advisory Committees shall have the following membership, roles, and responsibilities:

- (1) **MEMBERSHIP.** Per S.L. 2001-355, a Local Advisory Committee shall be maintained as provided in this Paragraph in each county or watershed as specified by the Basin Oversight Committee, within the Tar-Pamlico River Basin. The Committee shall terminate upon a finding by the Commission that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured. Each Local Advisory Committee shall consist of:
 - (A) One representative of the local Soil and Water Conservation District;
 - (B) One local representative of the United States Department of Agriculture-Natural Resources Conservation Service;
 - (C) One local representative of the North Carolina Department of Agriculture and Consumer Services;

- (D) One local representative of the North Carolina Cooperative Extension Service;
- (E) One local representative of the North Carolina Division of Soil and Water Conservation; and
- (F) At least two agricultural producers that reside in the county.

(2) **APPOINTMENT OF MEMBERS.** Per S.L. 2001-355, the Director of the Division of Water Resources and the Director of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services shall jointly appoint members described in Parts (1)(A), (1)(B), (1)(D), and (1)(E) of this Subparagraph. As directed by S.L. 2001-355, the Commissioner of Agriculture shall appoint the members described in Part (1)(F) of this Subparagraph from persons nominated by nongovernmental organizations whose members produce or manage significant agricultural commodities in each county or watershed.

- (3) **ROLE.** The Local Advisory Committees shall:
- (A) Continue to submit annual reports to the Basin Oversight Committee estimating total crop production on agricultural operations for the preceding calendar year, summarizing land use changes in the county, and making recommendations to the Basin Oversight Committee on the need for updates to the accounting methodology. Reports shall include documentation on the BMPs implemented, including type and location, that satisfy the requirements in Paragraph (f) of this Rule and documentation of any expired contracts for BMPs; and
 - (B) Take actions called for under Subparagraph (c)(2) of this Rule as needed to address maintenance of the nitrogen and phosphorus reduction goals.

(f) **PRACTICE STANDARDS.** To receive nutrient reduction credit, a BMP shall be included in the accounting method set forth in Subparagraph (d)(3) of this Rule, or in a subsequent revision to that method identified in annual reporting, and it shall be implemented according to applicable nutrient-related standards identified by the Basin Oversight Committee and established by the NC Soil and Water Conservation Commission or the USDA-Natural Resources Conservation Service in North Carolina.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1);
Eff. September 1, 2001;
Temporary Amendment Eff. January 1, 2002 (exempt from 270 day requirement-S.L. 2001-355);

Readopted Eff. Pending Delayed Eff. Date.

**15A NCAC 02B .0229 .0733 TAR-PAMLICO
 NUTRIENT STRATEGY: NEW AND EXPANDING
 WASTEWATER DISCHARGER REQUIREMENTS**

The following is the management strategy for new and expanding wastewater dischargers in the Tar-Pamlico River basin:

- (1) **Purpose.** The purpose of this Rule is to establish minimum nutrient control requirements for new and expanding point source discharges in the Tar-Pamlico River Basin in order to maintain or restore water quality in the Pamlico Estuary and protect its designated uses.
- (2) **Applicability.** This Rule applies to all discharges from wastewater treatment facilities in the Tar-Pamlico River Basin that receive nitrogen- or phosphorus-bearing wastewater and are required to obtain individual NPDES permits. This Rule applies to Tar-Pamlico Basin Association member facilities on or after June 1, 2025. This Rule applies to other facilities upon this Rule's effective date.
- (3) **Definitions.** The terms used in this Rule, in regard to point source dischargers, treatment facilities, wastewater flows or discharges, or like matters, shall be as defined in Rule .0701 of this Section and as follows:
 - (a) "Existing" means that which obtained an NPDES permit on or before December 8, 1994.
 - (b) "Expanding" means that which increases beyond its permitted flow as defined in Item (4) of this Rule.
 - (c) "New" means that which had not obtained an NPDES permit on or before December 8, 1994.
- (4) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 8, 1994.
- (5) This Item specifies nutrient controls for new facilities.
 - (a) Proposed new wastewater dischargers shall evaluate all practical alternatives to surface water discharge pursuant to 15A NCAC 02H .0105(c)(2) prior to submitting an application to discharge.
 - (b) The technology-based nitrogen and phosphorus discharge limits for a new facility shall not exceed:
 - (i) For facilities treating municipal or domestic wastewater, the mass load equivalent to a concentration of 3.5 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the facility's NPDES permit; and
 - (ii) For facilities treating industrial wastewater, the

- mass load equivalent to the best available technology economically achievable, calculated at the monthly average flow limit in the facility's NPDES permit.
 - (c) Proposed new dischargers submitting an application shall acquire nutrient allocation from existing dischargers or nutrient offset credits pursuant to Rule .0703 of this Section for the mass load dictated by this Item. The allocation and offset credits shall be sufficient for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(c).
 - (d) The Director shall not issue a permit authorizing discharge from a new facility unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of this Item. If a facility's permit contains tiered flow limits for expansion, the Director shall not authorize an increased discharge unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of this Item.
 - (e) Subsequent applications for permit renewal shall demonstrate that the facility has sufficient nitrogen allocation or offset credits to meet its effluent nutrient limitations for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(c).
 - (f) The Director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (6) This Item specifies nutrient controls for expanding facilities.
 - (a) Expanding facilities shall evaluate all practical alternatives to surface water discharge pursuant to 15A NCAC 02H .0105(c)(2) prior to submitting an application to discharge.
 - (b) The nitrogen and phosphorus discharge limits for an expanding facility shall not exceed the greater of loads equivalent to its active allocation and offset credit, or the following technology-based mass limits:
 - (i) For facilities treating municipal or domestic wastewater, the mass equivalent to a concentration of 3.5 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the NPDES permit; and
 - (ii) For facilities treating industrial wastewater, the mass load equivalent to the best available technology economically achievable, calculated at the monthly average flow limit in the facility's NPDES permit.
- (c) Facilities submitting application for increased discharge or, where an existing permit contains tiered flow limits, for authorization to discharge at an increased flow, shall acquire or demonstrate contractual agreement to acquire, prior to authorization to discharge at the increased flow, nutrient allocation from existing dischargers or nutrient offset credits pursuant to Rule .0703 of this Section for the proposed discharge above 0.5 million gallons per day (MGD). The allocation and offset credits shall be sufficient to meet its effluent nutrient limitations for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(c).
- (d) The Director shall not issue a permit authorizing increased discharge from an existing facility unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of this Item. If a facility's permit contains tiered flow limits for expansion, the Director shall not authorize discharge at an increased flow unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of this Item.
- (e) Subsequent applications for permit renewal shall demonstrate that the facility has sufficient nitrogen allocation or offset credits to meet its effluent nutrient limitations for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(c).

- (f) The Director shall modify an expanding facility's permit to establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (g) Existing wastewater dischargers expanding to greater than 0.5 MGD design capacity may petition the Director for an exemption from Sub-Items (a) through (c) and (e) of this Item upon meeting and maintaining all of the following conditions:
 - (i) The facility has reduced its annual average TN and TP loading by 30 percent from its annual average 1991 TN and TP loading. Industrial facilities may alternatively demonstrate that nitrogen and phosphorus are not part of the waste stream above background levels.
 - (ii) The expansion does not result in annual average TN or TP loading greater than 70 percent of the 1991 annual average TN or TP load. Permit limits shall be established to ensure that the 70 percent load is not exceeded.
- (2) the activity shall meet the requirements set out in Rule .0404 of this Section; and
- (3) the activity shall increase the professional competency of the CPA.
- (b) An activity that increases the professional competency of a CPA shall be an activity in an area of the profession in which the CPA practices or is planning to practice, or in the area of professional ethics.
- (c) Because of differences in the education and experience of CPAs, an activity may contribute to the professional competence of one CPA but not another. Each CPA shall therefore exercise judgment in selecting activities for which CPE credit is claimed and choose only those that contribute to that CPA's professional competence.
- (d) Active CPAs shall complete 2,000 CPE minutes computed in accordance with Rule .0409 of this Section by December 31 of each year, except as follows:
 - (1) CPAs having certificate applications approved by the Board in April to June shall complete 1,500 CPE minutes during the same calendar year;
 - (2) CPAs having certificate applications approved by the Board in July to September shall complete 1,000 CPE minutes during the same calendar year; or
 - (3) CPAs having certificate applications approved by the Board in October to December shall complete 500 CPE minutes during the same calendar year; and

Any CPE minutes completed during the calendar year in which the certificate application is approved may be used for that year's requirement even if the minutes were completed before the certificate was granted.

- (e) A CPA shall complete a minimum of 50 CPE minutes annually in activities on regulatory or behavioral professional ethics and conduct. Ethics CPE shall be offered by a CPE sponsor registered with NASBA pursuant to Rule .0403(c) of this Section.
- (f) There shall be no CPE requirements for inactive CPAs.
- (g) When a CPA has completed more than the required number of minutes of CPE in any one calendar year, up to 1,000 minutes shall be carried forward and treated as minutes earned in the following year. Ethics CPE minutes may not be included in any carry forward minutes to meet the requirement of Paragraph (e) of this Rule. A CPA shall not claim CPE credit for activities taken in any year prior to the year of certification.
- (h) Any CPE minutes used to satisfy the requirements for change of status as set forth in 21 NCAC 08J .0105, for reissuance as set forth in 21 NCAC 08J .0106, or for application for a new certificate as set forth in Rule 08I .0104 of this Chapter may be used to satisfy the annual CPE requirement set forth in Paragraph (d) of this Rule.
- (i) It shall be the CPA's responsibility to maintain records substantiating the CPE credits claimed for the current year and for each of the four calendar years prior to the current year.
- (j) A non-resident licensee may satisfy the annual CPE requirements in the jurisdiction where the CPA is licensed and currently works or resides. If there is no annual CPE requirement in the jurisdiction where the CPA is licensed and currently works or resides, the CPA shall comply with Paragraph (d) of this Rule.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); 143-215.8B; 143B-282; Eff. April 1, 1997; Readopted Pending Delayed Eff. Date.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 08 – BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

21 NCAC 08G .0401 CPE REQUIREMENTS FOR CPAS

- (a) In order for a CPA to receive credit for CPE activities:
 - (1) the CPA shall attend or complete the activity and receive a certificate of completion as set forth in the Standards for CPE Program Sponsors in the NASBA/AICPA Statement on Standards for Continuing Professional Education (CPE) Programs, including subsequent amendments and editions, are hereby incorporated by reference. Copies of the Standards for CPE Program Sponsors can be found at no cost on the NASBA website at www.nasbaregistry.org/the-standards;

A non-resident licensee whose office is in North Carolina shall comply with Paragraph (e) of this Rule. All other non-resident licensees may satisfy Paragraph (e) of this Rule by completing the ethics requirements in the jurisdiction in which the non-resident licensee is licensed as a CPA and works or resides. If there is no ethics CPE requirement in the jurisdiction where the non-resident licensee is licensed and currently works or resides, the non-resident licensee shall comply with Paragraph (e) of this Rule.

History Note: Authority G.S. 93-12(3); 93-12(8b); Eff. May 1, 1981; Amended Eff. January 1, 2014; January 1, 2007; January 1, 2004; August 1, 1995; April 1, 1994; May 1, 1989; September 1, 1988; Readopted Eff. February 1, 2016; Amended Eff. January 1, 2020.

21 NCAC 08G .0403 QUALIFICATION OF CPE SPONSORS

- (a) The Board shall not register CPE activities nor sponsors or providers of CPE activities.
- (b) CPE providers not in good standing on the NASBA National Registry of CPE Sponsors shall comply with the Standards for CPE Program Sponsors in the NASBA/AICPA Statement on Standards for Continuing Professional Education (CPE) Programs found on the NASBA website at www.nasbaregistry.org.
- (c) Sponsors of continuing education activities that are listed in good standing on the NASBA National Registry of CPE Sponsors shall be considered by the Board as compliant with the Standards for CPE Program Sponsors in the NASBA/AICPA Statement on Standards for Continuing Profession Education (CPE) Programs found on the NASBA website at www.nasbaregistry.org.
- (d) Failure of a National Registry of CPE Sponsor to comply with this Rule shall be grounds for the Board to disqualify the sponsor as a CPE sponsor with this Board and to notify NASBA and the public of this action.

History Note: Authority G.S. 93-12(3); 93-12(8b); Eff. May 1, 1981; Amended Eff. January 1, 2014; January 1, 2007; January 1, 2004; March 1, 1990; May 1, 1989; August 1, 1988; February 1, 1983; Readopted Eff. February 1, 2016; Amended Eff. January 1, 2020.

21 NCAC 08G .0404 REQUIREMENTS FOR CPE CREDIT

- (a) A CPA shall not be granted CPE credit for an activity unless the activity is in one of the fields of study listed in the NASBA Fields of Study, including subsequent amendments and editions, which are hereby incorporated by reference. Copies of the NASBA Fields of Study can be found at no cost on the NASBA website at www.nasbaregistry.org/the-standards.
- (b) The following shall qualify as acceptable types of CPE activities, provided the activities comply with the requirements set forth in Rule .0403(b) or (c) of this Section:
 - (1) professional development activities of national and state accounting organizations;
 - (2) technical sessions at meetings of national and state accounting organizations and their chapters;

- (3) courses taken at regionally accredited colleges and universities;
- (4) educational activities that are designed and intended for continuing professional education activity conducted within a business, accounting firm, or an association of accounting firms; or
- (5) correspondence activities that are designed and intended for continuing professional education.

(c) CPE credit shall be granted for instructing or authoring a CPE activity as long as the CPA's professional competency was increased and was in one of the fields of study recognized by the Board, as set forth in Paragraph (a) of this Rule.

(d) CPE credit shall not be granted for a self-study activity if the material that the CPA must study to take the examination is not designed for CPE purposes. This includes periodicals, guides, magazines, subscription services, books, reference manuals, and supplements that contain an examination to test the comprehension of the material read.

(e) A CPA may claim credit for an activity offered by a provider if the activity meets the requirements of this Rule and Rule .0409 of this Section. The CPA shall maintain documentation proving the activity met these standards.

History Note: Authority G.S. 93-12(8b); Eff. May 1, 1981; Amended Eff. January 1, 2007; January 1, 2004; August 1, 1998; February 1, 1996; March 1, 1990; May 1, 1989; August 1, 1988; February 1, 1983; Readopted Eff. February 1, 2016; Amended Eff. January 1, 2020.

21 NCAC 08G .0405 ADMINISTRATION OF REQUIREMENT

History Note: Authority G.S. 93-12(8b); Eff. May 1, 1981; Amended Eff. October 1, 1984; January 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014; Repealed Eff. January 1, 2020.

21 NCAC 08G .0406 COMPLIANCE WITH CPE REQUIREMENTS

- (a) All active CPAs shall file a reporting of CPE minutes by the July 1 renewal date of each year. The Board may audit information submitted by licensees who apply for a renewal license.
- (b) If a CPA fails to complete the CPE requirements prior to the end of the previous calendar year but the CPA has completed them by June 30, the Board may:
 - (1) issue a letter of warning for the first such failure within a five-calendar year period; and
 - (2) deny the renewal of the CPA's certificate for a period of not less than 30 days and until the CPA meets the reinstatement requirements set forth in 21 NCAC 08J .0106 for the second such failure within a five-calendar year period.

History Note: Authority G.S. 93-12(8b); 93-12(9)(e);
 Eff. May 1, 1981;
 Amended Eff. January 1, 2007; January 1, 2004; April 1, 1994;
 March 1, 1990; May 1, 1989; October 1, 1988;
 Readopted Eff. February 1, 2016;
 Amended Eff. January 1, 2020.

21 NCAC 08G .0409 COMPUTATION OF CPE CREDITS

- (a) Group Activity. CPE credit for a group activity shall be given based on contact minutes.
- (b) Completing a College Course. CPE credit for completing a college course in the college curriculum shall be granted based on converting the number of credit hours the college gives the CPA for completing the course into minutes. One semester hour of college credit shall be 750 CPE minutes. No CPE credit shall be given to a CPA who audits a college course. No more than 50 percent of the CPE credits required for a year shall be credits for completing a college course.
- (c) Self Study Activity. CPE credit for a self-study activity shall be given based on the number of minutes needed to complete the activity as determined by the sponsor.
- (d) Preparing or Presenting a CPE Activity. CPE credit for preparing or presenting a CPE activity for CPAs shall be given based on the number of minutes spent in preparing or presenting the activity. Preparing includes activities such as authoring or conducting a technical review. No more than 50 percent of the CPE credits required for a year shall be credits for preparing for or presenting CPE activities. CPE credit for preparing or presenting an activity shall be allowed only once a year for an activity prepared or presented more than once in the same year by the same CPA.
- (e) Authoring a Publication. CPE credit for published articles and books shall be given based on the number of minutes the CPA spent writing the article or book. No more than 25 percent of a CPA's required CPE credits for a year shall be credits for published articles or books. An article written for a CPA's client or business newsletter shall not receive CPE credit.
- (f) Instructing a College Course. CPE credit for instructing a college course above the level of accounting principles shall be given based on the number of credit hours the college gives a student for completing the course, using the calculation set forth in Paragraph (b) of this Rule. No more than 50 percent of the CPE credits required for a year shall be credits for instructing a college course.
- (g) Nano Learning Activity. CPE credit for Nano Learning, a tutorial activity without interaction with a real-time instructor that is designed to permit a participant to learn a given subject through electronic media including technology applications/processes, computer-based or web-based technology, shall be based on the number of contact minutes. Nano Learning is not a group program. This CPE activity shall be offered by a CPE sponsor registered with NASBA pursuant to Rule .0403(c) of this Section.
- (h) Blended Learning Activity. A Blended Learning program offers participants learning in multiple formats or delivery methods. Activities can include lectures, discussion, guided practice, games, case studies, and simulation. The varied delivery methods include Group Live, Group Internet Based, Self Study, or Nano Learning. The primary component of the program may

be concurrent (a group program) or nonconcurrent, allowing the participant to control a portion of the time and place of the learning. CPE credit for Blended Learning shall be based on the number of contact minutes incorporated in all the learning formats in the Blended Learning activity. This CPE activity shall be offered by a CPE sponsor registered with NASBA pursuant to Rule .0403(c) of this Section.

(i) No more than 50 percent of the CPE credits required for a year shall be credits claimed under Paragraphs (b), (d), and (f) of this Rule.

History Note: Authority G.S. 93-12(8b);
 Eff. May 1, 1989;
 Amended Eff. July 1, 2015; January 1, 2014; February 1, 2012;
 January 1, 2007; January 1, 2004; February 1, 1996; April 1, 1994; March 1, 1990;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 28, 2014;
 Amended Eff. January 1, 2020.

21 NCAC 08G .0410 PROFESSIONAL ETHICS AND CONDUCT CPE

History Note: Authority G.S. 93-12(3); 93-12(8b); 93-12(9);
 Eff. January 1, 2005;
 Amended Eff. January 1, 2014; February 1, 2012; January 1, 2007; January 1, 2006;
 Readopted Eff. February 1, 2016;
 Repealed Eff. January 1, 2020.

CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS

21 NCAC 10 .0103 STRUCTURE OF BOARD

- (a) Election of Candidates for Appointment to the Board. As necessary to meet the requirements of G.S. 90-140, the Board shall hold the election of chiropractic candidates for appointment to the Board at its March and September meeting at a time, date, and place to be selected by the Board and published on the Board's website at <https://ncchiroboard.com> at least 90 days in advance of the election.
- (b) The election shall be administered by the Board of Chiropractic Examiners. Any member of the Board who is nominated to succeed himself or herself shall be disqualified from conducting the vote in which he or she is a nominee.
- (c) Nomination shall be made from the floor and shall require two seconds. Any prospective nominee may withdraw his or her name from consideration by an oral statement to that effect.

History Note: Authority G.S. 90-139; 90-140; 90-142;
 Eff. February 1, 1976;
 Readopted Eff. January 27, 1978;
 Amended Eff. January 1, 1983; May 8, 1979;
 Legislative Objection Lodged Eff. January 31, 1983;
 Curative Amended Eff. February 18, 1983;
 Amended Eff. June 1, 1994; December 1, 1988;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;
Amended Eff. January 1, 2020.*

21 NCAC 10 .0204 LICENSURE

(a) Initial Licensure. The initial license awarded to an applicant who passed the examination shall be mailed to the address appearing on the application form.

(b) Change of Contact Information. The licensee shall inform the Board of any change in his or her contact information. Updated contact information shall be forwarded to the Board office email at ncboce@ncchiroboard.com, by regular mail to the Board office located at 6070 Six Forks Rd., Ste. L, Raleigh, NC 27609, or fax at (704) 793-1385 within 30 days after any such change.

*History Note: Authority G.S. 90-142; 90-145; 90-148;
Eff. February 1, 1976;
Readopted Eff. January 27, 1978;
Amended Eff. January 1, 1983;
Legislative Objection Lodged Eff. January 31, 1983;
Curative Amended Eff. February 28, 1983;
Amended Eff. July 1, 2014; December 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;
Amended Eff. January 1, 2020.*

21 NCAC 10 .0206 CERTIFICATION OF RADIOLOGIC TECHNOLOGISTS

(a) Definition. The Board shall refer to the terms "radiologic technologist," "x-ray tech," and "x-ray technician" interchangeably to mean "diagnostic imaging technician," as identified in G.S. 90-143.2.

(b) Application Procedure. After successful completion of the Certification of Clinical Assistants described in 21 NCAC 10 .0213 and completing the education program described in Paragraph (c) of this Rule, a person desiring certification as a radiologic technologist shall pass a competency examination administered by or under the authority of the Board. The applicant shall complete an application form available on the Board's website at <https://ncchiroboard.com/x-ray-technician/>, and confirm and submit that the applicant is at least 18 years of age, a high school graduate or the equivalent, and possessed of good moral character. A photocopy of the applicant's birth certificate, driver's license, or government-issued identification card shall constitute prima facie evidence of the applicant's age. A photocopy of the applicant's high school diploma, transcript, or general equivalency diploma (G.E.D.) shall constitute prima facie evidence of the applicant's graduation from high school. An affidavit attesting to good moral character and signed by a chiropractic physician or other responsible party who knows the applicant and is not related to the applicant shall constitute prima facie evidence of the applicant's good moral character.

(c) Approved Education Programs. In order to be approved by the Board, a radiological technologist education program shall be at least 50 hours in length, of which at least six hours shall be in-person didactic training with an instructor or instructors who, based on education and experience, are competent to teach the portion of the curriculum they have been assigned, and

completion of the practical requirement as set forth in Paragraph (d) of this Rule. The education program shall provide sufficient instruction in the five subjects set forth in G.S. 90-143.2 to enable its graduates to satisfy all applicable standards of care governing the production of X-rays. To obtain approval of an education program, the program sponsor shall submit to the Board, at least 60 days prior to the proposed starting date, all instructional materials to be used in the program, including a syllabus of the didactic training and a curriculum vitae for each instructor.

(d) Practical Requirement. Upon completion of the training set forth in Paragraph (c) of this Rule, a person desiring certification as a radiological technologist shall undergo a Practical whereby the person is evaluated by his or her program sponsor on the following competencies while viewing x-rays for four different patients:

- (1) Image quality;
- (2) Marking sides of the body;
- (3) Technique input to controller;
- (4) Tube/focal film distance;
- (5) Bucky/tube alignment;
- (6) Patient positioning;
- (7) Gonad shielding;
- (8) Ability to name additional views in the series; and
- (9) Collimation.

The person shall submit written documentation of the Practical evaluation on a form prescribed by the Board that is available on the Board's website at <https://ncchiroboard.com/x-ray-technician/>.

(e) A.C.R.R.T. Exemption. Any person registered as "active" with the American Chiropractic Registry of Radiologic Technologists shall be deemed to have satisfied the educational requirements of Paragraph (c) of this Rule.

(f) Competency Examination. The competency examination shall be administered in person at least three times per year. The Board shall publish on its website, <https://ncchiroboard.com/master-exam-calendar/>, the date, time, and location of the examination at least 90 days in advance. The Board may authorize additional testing sessions based on the number of applications received. The minimum passing score is 70 percent.

(g) Certificate Expiration and Renewal. A certificate of competency issued pursuant to G.S. 90-143.2 shall expire at the end of the calendar year in which it was issued but may be renewed upon a showing that the certificate holder completed six hours of Board-approved continuing education in radiologic technology during the year. A radiologic technologist whose initial certificate expires less than 12 months after issuance shall not be required to obtain continuing education until the second calendar year of certification but shall be required to pay the renewal fee at the end of the initial year of certification. A radiologic technologist seeking to renew a certificate of competency shall submit evidence that the applicant has completed six hours of Board-approved continuing education. A certificate of attendance or completion issued by the course sponsor and filed with the Board shall constitute prima facie evidence that the applicant has completed the number of hours recited in the certificate. The applicant shall pay a renewal fee in the amount of twenty-five dollars (\$25.00). The renewal fee shall not be paid in cash and may be paid by credit card through the

Board's website, <https://ncchiroboard.com>, or by a check made payable to the North Carolina Board of Chiropractic Examiners.

(h) **Displaying Certificate.** The holder of a certificate issued pursuant to this Rule shall display the certificate in the x-ray room of the chiropractic clinic in which the holder is employed in a location where the certificate may be viewed by patients.

(i) **Compliance.** Other than licensed doctors of chiropractic, only those persons maintaining current certifications of competency in conformity with this Rule may produce x-rays or other diagnostic images in chiropractic offices. A chiropractor who permits the production of x-rays or other diagnostic images by a non-certified employee or an employee whose certification has expired shall be deemed in violation of G.S. 90-154.3.

(j) **Lapsed Certificates.** If a certificate of competency has lapsed due to non-renewal and the lapse does not exceed 60 days, the certificate holder may obtain reinstatement by demonstrating completion of six hours of Board-approved continuing education and paying the renewal fee set forth in Paragraph (g) of this Rule. If the lapse is greater than 60 days, no make-up continuing education shall be required but the certificate holder shall re-take and pass the competency examination described in Paragraph (f) of this Rule and shall pay the renewal fee set forth in Paragraph (g) of this Rule.

History Note: Authority G.S. 90-143.2; 90-154.3; Eff. February 1, 1993; Temporary Amendment Eff. January 1, 2003; Temporary Amendment Expired October 31, 2003; Amended Eff. April 1, 2018; July 1, 2010; January 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; Amended Eff. January 1, 2020.

21 NCAC 10 .0207 CONTINUING EDUCATION SEMINARS

(a) **Approval of Seminars.** Only continuing education seminars approved by the Board shall count towards satisfying the requirements for license renewal. The sponsor and co-sponsors of any proposed seminar shall be responsible for submitting all the information outlined on the Board's Course Application to enable the Board to evaluate the seminar in accordance with this Rule. The Board's Course Application can be found on, and must be submitted via, the Board's website at <https://ncchiroboard.com>, containing the following information:

- (1) Whether the course's target audience is doctors of chiropractic, certified chiropractic assistants, or x-ray technicians;
- (2) The course title;
- (3) The beginning and end dates on which the course will be offered;
- (4) Whether the course will be offered online or in a physical location;
- (5) If the course is offered in a physical location, the cities and states in which the course will be offered;
- (6) The manner in which the sponsor or co-sponsor will verify the attendance of licentiates;
- (7) The name and contact information of the sponsor and co-sponsor;

- (8) The website at which information on the course offering will be available;
- (9) The number of continuing education credits that the licentiates can obtain by attending the course;
- (10) Whether the course will provide doctors of chiropractic, certified chiropractic assistants, or x-ray technicians with continuing education credit toward eligibility for licensure renewal, certification, or recertification; and
- (11) Whether the course has been approved by the Providers of Approved Continuing Education (PACE) program administered by the Federation of Chiropractic Licensing Boards (FCLB).

The Board's Course Application shall be submitted at least 30 days prior to the date of the proposed seminar. Incomplete applications will not be processed.

(b) **Duration of Approval.** A seminar approval issued by the Board shall expire at the end of the calendar year for which approved. If the sponsor or co-sponsors of an approved seminar wish to repeat the seminar on a date beyond the approval period, a new application shall be submitted to the Board.

(c) **Criteria for Approval.** The Board's criteria for approving continuing education seminars is as follows:

- (1) No practice-building or motivational seminars shall be approved;
- (2) No seminar shall be approved that requires attendees, in order to be able to utilize the information presented at the seminar, to purchase equipment or clinical supplies available only through the seminar's instructors, sponsors or co-sponsors;
- (3) Each seminar subject shall fall within the extent and limitation of chiropractic licensure in this State; and
- (4) Each instructor shall submit a curriculum vitae demonstrating that he or she has an educational background in, or professional experience with, the subject or subjects he or she is scheduled to teach.

(d) **Duties of Seminar Sponsor.** Sponsors and co-sponsors of any approved continuing education seminar shall:

- (1) Disclose on all brochures and advertising materials the name and address of each sponsor and co-sponsor and whether each sponsor and co-sponsor is a for-profit or not-for-profit entity;
- (2) Be liable for all expenses incurred in holding the seminar;
- (3) Give notice to the Board of any material changes in the seminar, including date, location, subject matter or instructors; and
- (4) Provide an agent at the seminar site who shall:
 - (A) Monitor and report the attendance of each person attending the seminar, in accordance with the method identified in the Course Application submitted for the course;

- (B) Supervise the agenda and prohibit the presentation of any subject matter not approved by the Board; and
- (C) Complete and submit to the Board a post-seminar review summarizing any problems experienced and any variance between the application for approval and the seminar as presented.

(e) Sanction for Non-Compliance. By applying for seminar approval, each sponsor and co-sponsor agrees to admit to the seminar at no charge a representative of the Board for the purpose of observing compliance with this Rule. If the Board determines that a sponsor or co-sponsor has falsified the application for approval, has failed to keep attendance, has allowed the seminar as presented to vary from the agenda as set forth in the application, or has failed to adhere to any other provision of this Rule, the Board shall refuse to approve future seminar applications from the offending sponsor or co-sponsor or from any principal who is a partner or shareholder in the offending sponsor or co-sponsor.

(f) PACE Approved State. All doctor of chiropractic courses that have been approved by the Providers of Approved Continuing Education (PACE) program administered by the Federation of Chiropractic Licensing Boards (FCLB) shall be deemed to have complied with this Rule.

History Note: Authority G.S. 90-142; 90-155; Eff. January 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; Amended Eff. January 1, 2020.

21 NCAC 10 .0213 CERTIFICATION OF CLINICAL ASSISTANTS

(a) Classification of Applicants. Applicants for clinical assistant competency certification shall be classified as follows:

- (1) Reciprocity applicants. A "reciprocity applicant" means an applicant who is currently certified or registered as a clinical assistant in another state whose requirements for certification or registration are substantially similar to or more stringent than the requirements for certification in North Carolina.
- (2) New applicants. A "new applicant" means any applicant who is not a reciprocity applicant.

(b) Requirements for Certification. Every applicant, regardless of classification, shall complete an application form available on the Board's website at <https://ncchiroboard.com> and requiring the applicant to confirm and submit documentary evidence satisfactory to the Board that the applicant is at least 18 years of age, a high school graduate or the equivalent, and possessed of good moral character. A photocopy of the applicant's birth certificate, driver's license, or government-issued identification card shall constitute prima facie evidence of the applicant's age. A photocopy of the applicant's high school diploma, transcript, or general equivalency diploma (G.E.D.) shall constitute prima facie evidence of the applicant's graduation from high school. An affidavit attesting to good moral character and signed by a chiropractic physician or other responsible party who knows the

applicant and is not related to the applicant shall constitute prima facie evidence of the applicant's good moral character. Every applicant, regardless of classification, shall pay to the Board an initial certification fee in the amount of twenty dollars (\$20.00). The initial certification fee shall not be paid in cash and may be paid by credit card through the Board's website at <https://ncchiroboard.com> or by a check made payable to the North Carolina Board of Chiropractic Examiners. In addition to the general certification requirements, an applicant shall satisfy the requirements for the appropriate category of certification, as follows:

- (1) Reciprocity Applicants. A reciprocity applicant shall submit a copy of the applicant's current certification or registration as a clinical assistant in a state with which North Carolina reciprocates and shall also submit written confirmation from the state's certifying authority or registrar that the applicant is in good standing in that state.
- (2) New Applicants. A new applicant shall submit evidence that the applicant has completed an approved clinical assistant education program as described in Paragraph (c) of this Rule. A certificate of completion filed with the Board by the program sponsor shall constitute prima facie evidence that the applicant has obtained the required education. A new applicant shall also take and pass the standard proficiency examination administered by or under the authority of the Board, as described in Paragraph (d) of this Rule.

(c) Education Programs. In order to be approved by the Board, a clinical assistant education program for new applicants shall be at least 24 hours in length, of which at least six hours shall be in-person didactic training with an instructor or instructors who, based on education and experience, are competent to teach the portion of the curriculum they have been assigned. Credit for online coursework shall not exceed 18 hours, and all online coursework shall precede didactic training. The education program shall provide sufficient instruction in the five subjects set forth in G.S. 90-143.4(c) to enable its graduates to satisfy all applicable standards of care. To obtain approval of an education program, the program sponsor shall submit to the Board, at least 60 days prior to the proposed starting date, all instructional materials to be used in the program, including a syllabus of the didactic training, and a curriculum vitae for each instructor.

(d) Examinations. The proficiency examination for new applicants shall assess both academic knowledge and practical skills acquired through education programs and shall be administered in person at least four times per year on dates and at locations to be announced by the Board at least 90 days in advance and published on the Board's website at <https://ncchiroboard.com>. In its discretion, the Board may authorize additional testing sessions based on the number of applications received. The minimum passing score on the examination is 75 percent.

(e) Certificate Expiration and Renewal. Unless renewed, a certificate of competency shall expire on June 30th of the third year following the year in which it was issued. A certificate holder seeking to renew shall submit evidence that the applicant has

completed six hours of Board-approved continuing education. A certificate of attendance or completion issued by the course sponsor and filed with the Board shall constitute prima facie evidence that the applicant has completed the number of hours recited in the certificate. The applicant shall pay to the Board a renewal fee in the amount of twenty-five dollars (\$25.00). The renewal fee shall not be paid in cash and may be paid by credit card through the Board's website at <https://ncchiroboard.com> or by a check made payable to the North Carolina Board of Chiropractic Examiners.

(f) Lapsed Certificates. If a certificate of competency has lapsed due to non-renewal and the lapse does not exceed 60 days, the certificate holder may obtain reinstatement by making up the accrued deficiency in continuing education. If the lapse is greater than 60 days, no make-up continuing education shall be required, but the certificate holder shall re-take and pass the proficiency examination for new applicants. Regardless of the length of lapse, a certificate holder seeking reinstatement shall pay the renewal fee set forth in Paragraph (e) of this Rule.

(g) Exemptions. Graduates of accredited chiropractic colleges and students enrolled in accredited chiropractic colleges who are serving college-sponsored preceptorships in North Carolina are deemed by the Board to have satisfied all requirements imposed by this Rule and shall be deemed competent to perform the duties of a clinical assistant. Any person who qualifies for exemption and who works as a clinical assistant in this state for more than 180 days shall submit the application form described in Paragraph (b) of this Rule and note the claim of exempt status. Exempt persons shall not be required to pay a certification fee.

(h) Displaying Certificate. The holder of a certificate issued pursuant to this Rule shall display the certificate in the chiropractic clinic in which the holder is employed in a location where the certificate may be viewed by patients.

History Note: Authority G.S. 90-142; 90-143.4; Eff. July 1, 2014; Amended Eff. April 1, 2018; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; Amended Eff. January 1, 2020.

21 NCAC 10 .0215 PETITION FOR PREDETERMINATION

(a) General. Pursuant to G.S. 93B-8.1(b6), any person with a criminal history may petition the Board at any time for a predetermination of whether the individual's criminal history will likely disqualify the individual from obtaining a license, in accordance with this Rule. The Petition form may be found on the Board's website at <https://ncchiroboard.com>.

(b) Petition Procedure. To petition the Board under this Rule, a person must submit to the Board's office a petition for predetermination that contains all of the following information:

- (1) The person's name;
- (2) The last four digits of the person's social security number;
- (3) The person's current residential address;
- (4) The person's current mailing address;

- (5) A nationwide criminal history record report from the criminal records reporting service currently under contract with the Board;
- (6) For each crime identified in the criminal history record report, the following information:
 - (A) Whether the crime was a felony or misdemeanor;
 - (B) The date that the crime occurred;
 - (C) The date the person was convicted of, or plead guilty or nolo contendere to, the crime;
 - (D) The age of the person at the time of the crime;
 - (E) The circumstances surrounding the commission of the crime;
 - (F) The sentence imposed for the crime;
 - (G) The period of time during which the person was incarcerated for the crime;
 - (H) The period of time during which the person was on probation or parole for the crime;
 - (I) Any documentation related to the person's rehabilitation or employment since the date of the crime;
 - (J) Whether the person has undergone any rehabilitative drug or alcohol treatment since the date of the crime;
 - (K) Whether a Certificate of Relief has been granted regarding the crime, pursuant to G.S. 15A 173.2; and
 - (L) Any affidavits or other written documents, including character references, for the person.
- (7) An affirmation under oath that the person has read the Instructions for Submitting a Petition for Predetermination and the statutes and rules governing the practice of chiropractic and that the information contained in the petition is true and accurate.

Incomplete petitions shall not be considered by the Board. If incomplete petitions received by the Board are not made complete within 30 days of receipt, the incomplete petitions will be returned to the person from whom the request was made.

(c) Petition Fee. A non-refundable petition fee of forty-five dollars (\$45.00) shall accompany each petition. This fee may be paid by credit card through the Board's website at <https://ncchiroboard.com> or by check made payable to the North Carolina Board of Chiropractic Examiners. Cash shall not be accepted.

(d) Delegation of Authority for Predetermination. The Board delegates authority for rendering predeterminations under this Rule to the Chiropractic Review Committee.

History Note: Authority G.S. 90-142; 90-143.3; 90-154; 93B-8.1; Eff. January 1, 2020.

21 NCAC 10 .0302 ADVERTISING AND PUBLICITY

(a) Methods of Professional Identification. Methods of professional identification that are compliant with G.S. 90-154.2(4) include:

- (1) Signs. Signs may be placed on exterior doors, windows or walls of the licentiate's office or at entrances to the building in which his office is located.
- (2) Stationery. A licentiate may identify himself on his stationery and mailing literature using the terms permitted by this Rule.

(b) Prohibited Advertising. The following shall constitute false or misleading advertising in violation of G.S. 90-154(b)(1):

- (1) Advertising that purports to guarantee a beneficial result from chiropractic treatment.
- (2) Advertising that promotes a treatment, therapy, or service that constitutes unacceptable care or the scope of practice as set forth in G.S. 90-143(a) and G.S. 90-151.
- (3) Advertising in which the licentiate is identified as a specialist, unless the licentiate has complied with the requirements of 21 NCAC 10 .0304, and any reference to the specialty is immediately preceded by the term "chiropractic." Illustrations are as follows:
 - (A) "Pediatrics" standing alone is deemed false or misleading; "chiropractic pediatrics" conforms to this Rule; and
 - (B) "Neurologist" standing alone is deemed false or misleading; "chiropractic neurologist" conforms to this Rule.
- (4) Advertising that implies the licensee holds an additional license(s) in North Carolina not so held, including but not limited to a medical physician, physical therapist, massage therapist, or acupuncturist.

History Note: Authority G.S. 90-142; 90-154; Eff. February 1, 1976; Readopted Eff. January 27, 1978; Amended Eff. January 1, 1983; May 8, 1979; Legislative Objection Lodged Eff. January 31, 1983; Curative Amended Eff. February 28, 1983; Curative Amended Eff. March 2, 1983; Amended Eff. November 1, 2007; December 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; Amended Eff. January 1, 2020.

21 NCAC 10 .0401 PETITIONS FOR ADOPTION OF RULES

Submission. Rule-making petitions shall be sent to the president of the Board and shall state the petitioner's name and address, and shall contain the information required in G.S. 150B-20(a). The petitioner also may submit the following additional information:

- (1) the reason for its proposal;
- (2) data supporting the proposed rule;

- (3) practices likely to be affected by the proposed rule;
- (4) persons likely to be affected by the proposed rule.

History Note: Authority G.S. 90-142; 150B-20; Eff. February 1, 1976; Readopted Eff. January 27, 1978; Amended Eff. December 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; Amended Eff. January 1, 2020.

21 NCAC 10 .0403 ORAL PRESENTATIONS AT PUBLIC RULE-MAKING HEARINGS

Oral Presentations at Public Hearing. Any public rule-making hearing required by Article 2A of Chapter 150 of the North Carolina General Statutes shall be conducted by the President of the Board or by any person he or she may delegate. Oral presentations shall not exceed 15 minutes.

History Note: Authority G.S. 90-142; 150B-21.1A; 150B-21.2; Eff. February 1, 1976; Readopted Eff. January 27, 1978; Amended Eff. December 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; Amended Eff. January 1, 2020.

21 NCAC 10 .0406 DECLARATORY RULINGS

(a) General. The Board shall respond to requests for declaratory rulings in accordance with G.S. 150B-4.

(b) Request for Declaratory Ruling: Contents. A request for a declaratory ruling shall be in writing and addressed to the president. The request shall contain the following information:

- (1) The name and address of the person making the request;
- (2) The statute or rule to which the request relates;
- (3) A statement of the manner in which the person has been aggrieved by the statute or rule; and
- (4) A statement as to whether a hearing is desired, and if desired, the reason therefor.

(c) Refusal to Issue Ruling. The Board shall refuse to issue a declaratory ruling under the following circumstances:

- (1) When the Board has already made a controlling decision on similar facts in a contested case;
- (2) When the facts underlying the request for a ruling were considered at the time of the adoption of the rule in question; or
- (3) When the subject matter of the request is involved in pending litigation in North Carolina.

History Note: Authority G.S. 150B-4; Eff. February 1, 1976; Readopted Eff. January 27, 1978; Amended Eff. January 1, 1983; Legislative Objection Lodged Eff. January 31, 1983;

*Curative Amended Eff. February 28, 1983;
Amended Eff. December 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. April 27, 2019;
Amended Eff. January 1, 2020.*

21 NCAC 10 .0501 FILING COMPLAINTS

Any person who has reason to believe that a Doctor of Chiropractic has violated the laws governing chiropractic may file a complaint with the Board. Board Anyone wishing to file a complaint shall file a form with the Board office that contains the following information:

- (1) the complainant's name and contact information;
- (2) the name and contact information of the person about which the complainant wishes to file the complaint;
- (3) a narrative of the facts about which the complainant wishes to complain; and
- (4) the complainant's signature and the date on which the complaint is made.

The complaint form can be found on the Board's website at <https://ncchiroboard.com/complaint-filing-process>.

*History Note: Authority G.S. 90-142; 90-154;
Eff. February 1, 1976;
Readopted Eff. January 27, 1978;
Amended Eff. December 1, 1988; January 1, 1983; December 20, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. April 27, 2019;
Amended Eff. January 1, 2020.*

21 NCAC 10 .0503 DETERMINATION OF PROBABLE CAUSE

(a) General. Complaints deemed likely to have occurred, based on the findings of the Investigative Report, shall be referred to the Chiropractic Review Committee. The committee shall hold a hearing to determine whether there is probable cause to believe a violation of the laws governing Chiropractic has occurred.

(b) Composition of Chiropractic Review Committee. The committee shall be composed of:

- (1) the secretary of the Board of Examiners. If the secretary is unable to attend a specific probable cause hearing, he or she may designate another physician member of the Board to serve and assume his or her duties at said hearing;
- (2) an alternate Board member. "Alternate Board member" means:
 - (A) a former Board member selected by the secretary;
 - (B) a current Board member selected by the secretary; or
 - (C) a licensee selected by the secretary from among those who, at any election held pursuant to Rule .0103(c) of this Chapter, have been elected nominees for Board membership but not appointed to the Board.

(c) Notice of hearing. The secretary shall provide notice of the probable cause hearing in accordance with G.S. 150B-38(b).

(d) Conduct of Probable Cause Hearing. The secretary, or designee per Subparagraph (b)(1) of this Rule, shall preside over the probable cause hearing. The Chiropractic Review Committee may consider evidence at the probable cause hearing that would not be admissible if offered at the hearing in a contested case.

(e) Action by the Chiropractic Review Committee. After examining the evidence presented at the probable cause hearing, the Chiropractic Review Committee shall dispose of each charge in a complaint as follows:

- (1) If no probable cause exists to believe that a violation of G.S. 90-154 has occurred, the charge shall be dismissed;
- (2) If probable cause exists to believe that a violation of G.S. 90-154 has occurred, and if the Committee and licensee at issue fail to resolve the matter through settlement, the case shall be considered a "contested case" and set for hearing before either the Board, or an Administrative Law Judge at the NC Office of Administrative Hearings, in accordance with G.S. 150B-40.

*History Note: Authority G.S. 90-141; 90-143; 90-154;
Eff. December 1, 1988;
Amended Eff. October 1, 2016;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. April 27, 2019;
Amended Eff. January 1, 2020.*

21 NCAC 10 .0706 CONDUCT OF BOARD HEARING

(a) General. Hearings in contested cases shall be conducted by a majority of the Board, unless a majority of the Board votes to designate an administrative law judge to preside at the hearing in the Office of Administrative Hearings. The president shall serve as presiding officer at Board Hearings unless he or she is absent or disqualified, in which case the vice-president shall preside. Board Hearings shall be conducted as prescribed by G.S. 150B-40.

(b) Disqualification. An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, shall be ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

- (1) Prior to the hearing; or
- (2) As soon after the commencement of the hearing as the affiant becomes aware of facts that give rise to his or her belief that a Board member should be disqualified.

(c) Evidence. The admission of evidence in a Board Hearing on a contested case shall be as prescribed in G.S. 150B-41.

*History Note: Authority G.S. 150B-40; 150B-41;
Eff. February 1, 1976;
Readopted Eff. January 27, 1978;
Amended Eff. January 1, 1989;
Expired Eff. May 1, 2019 pursuant to G.S. 150B-21.3.A;
Readopted Eff. January 1, 2020.*

21 NCAC 10 .0708 CONTINUANCES FOR BOARD HEARINGS

- (a) Consistent with G.S. 150B-40(b), all motions for continuance shall be addressed to the secretary, or the designated presiding officer of the contested case hearing. All motions for continuance shall be in writing and received in the office of the Board no less than seven calendar days before the hearing date.
- (b) Motions for a continuance of a hearing may be granted upon a showing of good cause. In determining whether good cause exists, the presiding officer shall consider the ability of the party requesting a continuance to proceed without a continuance.
- (c) A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied if a continuance has been previously granted unless the reason for the motion could not have been ascertained earlier.

History Note: Authority G.S. 90-156; 150B-38(h); Eff. January 1, 2020.

21 NCAC 10 .0709 SUBPOENAS

- (a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a Board Hearing or for the purposes of discovery, shall:
 - (1) be made in writing to the Board;
 - (2) identify any document sought;
 - (3) include the full name and home or business address of all persons to be subpoenaed; and
 - (4) if known, the date, time, and place for responding to the subpoena.

The Board shall issue the requested subpoenas within three days of receipt of the request.

- (b) Subpoenas shall contain the following:
 - (1) the caption of the case;
 - (2) the name and address of the person subpoenaed;
 - (3) the date, hour, and location of the hearing in which the witness is commanded to appear;
 - (4) a particularized description of the books, papers, records, or objects the witness is directed to bring with him to the hearing, if any;
 - (5) the identity of the party on whose application the subpoena was issued;
 - (6) the date of issue;
 - (7) the signature of the presiding officer or his designee; and
 - (8) a "return of service." The "return of service" form as filled out, shall show:
 - (A) the name and capacity of the person serving the subpoena;
 - (B) the date on which the subpoena was delivered to the person directed to make service;
 - (C) the date on which service was made;
 - (D) the person on whom service was made;
 - (E) the manner in which service was made; and
 - (F) the signature of the person making service.

- (c) Subpoenas shall be served in a manner set forth in Rule 45 of the N.C. Rules of Civil Procedure.
- (d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Written objections shall comply with Rule 45 of the N.C. Rules of Civil Procedure.
- (e) The party who requested the subpoena may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness with the filing of the response with the Board.
- (f) After receipt of the objection and response thereto, if any, the Board shall issue a notice of a Hearing on the motion to the party who requested the subpoena and the party challenging the subpoena to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.
- (g) After the close of such Board Hearing, a majority of the Board members hearing the contested case shall rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

History Note: Authority G.S. 150B-38; 150B-39; 150B-40; Eff. January 1, 2020.

CHAPTER 38 – BOARD OF OCCUPATIONAL THERAPY

21 NCAC 38 .0801 CONTINUING COMPETENCE DEFINITIONS

As used in this Section:

- (1) "AOTA Approved Provider Program" means a voluntary process of review and approval of continuing education (CE) providers by the American Occupational Therapy Association (AOTA) based on criteria and guidelines that assess a provider's ability to develop and implement CE activities that are relevant to the practice of occupational therapy.
- (2) "Contact Hour" means a unit of measure for a continuing education activity. One contact hour equals 60 minutes in a learning activity, excluding meals and breaks.
- (3) "Continuing Competence" means a process in which an occupational therapist or an occupational therapy assistant develops and maintains the knowledge, performance skills, interpersonal abilities, critical reasoning skills, and ethical practice reasoning skills necessary to perform his or her occupational therapy professional responsibilities.
- (4) "Continuing Education" means structured educational experiences beyond academic degree work that are intended to provide knowledge in a particular area.
- (5) "Continuing Education Credit" means credit given for a formalized activity in the form of contact hours or continuing education units.
- (6) "Continuing Education Unit (CEU)" means a unit of measure for continuing education. One

CEU is defined as 10 contact hours of participation in a learning activity excluding meals and breaks.

- (7) "Peer Reviewed" means any written work that is blind reviewed by more than one person.
- (8) "Points" means an assigned unit of measure for each continuing competence activity as set forth in Rule .0805 of this Section.

History Note: Authority G.S. 90-270.69; 90-270.75(a); Eff. July 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. January 1, 2020.

21 NCAC 38 .0804 SCOPE OF QUALIFIED ACTIVITIES FOR MAINTAINING CONTINUING COMPETENCE

- (a) To be approved by the Board, activities that qualify for maintaining continuing competence as set forth in Rule .0805 of this Section must be related to the licensee's current or anticipated roles and responsibilities in occupational therapy by enhancing the licensee's continuing competence.
- (b) Subject matter for approved activities include research; theoretical or practical content related to the practice of occupational therapy; or the development, administration, supervision, and teaching of clinical practice or service delivery programs by occupational therapists or occupational therapy assistants.
- (c) Documentation of completion of continuing competence activities must be submitted to the Board as set forth in Rule .0805 of this Section.

History Note: Authority G.S. 90-270.69; 90-270.75(a); Eff. July 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. January 1, 2020.

21 NCAC 38 .0805 QUALIFIED ACTIVITIES FOR MAINTAINING CONTINUING COMPETENCE

Activities that qualify for maintaining continuing competence shall include the following:

- (1) Continuing Education:
 - (a) Includes attendance and participation at a live presentation such as a workshop, seminar, conference, or in-service educational program and may include participation in other continuing education activities that require an assessment of learning. Examples of continuing education include electronic or Web-based courses, AOTA Self-Paced Clinical Courses or other formalized self-study courses, or AOTA Continuing Education Articles;
 - (b) A licensee shall earn one point for each contact hour that is awarded by

the provider. There are no maximum points in this category; and

- (c) Documentation shall include a certificate of completion including name of course, date, author/instructor, sponsoring organization, location, and number of hours attended.

(2) Academic Coursework:

- (a) Includes participation in on-site or distance learning academic courses from a university, college, or vocational technical adult education course related to the practice of occupational therapy;
- (b) A licensee shall earn one point for each contact hour, up to a maximum of six points, except that a licensee enrolled in a graduate or post-graduate OT curriculum has no maximum points in this category; and
- (c) Documentation shall include an original official transcript indicating completion of the course, date, and a description of the course from the school catalogue or course syllabus.

(3) Small Group Study:

- (a) Includes review and discussion of journal articles, clinical videotapes or audiotapes by at least two licensed practitioners;
- (b) A licensee shall earn one point for three contact hours up to a maximum of three points; and
- (c) Documentation shall include title, author, publisher, time spent, and date of completion. Licensee must complete the Small Group Study Form provided by the NCBOT and include a statement that describes how the activity relates to a licensee's current or anticipated roles and responsibilities.

(4) Mentorship Agreement:

- (a) Participation as a Mentee:
 - (i) Participation in a formalized mentorship agreement with a mentor as defined by a signed contract between the occupational therapy practitioner mentor and the occupational therapy practitioner mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee. These activities must be related to the development of new

- occupational therapy skills outside current required job performance;
 - (ii) A licensee shall earn one point for each 10 contact hours spent in activities directly related to achievement of goals and objectives up to a maximum of two points; and
 - (iii) Documentation shall include name of mentor and mentee, copy of signed contract, dates, hours spent and focus of mentorship activities, and outcomes of mentorship agreement.
 - (b) Participation as Mentor:
 - (i) Participation in a formalized mentorship agreement with an occupational therapy practitioner or post Level II OT or OTA fieldwork student mentee as defined by a signed contract between the mentor and mentee that designates the responsibilities of the mentor and specific goals and objectives that are to be met by the mentee. These activities must be related to the development of occupational therapy skills for the mentee. The mentorship must not be part of the mentor's current required job responsibilities;
 - (ii) A licensee shall earn one point for each four hours spent in mentorship activities as a mentor up to a maximum of five points; and
 - (iii) Documentation shall include name of mentor and mentee, copy of signed contract, dates, hours spent and focus of mentorship activities, and outcomes of mentorship agreement.
- (5) Fieldwork Supervision:
 - (a) Participation as the primary clinical fieldwork educator for Level I or Level II OT or OTA fieldwork students;
 - (b) A licensee shall earn one-half point for each 20 hours of fieldwork, up to a maximum of 12 points; points for Level I may not exceed six.
- (c) Documentation shall include verification provided by the school to the fieldwork educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form. Evaluation scores and comments shall be deleted or blocked out; and
- (d) If fieldwork spans two licensure years, credit shall be given only for the year it is completed.
- (6) Professional Writing:
 - (a) Publication of a peer-reviewed book, chapter, article, or contracted review of occupational therapy resource material;
 - (b) During the year written, edited, or reviewed a licensee shall earn:
 - (i) 15 points as author of a book;
 - (ii) 10 points as author of a chapter;
 - (iii) Five points as author of a peer-reviewed article;
 - (iv) Five points as a contracted reviewer of a print or multimedia occupational therapy resource; or
 - (v) 10 points as listed editor of a book.
 - (c) Documentation shall consist of full reference for publication including title, author, editor, and date of publication; or copy of acceptance letter, if not yet published; and
 - (d) Credit for submitted items shall be given for one licensure period only.
- (7) Presentation and Instruction:
 - (a) Presentation of an academic course or peer-reviewed or non peer-reviewed workshop, seminar, in-service, electronic or Web-based course for the first time or for which more than 50% of the material has been revised related to occupational therapy;
 - (b) A licensee shall earn two points for one contact hour that is awarded for an activity, up to a maximum of six points; and
 - (c) Documentation shall include a copy of official program, schedule, or syllabus including presentation title, date, hours of presentation, and type of audience or verification of such, signed by the sponsor.
- (8) Professional Meetings and Activities:
 - (a) Includes participation in board or committee work with agencies or organizations to promote and enhance the practice of occupational therapy;

- (b) A licensee shall earn one point for five hours, up to a maximum of two points for participation on committees or boards; and
 - (c) Documentation must include name of committee or board, name of agency or organization, purpose of service, description of licensee's role, and hours of participation must be signed by an officer or representative of the organization or committee.
- (9) Board Certification or Specialty Certification:
- (a) The Board shall recognize completion of activities that result in board certification or specialty certification by AOTA during the current licensure period;
 - (b) A licensee shall earn 15 points for each board certification or specialty certification credential earned or re-certified during the current licensure period; and
 - (c) Documentation shall include certificate of completion or other documentation from the recognized certifying body that identifies satisfactory completion of requirements for obtaining board certification or specialty certification or recertification.

- (10) Research and Grants:
 - (a) Development of or participation in a research project or grant proposal relevant to occupational therapy;
 - (b) A licensee shall earn one point for each three hours spent working on a research project or grant proposal, up to a maximum of five points; and
 - (c) Documentation includes verification from the primary investigator indicating the name of the research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project or name of grant proposal, name of grant source, purpose and objectives of the project, and verification from the grant author regarding licensee's role in the development of the grant if not the author.

History Note: Authority G.S. 90-270.69; 90-270.75(a); Eff. July 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. January 1, 2020.

This Section contains information for the meeting of the Rules Review Commission February 20, 2020 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

February 20, 2020 March 19, 2020
April 16, 2020 May 21, 2020

AGENDA**RULES REVIEW COMMISSION**

THURSDAY, FEBRUARY 20, 2020 9:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Department of Natural and Cultural Resources - 07 NCAC 13F .0202, .0303, .0304 (Reeder)
 - B. Board of Elections - 08 NCAC 10B .0103 (May)
 - C. Commission for the Blind - 10A NCAC 63C .0203, .0204, .0403, .0601 (Reeder)
 - D. Criminal Justice Education and Training Standards Commission – 12 NCAC 09E .0105 (Snyder)
 - E. Private Protective Services Board - 14B NCAC 16 .0114, .0201, .0202, .0203, .0205, .0502, .0701, .0702, .0705, .0706, .0801, .0802, .0806, .0902, .0903, .0904, .0909, .0910, .0911, .0912, .1301, .1302, .1306, .1401, .1402, .1406 (Reeder)
 - F. Environmental Management Commission - 15A NCAC 02B .0240 (Reeder)
 - G. 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, .1206 (May)
 - H. Sedimentation Control Commission - 15A NCAC 04A .0101, .0105; 04B .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0115, .0118, .0120, .0124, .0125, .0126, .0127, .0129, .0130, .0131, .0132; 04C .0103, .0106, .0107, .0108, .0110, .0111; 04D .0102; 04E .0101, .0102, .0104, .0201, .0203, .0403, .0405, .0406, .0501, .0502, .0503, .0504 (Reeder)
 - I. Coastal Resources Commission - 15A NCAC 07H .0304, .0305, .0309, .0313, .1901, .1902, .1904, .1905 (Snyder)
 - J. Wildlife Resources Commission - 15A NCAC 10F .0306 (Snyder)
 - K. Board of Examiners of Electrical Contractors - 21 NCAC 18B .0212, .0303, .0404, .0408, .0901 (Reeder)
 - L. State Board of Opticians – 21 NCAC 40 .0321 (Snyder)

- M. Psychology Board - 21 NCAC 54 .1602, .1605, .1606, .1607, .1608, .1609, .1610, .1611, .1612, .1701, .1702, .1703, .1705, .1706, .1707, .1802, .1803, .1901, .1903, .1904, .2001, .2002, .2005, .2006, .2007, .2008, .2009, .2101, .2102, .2103, .2104, .2202, .2203, .2301, .2302, .2303, .2304, .2305, .2308, .2309, .2311, .2314, .2401, .2402, .2601, .2701, .2703, .2704, .2705, .2706, .2801, .2802, .2803, .2804, .2805, .2806 (May)
 - N. Building Code Council - Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; Energy Conservation Code R406.2 (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between December 23, 2019 through January 21, 2020
- Board of Agriculture (Snyder)
 - Credit Union Division (Reeder)
 - Department of Insurance (Snyder)
 - Board of Dental Examiners (Snyder)
 - Board of Nursing (May)
 - Board of Recreational Therapy Licensure (Reeder)
 - Building Code Council (Reeder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
- Readoptions
- VII. Commission Business
- Next meeting: Thursday, March 19, 2020
-

**Commission Review
Log of Permanent Rule Filings
December 23, 2019 through January 21, 2020**

AGRICULTURE, BOARD OF

The rules in Chapter 9 are from the food and drug protection division.

The rules in Subchapter 09E concern feed.

Current Good Manufacturing Practice of the North Carolina...
Adopt*

02 NCAC 09E .0116

CREDIT UNION DIVISION

The rules in Subchapter 6C concern credit unions and include general information (.0100); organization of credit unions (.0200); basic internal controls: accounting procedures and operation standards for state-chartered credit unions (.0300); loans (.0400); impairment and insolvency (.0500); dividends deposits and interest rebate (.0600); accounts (.0700); reports to administrator (.0800); pension plans (.0900); retention of records (.1000); forms used by credit union division (.1100); investments (.1200); reserves (.1300); and signature guarantee services.

Other Reserves
Amend*

04 NCAC 06C .1302

INSURANCE, DEPARTMENT OF

The rules in Chapter 12 cover life and health insurance including general provisions applicable to all rules and all life and health insurance policies (.0100 - .0300); general life insurance provisions (.0400); general accident and health insurance provisions (.0500); replacement of insurance (.0600); credit insurance (.0700); medicare supplement insurance (.0800); long-term care insurance (.1000); mortgage insurance consolidations (.1100); accelerated benefits (.1200); small employer group health coverage (.1300); HMO and point-of-service coverage (.1400); uniform claim forms

(.1500); retained asset accounts (.1600); viatical settlements (.1700); preferred provider plan product limitations (.1800); and domestic violence - prohibited acts (.1900).

<u>Rate Filing: HMO</u>	11	NCAC	12	.0321
Readopt without Changes*				
<u>Coordination: Group A/H Contract Benefits: Group Coverages</u>	11	NCAC	12	.0514
Readopt without Changes*				
<u>Definitions</u>	11	NCAC	12	.1501
Readopt without Changes*				
<u>Requirements for Use of HCFA Form 1450 (UB92)</u>	11	NCAC	12	.1502
Readopt without Changes*				
<u>Requirements for Use of HCFA Form 1500</u>	11	NCAC	12	.1503
Readopt without Changes*				
<u>Requirements for Use of the Current ADA Dental Claim Form</u>	11	NCAC	12	.1504
Readopt without Changes*				
<u>Managed Care Forms</u>	11	NCAC	12	.1505
Readopt without Changes*				
<u>Electronic Format Standards</u>	11	NCAC	12	.1506
Readopt without Changes*				
<u>Attachment Form or Format</u>	11	NCAC	12	.1507
Readopt without Changes*				
<u>Medicare Supplement Payors</u>	11	NCAC	12	.1508
Readopt without Changes*				
<u>Patient Submitted Claim Forms</u>	11	NCAC	12	.1509
Readopt without Changes*				
<u>General Requirements</u>	11	NCAC	12	.1803
Readopt without Changes*				

DENTAL EXAMINERS, BOARD OF

The rules in Chapter 16 cover the licensing of dentists and dental hygienists.

The rules in Subchapter 16B concern licensure examination for dentists including examination required (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); licensure by credentials (.0500); limited volunteer dental license (.0600); instructor's license (.0700); temporary volunteer dental license (.0800); and exemptions for active military (.0900).

<u>Application for Licensure</u>	21	NCAC	16B	.0301
Amend*				
<u>Dental Licensure by Credentials</u>	21	NCAC	16B	.0501
Amend*				
<u>Limited Volunteer Dental License</u>	21	NCAC	16B	.0601
Amend*				
<u>Instructor's License</u>	21	NCAC	16B	.0701
Amend*				
<u>Temporary Volunteer Dental Permit</u>	21	NCAC	16B	.0801
Amend*				
<u>Dental Licensure by Endorsement Based on Military Service</u>	21	NCAC	16B	.1001
Amend*				
<u>Dental Licensure by Endorsement Based on Status as Milita...</u>	21	NCAC	16B	.1002
Amend*				

The rules in Subchapter 16C are dental hygienist licensure rules including general provisions (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); and licensure by credentials (.0500).

<u>Application for Licensure</u>	21	NCAC	16C	.0301
Amend*				

<u>Dental Hygiene Licensure by Credentials</u>	21	NCAC	16C	.0501
Amend*				

The rules in Subchapter 16D concern provisional licensure for dentists including general provisions (.0100); and examinations (.0200).

<u>Application for Provisional License</u>	21	NCAC	16D	.0104
Amend*				

The rules in Subchapter 16E concern provisional licensure for dental hygienists.

<u>Restrictions on Practice</u>	21	NCAC	16E	.0102
Amend*				

<u>Application for Provisional License</u>	21	NCAC	16E	.0103
Amend*				

The rules in Subchapter 16G concern dental hygienists.

<u>Dental Hygiene License by Endorsement Based on Military S...</u>	21	NCAC	16G	.0107
Amend*				

<u>Dental Hygiene License by Endorsement Based on Status as ...</u>	21	NCAC	16G	.0108
Amend*				

The rules in Subchapter 16Y concern permitting intern dentists.

<u>Application for Intern Permit</u>	21	NCAC	16Y	.0102
Amend*				

NURSING, BOARD OF

The rules in Chapter 36 include rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

<u>Approval of Nurse Aide Education Programs</u>	21	NCAC	36	.0405
Amend*				

RECREATIONAL THERAPY LICENSURE, BOARD OF

The rules in Chapter 65 cover the practice of recreational therapy including general provisions (.0100); requirements for practice (.0200); requirements for licensure (.0300); application (.0400); fees (.0500); license renewal requirements (.0600); reinstatement (.0700); inactive status (.0800); reciprocity (.0900); and revocation, suspension or denial of licensure (.1000).

<u>Continuing Education Requirements for Licensed Recreation...</u>	21	NCAC	65	.0601
Amend*				

<u>Renewal Requirements for Licensed Recreational Therapist ...</u>	21	NCAC	65	.0602
Amend*				

<u>Reinstatement of Lapsed License</u>	21	NCAC	65	.0701
Amend*				

<u>Inactive Status</u>	21	NCAC	65	.0801
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Amend*

Military Endorsement

21 NCAC 65 .0902

Amend*

BUILDING CODE COUNCIL

2018 NC Mechanical Code/General Definitions

202

Amend*

2018 NC Residential Code/Drain Pipe Materials and Sizes

M1411.3.2

Amend*

2018 NC Residential Code/General

M1502.1

Amend*

2018 NC Residential Code/Duct Installation

M1502.4.2

Amend*

2018 NC Residential Code/Return-Air Intake

M1602.3

Amend*

2018 NC Fire Code/Valet Trash Collection Services

304.4

Amend*

2018 NC Residential Code/Frost Protection

P2603.5.2

Amend*

2018 NC Residential Code/Fill

R506.2.1

Amend*

CONTESTED CASE DECISIONS

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 919-431-3000.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter
Don Overby
J. Randall May
David Sutton
Tenisha Jacobs

A. B. Elkins II
Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>Published</u>			
19	BOE	02221	11/1/2019	Cherokee REC, Cherokee County GOP	v .	NC State Board of Elections	Sutton
19	DHR	04165	11/22/2019	Mattie Clark	v .	NC Department of Health and Human Services, Division of Health Service Regulation	Bawtinheimer
19	DOJ	02703	11/14/2019	Robert Jason Chabot	v .	NC Sheriffs Education and Training Standards Commission	May
19	DOJ	03205	11/20/2019	Shane Welch	v .	NC Sheriffs Education and Training Standards Commission	Sutton
19	DOJ	03748	11/8/2019	Coyte Charles Franklin Kennedy Jr	v .	NC Private Protective Services Board	Jacobs
19	DST	03598	11/15/2019	Joan Ruth Wall Hunter	v .	North Carolina Department of State Treasurer, Retirement Systems Division	Ward
19	MIS	03867	11/14/2019	Charles Udoh	v .	Central Piedmont Community College Cental Piedmont Community College Basic Law Enforcement Training School KandiDeitemeyerStandleyTMOoreLatreaseNQuigleyCandaceTurnerMikeWhitemanDavid Kim	Malherbe
				<u>Unpublished</u>			
19	CPS	03881	11/12/2019	Hattie Capers	v .	Victims Commission Fund	Mann
19	CPS	04161	11/21/2019	Shirley Ann Holden	v .	Department of Public Safety et al	Ward

CONTESTED CASE DECISIONS

18	CSE	06766	6/18/2019; 11/13/2019	Rodrick Barnwell	v .	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
18	CSE	06979	4/22/2019; 11/20/2019	Joshua K Jones	v .	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
18	CSE	07311	5/28/2019; 11/20/2019	Kelvin Jamison	v .	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
19	DHR	04088	11/26/2019	Tracy L Maye	v .	Department of Health and Human Services, Division of Health Service Regulation	Ward
19	DHR	04101	11/26/2019	April S Ward	v .	Department of Health and Human Services, Division of Health Service Regulation	Ward
19	DHR	05339	11/8/2019	First Baptist Day Care Inc	v .	NC Department of Health and Human Services, Division of Child Development and Early Education	Bawtinhi mer
19	DOJ	04774	11/14/2019	Robert Corbett	v .	NC Sheriffs Education and Training Standards Commission	Jacobs
19	EHR	05250	11/15/2019	Duke Engery Carolina LLC and Duke Energy Progress LLC	v .	State of North Carolina ex rel North Carolina Department of Environmental Quality	Malherbe
19	INS	05139	11/19/2019	Bayada Home Health Care	v .	North Carolina State Health Plan	Malherbe
19	OAH	04846	11/14/2019	Gidget Renee Higgins	v .	NC Office of Administrative Hearings	Jacobs
19	OSP	04629	11/21/2019	Laketha S Southern	v .	Robeson County Department of Social Services	Overby