

NORTH CAROLINA REGISTER

VOLUME 25 • ISSUE 01 • Pages 1 - 118

July 1, 2010

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings
Rules Division
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Rule Review and Legal Issues

Rules Review Commission
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contact: Joe DeLuca Jr., Commission Counsel joe.deluca@oah.nc.gov (919) 431-3081
Bobby Bryan, Commission Counsel bobby.bryan@oah.nc.gov (919) 431-3079

Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX
Contact: Anca Grozav, Economic Analyst osbmruleanalysis@osbm.nc.gov (919)807-4740

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
contact: Jim Blackburn jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603
contact: Erin L. Wynia ewynia@nclm.org

Governor's Review

Edwin M. Speas, Jr. edwin.speas@nc.gov
General Counsel to the Governor (919) 733-5811
116 West Jones Street
20301 Mail Service Center
Raleigh, North Carolina 27699-0301

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney Karen.cochrane-brown@ncleg.net
Jeff Hudson, Staff Attorney Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
Publication Schedule for January 2010 – December 2010

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	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
24:13	01/04/10	12/09/09	01/19/10	03/05/10	03/22/10	05/01/10	05/12/10	10/01/10
24:14	01/15/10	12/22/09	01/30/10	03/16/10	03/22/10	05/01/10	05/12/10	10/12/10
24:15	02/01/10	01/08/10	02/16/10	04/05/10	04/20/10	06/01/10	01/26/11	10/29/10
24:16	02/15/10	01/25/10	03/02/10	04/16/10	04/20/10	06/01/10	01/26/11	11/12/10
24:17	03/01/10	02/08/10	03/16/10	04/30/10	05/20/10	07/01/10	01/26/11	11/26/10
24:18	03/15/10	02/22/10	03/30/10	05/14/10	05/20/10	07/01/10	01/26/11	12/10/10
24:19	04/01/10	03/11/10	04/16/10	06/01/10	06/21/10	08/01/10	01/26/11	12/27/10
24:20	04/15/10	03/24/10	04/30/10	06/14/10	06/21/10	08/01/10	01/26/11	01/10/11
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24:22	05/17/10	04/26/10	06/01/10	07/16/10	07/20/10	09/01/10	01/26/11	02/11/11
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25:02	07/15/10	06/23/10	07/30/10	09/13/10	09/20/10	11/01/10	01/26/11	04/11/11
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25:04	08/16/10	07/26/10	08/31/10	10/15/10	10/20/10	12/01/10	01/26/11	05/13/11
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25:06	09/15/10	08/24/10	09/30/10	11/15/10	11/22/10	01/01/11	01/26/11	06/12/11
25:07	10/01/10	09/10/10	10/16/10	11/30/10	12/20/10	02/01/11	05/2012	06/28/11
25:08	10/15/10	09/24/10	10/30/10	12/14/10	12/20/10	02/01/11	05/2012	07/12/11
25:09	11/01/10	10/11/10	11/16/10	01/03/11	01/20/11	03/01/11	05/2012	07/29/11
25:10	11/15/10	10/22/10	11/30/10	01/14/11	01/20/11	03/01/11	05/2012	08/12/11
25:11	12/01/10	11/05/10	12/16/10	01/31/11	02/21/11	04/01/11	05/2012	08/28/11
25:12	12/15/10	11/22/10	12/30/10	02/14/11	02/21/11	04/01/11	05/2012	09/11/11

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) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) 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;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) 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.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.



**EXECUTIVE ORDER NO. 59
PROCLAMATION OF A STATE OF DISASTER
FOR HOKE COUNTY**

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, N.C.G.S. § 166A-6, authorizes the issuance of a proclamation defining an area subject to a state of disaster and categorizing the disaster as a Type I, Type II or Type III disaster; and

WHEREAS, on May 16, 2010, Hoke County, North Carolina was impacted by a severe wind storm; and

WHEREAS, on May 16, 2010, Hoke County, proclaimed the existence of a state of emergency; and

WHEREAS, I have determined that a State of a Disaster, as defined in G.S. §166A-6, exists in the State of North Carolina specifically in Hoke County; and

WHEREAS, pursuant to N.C.G.S. § 166A-6, the criteria for a Type I disaster are met if: (1) the Secretary of Crime Control and Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) Hoke County has declared a local state of emergency pursuant to N.C.G.S. § 166A-8; (3) the preliminary damage assessment has met or exceeded the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

WHEREAS, pursuant to N.C.G.S. § 166A-6.01, if a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Pursuant to N.C.G.S. § 166A-6, a Type I state of disaster is hereby declared for Hoke County.

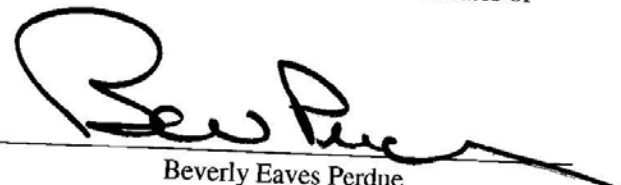
Section 2. I authorize state disaster assistance in the form of public assistance grants to eligible entities located within the disaster area that meet the terms and conditions under N.C.G.S. § 166A-6.01.

Section 3. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this proclamation.

Section 4. This Type I Disaster Declaration shall expire 30 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-fifth day of May in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fourth.




Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Secretary of State



EXECUTIVE ORDER NO. 60

**PROCLAMATION OF A STATE OF DISASTER
FOR TOWN OF HIGHLANDS**

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, N.C.G.S. § 166A-6, authorizes the issuance of a proclamation defining an area subject to a state of disaster and categorizing the disaster as a Type I, Type II or Type III disaster; and

WHEREAS, on January 29, 2010, the Town of Highlands in Macon County, North Carolina proclaimed the existence of a state of emergency; and

WHEREAS, on January 30, 2010, I proclaimed the existence of a state of emergency in North Carolina due to a winter storm; and

WHEREAS, I have determined that a state of a disaster, as defined in G.S. §166A-6, existed in the State of North Carolina, specifically for the Town of Highlands; and

WHEREAS, pursuant to N.C.G.S. § 166A-6, the criteria for a Type I disaster are met if: (1) the Secretary of Crime Control and Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) the Town of Highlands has declared a local state of emergency pursuant to N.C.G.S. § 166A-8; (3) the preliminary damage assessment has met or exceeded the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123, or has met or exceeded the State infrastructure criteria set out in N.C.G.S. § 166A-6.01(b)(2)a; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

WHEREAS, pursuant to N.C.G.S. § 166A-6A, if a state of disaster is proclaimed, the Governor may make State funds available for disaster assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the disaster area.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Pursuant to N.C.G.S. § 166A-6, a Type I state of disaster is hereby declared for the Town of Highlands.

Section 2. I authorize state disaster assistance in the form of public assistance grants to eligible entities located within the disaster area that meet the terms and conditions under N.C.G.S. § 166A-6.01(b)(2)(c) for costs incurred for the following purposes only:

1. Debris clearance
2. Emergency protective measures
3. Repairs to roads and bridges

Section 3. I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this proclamation.

Section 4. This Type I Disaster Declaration shall expire 30 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-fifth day of May in the year of our Lord two thousand and ten, and of the Independence of the United States of America the two hundred and thirty-fourth.



Beverly Eaves Perdue
Governor

ATTEST:

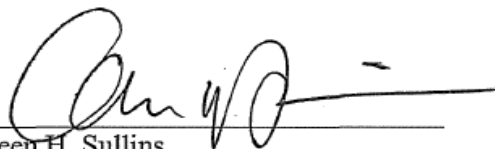
Elaine F. Marshall
Secretary of State

PUBLIC NOTICE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF WATER QUALITY

The Division of Water Quality has received a petition to establish interim maximum allowable concentrations in groundwater for Alachlor, Ammonia, Antimony, Bromomethane, Butanol, Dalapon, 1,4-Dibromobenzene, 2,4-Dichlorophenol, DDE, Dinoseb, Diquat, Endothall, Methyl methacrylate, 1,2,4,5-tetrachlorobenzene, 1,1,1,2-Tetrachloroethane and 1,1,2-Trichloroethane. These IMACs will aid DENR programs in assessing conditions and setting health protective groundwater levels at regulated sites. In accordance with 15A NCAC 02L .0202 (c), the data supporting the request has been reviewed as have staff recommendations from the Division of Water Quality and the Division of Public Health. Therefore, the following interim maximum allowable concentrations are hereby established for Class GA and GSA groundwaters effective August 1, 2010.

<u>Substance</u>	<u>Concentration</u>
Alachlor	0.4 ug/L
Ammonia	1,500 ug/L
Antimony	1 ug/L
Bromomethane	10 ug/L
Butanol	700 ug/L
Dalapon	200 ug/L
1,4-Dibromobenzene	70 ug/L
2,4-Dichlorophenol	0.98 ug/L
DDE	0.1 ug/L
Dinoseb	7 ug/L
Diquat	20 ug/L
Endothall	100 ug/L
Methyl methacrylate	25 ug/L
1,2,4,5-Tetrachlorobenzene	2 ug/L
1,1,1,2-Tetrachloroethane	1 ug/L
1,1,2-Trichloroethane	0.6 ug/L

Action to adopt permanent standards for these substances will be initiated during the next groundwater standard triennial review. For more information or questions, please contact Sandra Moore at Sandra.moore@ncdenr.gov or 919-807-6417 or visit our web site at <http://portal.ncdenr.org/web/wq/ps/csu>.



Coleen H. Sullins
Director, Division of Water Quality



STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

June 2, 2010

Senator Charlie W. Albertson
North Carolina State Senate
523 Legislative Office Building
300 North Salisbury Street
Raleigh, NC 27603-5925

FILED
2010 JUN -4 AM 10:47
OFFICE OF
ADMIN HEARINGS

RE: NOAA Award Ceremony, June 10, 2010

Dear Senator Albertson:

You have requested a written opinion pursuant to NC General Statute § 163-278.23 regarding the use of your campaign committee's funds to pay for your son's travel expenses to an award ceremony where you will be honored.

Your son's accompaniment to the June 10, 2010 awarding of the "Coastal Steward of the Year" honor from NOAA would be considered an expenditure arising out of holding public office. Thus it is allowable for the expenses to be paid using funds from your campaign committee pursuant to NC General Statute § 163-278.16B(2).

This opinion is based upon the facts as stated in your letter dated May 27, 2010. If those facts should change, you should evaluate whether this opinion is still applicable and binding. In addition, changes in statutes and case law may affect this opinion and you should evaluate their applicability. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Congratulations on your well-deserved award.

Sincerely,

A handwritten signature in cursive script that reads "Gary O. Bartlett".

Gary O. Bartlett
Executive Director

LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603 • (919) 733-7173



STATE BOARD OF ELECTIONS
6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

June 2, 2010

Andrew Whalen
Executive Director
North Carolina Democratic Party
220 Hillsborough Street
Raleigh, NC 27603

Re: N.C. Political Parties Financing Fund

Dear Mr. Whalen:

You have requested a written opinion pursuant to N.C. General Statute § 163-278.23. You inquire as to how a State Political Party Chairman should maintain a full accounting of the expenditures and disbursements of funds received from the N.C. Political Parties Financing Fund, statutorily required by N.C.G.S. § 163-278.43.

All record keeping of monies allocated from the N.C. Political Parties Financing Fund is the sole responsibility of the Chair of the Political Party to which the funds were disbursed, as mandated by N.C.G.S. § 163-278.42(a). Fifty percent (50%) of the disbursed funds are to be allocated by a special committee, of which membership is outlined in N.C.G.S. § 163-278.42(d). This committee has sole discretion of fund disbursement. However, the allocations must fall within the parameters set forth in N.C.G.S. § 163-278.42(e), and the Chair of the Political Party maintains responsibility for accurate and complete accounting of disbursements and expenditures.

The North Carolina General Assembly made the accounting of actual expenditures and disbursements of funds received from the N.C. Political Parties Financing Fund a very strict mandate. Criminal penalties can be imposed on persons who willfully and intentionally violate the provisions of N.C. General Statute Article 22B. Improper use of funds can lead to criminal charges against those who made the improper expenses, an order of reimbursement against the

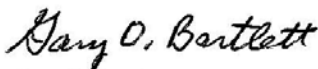
LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603 • (919) 733-7173

party, and/or a suspension of future funds payment to the party until reimbursement is made. Compliance with the Campaign Finance laws of this State should not be treated casually.

The law requires that the State Chair's records of these financial items to be complete and it is the sole responsibility of the Political Party Chair to insure accuracy of the records. Next, the receipts and all subsequent expenditures and disbursements must be substantiated by the records required by this office. In addition, it is required that such records must be centrally located and readily available. This implies that the data must be promptly tendered and centrally reported to the Chairman by each sub-entity receiving a disbursement of funds. Finally, the Chairman must vouch for the proper expenditure of the funds when he files his annual report pursuant to N.C.G.S. § 163-278.43(b).

This opinion is based upon the facts as stated in your e-mail dated June 2, 2010. If those facts should change, you should evaluate whether this opinion is still applicable and binding. In addition, changes in statutes and case law may affect this opinion and you should evaluate their applicability. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Gary O. Bartlett
Executive Director

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

Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Health Service Regulation intends to amend the rules cited as 10A NCAC 14C .1202, .1402-.1403, .1701, .1703, .1902, .2102-.2106, .2202-.2203, and .2701.

Proposed Effective Date: November 1, 2010

Public Hearing:

Date: August 11, 2010

Time: 10:00 a.m.

Location: Council Building, Room 201, NC Division of Health Service Regulation, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC 27603

Reason for Proposed Action: These rules are currently temporary rules which became effective February 1, 2010 and are now proposed for permanent rule amendment. Several subject matters are addressed in the State Medical Facilities Plan (SMFP). Each year, changes to existing Certificate of Need rules are required to complement or to ensure consistency with the SMFP which is effective January 1, 2010. The specific subject areas being addressed by these proposed permanent rule changes are Intensive Care Services, Neonatal Services, Open-Heart Surgery Services and Heart-Lung Bypass Machines, Radiation Therapy Equipment, Surgical Services and Operating Rooms, End-Stage Renal Disease Services, and Magnetic Resonance Imaging Scanner.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rule by submitting written comments on the proposed rules. They may also object by attending the public hearing and personally voice their objections during that time.

Comments may be submitted to: Erin Glendening, Division of Health Service Regulation, 2714 Mail Service Center, Raleigh, NC 27699-2714; fax (919) 715-4413; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: August 30, 2010

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:

- ☐ State
- ☐ Local
- ☐ Substantial Economic Impact (≥\$3,000,000)
- ☒ None

CHAPTER 14 – DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14C - CERTIFICATE OF NEED REGULATIONS

SECTION .1200 - CRITERIA AND STANDARDS FOR INTENSIVE CARE SERVICES

10A NCAC 14C .1202 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes new or expanded intensive care services shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing new or expanded intensive care services shall also submit the following additional information:

- (1) the number of intensive care beds currently operated by the applicant and the number of intensive care beds to be operated following completion of the proposed project;
- (2) documentation of the applicant's experience in treating patients at the facility during the past twelve months, including:
 - (A) the number of inpatient days of care provided to intensive care patients;
 - (B) the number of patients initially treated at the facility and referred to other facilities for intensive care services; and
 - (C) the number of patients initially treated at other facilities and referred to the applicant's facility for intensive care services.

~~(3) the number of patients from the proposed service area who are projected to require intensive care services by the patients' county of residence in each of the first 12 quarters of~~

- ~~operation, including all assumptions and methodologies;~~
- (4)(3) the projected number of patients to be served and inpatient days of care to be provided by county of residence by specialized type of intensive care for each of the first twelve calendar quarters following completion of the proposed project, including all assumptions and methodologies;
- (5)(4) data from actual referral sources or correspondence from the proposed referral sources documenting their intent to refer patients to the applicant's facility;
- (6)(5) documentation which demonstrates the applicant's capability to communicate effectively with emergency transportation agencies;
- (7)(6) documentation of written policies and procedures regarding the provision of care within the intensive care unit, which includes, but is not limited to the following:
- (A) the admission and discharge of patients;
 - (B) infection control;
 - (C) safety procedures; and
 - (D) scope of services.
- (8)(7) documentation that the proposed service shall be operated in an area organized as a physically and functionally distinct entity, separate from the rest of the facility, with controlled access;
- (9)(8) documentation to show that the services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;
- (10)(9) a detailed floor plan of the proposed area drawn to scale; and
- (11)(10) documentation of a means for observation by unit staff of all patients in the unit from at least one vantage point.
- (2) the proposed number of Level I nursery bassinets, Level II beds, Level III beds and Level IV beds to be operated following completion of the proposed project;
- (3) evidence of the applicant's experience in treating the following patients at the facility during the past twelve months, including:
- (A) the number of obstetrical patients treated at the acute care facility;
 - (B) the number of neonatal patients treated in Level I nursery bassinets, Level II beds, Level III beds and Level IV beds, respectively;
 - (C) the number of inpatient days at the facility provided to obstetrical patients;
 - (D) the number of inpatient days provided in Level II beds, Level III beds and Level IV beds, respectively;
 - (E) the number of high-risk obstetrical patients treated at the applicant's facility and the number of high-risk obstetrical patients referred from the applicant's facility to other facilities or programs; and
 - (F) the number of neonatal patients referred to other facilities for services, identified by required level of neonatal service (i.e. Level II, Level III or Level IV);
- (4) the projected number of neonatal patients to be served identified by Level I, Level II, Level III and Level IV neonatal services for each of the first three years of operation following the completion of the project, including the methodology and assumptions used for the projections;
- (5) the projected number of patient days of care to be provided in Level I bassinets, Level II beds, Level III beds, and Level IV beds, respectively, for each of the first three years of operation following completion of the project, including the methodology and assumptions used for the projections;
- (6) if proposing to provide Level I or Level II neonatal ~~services~~, services in the facility for the first time, documentation that at least 90 percent of the anticipated patient population is within 30 minutes driving time one-way from the facility;
- (7) if proposing to provide ~~new~~ Level I or Level II neonatal ~~services~~, services in the facility for the first time, documentation of a written plan to transport infants to Level III or Level IV neonatal services as the infant's care requires;
- (8) evidence that the applicant shall have access to a transport service with at least the following components:
- (A) trained personnel;

Authority G.S. 131E-177(1); 131E-183.

SECTION .1400 - CRITERIA AND STANDARDS FOR NEONATAL SERVICES

10A NCAC 14C .1402 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to develop a ~~new~~ Level I nursery in the facility for the first time or ~~increase the number of new or additional~~ Level II, III or IV neonatal beds shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to develop a ~~new~~ Level I nursery service in the facility for the first time or ~~to increase the number of new or additional~~ Level II, III or IV neonatal beds shall provide the following additional information:

- (1) the current number of Level I nursery bassinets, Level II beds, Level III beds and Level IV beds operated by the applicant;

- (B) transport incubator;
- (C) emergency resuscitation equipment;
- (D) oxygen supply, monitoring equipment and the means of administration;
- (E) portable cardiac and temperature monitors; and
- (F) a mechanical ventilator;
- (9) documentation that the proposed service shall be operated in an area organized as a physically and functionally distinct entity with controlled access;
- (10) documentation to show that the new or additional Level I, Level II, Level III or Level IV neonatal services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;
- (11) a detailed floor plan of the proposed area drawn to scale;
- (12) documentation of direct or indirect visual observation by unit staff of all patients from one or more vantage points; and
- (13) documentation that the floor space allocated to each bed and bassinet shall accommodate equipment and personnel to meet anticipated contingencies.

(c) If proposing to provide ~~new~~ Level III or Level IV neonatal services in the facility for the first time, the applicant shall also provide the following information:

- (1) documentation that at least 90 percent of the anticipated patient population is within 90 minutes driving time one-way from the facility, with the exception that there shall be a variance from the 90 percent standard for facilities which demonstrate that they provide very specialized levels of neonatal care to a large and geographically diverse population, or facilities which demonstrate the availability of air ambulance services for neonatal patients;
- (2) evidence that existing and approved neonatal services in the applicant's defined neonatal service area are unable to accommodate the applicant's projected need for additional Level III and Level IV services;
- (3) an analysis of the proposal's impact on existing Level III and Level IV neonatal services which currently serve patients from the applicant's primary service area;
- (4) the availability of high risk OB services at the site of the applicant's planned neonatal service;
- (5) copies of written policies which provide for parental participation in the care of their infant, as the infant's condition permits, in order to facilitate family adjustment and continuity of care following discharge; and
- (6) copies of written policies and procedures regarding the scope and provision of care within the neonatal service, including but not limited to the following:

- (A) the admission and discharge of patients;
- (B) infection control;
- (C) pertinent safety practices;
- (D) the triaging of patients requiring consultations, including the transfer of patients to another facility; and
- (E) the protocols for obtaining emergency physician care for a sick infant.

Authority G.S. 131E-177(1); 131E-183.

10A NCAC 14C .1403 PERFORMANCE STANDARDS

(a) An applicant shall demonstrate that the proposed project is capable of meeting the following standards:

- (1) if an applicant ~~proposes an increase in the number of the facility's existing~~ is proposing to increase the total number of neonatal beds (i.e., the sum of Level II, Level III ~~or~~ and Level IV beds, beds), the overall average annual occupancy of the total combined number of all existing Level II, Level III and Level IV beds in the facility is at least 75 percent, over the 12 months immediately preceding the submittal of the proposal;
- (2) if an applicant is proposing to ~~develop new or additional~~ increase the total number of neonatal beds (i.e., the sum of Level II, Level III ~~or~~ and Level IV beds, beds), the projected overall average annual occupancy of the total combined number of all Level II, Level III and Level IV beds proposed to be operated during the third year of operation of the proposed project shall be at least 75 percent; and
- (3) The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this rule.

(b) If an applicant proposes to develop a new Level III or Level IV service, the applicant shall document that an unmet need exists in the applicant's defined neonatal service area, unless the State Medical Facilities Plan includes a need determination for neonatal beds in the service area. The need for Level III and Level IV beds shall be computed for the applicant's neonatal service area by:

- (1) identifying the annual number of live births occurring at all hospitals within the proposed neonatal service area, using the latest available data compiled by the State Center for Health Statistics;
- (2) identifying the low birth weight rate (percent of live births below 2,500 grams) for the births identified in (1) of this Paragraph, using the latest available data compiled by the State Center for Health Statistics;
- (3) dividing the low birth weight rate identified in (2) of this Paragraph by .08 and subsequently multiplying the resulting quotient by four; and

- (4) determining the need for Level III and Level IV beds in the proposed neonatal service area as the product of:
 - (A) the product derived in (3) of this Paragraph, and
 - (B) the quotient resulting from the division of the number of live births in the initial year of the determination identified in (1) of this Paragraph by the number 1000.

Authority G.S. 131E-177(1); 131E-183(b).

**SECTION .1700 - CRITERIA AND STANDARDS FOR
OPEN-HEART SURGERY SERVICES AND HEART-
LUNG BYPASS MACHINES**

10A NCAC 14C .1701 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- (1) "Capacity" of a heart-lung bypass machine means 400 adult-equivalent open heart surgical procedures per year. One open heart surgical procedure on persons age 14 and under is valued at two adult open heart surgical procedures. For purposes of determining capacity, one open heart surgical procedure is defined to be one visit or trip by a patient to an operating room for an open heart operation.
- (2) "Cardiac Surgical Intensive Care Unit" means a distinct intensive care unit as defined in 10A NCAC 14C .1201(2) and which is for exclusive use by post-surgical open heart patients.
- (3) "Heart-lung bypass machine" shall have the same meaning as defined in G.S. 131E-176(10a).
- (4) "Open heart surgery service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 90 road miles from the facility, except that the open heart surgery service area of an academic medical center teaching hospital designated in 10A NCAC 14B the State Medical Facilities Plan shall not be limited to 90 road miles.
- (5) "Open heart surgery services" shall have the same meaning as defined in G.S. 131E-176(18b).
- (6) "Open heart surgical procedures" means highly specialized surgical procedures which:
 - (a) utilize a heart-lung bypass machine (the "pump") to perform extra-corporeal circulation and oxygenation during surgery;
 - (b) are designed to correct congenital and acquired cardiac and coronary disease; and
 - (c) are identified by Medicare Diagnostic Related Group ("DRG") numbers

104, 105, 106, ~~107, and 108.~~ 108, 547, 548, 549, and 550.

- (7) "Primary open heart surgery service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 45 road miles from the facility, except that the primary open heart surgery service area of an academic medical center teaching hospital designated ~~to in 10A NCAC 14B,~~ the State Medical Facilities Plan shall not be limited to 45 road miles.

Authority G.S. 131E-177(1); 131E-183.

10A NCAC 14C .1703 PERFORMANCE STANDARDS

The applicant shall demonstrate that the proposed project is capable of meeting the following standards:

- ~~(1) the applicant shall perform at least four diagnostic catheterizations per open heart surgical procedure during each quarter;~~
- ~~(2)~~(1) an applicant's existing and new or additional heart-lung bypass machines shall be utilized at an annual rate of 200 open heart surgical procedures per machine, measured during the twelfth quarter following completion of the project;
- ~~(3)~~(2) at least 50 percent of the projected open heart surgical procedures shall be performed on patients residing within the primary open heart surgery service area;
- ~~(4)~~(3) the applicant's projected utilization and proposed staffing patterns are such that each open heart surgical team shall perform at an annual rate of at least 150 open heart surgical procedures by the end of the third year following completion of the project;
- ~~(5)~~(4) the applicant shall document the assumptions and provide data supporting the methodology used to make these projections; and
- ~~(6)~~(5) heart-lung bypass machines that have been acquired for non-surgical use, or for non-heart surgical procedure use, and that are dedicated for services that are not related to the open heart surgery services, shall not be utilized in the performance of open heart surgical procedures.

Authority G.S. 131E-177(1); 131E-183(b).

**SECTION .1900 - CRITERIA AND STANDARDS FOR
RADIATION THERAPY EQUIPMENT**

**10A NCAC 14C .1902 INFORMATION REQUIRED OF
APPLICANT**

- (a) An applicant proposing to acquire radiation therapy equipment shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to acquire radiation therapy equipment shall also provide the following additional information:

- (1) a list of all the radiation therapy equipment to be acquired and documentation of the capabilities and capacities of each item of equipment;
- (2) documentation of the purchase price and fair market value of each piece of radiation therapy equipment, each simulator, and any other related equipment proposed to be acquired;
- (3) the projected number of patient treatments by ~~county and by intensity modulated (IMRT), stereotactic radiosurgery,~~ simple, intermediate and complex radiation treatments to be performed on each piece of radiation therapy equipment for each of the first three years of operation following the completion of the proposed project and documentation of all assumptions by which utilization is projected;
- (4) documentation that the proposed radiation therapy equipment shall be operational at least seven hours per day, five days a week;
- (5) documentation that no more than one simulator is available for every two linear accelerators in the applicant's facility, except that an applicant that has only one linear accelerator may have one simulator;
- (6) documentation that the services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies; ~~and~~
- (7) the projected total number of radiation treatment patients that will be treated by county in the facility in each of the first three years of operation following completion of the proposed ~~project.~~ project;
- (8) the projected number of radiation treatment patients that will be treated for palliation in each of the first three years of operation following completion of the proposed project; ~~and~~
- (9) the projected number of radiation treatment patients that will be treated for cure in each of the first three years of operation following completion of the proposed project.

(c) An applicant proposing to acquire a linear accelerator for development of a multidisciplinary prostate health center pursuant to a need determination for a demonstration project in the State Medical Facilities Plan shall provide the following additional information:

- (1) description of all services to be provided by the proposed multidisciplinary prostate health center, including a description of each of the following services:
 - (A) urology services,
 - (B) medical oncology services,
 - (C) biofeedback therapy,
 - (D) chemotherapy,

- (E) brachytherapy, and
- (F) living skills counseling and therapy;
- (2) documentation that urology services, medical and radiation oncology services, biofeedback therapy, brachytherapy and post-treatment living skills counseling and therapy will be provided in the same building;
- (3) description of any services that will be provided by other facilities or in different buildings;
- (4) demographics of the population in the county in which the proposed multidisciplinary prostate health center will be located, including:
 - (A) percentage of the population in the county that is African American,
 - (B) the percentage of the population in the county that is male,
 - (C) the percentage of the population in the county that is African American male,
 - (D) the incidence of prostate cancer for the African American male population in the county, and
 - (E) the mortality rate from prostate cancer for the African American male population in the county;
- (5) documentation that the proposed center is located within walking distance of an established bus route and within five miles of a minority community;
- (6) documentation that the multiple medical disciplines in the center will collaborate to create and maintain a single or common medical record for each patient and conduct multidisciplinary conferences regarding each patient's treatment and follow-up care;
- (7) documentation that the center will establish its own prostate/urological cancer tumor board for review of cases;
- (8) copy of the center's written policies that prohibit the exclusion of services to any patient on the basis of age, race, religion, disability or the patient's ability to pay;
- (9) copy of written strategies and activities the center will follow to assure its services will be accessible by patients without regard to their ability to pay;
- (10) description of the center's outreach activities and the manner in which they complement existing outreach initiatives;
- (11) documentation of number and type of clinics to be conducted to screen patients at risk for prostate cancer;
- (12) written description of patient selection criteria, including referral arrangements for high-risk patients;
- (13) commitment to prepare an annual report at the end of each of the first three operating years,

to be submitted to the Medical Facilities Planning Section and the Certificate of Need Section, that shall include:

- (A) the total number of patients treated;
 - (B) the number of African American persons treated;
 - (C) the number of persons in other minority populations treated; and
 - (D) the number of insured, underinsured and uninsured patients served by type of payment category;
- (14) documentation of arrangements made with a third party researcher to evaluate, during the fourth operating year of the center, the efficacy of the clinical and outreach initiatives on prostate and urological cancer treatment, and develop recommendations regarding the advantages and disadvantages of replicating the project in other areas of the State. The results of the evaluation and recommendations shall be submitted in a report to the Medical Facilities Planning Section and Certificate of Need Section in the first quarter of the fifth operating year of the demonstration project; and
- (15) if the third party researcher is not a historically black university, document the reasons for using a different researcher for the project.

Authority G.S. 131E-177(1); 131E-183.

SECTION .2100 - CRITERIA AND STANDARDS FOR SURGICAL SERVICES AND OPERATING ROOMS

10A NCAC 14C .2102 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish a new ambulatory surgical facility, to establish a new campus of an existing facility, to establish a new hospital, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify each of the following specialty areas that will be provided in the facility:

- (1) gynecology;
- (2) otolaryngology;
- (3) plastic surgery;
- (4) general surgery;
- (5) ophthalmology;
- (6) orthopedic;
- (7) oral surgery; and
- (8) other specialty area identified by the applicant.

(b) An applicant proposing ~~to establish a new ambulatory surgical facility,~~ to increase the number of operating rooms ~~except relocations of existing operating rooms between existing licensed facilities within the same~~ in a service area, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty

ambulatory surgical program shall provide the following information:

- (1) the number and type of operating rooms in each ~~licensed~~ facility which the applicant or a related entity owns a controlling interest in and is located in the service area, (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (2) the number and type of operating rooms to be located in each ~~licensed~~ facility which the applicant or a related entity owns a controlling interest in and is located in the service area after completion of the proposed project and all previously approved projects related to these facilities (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (3) the number of inpatient surgical cases, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units, and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases performed in the most recent 12 month period for which data is available, in the operating rooms in each ~~licensed~~ facility listed in response to Subparagraphs (b)(1) and (b)(2) of this Rule;
- (4) the number of inpatient surgical cases, excluding trauma cases reported by level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases projected to be performed in each of the first three operating years of the proposed project, in each ~~licensed~~ facility listed in response to Subparagraphs (b)(1) and (b)(2) of this Rule;
- (5) a detailed description of and documentation to support the assumptions and methodology used in the development of the projections required by this Rule;
- (6) the hours of operation of the proposed new operating rooms;
- (7) if the applicant is an existing facility, the average reimbursement received per procedure for the 20 surgical procedures most commonly performed in the facility during the preceding 12 months and a list of all services and items included in the reimbursement;
- (8) the projected average reimbursement to be received per procedure for the 20 surgical procedures which the applicant projects will be performed most often in the facility and a list of all services and items included in the reimbursement; and

(9) identification of providers of pre-operative services and procedures which will not be included in the facility's charge.

(c) An applicant proposing to relocate existing or approved operating rooms ~~between existing licensed facilities~~ within the same service area shall provide the following information:

- (1) the number and type of existing and approved operating rooms in each ~~licensed~~ facility in which the number of operating rooms will increase or decrease (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (2) the number and type of operating rooms to be located in each affected ~~licensed~~ facility after completion of the proposed project and all previously approved projects related to these facilities (separately identifying the number of dedicated open heart and dedicated C-Section rooms);
- (3) the number of inpatient surgical cases, excluding trauma cases reported by Level I, II, or III trauma centers, cases reported by designated burn intensive care units, and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases performed in the most recent 12 month period for which data is available, in the operating rooms in each ~~licensed~~ facility listed in response to Subparagraphs (c)(1) and (c)(2) of this Rule;
- (4) the number of inpatient surgical cases, excluding trauma cases reported by level I, II, or III trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and dedicated C-section rooms, and the number of outpatient surgical cases projected to be performed in each of the first three operating years of the proposed project, in each ~~licensed~~ facility listed in response to Subparagraphs (c)(1) and (c)(2) of this Rule;
- (5) a detailed description of and documentation to support the assumptions and methodology used in the development of the projections required by this Rule;
- (6) the hours of operation of the facility to be expanded;
- (7) the average reimbursement received per procedure for the 20 surgical procedures most commonly performed in each affected ~~licensed~~ facility during the preceding 12 months and a list of all services and items included in the reimbursement;
- (8) the projected average reimbursement to be received per procedure for the 20 surgical procedures which the applicant projects will be performed most often in the facility to be expanded and a list of all services and items included in the reimbursement; and

(9) identification of providers of pre-operative services and procedures which will not be included in the facility's charge.

(d) An applicant proposing to establish a new single specialty separately licensed ambulatory surgical facility pursuant to the demonstration project in the 2010 State Medical Facilities Plan shall provide:

- (1) the single surgical specialty area in which procedures will be performed in the proposed ambulatory surgical facility;
- (2) a description of the ownership interests of physicians in the proposed ambulatory surgical facility;
- (3) a commitment that the Medicare allowable amount for self pay and Medicaid surgical cases minus all revenue collected from self-pay and Medicaid surgical cases shall be at least seven percent of the total revenue collected for all surgical cases performed in the proposed facility;
- (4) for each of the first three full fiscal years of operation, the projected number of self-pay surgical cases;
- (5) for each of the first three full fiscal years of operation, the projected number of Medicaid surgical cases;
- (6) for each of the first three full fiscal years of operation, the total projected Medicare allowable amount for the self pay surgical cases to be served in the proposed facility, i.e. provide the projected Medicare allowable amount per self-pay surgical case and multiply that amount by the projected number of self pay surgical cases;
- (7) for each of the first three full fiscal years of operation, the total projected Medicare allowable amount for the Medicaid surgical cases to be served in the facility, i.e. provide the projected Medicare allowable amount per Medicaid surgical case and multiply that amount by the projected number of Medicaid surgical cases;
- (8) for each of the first three full fiscal years of operation, the projected revenue to be collected from the projected number of self-pay surgical cases;
- (9) for each of the first three full fiscal years of operation, the projected revenue to be collected from the projected number of Medicaid surgical cases;
- (10) for each of the first three full fiscal years of operation, the projected total revenue to be collected for all surgical cases performed in the proposed facility;
- (11) a commitment to report utilization and payment data for services provided in the proposed ambulatory surgical facility to the statewide data processor, as required by G.S. 131E-214.2;

- (12) a description of the system the proposed ambulatory surgical facility will use to measure and report patient outcomes for the purpose of monitoring the quality of care provided in the facility;
- (13) descriptions of currently available patient outcome measures for the surgical specialty to be provided in the proposed facility, if any exist;
- (14) if patient outcome measures are not currently available for the surgical specialty area, the applicant shall develop its own patient outcome measures to be used for monitoring and reporting the quality of care provided in the proposed facility, and shall provide in its application a description of the measures it developed;
- (15) a description of the system the proposed ambulatory surgical facility will use to enhance communication and ease data collection, e.g. electronic medical records;
- (16) a description of the proposed ambulatory surgical facility's open access policy for physicians, if one is proposed;
- (17) a commitment to provide to the Agency annual reports at the end of each of the first five full years of operation regarding:
 - (A) patient payment data submitted to the statewide data processor as required by G.S. 131E-214.2;
 - (B) patient outcome results for each of the applicant's patient outcome measures;
 - (C) the extent to which the physicians owning the proposed facility maintained their hospital staff privileges and provided Emergency Department coverage, e.g. number of nights each physician is on call at a hospital; and
 - (D) the extent to which the facility is operating in compliance with the representations the applicant made in its application relative to the single specialty ambulatory surgical facility demonstration project in the 2010 State Medical Facilities Plan.

multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless:

- (1) the applicant reasonably demonstrates the need for the number of proposed operating rooms in the facility, which is the subject of this review, facility, which is proposed to be developed or expanded, in the third operating year of the project based on the following formula: $\{[(\text{Number of facility's projected inpatient cases, excluding trauma cases reported by Level I or II trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours}) + (\text{Number of facility's projected outpatient cases times 1.5 hours})] \div 1872 \text{ hours}\}$ minus the facility's total number of existing and approved operating rooms and operating rooms proposed in another pending application, excluding one operating room for Level I or II trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-section operating rooms. The number of rooms needed is determined as follows:
 - (A) in a service area which has more than 10 operating rooms, if the difference is a positive number greater than or equal to 0.5, then the need is the next highest whole number for fractions of 0.5 or greater and the next lowest whole number for fractions less than 0.5; and if the difference is a negative number or a positive number less than 0.5, then the need is zero;
 - (B) in a service area which has 6 to 10 operating rooms, if the difference is a positive number greater than or equal to 0.3, then the need is the next highest whole number for fractions of 0.3 or greater and the next lowest whole number for fractions less than 0.3, and if the difference is a negative number or a positive number less than 0.3, then the need is zero; and
 - (C) in a service area which has five or fewer operating rooms, if the difference is a positive number greater than or equal to 0.2, then the need is the next highest whole number for fractions of 0.2 or greater and the next lowest whole number for fractions less than 0.2; and if the difference is a negative number or a positive number less than 0.2, then the need is zero; or
- (2) the applicant demonstrates conformance of the proposed project to Policy AC-3 in the State

Authority G.S. 131E-177; 131E-183(b).

10A NCAC 14C .2103 PERFORMANCE STANDARDS

- (a) In projecting utilization, the operating rooms shall be considered to be available for use five days per week and 52 weeks a year.
- (b) A proposal to establish a new ambulatory surgical facility, to establish a new campus of an existing facility, to establish a new hospital, to increase the number of operating rooms in an existing facility (excluding dedicated C-section operating rooms), to convert a specialty ambulatory surgical program to a

Medical Facilities Plan titled "Exemption From Plan Provisions for Certain Academic Medical Center Teaching Hospital Projects."

(c) A proposal to establish a new ambulatory surgical facility, to increase the number of operating rooms (excluding dedicated C-section operating rooms) ~~except relocations of existing operating rooms within the same in a service area, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program~~ area shall not be approved unless the applicant reasonably demonstrates the need for the number of proposed operating rooms in addition to the rooms in all of the licensed facilities identified in response to 10A NCAC 14C .2102(b)(2) in the third operating year of the proposed project based on the following formula: $\{[(\text{Number of projected inpatient cases for all the applicant's or related entities' facilities, excluding trauma cases reported by Level I or II trauma centers, cases reported by designated burn intensive care units and cases performed in dedicated open heart and C-section rooms, times 3.0 hours}) \text{ plus } (\text{Number of projected outpatient cases for all the applicant's or related entities' facilities times 1.5 hours})] \text{ divided by } 1872 \text{ hours}\}$ minus the total number of existing and approved operating rooms and operating rooms proposed in another pending application, excluding one operating room for Level I or II trauma centers, one operating room for facilities with designated burn intensive care units, and all dedicated open heart and C-Section operating rooms in all of the applicant's or related entities' licensed facilities in the service area. The number of rooms needed is determined as follows:

- (1) in a service area which has more than 10 operating rooms, if the difference is a positive number greater than or equal to 0.5, then the need is the next highest whole number for fractions of 0.5 or greater and the next lowest whole number for fractions less than 0.5; and if the difference is a negative number or a positive number less than 0.5, then the need is zero;
- (2) in a service area which has 6 to 10 operating rooms, if the difference is a positive number greater than or equal to 0.3, then the need is the next highest whole number for fractions of 0.3 or greater and the next lowest whole number for fractions less than 0.3, and if the difference is a negative number or a positive number less than 0.3, then the need is zero; and
- (3) in a service area which has five or fewer operating rooms, if the difference is a positive number greater than or equal to 0.2, then the need is the next highest whole number for fractions of 0.2 or greater and the next lowest whole number for fractions less than 0.2; and if the difference is a negative number or a positive number less than 0.2, then the need is zero.

(d) An applicant that has one or more existing or approved dedicated C-section operating rooms and is proposing to develop an additional dedicated C-section operating room in the same

facility shall demonstrate that an average of at least 365 C-sections per room were performed in the facility's existing dedicated C-section operating rooms in the previous 12 months and are projected to be performed in the facility's existing, approved and proposed dedicated C-section rooms during the third year of operation following completion of the project.

(e) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently utilized an average of at least 1,872 hours per operating room per year, excluding dedicated open heart and C-Section operating rooms. The hours utilized per operating room shall be calculated as follows: $\{[(\text{Number of projected inpatient cases, excluding open heart and C-sections performed in dedicated rooms, times 3.0 hours}) \text{ plus } (\text{Number of projected outpatient cases times 1.5 hours})] \text{ divided by the number of operating rooms, excluding dedicated open heart and C-Section operating rooms.}$

(f) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall reasonably demonstrate the need for the conversion in the third operating year of the project based on the following formula: $\{[(\text{Total number of projected outpatient cases for all ambulatory surgery programs in the service area times 1.5 hours}) \text{ divided by } 1872 \text{ hours}] \text{ minus the total number of existing, approved and proposed outpatient or ambulatory surgical operating rooms and shared operating rooms in the service area.}$ The need for the conversion is demonstrated if the difference is a positive number greater than or equal to one, after the number is rounded to the next highest number for fractions of 0.50 or greater.

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

Authority G.S. 131E-177; 131E-183(b).

10A NCAC 14C .2104 SUPPORT SERVICES

(a) An applicant proposing to establish a new ambulatory surgical facility, ~~a new campus of an existing facility, or a new hospital increase the number of operating rooms, convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or add a specialty to a specialty ambulatory surgical program~~ shall provide copies of the written policies and procedures demonstrating that that will be used by the proposed facility will have for patient referral, transfer, and follow-up procedures. follow-up.

(b) ~~The applicant~~ An applicant proposing to establish a new ambulatory surgical facility, a new campus of an existing facility, or a new hospital shall provide documentation showing the proximity of the proposed facility to the following services:

- (1) emergency services;
- (2) support services;
- (3) ancillary services; and
- (4) public transportation.

Authority G.S. 131E-177; 131E-183(b).

10A NCAC 14C .2105 STAFFING AND STAFF TRAINING

(a) An applicant proposing to establish a new ambulatory surgical facility, to establish a new campus of an existing facility, to establish a new hospital, to increase the number of operating ~~rooms,~~ rooms in a facility, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall identify, justify and document the availability of the number of current and proposed staff to be utilized in the following ~~areas:~~ areas in the facility to be developed or expanded:

- (1) administration;
- (2) pre-operative;
- (3) post-operative;
- (4) operating room; and
- (5) other.

(b) The applicant shall identify the number of physicians who currently utilize the facility and estimate the number of physicians expected to utilize the facility and the criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel.

(c) The applicant shall provide documentation that physicians with privileges to practice in the facility will be active members in good standing at a general acute care hospital within the ~~ambulatory surgical service area in which the facility is, or will be, located or will have written referral procedures with a physician who is an active member in good standing at a general acute care hospital in the ambulatory surgical service area.~~ documentation of contacts the applicant made with hospitals in the service area in an effort to establish staff privileges.

(d) The applicant shall provide documentation that physicians owning the proposed single specialty demonstration facility will meet Emergency Department coverage responsibilities in at least one hospital within the service area, or documentation of contacts the applicant made with hospitals in the service area in an effort to commit its physicians to assume Emergency Department coverage responsibilities.

Authority G.S. 131E-177; 131E-183(b).

10A NCAC 14C .2106 FACILITY

(a) An applicant proposing to establish a licensed ambulatory surgical facility that will be physically located in a physician's or dentist's office or within a general acute care hospital shall demonstrate that reporting and accounting mechanisms exist and can be used to confirm that the licensed ambulatory surgery facility is a separately identifiable entity physically and administratively, and is financially independent and distinct from other operations of the facility in which it is located.

(b) An applicant proposing to establish a licensed ambulatory surgical facility or a new hospital shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years of completion of the facility.

~~(c) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program~~ All applicants shall document that the physical environment of the facility to be developed or expanded conforms to the requirements of federal, state, and local regulatory bodies.

(d) ~~The~~ An applicant proposing to establish a new ambulatory surgical facility, a new campus of an existing facility or a new hospital shall provide a floor plan of the proposed facility identifying the following areas:

- (1) receiving/registering area;
- (2) waiting area;
- (3) pre-operative area;
- (4) operating room by type;
- (5) recovery area; and
- (6) observation area.

(e) An applicant proposing to expand by converting a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or by adding a specialty to a specialty ambulatory surgical program that does not propose to add physical space to the existing ambulatory surgical facility shall demonstrate the capability of the existing ambulatory surgical program to provide the following for each additional specialty area:

- (1) physicians;
- (2) ancillary services;
- (3) support services;
- (4) medical equipment;
- (5) surgical equipment;
- (6) receiving/registering area;
- (7) clinical support areas;
- (8) medical records;
- (9) waiting area;
- (10) pre-operative area;
- (11) operating rooms by type;
- (12) recovery area; and
- (13) observation area.

Authority G.S. 131E-177; 131E-183(b).

**SECTION .2200 - CRITERIA AND STANDARDS FOR
END-STAGE RENAL DISEASE SERVICES**

10A NCAC 14C .2202 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes to increase dialysis stations in an existing certified facility or relocate stations must provide the following information:

- (1) Utilization rates;
- (2) Mortality rates;
- (3) The number of patients that are home trained and the number of patients on home dialysis;
- (4) The number of transplants performed or referred;
- (5) The number of patients currently on the transplant waiting list;

- (6) Hospital admission rates, by admission diagnosis, i.e., dialysis related versus non-dialysis related;
 - (7) The number of patients with infectious disease, e.g., hepatitis, and the number converted to infectious status during last calendar year.
- (b) An applicant that proposes to develop a new facility, increase the number of dialysis stations in an existing facility, establish a new dialysis station, or relocate existing dialysis stations shall provide the following information requested on the End Stage Renal Disease (ESRD) Treatment application form:
- (1) For new facilities, a letter of intent to sign a written agreement or a signed written agreement with an acute care hospital that specifies the relationship with the dialysis facility and describes the services that the hospital will provide to patients of the dialysis facility. The agreement must comply with 42 C.F.R., Section 405.2100.
 - (2) For new facilities, a letter of intent to sign a written agreement or a written agreement with a transplantation center describing the relationship with the dialysis facility and the specific services that the transplantation center will provide to patients of the dialysis facility. The agreements must include the following:
 - (A) timeframe for initial assessment and evaluation of patients for transplantation,
 - (B) composition of the assessment/evaluation team at the transplant center,
 - (C) method for periodic re-evaluation,
 - (D) criteria by which a patient will be evaluated and periodically re-evaluated for transplantation, and
 - (E) signatures of the duly authorized persons representing the facilities and the agency providing the services.
 - (3) For new or replacement facilities, Documentation documentation of standing service from a power company and back up capabilities, that power and water will be available at the proposed site.
 - (4) Copies of written policies and procedures for back up for electrical service in the event of a power outage.
 - (4)(5) For new facilities, the location of the site on which the services are to be operated. If such site is neither owned by nor under option to the applicant, the applicant must provide a written commitment to pursue acquiring the site if and when the approval is granted, must specify a secondary site on which the services could be operated should acquisition efforts relative to the primary site ultimately fail, and must demonstrate that the primary and secondary sites are available for acquisition.

- ~~(5)~~(6) Documentation that the services will be provided in conformity with applicable laws and regulations pertaining to staffing, fire safety equipment, physical environment, water supply, and other relevant health and safety requirements.
- ~~(6)~~(7) The projected patient origin for the services. All assumptions, including the methodology by which patient origin is projected, must be stated.
- ~~(7)~~(8) For new facilities, documentation that at least 80 percent of the anticipated patient population resides within 30 miles of the proposed facility.
- ~~(8)~~(9) A commitment that the applicant shall admit and provide dialysis services to patients who have no insurance or other source of payment, but for whom payment for dialysis services will be made by another healthcare provider in an amount equal to the Medicare reimbursement rate for such services.

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .2203 PERFORMANCE STANDARDS

- (a) An applicant proposing to establish a new End Stage Renal Disease facility shall document the need for at least 10 stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the facility, with the exception that the performance standard shall be waived for a need in the State Medical Facilities Plan that is based on an adjusted need determination.
- (b) An applicant proposing to increase the number of dialysis stations in an existing End Stage Renal Disease facility or one that was not operational prior to the beginning of the review period but which had been issued a certificate of need shall document the need for the additional stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the additional stations.
- (c) An applicant shall provide all assumptions, including the methodology by which patient utilization is projected.

Authority G.S. 131E-177(1); 131E-183(b).

SECTION .2700 - CRITERIA AND STANDARDS FOR MAGNETIC RESONANCE IMAGING SCANNER

10A NCAC 14C .2701 DEFINITIONS

The following definitions apply to all rules in this Section:

- (1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
- (2) "Capacity of fixed MRI scanner" means 100 percent of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or

- physician delays and no MRI procedures outside the norm. Annual capacity of a fixed MRI scanner is 6,864 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 66 hours per week, 52 weeks per year.
- (3) "Capacity of mobile MRI scanner" means 100 percent of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a mobile MRI scanner is 4,160 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 40 hours per week, 52 weeks per year.
- (4) "Dedicated breast MRI scanner" means an MRI scanner that is configured to perform only breast MRI procedures and is not capable of performing other types of non-breast MRI procedures.
- (5) "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.
- (6) "Extremity MRI scanner" means an MRI scanner that is utilized for the imaging of extremities and is of open design with a field of view no greater than 25 centimeters.
- (7) "Fixed MRI scanner" means an MRI scanner that is not a mobile MRI scanner.
- (8) "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.
- (9) "Magnetic resonance imaging scanner" (MRI Scanner) is defined in G.S. ~~131E-176(14e)~~. 131E-176(14m).
- (10) "Mobile MRI region" means either the eastern part of the State which includes the counties in Health Service Areas IV, V and VI (Eastern Mobile MRI Region), or the western part of the State which includes the counties in Health Service Areas I, II, and III (Western Mobile MRI Region). The counties in each Health Service Area are identified in Appendix A of the State Medical Facilities Plan.
- (11) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved at least weekly to provide services at two or more campuses or physical locations.
- (12) "MRI procedure" means a single discrete MRI study of one patient.
- (13) "MRI service area" means the Magnetic Resonance Imaging Planning Areas, as defined in the applicable State Medical Facilities Plan, except for proposed new mobile MRI scanners for which the service area is a mobile MRI region.
- (14) "MRI study" means one or more scans relative to a single diagnosis or symptom.
- (15) "Multi-position MRI scanner" means an MRI scanner as defined in the State Medical Facilities Plan, pursuant to a special need determination for a demonstration project.
- (16) "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50 percent or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).
- (17) "Temporary MRI scanner" means an MRI scanner that the Certificate of Need Section has approved to be temporarily located in North Carolina at a facility that holds a certificate of need for a new fixed MRI scanner, but which is not operational because the project is not yet complete.
- (18) "Weighted MRI procedures" means MRI procedures which are adjusted to account for the length of time to complete the procedure, based on the following weights: one outpatient MRI procedure without contrast or sedation is valued at 1.0 weighted MRI procedure, one outpatient MRI procedure with contrast or sedation is valued at 1.4 weighted MRI procedures, one inpatient MRI procedure without contrast or sedation is valued at 1.4 weighted MRI procedures; and one inpatient MRI procedure with contrast or sedation is valued at 1.8 weighted MRI procedures.
- (19) "Weighted breast MRI procedures" means MRI procedures which are performed on a dedicated breast MRI scanner and are adjusted to account for the length of time to complete the procedure, based on the following weights: one diagnostic breast MRI procedure is valued at 1.0 weighted MRI procedure (based on an average of 60 minutes per procedure), one MRI-guided breast needle localization MRI procedure is valued at 1.1 weighted MRI procedure (based on an average of 66 minutes per procedure), and one MRI-guided breast biopsy procedure is valued at 1.6 weighted

MRI procedures (based on an average of 96 minutes per procedure).

Authority G.S. 131E-177(1); 131E-183(b).

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Registrar intends to amend the rules cited as 10A NCAC 41H .0701-.0702.

Proposed Effective Date: November 1, 2010

Public Hearing:

Date: July 22, 2010

Time: 2:00 pm – 4:00 p.m.

Location: Cardinal Room, 5605 Six Forks Road, Raleigh, NC 27609

Reason for Proposed Action: All state funding for Vital Records was eliminated by Session Law 2009-451, SB 202 current Operations and Capital Improvements Appropriations Act of 2009, based upon projected receipts from an immediate maximum fee increase. This requires a fee increase if Vital Records is to remain funded properly. Both emergency rule and temporary rule adoptions made this possible on a temporary basis. This permanent rules change makes this change permanent.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Chris G. Hoke, JD, the Rule-Making Coordinator, during the public comment period. Additionally, objections may be made verbally and/or in writing at the public hearing for these rules.

Comments may be submitted to: Chris G. Hoke, JD, Rule-Making Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; phone (919) 715-5006; email chris.hoke@dhhs.nc.gov

Comment period ends: August 30, 2010

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: A copy of the fiscal note can be obtained from the agency.

☒

State

☒

Local

☐

Substantial Economic Impact (≥\$3,000,000)

☐

None

**CHAPTER 41 - HEALTH: EPIDEMIOLOGY
SUBCHAPTER 41H - VITAL RECORDS
SECTION .0700 - FEES AND REFUNDS**

10A NCAC 41H .0701 ROUTINE REQUESTS FOR CERTIFIED COPIES

(a) The fee for searching for a certificate of birth, death, marriage or divorce ~~shall be is fifteen twenty-four~~ dollars ~~(\$15.00), (\$24.00)~~, which ~~shall include~~ includes the cost of a search of the year indicated and if necessary the year immediately prior to and subsequent to the indicated year. This fee also covers issuance of a copy if the record is found. If the record is not located, the fee shall be retained for providing the search.

(b) If expedited service is specifically requested, an additional fee of fifteen dollars (\$15.00), in addition to all shipping and commercial charges, shall be charged in accordance with G.S. 130A-93.1(a)(2).

Authority G.S. 130A-92(a)(7); 130A-93; 130A-93.1.

10A NCAC 41H .0702 RESEARCH REQUESTS

(a) The State Registrar may permit the use of data from vital records for research purposes. The State Registrar shall require the applicant to specify in writing the conditions under which the records or data will be used, stored, and disposed of; the purpose of the research; the research protocol; access limitations; and security precautions.

(b) ~~The State Registrar may determine fees charged for preparing, searching or providing information from, or non-certified copies of the vital records based on the estimated cost of rendering the service. An hourly rate or charge per name searched may be imposed. The fee shall be fifteen of twenty-four~~ dollars ~~(\$15.00) (\$24.00)~~ shall be charged per name searched. If expedited service is specifically requested, an additional fee of fifteen dollars (\$15.00), in addition to all shipping and commercial charges, shall be charged in accordance with G.S. 130A-93.1(a)(2).

(c) Vital records or data provided under this Rule shall be used only for the purposes described in the application.

Authority G.S. 130A-92(a)(7); 130A-93; 130A-93.1.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 02 - BOARD OF ARCHITECTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Architecture intends to adopt the rule cited as

21 NCAC 02 .0109; amend the rules cited as 21 NCAC 02 .0108, .0201, .0204-.0206, .0208-.0209, .0213-.0215, .0301-.0303, .0701, and .0703; and repeal the rules cited as 21 NCAC 02 .0216 and .0219.

Proposed Effective Date: November 1, 2010

Public Hearing:

Date: July 16, 2010

Time: 11:00 a.m.

Location: 127 W. Hargett Street, Suite 304, Raleigh, NC 27601

Reason for Proposed Action:

21 NCAC 02 .0109 – To add definitions to the code.

21 NCAC 02 .0108, .0201, .0204-.0206, .0208-.0209, .0213-.0215, .0301-.0303, .0701, .0703 – To clarify language related to firm practice, update administrative procedures, and update practice and exam procedures.

21 NCAC 02 .0216, .0219 – To remove language no longer necessary due to clarification in other rules.

Procedure by which a person can object to the agency on a proposed rule: Objections may be submitted in writing to Cathe M. Evans, Executive Director, NC Board of Architecture, 127 W. Hargett Street, Suite 304, Raleigh, NC 27601. Additionally, objections may be made in person at the public hearing for these Rules.

Comments may be submitted to: Cathe M. Evans, Executive Director, NC Board of Architecture, 127 W. Hargett Street, Suite 304, Raleigh, NC 27601; fax (919) 733-1272; email cathe@ncbarch.org

Comment period ends: August 30, 2010

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:

- ☐ State
☐ Local
☐ Substantial Economic Impact (≥\$3,000,000)
☒ None

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 02 .0108 FEES

Fees required by the Board, are payable in advance and are set forth below:

Initial Registration Application by Exam Individual

Residents and Non-Residents	\$ 50.00
Nonresidents	\$ 50.00
Corporate Firm	\$ 75.00

Examination — At Cost (See Rule .0301)

Initial Exam Application to take the Architectural Registration Exam

\$ 50.00

~~Re-examination~~ \$25.00

Annual license renewal Individual \$ 50.00

~~Corporate Firm~~ \$100.00

Late renewal ~~Penalty Fee~~ \$ 50.00

Reciprocal registration \$150.00

Individual or Firm Reinstatement (~~application fee plus a prior year's renewal and late fees plus current renewal fee~~) \$250.00

~~Copies of the roster and other~~ Other publications and services provided by the Board are available at cost from the Board office.

Authority G.S. 83A-4; 83A-11.

21 NCAC 02 .0109 DEFINITIONS

In addition to the statutory definitions in G.S. 83A-1, as used in these Rules, the following terms shall have the following meanings:

- (1) "Delinquent" shall be the status of a license registration that has not been renewed in accordance with 21 NCAC 02 .0213(b) for individuals and 21 NCAC 02 .0214(d) for firms.
- (2) "Licensed" shall mean holding a license to practice architecture in the State of North Carolina as defined by G.S. 83A. "Registered" shall have the same meaning as licensed.
- (3) "Fictitious names" A fictitious name is any assumed name, style or designation other than the proper name of the entity using such name. The surname of a person, standing alone or coupled with words that describe the business, is not a fictitious business name. The inclusion of words that suggest additional owners, examples of such are, but not limited to "Company", "& Company", "& Sons", "& Associates", makes the name an assumed or fictitious name. For partnerships, the last name of all partners must be listed or the fictitious name definition applies.
- (4) "Responsible control" shall have the meaning described in Rule .0206(d).
- (5) "Firm" or "Architectural Firm" shall mean any entity approved by the Board and engaged in the practice of architecture.
- (6) "Procurement" shall mean purchasing or pricing of materials to construct a building or structure.
- (7) "Direct Supervision" as used in G.S. 83A shall mean responsible control.

Authority G.S. 83A-6.

SECTION .0200 - PRACTICE OF ARCHITECTURE

21 NCAC 02 .0201 ARCHITECT AND FIRM CONTACT INFORMATION AS ON FILE WITH THE BOARD

~~(a) Every individual licensee, partnership, firm or corporation licensee has the continuing responsibility of keeping the Board currently advised of his his/her or its proper and preferred current mailing address contact information, including but not limited to physical mailing address, email and phone numbers, principle place of business and electronic mail address and the name or names under which he or it is practicing of the firm where he/she is employed.~~

~~(b) Each licensee or firm shall immediately within 30 days notify the Board in writing of any and all changes in ownership, of association association, contact information, electronic email or physical address. Upon the dissolution of a professional relationship, firm, the architect member or members in responsible control of the firm at the time of dissolution thereof shall promptly notify the Board in writing concerning such dissolution, and of the succeeding status and addresses of the individual or firm. This requirement is in addition to registration, listing and renewal requirements set out elsewhere in these Rules.~~

Authority G.S. 83A-5; 83A-6.

21 NCAC 02 .0204 FORMS OF PRACTICE

~~The practice of architecture may be carried on by sole practitioners, partnerships, professional limited liability companies, registered limited liability partnerships or registered architectural corporations, provided all those who practice are duly licensed, and the firm is properly described and identified by its name or title. Whenever the practice of architecture is carried on by a partnership, all partners must be duly licensed in North Carolina.~~

~~(a) The practice of architecture shall be carried out by one of the following types of entities:~~

- ~~(1) sole practitioners,~~
- ~~(2) professional limited liability companies, that shall be established under the provisions of G.S. 57C;~~
- ~~(3) limited liability partnerships, that shall be established under the provisions of G.S. 59-84.2;~~
- ~~(4) professional corporations, that shall be established under the provisions of G.S. 55B.~~

~~(b) All individuals who practice through entities described in Subparagraphs (a)(1) through (a)(4) of this Rule shall be licensed to practice architecture.~~

~~(c) The firm shall be properly described and identified by its name or title.~~

Authority G.S. 83A-4; 83A-6; 83A-8; 57C, 59-84.2, 55B.

21 NCAC 02 .0205 NAME OF FIRM

~~(a) A licensee shall not engage in the practice of architecture under a professional or firm name which is misleading or deceptive in any way as to the legal form of the firm or the~~

~~persons who are partners, officers, members, or shareholders in the firm. The Board shall approve all firm names to be used in this State. Examples of misleading or deceptive firm names include include, but are not limited to, the following:~~

- ~~(1) Use of the plural "architects" in any form when the number of architects in a firm does not warrant such use;~~
- ~~(2) Use of the name of an employee unless that employee is a licensed partner, licensed officer, licensed member or licensed shareholder;~~
- ~~(3) Use of the name of a deceased architect in order to benefit from his reputation, when that architect was not a former partner, officer, member or shareholder in the present firm;~~
- ~~(4) Use of a name which is deceptively similar to that of existing firm name; and~~
- ~~(5) Use of a fictitious name by a sole proprietor or partnership or limited liability partnership proprietor.~~

~~(b) Names of all architectural firms shall be approved in writing by the Board before adopted or used by such firm. Provided, however, that this Rule shall not be construed to require any firm to seek approval of, or to change, any name adopted in conformity with Board rules in effect at the date of such adoption other than a rule that is a violation of Subparagraph (a)(1) of this Rule. Failure of the firm to register a fictitious name shall be prima facie evidence of the name being misleading or deceptive.~~

~~(c) Only firms established pursuant to 21 NCAC 02 .0214 (professional corporations), 21 NCAC 02 .0215 (qualified foreign corporations), or 21 NCAC 02 .0218 (professional limited liability companies) may engage in the practice of architecture under a fictitious name; provided, however, a registered firm in good standing having obtained written approval of its fictitious name prior to the adoption of this Rule and having continuously used such name may continue to use the previously approved name only for so long as:~~

- ~~(1) said name complies with Paragraphs (a) and (b) of this Rule;~~
- ~~(2) the firm's use of said name is continuous; and~~
- ~~(3) the firm complies with any applicable statutes pertaining to the registration of fictitious names, including but not limited to G.S. 66, Article 14.~~

Authority G.S. 55B-5; 83A-6; 83A-9; 83A-12.

21 NCAC 02 .0206 REQUIREMENT FOR AND USE OF PROFESSIONAL SEAL

~~(a) As more fully set out in this Rule, an architect must seal his his/her work whether or not the work is for an exempt project project as defined in G.S. 83A-13. An architect shall not sign nor seal drawings, specifications, reports or other professional work which were not prepared by the architect or under his his/her direct supervision responsible control. Documents shall be sealed as follows:~~

- (1) ~~Provided, however, that the~~ An architect may sign or seal those portions of the professional work that:
 - (A) ~~were prepared by or under the direct supervision responsible control of persons who are registered under the architecture registration laws of this jurisdiction architects in this state if the architect has reviewed in whole or in part such portions and has either coordinated their preparation or integrated them into his or her work; and~~
 - (B) are not required by law to be prepared by or under the responsible control of an architect if the architect has reviewed and adopted in whole or in part such portions and has integrated them into his or her work.
 - (2) Individual Seal Design. Every licensed architect shall have an individual seal which shall be composed of two concentric circles with outer and inner circle diameters of approximately 1.5 inches and 1 inch respectively. The architect's name and primary place of business shall be between the inner and outer circles. The words "Registered Architect, North Carolina" shall be along the inside perimeter of the inner circle. The architect's North Carolina registration number shall be in the center of the inner circle. The original signature of the individual named on the seal and date is a required part of an individual seal and a seal image lacking said signature and date is incomplete and shall not be considered a "seal" for purposes of these Rules. (See facsimile on Board web site.)
 - (3) ~~Corporate Firm~~ Seal Design. Every ~~corporation firm which shall have obtained from the Board a certificate for corporate practice~~ shall have a corporate firm seal, which shall be composed of two concentric circles with outer and inner circle diameters of approximately 1.5 inches and 1 inch respectively. The Architectural ~~Corporation's~~ Firm's approved North Carolina name and place of business shall be between the inner and outer circles.
 - (A) ~~For a Professional Corporation the~~ The words "Registered Architectural Corporation, North Carolina" shall be along the inside perimeter of the inner circle. The ~~corporation's~~ firm's North Carolina registration number shall be in the center of the inner circle. (See facsimile on Board web site.)
 - (B) ~~For a Professional Limited Liability Company the words "Registered Architectural Company" shall be~~
- along the inside perimeter of the inner circle. The firm's North Carolina registration number shall be in the center of the inner circle. (See facsimile on the Board web site.)
- (C) ~~For a Limited Liability Partnership the words "Registered Limited Liability Partnership" shall be along the inside perimeter of the inner circle. The firm's North Carolina registration number shall be in the center of the inner circle. (See facsimile on the Board web site.)~~
 - (D) ~~For a Partnership the words "Registered Partnership" shall be along the inside perimeter of the inner circle. The firm's North Carolina registration number shall be in the center of the inner circle. (See facsimile on the Board web site.)~~
 - (E) ~~A sole proprietorship shall not be required to have a firm seal and shall seal all work with the individual seal as set forth in Subparagraph (a)(2) of this Rule.~~
- (4) Seal Types. The seal required for use on ~~opaque~~ original technical submissions not intended for duplication shall be of a type which will produce an impression facsimile of the seal, or a rubber stamp which will produce an ink facsimile of the seal. The seal required for use on ~~transparent~~ original technical submissions intended for duplication shall be of a type which will produce an ink facsimile of the seal such as a rubber stamp, or a substantially similar electronic or digital representation of the design. The use of pre-printed documents bearing a pre-printed facsimile of the signed and dated seal is prohibited. ~~Technical submissions shall be defined to mean plans, drawings, specifications, studies, addenda and other technical reports prepared for use in this state in the course of practicing architecture.~~
 - (5) Individual Seal, Signature and Date Required. Architects shall affix their seal on one original of all their drawings and sets of specifications prepared by them for use in this State as follows:
 - (A) on the cover sheet of each design and on each drawing; drawing prepared by the architect for said design;
 - (B) on the index page identifying each set of specifications; and
 - (C) on the index page of all other technical submissions.

The original signature of the individual named on the seal shall be considered part of an individual seal and shall appear across the face

of each original seal imprint along with the date of affixation. For the purposes of this Rule, the term "for use in this State" means drawings and sets of specifications prepared for bidding, procurement, permitting or for construction. For purposes of this Rule, "original" means the version of drawings and sets of specifications from which all lawful copies can be made.

(6) ~~Presentation—Documents.~~ Presentation documents (renderings, drawings used to communicate conceptual information only) ~~are~~ shall not ~~required to~~ be sealed or signed.

(7) Technical submissions shall refer to plans, drawings, specifications, studies, addenda and other technical reports prepared for use in this state in the course of practicing architecture.

(7)(8) ~~Incomplete—Documents.~~ Documents considered incomplete by the architect may be released for interim review without the architect's seal or signature affixed, but shall be dated, bear the architect's name and be conspicuously marked to clearly indicate the documents are for interim review and not intended for bidding, procurement, permit, or construction purposes.

(8)(9) Sheets or Pages Prepared By Licensed Professional Consultants. Those sheets or pages prepared by licensed professional consultants (~~such as~~, for example, structural, mechanical or electrical engineers) retained by the architect shall bear the seal and registration number of the consultant responsible therefore and shall not be sealed by the architect.

(9)(10) Original Signature. The use of signature reproductions such as rubber ~~stamps or stamps~~, computer generated or other facsimiles shall not be permitted in lieu of actual handwritten and hand dated signatures; provided, however, a digital signature as defined in Paragraph ~~(f)~~ (e) of this Rule may be used in lieu of a handwritten ~~signature~~ signature and handwritten date.

(10)(11) ~~Security of Seal.~~ Authorized use of the prescribed seal is an individual act whereby the architect must personally sign over the imprint of the seal. The architect is responsible for security of the seal when not in use.

(11)(12) Use of ~~Corporate Firm~~ Seal. The use of the corporate firm seal does not replace the statutory requirement for an architect's individual seal as required in Paragraph (d). The corporate firm seal must be affixed in addition to the individual seal on the cover sheet and each page of the table of contents of specifications and drawings sheet.

(b) ~~Standard Design Documents.~~ Standard design documents prepared by architects who are registered in this state or in their

state of origin may be sealed by a succeeding licensed architect registered in North Carolina provided:

- (1) the seal of the original architect appears on the documents to authenticate authorship;
- (2) the words "standard design document" be placed on each sheet of the documents by the original architect;
- (3) the succeeding North Carolina architect clearly identifies all modifications to the standard design documents;
- (4) the succeeding North Carolina architect assumes responsibility for the adequacy of the design for the specific application in North Carolina and for the design conforming with applicable building codes; and
- (5) the succeeding North Carolina architect affixes ~~his~~ his/her seal to the standard design documents and a statement substantially as follows: "These documents have been properly examined by the undersigned. I have determined that they comply with existing local North Carolina codes, and I assume responsibility for the adequacy of the design for the specific application in North Carolina."

(c) ~~Record Drawings—~~ Post Construction record drawings prepared by an architect, but based upon representations of contractors, are not plans that are for "bidding, procurement, permit or construction purposes" and therefore ~~need~~ shall not be sealed by the architect as long as the documents bear the name of the architect and include language stating "these drawings are based in part upon the representations of others and are not for bidding, procurement, permit or construction purposes."

(d) Responsible Control. No architect shall affix ~~his~~ his/her seal and signature to contract documents developed by others not under his responsible control. Responsible control ~~includes:~~ includes that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by an architect applying the required professional standard of care, including but not limited to:

- (1) Dissemination of programmatic requirements;
- (2) Ongoing coordination and correlation of services with other aspects of the total design of the project;
- (3) Verification with consultant that owner's requirements are being met;
- (4) Authority over the services of those who assisted in the preparation of the documents;
- (5) Assumption of responsibility for the services; ~~and~~
- (6) Incorporation of services and technical submissions into design documents to be issued for permitting ~~purposes:~~ purposes:
- (7) Incorporation and integration of information from manufacturers, suppliers, installers, the architect's consultants, owners, contractors, or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect's technical

submissions if the architect has coordinated and reviewed such information.

(e) For purposes of this Rule the term "Signature" shall mean handwritten or digital as follows:

- (1) A handwritten message identification containing the name of the person who applied it; or
- (2) A digital signature that is an electronic authentication process attached to or logically associated with an electronic document. The digital signature must be:
 - (A) Unique to the person using it;
 - (B) Capable of verification;
 - (C) Under the sole control of the person using it; and
 - (D) Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.
- (3) A digital signature that uses a process approved by the Board shall be presumed to meet the criteria set forth in Parts (e)(2)(A) through (e)(2)(D) of this Rule.
- (4) The architect is responsible for the security of the digital signature.

Authority G.S. 83A-6; 83A-10; 83A-12.

21 NCAC 02 .0208 DISHONEST CONDUCT

(a) Deception. An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his application for registration renewal.

(b) Contributions. An architect shall not pay or offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure ~~work~~, work. Gifts of nominal value (including for example, reasonable entertainment and hospitality) and exclusive of securing salaried positions through employment agencies. agencies are permitted.

(c) Registration of Others. An architect shall not assist the application for registration of a person known by the architect to be unqualified with respect to education, training, experience, or character.

(d) Knowledge of Violation. An architect possessing knowledge of a violation of these Rules by another architect shall report such a violation to the Board.

Authority G.S. 14-353; 83A-6; 83A-14; 83A-15.

21 NCAC 02 .0209 UNPROFESSIONAL CONDUCT

In addition to those grounds as stated in G.S. 83A-15(3) the following acts or omissions, among others, may be deemed to be "unprofessional conduct" and to be cause for the levy of a civil penalty or for denial, suspension, or revocation of a license or certificate of registration to practice architecture:

- (1) Compliance With Laws. It shall be deemed unprofessional conduct for an architect, in the conduct of his or her professional practice, to knowingly violate any state or federal criminal

law. A criminal conviction shall be deemed prima facie evidence of knowingly violating the law.

- (2) Compliance With Foreign Registration. It shall be deemed unprofessional conduct for an architect to knowingly violate the laws governing the practice of architecture or the rules promulgated by any other architectural licensing board in any United States jurisdiction. A finding by a foreign architectural registration board that an architect has violated a law or rule governing the practice of architecture shall be deemed prima facie evidence of knowingly violating the law or rule.

- (3) Product Specification. It shall be deemed unprofessional conduct for an architect to solicit or accept financial or other valuable consideration from material or equipment suppliers for specifying their products.

- (4) Advertising. It shall be deemed unprofessional conduct for an architect to engage in any false, deceptive, fraudulent, or misleading advertising.

- (5) False Statements. It shall be deemed unprofessional conduct for an architect to knowingly make false statements about the professional work of; or to maliciously injure the prospects, practice, or employment position of others active in the design and construction of the physical environment.

- (6) ~~Evasion.~~ Evasion shall be as follows:

(a) It shall be deemed unprofessional conduct for an architect, through employment by ~~building contractors,~~ contractors (whether or not the contractors are licensed under G.S. 89), or by another ~~individual or~~ entity not holding an individual or ~~corporate~~ firm certificate registration from the Board, to enable the employer to offer or perform architectural services, except as provided in G.S. 83A-13. In design/build arrangements, the architect shall not be an employee of a person or firm ~~not registered or~~ licensed holding a registration to practice architecture in North Carolina.

(b) It shall be deemed unprofessional conduct for an architect to furnish limited services in such manner as to enable owners, draftsmen, or others to evade the public health and safety requirements of Chapter 83A, G.S. 133-2, G.S. 153A-357, or G.S. 160A-417.

(c) When building plans are begun or contracted for by persons not licensed

- and qualified, it shall be deemed unprofessional conduct for an architect to take over, review, revise, or sign or seal such drawings or revisions thereof for such persons, or do any act to enable either such persons or the project owners, directly or indirectly, to evade the requirements of Chapter 83A, G.S. 133-2, G.S. 153A-357, or G.S. 160A-417.
- (7) Branch Office. It shall be deemed unprofessional conduct for an individual architect or firm to maintain or represent by sign, listing, or other manner that ~~he~~ he/she maintains an architectural office or branch office in North Carolina unless such office is ~~continuously staffed with a registered architect in charge.~~ has a registered resident architect in North Carolina whose principle place of business is in that office. ~~Provided, however, that this~~ This Rule does not apply to on-site project offices during ~~construction.~~ construction of a project.
- (8) Misrepresentation Regarding Prior Experience. An architect shall accurately represent to a prospective or existing client or employer ~~his~~ his/her qualifications and the scope of ~~his~~ his/her responsibility in connection with work for which he is claiming credit. Misrepresentation shall be as follows:
- (a) It shall be the responsibility of each ~~registered~~ architect to state their prior professional experience ~~of the architect~~ and the firm the architect is representing ~~in~~ while presenting qualifications to prospective clients, both public and private. If an architect uses visual representations of prior projects or experience, all architects-of-record must be clearly identified. Architect-of-record means persons or entities whose seals appear on plans, specifications and/or contract documents.
- (b) An architect who has been an employee of another architectural practice may not claim credit for projects contracted for in the name of the previous employer. The architect shall indicate, next to the listing for each project, that individual experience gained in connection with the project was acquired as an employee, and identify the previous architectural firm. The architect shall also describe the nature and extent of his/her participation in the project.
- (c) An architect who was formerly a principal in a firm may make additional claims provided he/she discloses the nature of ownership in the previous architectural firm (e.g. stockholder or junior partner) and identifies with specificity his/her responsibilities for that project.
- (d) An architect who presents a project that has received awards or public recognition must comply with the requirements in Subparagraph (8) of this Rule with regard to project presentation to the public and prospective clients.
- (e) Projects which remain unconstructed and which are listed as credits shall be listed as "unbuilt" or a similar designation.
- (9) Fee Bidding on Public Projects. An architect shall not knowingly cooperate in a violation of any provisions of G.S. 143-64.31.
- (10) ~~Cooperation with Board.~~ An architect shall cooperate with the Board in connection with any inquiry it shall make. Cooperation includes but is not limited to responding in a timely manner to all inquiries of the Board or ~~its representative of the Board and claiming Board correspondence from the U.S. Postal Service.~~ which is mailed in accordance with 21 NCAC 02 .0201.
- (11) Copyright Infringement. It shall be deemed unprofessional conduct for an architect to be found by a court to have infringed upon the copyrighted works of other architects or design professionals.

Authority G.S. 83A-6; 83A-14; 83A-15.

21 NCAC 02 .0213 INDIVIDUAL LICENSES

(a) Renewal. ~~Licenses~~ License registration must be renewed on or before ~~the first day of July in June 30th~~ each year. No less than 30 days prior to the renewal date, the Board shall send a notice of renewal application shall be mailed to each individual licensee. The licensee shall complete the current license renewal documentation required form provided by the Board. ~~Board, including continuing education credit earned.~~ The licensee shall submit to the Board the completed ~~form for license renewal,~~ renewal documentation, along with the annual license renewal ~~fee shall be forwarded to the Board.~~ fee. The Board shall not accept incomplete renewal documentation. ~~If the application form is incomplete or the annual renewal fee is not paid, the application for renewal shall not be accepted.~~ Also, if ~~If~~ the accompanying draft or check in the amount of the renewal fee is dishonored by the architect's drawee bank for any reason, the Board shall suspend the license until the renewal fees and check charges are paid. ~~annual license renewal shall be deemed to be not renewed.~~ Once ~~When~~ the annual renewal has been completed according to the provisions of G.S. 83A-11, as well as

Section .0900 of these Rules, the Executive Director shall ~~issue to the licensee a current license~~ approve renewal of the license ~~for the current license for the ensuing year.~~ Renewal fees are non-refundable.

(b) Late Renewal and Reinstatement. If the Board has not received the annual renewal fee and completed ~~application~~ renewal documentation ~~on or before July 1st, on or before June 30th each year,~~ the license shall expire and be ~~deemed~~ delinquent. The license may be renewed at any time within one ~~year, year of being deemed delinquent,~~ upon the return of the completed ~~application,~~ renewal documentation, the annual renewal fee and the late renewal ~~penalty fee~~ and demonstration of compliance with Section .0900 of these Rules. After one year from the date of ~~expiration for non-payment of the annual renewal fee~~ delinquency the license shall be deemed automatically revoked. Reinstatement shall occur according to the directives of G.S. 83A-11 and Section .0900 of these Rules.

Authority G.S. 83A-6; 83A-11.

21 NCAC 02 .0214 FIRM PRACTICE OF ARCHITECTURE

(a) ~~Application Forms.~~ Prior to offering and rendering architectural services as set forth in G.S. 83A and 21 NCAC 02 .0204(a), all firms must submit an application for firm registration and be granted registration by the Board. Application for a ~~corporate firm~~ certificate of registration for the to practice of architecture within the State of North Carolina shall be made upon forms provided by the ~~Board.~~ Board and include the required application fee. ~~Completed applications must be accompanied by the corporate application fee.~~ Certificates for ~~corporate firm~~ practice may be issued only under the provisions of the ~~Professional Corporation Act,~~ G.S. 55B, except as provided in Subsection (b) of this ~~Rule.~~ Rule, G.S. 57C, and G.S. 59-84.2.

(b) Architectural Corporations Under G.S. 55, the Business Corporation Act. Applications for certificate of registration as exempt from the Professional Corporation Act under the provisions of G.S. 55B-15 shall be made upon forms provided by the Board. Completed applications must be accompanied by the corporate application fee. To be eligible as an exempt corporation under the provisions of G.S. 55B-15, the following conditions must exist:

- (1) The corporation must have been incorporated prior to June 5, 1969 as a business corporation;
- (2) Prior to and since June 5, 1969, the corporation must have been a bona fide architectural or architectural-engineering firm with services limited to the practice of architecture or architecture-engineering and such services as may be ancillary thereto within the State of North Carolina; and
- (3) The corporation must have applied to be an exempt corporation before October 1, 1979.

(c) Renewal of Certificate. ~~The renewal of corporate certificates of registration shall follow the same requirements as set out in Rule .0213 of this Section for individual licensees except that the corporate renewal shall expire on December 31st of each year.~~ Firm registration must be renewed on or before

December 31st each year. If the Board has not received the annual renewal fee and completed application on or before December 31st each year, the firm license shall expire and be delinquent. No less than 30 days prior to the renewal date, the Board shall send a notice of renewal to each registered firm. The firm must designate an officer to complete the renewal documentation required by the Board. The Board shall not accept incomplete renewal documentation. Renewal documentation must be accompanied by the renewal fee. If the accompanying draft or check in the amount of the renewal fee is dishonored by the firm's drawee bank for any reason, the Board shall suspend the firm registration until the renewal fees and returned check charges are paid. When the annual renewal has been complete according to the provision of G.S. 83A-11, the Executive Director shall approve renewal for the firm registration for the current renewal year. Renewal fees are non-refundable.

(d) Failure to Renew and Reinstatement. ~~If the corporation fails to renew its corporate certificate of registration, it shall be subject to the same requirements for its failure to renew and reinstatement as apply to individual licensees under Rule .0213 of this Section.~~ Within one year of the expiration the firm license may be renewed at any time, upon the return of the completed renewal documents, the annual renewal fee and the late renewal fees. After one year from the date of expiration for non-payment of the annual renewal fee the license shall be automatically revoked. The Board may reinstate the firms' certificate of registration, as allowed by G.S. 83A-11.

(e) Seal. Each registered corporation shall adopt a seal pursuant to ~~21 NCAC 2 .0206(b).~~ 21 NCAC 02 .0206(a)(3).

(f) Approval of Name. In addition to the requirements and limitations of ~~Chapter 55 and 55B of the General Statutes, G.S. 55 and 55B,~~ the ~~corporate firm~~ name used by an architectural corporation shall conform with Rule .0205 and be approved by the Board before being used. ~~Provided, however, that this~~ This Rule shall not prohibit the continued use of any corporate name duly adopted in conformity with the General Statutes of North Carolina and Board Rules in effect at the date of such adoption.

Authority G.S. 55B5; 55-B10; 55B-15; 83A-6; 83A-8.

21 NCAC 02 .0215 OUT OF STATE FIRMS

(a) Incorporation in Other States. Architectural ~~corporations~~ firms ~~of from~~ other states may be granted ~~corporate firm~~ certificates of registration for practice in this State ~~on the upon~~ receipt by the Board of a completed application, ~~fees,~~ the submission of a certified copy of their ~~corporate firm~~ charter, or other corresponding documents, amended as may be necessary to insure full compliance with all requirements of Chapter 55B, the Professional Corporation Act of the State of North Carolina, and the payment of the ~~corporate firm~~ application fee. In addition to the other requirements as set out in G.S. 83A-8, foreign ~~corporations~~ firms must, prior to registration, receive from the Secretary of State of North Carolina a certificate of authority to do business within the state. A certificate for filing for a certificate of authority must be obtained by the Board prior to submitting application to the Secretary of State. The registration requirements for foreign ~~corporations~~ firms ~~cannot~~ shall not be avoided by practice in North Carolina through an individual licensee.

(b) Designated Individuals. Foreign Corporations entities shall may be permitted to practice architecture within the State of North Carolina provided that it complies with G.S. 55B. If a foreign entity offers both architectural and engineering services, then the it must comply with requirements set forth in G.S. 89C. A foreign entity must have at least one officer, director and shareholder licensed as an individual in this state. two-thirds Two-thirds of the issued and outstanding shares of the foreign corporations are must be owned by licensed architects or engineers who are licensed to practice their profession in a jurisdiction of the United States. However, the corporation firm must designate at least one architect who is licensed in the State of North Carolina to be in responsible charge for the corporate firm practice of architecture within the State of North Carolina.

(c) Partnerships. An out of state architectural partnership may be permitted to practice architecture, if every partner in the firm is licensed as an individual in this state under Rule .0213 and the partnership complies with Paragraph (f) this Rule.

(d) Limited Liability Companies. An out of state Limited Liability Company may be permitted to practice architecture, if the Limited Liability Company complies with G.S. 57C and at least one member and one owner are licensed as in individuals under Rule .0213 and comply with Paragraph (a) of this Rule.

(e) Limited Liability Partnerships. An out of state Limited Liability Partnership may be permitted to practice architecture, if the Limited Liability Partnership complies with G.S. 59, and at least one partner is licensed as an individual under Rule .0213 and complies with Paragraph (f) of this Rule.

(f) Application Forms. Each partnership or limited liability partnership shall submit an application for a partnership certificate of registration for the practice of architecture within the State of North Carolina upon the forms provided by the Board. Each partnership or limited liability partnership shall also submit a non-refundable application fee.

(g) Failure to Renew and Reinstatement. If the Board has not received the annual firm renewal fee and completed application on or before December 31st each year the firm registration shall expire and be deemed delinquent. The firm registration may be renewed at any time within one year, upon the return of the completed application, the annual renewal fee and the late renewal fees. After one year from the date of expiration for non-payment of the annual renewal fee, the license shall be automatically revoked. The Board may reinstate the firm's certificate of registration, as allowed by G.S. 83A-11.

Authority G.S. 55B-6; 83A-6; 83A-8.

21 NCAC 02 .0216 ANNUAL LISTING OF PARTNERSHIP

(a) By December 31 of each year, each partnership or registered limited liability partnership engaged in the practice of architecture in North Carolina shall submit a list of all resident and non-resident partners of the partnership.

(b) One annual listing by a representative of the partnership shall satisfy the requirements of Paragraph (a) of this Rule for all partners of the firm; however, each partner shall remain responsible for compliance with the rules.

~~(e) Changes in the information required by Paragraph (a) of this Rule shall be filed with the Board office within 30 days after the change occurs.~~

Authority G.S. 83A-6; 83A-9.

21 NCAC 02 .0219 REGISTERED LIMITED LIABILITY PARTNERSHIPS

~~Architects may practice in this state through duly registered limited liability partnerships only as provided under G.S. 59-84.2 and G.S. 59-84.3. Any registered limited liability partnership that offers to practice or practices architecture in this state must comply with the same requirements applicable to partnerships under Rules .0201, .0202, .0204, .0205, and .0216 of this Chapter.~~

Authority G.S. 83A-6; 59-84.2; 59-84.3.

SECTION .0300 - EXAMINATION PROCEDURES

21 NCAC 02 .0301 APPLICATION FOR REGISTRATION BY EXAM

~~(a) All persons desiring to submit an application applications for written examination to take the Architectural Registration Exam (ARE) must shall complete an the application for licensure by exam and submit the non-refundable application fee. fee as established in Rule .0108. All new applications and supporting documents for the Architectural Registration Examination (ARE) must be on file in the office of the Board not later than two months prior to the date of initial examination in order for the applicant's eligibility to be determined and in order that the applicant may receive proper instructions to prepare for the examination. If an application is in proper form and the applicant is otherwise qualified by statute and the rules of the Board to sit for the examination, the Board shall send notice of ARE eligibility will be mailed to the applicant, with detailed information as to the time, place and other requirements of the examination. applicant.~~

~~(b) The fees for examination, or parts thereof, will shall be established by the Board in order that all costs for examination materials are recovered. National Council of Architecture Registration Boards. Fees will be published in a separate schedule and Fee information will be made available to all applicants for examination. examination on the Board web site and may be obtained from the National Council of Architecture Registration Boards. A non-refundable application fee as established in Rule .0108 of this Chapter must be submitted with each first-time application in addition to the examination fee.~~

Authority G.S. 83A-4; 83A-6; 83A-7.

21 NCAC 02 .0302 EXAMINATION

(a) Licensure Examination. All applicants for architectural registration in North Carolina by examination must shall pass the Architectural Registration Examination (ARE), prepared by the National Council of Architectural Registration Boards (NCARB). Provided, applicants who have never been registered in any state or territory NCARB recognized jurisdiction may transfer credits for portions of the examination previously passed

in another state jurisdiction if at the time of taking initial approval to take the exam elsewhere in said jurisdiction they otherwise qualified for taking the exam under the rules in this Chapter.

(1) ~~Description. The nature of the examination is to place the candidate in areas relating to actual architectural situations whereby his abilities to exercise competent value judgments will be tested and evaluated.~~

(2) ~~Qualifications. The prequalifications qualifications necessary for an applicant's admission eligibility to take the Architectural Registration examination (ARE) ARE are as follows:~~

~~(A)(1)~~ be of good moral character as defined in G.S. 83A-1(5);

~~(B)(2)~~ be at least 18 years of age;

~~(C)(3)~~ the professional education qualification is the NAAB (National Architectural Accrediting Board) accredited professional degree in architecture;

~~(D)(4)~~ all applicants who apply for architectural registration by exam shall be required to follow the Intern Development Program (IDP) through the National Council of Architectural Registration Boards NCARB or an equivalent program approved by the North Carolina Board of Architecture in order to satisfy the requirements of this Section.

(5) The Board, in its discretion, may grant eligibility to take the exam, to those individuals who have obtained the required NAAB accredited degree, have enrolled in the NCARB IDP and have had verified by NCARB at least 2000 training units of the IDP as approved by NCARB. Upon successful completion of all sections of the ARE, fulfillment of the practical training requirement and fulfillment of all remaining IDP requirements an individual may submit the application and fee for licensure by exam and may then be granted a license to practice architecture.

(b) Retention of Credit. credit for purposes of licensure by examination in North Carolina.

(1) Passing grades scores received after July 1, 2006 on any part of the ARE shall remain valid for a period of time established by the exam provider, NCARB.

(2) As of July 1, 2011, passing scores received on any part of the ARE prior to July 1, 1996 shall be invalid.

(3) As of July 1, 2014, passing scores received on any part of the ARE after July 1, 1996 and prior to July 1, 2006 shall be invalid.

(c) ~~Practical Training.~~ Practical training means practical experience and diversified training as defined by the ~~Intern Development Program (IDP) IDP~~ through the National Council of Architectural Registration Boards NCARB. However, the Board reserves the right to judge each case on its own merits.

(d) Personal interview. During the application process, the applicant may be interviewed by the Board members. The purpose of the interview is to augment the evidence submitted in an application with regard to ~~education and experience.~~ qualifications required in Subparagraph (a)(1) of this Rule.

(e) ~~Grading.~~ The ARE shall be graded in accordance with the methods and procedures recommended by the NCARB. An exam candidate shall receive a passing grade in each division of the Architectural Registration Exam.

(1) ~~An applicant must receive a passing grade in each division. Grades from the individual divisions shall not be averaged. A passing grade for any division on any examination taken after July 1, 1996 and before January 1, 2006, shall be valid only for five years prior to July 1, 1996.~~

(2) ~~Each candidate shall be assigned a number that will be unique for each candidate.~~

(f) A person currently employed under the responsible control of an architect, who holds a first Professional Degree from a NAAB accredited program, and who is enrolled in and maintains in good standing or has successfully completed a National Council of Architectural Registration Boards Record in the Intern Development Program (IDP) may use the title "Architectural Intern" or "Intern Architect" in conjunction with ~~his his/her~~ current employment.

Authority G.S. 83A-1; 83A-6; 83A-7.

21 NCAC 02 .0303 LICENSURE BY RECIPROCITY

(a) ~~Registration by "Blue Cover."~~ The only means of individual reciprocity recognized by the Board is for an An individual to ~~who hold holds~~ a current license in good standing from ~~another state a~~ National Council of Architecture Registration Boards (NCARB) recognized jurisdiction and a Certified Council Certificate (also known as "Blue Cover") issued by the ~~National Council of Architectural Registration Boards (NCARB) NCARB~~ or comply with the requirements of Paragraph (b) of this Rule. may qualify for licensure by reciprocity. Upon receipt of a ~~verified application~~ certified record from NCARB and the ~~payment of the Board individual license application for licensure by reciprocity and fee,~~ the Board may issue a license to an applicant ~~without written examination~~ as provided in G.S. 83A-7(b). Revocation of the ~~"Blue Cover"~~ certificate by NCARB shall automatically ~~terminate~~ suspend the architect's license to practice in North Carolina until such time as the ~~"Blue Cover"~~ certificate is reinstated by NCARB.

(b) ~~Registration other than "Blue Cover."~~ Licensure by Direct Reciprocity with another NCARB recognized jurisdiction. The Board may grant a reciprocal ~~certificate~~ license to an individual ~~who does not qualify for a "Blue Cover" but who submits an a~~

~~non-certified~~ NCARB "~~Buff Cover~~" record (also known as the "~~Buff Cover~~") or other verified evidence that ~~he~~ he/she meets the following requirements:

- (1) the applicant has been continuously licensed in good standing in another jurisdiction; and
- (2) the applicant otherwise met the requirements for ~~the "Blue Cover"~~ a certified NCARB record or North Carolina ~~registration~~ license in effect at the time of ~~his~~ his/her original ~~registration~~ licensure as an architect; and
- (3) ~~the applicant agrees to Board may, in its discretion request an interview with the Board or a designee applicant to satisfy the Board Board, or its designee that he the applicant has had sufficient recent architectural practice experience to be able to competently practice architecture in this state.~~

Authority G.S. 83A-6; 83A-7.

SECTION .0700 - ADMINISTRATIVE HEARINGS: DECISIONS: RELATED RIGHTS

21 NCAC 02 .0701 CONTINUANCES FAILURE TO APPEAR

(a) ~~The presiding officer may grant continuances~~ Continuances and adjournments ~~will be granted~~ only in compelling circumstances.

(b) Should a party fail to appear at a hearing or fail to appear following the granting of a continuance adjournment, the hearing will be conducted in the party's absence.

~~(c) If a hearing is conducted and a decision is reached in an administrative hearing in the absence of a party, that party may file a written petition with the Board for a reopening of the case.~~

~~(d) Petitions for reopening a case will not be granted except when the petitioner can show that the reasons for his failure to appear were justifiable and unavoidable and that fairness requires reopening the case. Such petitions, however, will have no effect on the running of the 30-day period for seeking judicial review, which starts from the day the party is served with the final decision.~~

Authority G.S. 83A-6; 150B-11; 150B-38; 150B-40.

21 NCAC 02 .0703 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the Board, shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Board shall issue the requested subpoenas within five days of receipt of the request.

(b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of one of the members of the Board or the Board's Secretary; and a "return of service." The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.

(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.

(e) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(f) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.

(g) The party who requested the subpoena, in such time as may be granted by the ~~Board~~, presiding officer, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.

(h) After receipt of the objection and response thereto, if any, the ~~Board~~ presiding officer shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, 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.

(i) Promptly after the close of such hearing, a majority of the Board members hearing the contested case will 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.

Authority G.S. 83A-6; 150B-11; 150B-38; 150B-39.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on May 20, 2010.

REGISTER CITATION TO THE NOTICE OF TEXT

SOCIAL SERVICES COMMISSION

<u>Responsibilities of the Governing Body</u>	10A	NCAC	70F	.0202*	24:14 NCR
<u>Finances, Fees and Insurance</u>	10A	NCAC	70F	.0203*	24:14 NCR
<u>Staff</u>	10A	NCAC	70F	.0207*	24:14 NCR
<u>Personnel</u>	10A	NCAC	70G	.0501*	24:14 NCR
<u>Personnel</u>	10A	NCAC	70H	.0401*	24:14 NCR
<u>Governance</u>	10A	NCAC	70I	.0301*	24:16 NCR
<u>Responsibilities of the Governing Body</u>	10A	NCAC	70I	.0302*	24:14 NCR
<u>Personnel Qualifications</u>	10A	NCAC	70I	.0404*	24:14 NCR
<u>Personnel Positions</u>	10A	NCAC	70I	.0405*	24:14 NCR

LABOR, DEPARTMENT OF

<u>Steel Erection</u>	13	NCAC	07F	.0205*	n/a G.S. 150B-21.5(a)
<u>Design, Construction and Testing</u>	13	NCAC	07F	.0909*	n/a G.S. 150B-21.5(a)

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Randleman Lake Water Supply Watershed: Protection and Mai...</u>	15A	NCAC	02B	.0250*	24:08 NCR
<u>Randleman Lake Water Supply Watershed: Mitigation Program...</u>	15A	NCAC	02B	.0252*	24:08 NCR

COASTAL RESOURCES COMMISSION

<u>Use Standards</u>	15A	NCAC	07H	.0208*	24:05 NCR
<u>Use Standards for Ocean Hazard Areas: Exceptions</u>	15A	NCAC	07H	.0309*	24:05 NCR

TRANSPORTATION, DEPARTMENT OF

<u>Permits-Weight, Dimensions and Limitations</u>	19A	NCAC	02D	.0607*	24:16 NCR
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GENERAL CONTRACTORS, LICENSING BOARD FOR

<u>Construction Management</u>	21	NCAC	12	.0208*	24:06 NCR
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COSMETIC ART EXAMINERS, BOARD OF

<u>License Renewal Waiver for Armed Forces</u>	21	NCAC	14A	.0401*	24:12 NCR
<u>Space Requirements</u>	21	NCAC	14G	.0103*	24:12 NCR
<u>Equipment and Teachers</u>	21	NCAC	14G	.0107*	24:12 NCR
<u>Transfer of Credit</u>	21	NCAC	14I	.0105*	24:12 NCR
<u>Report of Enrollment</u>	21	NCAC	14I	.0107*	24:12 NCR
<u>Seal</u>	21	NCAC	14I	.0108*	24:12 NCR

APPROVED RULES

<u>Recitation Room</u>	21	NCAC	14I	.0301	24:12 NCR
<u>Equipment for Beginner Department</u>	21	NCAC	14J	.0106*	24:12 NCR
<u>Equipment in Advanced Department</u>	21	NCAC	14J	.0206*	24:12 NCR
<u>Live Model/Mannequin Performance Requirements</u>	21	NCAC	14J	.0207*	24:12 NCR
<u>Internships</u>	21	NCAC	14J	.0208*	24:12 NCR
<u>Supervision of Cosmetic Art Teacher Trainee</u>	21	NCAC	14L	.0208*	24:12 NCR
<u>Revocation of Licenses and Other Disciplinary Measures</u>	21	NCAC	14P	.0108	24:12 NCR
<u>Operations of Schools of Cosmetic Art</u>	21	NCAC	14P	.0113	24:12 NCR
<u>Cosmetology Curriculum</u>	21	NCAC	14P	.0114	24:12 NCR

PHARMACY, BOARD OF

<u>Drug, Supplies and Medical Device Repository Program</u>	21	NCAC	46	.2513*	24:16 NCR
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REAL ESTATE COMMISSION

<u>Broker-In-Charge</u>	21	NCAC	58A	.0110	24:14 NCR
<u>Offers and Sales Contracts</u>	21	NCAC	58A	.0112*	24:14 NCR
<u>Residential Property Disclosure Statement</u>	21	NCAC	58A	.0114*	24:14 NCR
<u>Attendance and Participation Requirements</u>	21	NCAC	58A	.1705	24:14 NCR
<u>Filing</u>	21	NCAC	58A	.2001	24:14 NCR
<u>Escrow Account</u>	21	NCAC	58A	.2002	24:14 NCR
<u>Applicability</u>	21	NCAC	58A	.2101	24:14 NCR
<u>Postponement of Fees</u>	21	NCAC	58A	.2102	24:14 NCR
<u>Postponement of Continuing Education</u>	21	NCAC	58A	.2103*	24:14 NCR
<u>Postponement of Postlicensing Education</u>	21	NCAC	58A	.2104	24:14 NCR
<u>Proof of Eligibility</u>	21	NCAC	58A	.2105	24:14 NCR
<u>Application for Approval</u>	21	NCAC	58C	.0102*	24:14 NCR
<u>Criteria for Approval</u>	21	NCAC	58C	.0103	24:14 NCR
<u>Administration</u>	21	NCAC	58C	.0206*	24:14 NCR
<u>Program Structuring and Admission Requirements</u>	21	NCAC	58C	.0302	24:14 NCR
<u>Criteria for Elective Course Approval</u>	21	NCAC	58E	.0304*	24:14 NCR
<u>Denial or Withdrawal of Approval</u>	21	NCAC	58E	.0412	24:14 NCR
<u>Monitoring Attendance</u>	21	NCAC	58E	.0510*	24:14 NCR
<u>Purpose and Applicability</u>	21	NCAC	58E	.0601*	24:14 NCR
<u>Authority to Conduct Course</u>	21	NCAC	58E	.0603	24:14 NCR
<u>Course Operational Requirements</u>	21	NCAC	58E	.0604	24:14 NCR

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 70F .0202 RESPONSIBILITIES OF THE GOVERNING BODY

- (a) The governing body shall provide leadership for the agency and shall approve the agency's policies and programs.
- (b) The governing body shall employ an executive director who is located in the administrative office within the geographical boundaries of North Carolina and delegate responsibility to that person for the administration and operation of the agency, including the employment and discharge of all agency staff.

(c) The governing body shall require the executive director provide a signed statement that the executive director has no criminal, social or medical history that would adversely affect his or her capacity to work with children and adults. The governing body shall ensure that the criminal histories of an executive director are completed. The governing body shall ensure that searches of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed. The governing body shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the executive director has

had child protective services involvement resulting in a substantiation of child abuse or serious neglect. The employing agency shall make all determinations concerning an individual's fitness for employment based on the requirements of this Paragraph prior to employment. The governing body shall require that the executive director provide a signed statement prior to employment that he or she has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. The governing body shall require that the executive director provide a signed statement that he or she has not abused, neglected or exploited a disabled adult and that he or she has not been a domestic violence perpetrator. Agencies or applicants that do not have a governing body shall provide this information directly to the licensing authority.

(d) The executive director is not eligible for employment if he or she has been convicted of a felony involving:

- (1) child abuse or neglect;
- (2) spouse abuse;
- (3) a crime against a child or children (including child pornography); or
- (4) a crime of rape, sexual assault, or homicide.

(e) The executive director is not eligible for employment if within the last five years he or she has been convicted of a felony involving:

- (1) assault;
- (2) battery; or
- (3) a drug-related offense.

(f) The governing body shall annually evaluate the executive director's performance except a sole proprietor or partner is exempt from this Rule if he or she serves as executive director.

(g) The governing body shall approve the annual budget of anticipated income and expenditures necessary to provide the services described in its statement of purpose. Child-placing agencies and residential maternity homes receiving foster care payments or state maternity home funds shall submit an annual audit of their financial statements to the Department of Health and Human Services, Controller's Office, Rate Setting Branch in compliance with 10A NCAC 70D .0105(a)(5).

(h) The governing body shall annually evaluate the agency's services. This evaluation shall include the agency's interaction with other community agencies to serve its clients.

(i) The governing body shall establish in writing confidentiality policies and procedures for control and access to and receipt, use, or release of information about its clients.

(j) The governing body of child-placing agencies providing foster care services shall develop a written disaster plan that is provided to agency personnel and foster parents. The disaster plan shall be prepared and updated at least annually. The governing body of residential maternity homes shall comply with 10A NCAC 70K .0315(g).

(k) The governing body, in the event of the closing of the agency, shall develop a plan for the retention and storage of client records. The specifics of this plan shall be submitted to the licensing authority before the actual closing of the agency.

History Note: Authority G.S. 131D-10.5; 131D-10.6; 131D-10.10; 143B-153;

Eff. February 1, 1986;

Amended Eff. July 1, 1990;

Temporary Amendment Eff. February 1, 2002;

Amended Eff. June 1, 2010; November 1, 2009; October 1, 2008; July 18, 2002.

10A NCAC 70F .0203 FINANCES, FEES AND INSURANCE

(a) Child-placing agencies and residential maternity homes shall have a written line item budget, showing planned expenditures and revenues available to operate the agency for a 12 month period. A copy of the budget shall be submitted to the licensing authority prior to initial licensure and biennially thereafter.

(b) Child-placing agencies and residential maternity homes receiving foster care maintenance payments of state funds or state maternity home funds shall submit an annual audit of their financial statements to the Department of Health and Human Services, Controller's Office in compliance with 10A NCAC 70D .0105(a)(5).

(c) Child-placing agencies and residential maternity homes shall have a written policy on fees for services which shall be inclusive of all fees and charges. No cost beyond the written policy shall be imposed. The agency policy shall describe the relationship between fees and services provided and the conditions under which fees are charged or waived. The agency shall make the policy available to applicants for services at the time an application for service is made and to the public upon request.

(d) Adoption agencies that provide international adoption services shall inform prospective adoptive parents of the estimated or actual expenses associated with an international adoption that includes:

- (1) application fees;
- (2) preplacement assessment (homestudy) fees;
- (3) pre-adoption service fees;
- (4) government and facilitator fees;
- (5) placement service fees;
- (6) post-placement and post-adoption service fees;
- (7) travel and other costs and fees in the child's country of origin; and
- (8) additional costs associated with the adoption.

(h) Child-placing agencies and residential maternity homes shall notify the licensing authority, parents, guardian, and legal custodian (if applicable) of its status related to liability insurance for the agency and staff to applicants for services at the time an application for service is made.

(i) The executive director shall report to the governing body at least quarterly, or more frequently if requested by any member of the governing body, on present financial status and anticipated problems.

History Note: Authority G.S. 131D-10.5; 131D-10.10; 143B-153;

Eff. February 1, 1986;

Amended Eff. June 1, 2010; October 1, 2008; July 1, 1990.

10A NCAC 70F .0207 STAFF

(a) The agency shall verify prior to employment the personal qualifications of employees through at least three references.

(b) The agency shall require that each applicant provide a signed statement that the applicant has no criminal, social or medical history which would adversely affect the applicant's capacity to work with children and adults. Prior to employment, the agency shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the applicant has had child protective services involvement resulting in a substantiation of child abuse or serious neglect. The agency shall require that each applicant provide a signed statement that the applicant has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. Prior to employment, a certified criminal record check for the applicant shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256) are completed. The agency shall require that each applicant provide a signed statement that the applicant has not abused, neglected, or exploited a disabled adult, and has not been a domestic violence perpetrator.

(c) Employees are not eligible for employment if they have been convicted of a felony involving:

- (1) child abuse or neglect;
- (2) spouse abuse;
- (3) a crime against a child or children (including child pornography); or
- (4) a crime of rape, sexual assault, or homicide.

(d) The employee is not eligible for employment if within the last five years he or she has been convicted of a felony involving:

- (1) assault;
- (2) battery; or
- (3) a drug-related offense.

(e) The agency shall employ staff qualified to perform administrative, supervisory, direct care, social work, therapeutic, and placement services.

(f) The agency shall have staff to keep correspondence, records, bookkeeping and files current and in good order. The staff shall maintain strict confidentiality concerning contents of the case records.

(g) The agency shall maintain a roster of members of the staff listing position, title, and qualifications and a current organizational chart showing administrative structure and staffing, including lines of authority. The organizational chart shall be submitted prior to initial licensure and biennially thereafter.

(h) An agency which uses volunteers and interns as unpaid staff to work directly with clients shall:

- (1) have written job descriptions and select only those persons qualified to meet the requirements of those jobs;
- (2) require three references relevant to the role and responsibilities to be assumed;
- (3) designate a staff member to supervise and evaluate volunteers and interns;
- (4) develop and implement a plan for the orientation and training of volunteers and

interns in the philosophy of the agency and the needs of the clients and their families; and

(5) require that each volunteer and intern provide a signed statement that they have no criminal, social or medical history that would adversely affect their capacity to work with children and adults. The agency shall submit authorization to the licensing authority to search the Responsible Individuals List as defined in 10A NCAC 70A .0102 to determine if the intern or volunteer has had child protective services involvement resulting in a substantiation of child abuse or serious neglect. Prior to beginning volunteer or intern duties, a certified criminal record check shall be obtained and a search conducted of the North Carolina Sex Offender and Public Protection Registry and North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256). The agency shall require that each volunteer or intern provide a signed statement that the volunteer or intern has not abused or neglected a child, been a respondent in a juvenile court proceeding that resulted in the removal of a child, or had child protective services involvement that resulted in the removal of a child. The agency shall require that each volunteer or intern provide a signed statement that the volunteer or intern has not abused, neglected, or exploited a disabled adult and has not been a domestic violence perpetrator.

(i) Volunteers or interns are not eligible to serve as volunteers or interns if they have been convicted of a felony involving:

- (1) child abuse or neglect;
- (2) spouse abuse;
- (3) a crime against a child or children (including child pornography); or
- (4) a crime of rape, sexual assault, or homicide.

(j) Volunteers or interns are not eligible to serve as volunteers or interns, if within the last five years they have been convicted of a felony involving:

- (1) assault;
- (2) battery; or
- (3) a drug-related offense.

(k) The employing agency shall make all determinations concerning the individual's fitness for employment, volunteering and internship based on the requirements of this Rule.

History Note: Authority G.S. 131D-10.5; 131D-10.6; 131D-10.10; 143B-153;

Eff. February 1, 1986;

Amended Eff. June 1, 2010; October 1, 2008; July 18, 2002.

10A NCAC 70G .0501 PERSONNEL

(a) The executive director is responsible for the general management and administration of the agency in accordance with licensing requirements and policies of the governing body. The executive director shall meet the requirements of a Social Services Program Administrator I as defined by the North

Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:

(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310-0-04099/PDF_Files/04077.pdf). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715.

(b) The social work supervisor is responsible for supervising, evaluating, and monitoring the work and progress of the social work staff. The social work supervisor shall meet the requirements of a Social Work Supervisor II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:

(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310-0-04099/PDF_Files/04016.pdf). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715. Social work supervisors shall receive 24 hours of continuing education annually.

(c) The social worker is responsible for intake services, providing casework or group work services for children and their families, conducting home-finding and assessment studies related to foster parents and planning and coordinating the services and resources affecting children and their families. The social worker shall meet the requirements of a Social Worker II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:

(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310-0-04099/PDF_Files/04012.pdf). The college or university degree shall be from a college or university listed at the time of the degree in the] Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715. Social workers shall receive 24 hours of continuing education annually.

(d) Social workers or case managers serving children in family foster homes shall serve no more than 15 children. Social workers or case managers serving children in therapeutic foster homes shall serve no more than 12 children. Social workers providing foster home licensing services (licensing workers) shall serve no more than 32 foster families. Agencies providing family foster care services may combine the duties of the social worker or case manager and licensing worker and serve no more than ten children and ten foster families. Agencies providing therapeutic foster care services may combine the duties of the social worker or case manager and licensing worker and serve no more than eight children and eight foster families.

(e) Supervision of social workers or case managers shall be assigned as follows:

Supervisors Required	Social Workers or Case Managers
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0	0-4 (executive director serves as social work supervisor)
1	5
2	6-11
3	12-17
There shall be one additional supervisor for every one to five additional social workers.	

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. October 1, 2008; Amended Eff. June 1, 2010

10A NCAC 70H .0401 PERSONNEL

(a) The executive director is responsible for the general management and administration of the agency in accordance with licensing requirements and policies of the governing body. The executive director shall meet the requirements of a Social Services Program Administrator I as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:

(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310-0-04099/PDF_Files/04077.pdf). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715. Social work supervisors shall receive 24 hours of continuing education annually.

(b) The social work supervisor is responsible for supervising, evaluating, and monitoring the work and progress of the social work staff. The social work supervisor shall meet the requirements of a Social Work Supervisor II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:

(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310-0-04099/PDF_Files/04016.pdf). The college or university degree shall be from a college or university listed at the time of the degree in the] Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715. Social work supervisors shall receive 24 hours of continuing education annually.

(c) The social worker is responsible for intake services, providing casework or group work services for children and their families, conducting home-finding and assessment studies related to foster parents and planning and coordinating the services and resources affecting children and their families. The social worker shall meet the requirements of a Social Worker II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:

(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310-0-04099/PDF_Files/04012.pdf). The college or university degree shall be from a college or university listed at the time of the

degree in the Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715. Social workers shall receive 24 hours of continuing education annually.

(d) Social workers counseling birth families, preparing and assessing adoptive applicants for infant placements and supporting these families shall serve no more than 50 families.

(e) Social workers preparing children ages six and above or children having special needs shall serve no more than 15 children.

(f) Social workers preparing and assessing adoptive applicants for the placement of children ages six and above or children who have special needs shall serve no more than 20 families.

(g) Social workers preparing and assessing families for international adoptions shall serve no more than 35 families.

(h) Supervision of adoption social workers shall be assigned as follows:

Supervisors Required	Social Workers
0	0-4 (executive director serves as social work supervisor)
1	5
2	6-11
3	12-17
There shall be one additional supervisor for every one to five additional social workers.	

(i) Staff members of the adoption agency may maintain dual employment or serve as volunteers with maternity homes or crisis pregnancy centers as long as the adoption agency does not provide services to the clients of the maternity home or crisis pregnancy center or accept or arrange releases for adoption for the children of the clients of the maternity home or crisis pregnancy center. Staff members, owners, officers and directors of the adoption agency may serve on the board of directors of maternity homes or crisis pregnancy centers as long as the adoption agency does not provide services to the clients of the maternity home or crisis pregnancy center or accept or arrange releases for adoption for the children of the clients of the maternity home or crisis pregnancy center.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. October 1, 2008;
Amended Eff. June 1, 2010.*

10A NCAC 70I .0301 GOVERNANCE

(a) A private residential child-care facility shall operate under articles of incorporation that are filed with the Department of the Secretary of State (www.secretary.state.nc.us). A private residential child-care facility shall submit a copy of the articles of incorporation to the licensing authority.

(b) A private residential child-care facility shall have a governing body that exercises authority over and has responsibility for its operation, policies and practices. The residential child-care facility shall notify the licensing authority of the type and structure of the governing body.

(c) In the case of non-profit or for-profit corporations, the governing body shall:

- (1) be composed of no fewer than six members to include men and women;
- (2) provide for a system of rotation for board members, for limitation to the number of consecutive terms a member may serve;
- (3) establish standing committees;
- (4) provide orientation for new members; and
- (5) meet at least four times annually with a quorum present.

(d) Public residential child-care facilities operated by governmental agencies shall be governed by appointed officials of a governmental unit.

(e) A residential child-care facility shall submit to the licensing authority a list of members of the governing body. This list shall indicate the name, address and terms of membership of each member and shall identify each officer and the term of that office.

(f) A residential child-care facility shall permanently maintain meeting minutes of the governing body and committees.

(g) The governing body, in the event of the closing of the residential child-care facility, shall develop a plan for the retention and storage of client records. The specifics of this plan shall be submitted to the licensing authority before the actual closing of the residential child-care facility.

*History Note: Authority G.S. 131D-10.5; 143B-153;
Eff. July 1, 1999 (See S. L. 1999, c. 237, s. 11.30);
Amended Eff. June 1, 2010; November 1, 2009; October 1, 2008.*

10A NCAC 70I .0302 RESPONSIBILITIES OF THE GOVERNING BODY

The governing body shall:

- (1) adopt administrative, personnel, and program policies which are reviewed at least every two years;
- (2) review and approve a budget prior to the beginning of the fiscal year;
- (3) establish and review policies on fundraising and investment management at least every two years;
- (4) annually review and accept the financial audit, in the case of a private residential child-care facility;
- (5) employ an executive director (CEO, director, president, superintendent) and delegate authority to that person to employ and dismiss staff, implement board policies, and manage day-to-day operation of the facility;
- (6) ensure that the criminal history of the executive director is checked prior to employment, and based on the criminal history, a determination is made concerning the individual's fitness for employment. The governing body shall ensure that searches of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to

G.S. 131E-256) are completed prior to employment, and based on these searches, a determination is made concerning the individual's fitness for employment. The governing body shall submit authorization to the licensing authority to search the Responsible Individuals List, as defined in 10A NCAC 701 .0102, to determine if the executive director has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination is made concerning the individual's fitness for employment. The governing body shall require that the executive director provide a signed statement prior to employment that he/she has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. The governing body shall require that the executive director provide a signed statement that the executive director has not abused, neglected or exploited a disabled adult and that the executive director has not been a domestic violence perpetrator. Agencies or applicants that do not have a governing body shall provide this information directly to the licensing authority.

- (7) not employ an executive director who has been convicted of a felony involving:
 - (A) child abuse or neglect;
 - (B) spouse abuse;
 - (C) a crime against a child or children (including child pornography); or
 - (D) a crime of rape, sexual assault, or homicide.
- (8) not employ an executive director who has been convicted of a felony within the last five years involving:
 - (A) assault;
 - (B) battery; or
 - (C) a drug-related offense.
- (9) permit the executive director or his or her designee to attend all meetings of the governing body and committees with the exception of those held for the purpose of reviewing his performance, status, or compensation;
- (10) annually evaluate and document the executive director's performance through specific criteria and objectives;
- (11) initiate and review an annual evaluation of services and direct needed changes based on the evaluation;
- (12) annually review facility needs related to risk management; and

- (13) maintain a long range plan and review annually.

History Note: Authority G.S. 131D-10.5; 131D-10.6; 143B-153;

Eff. July 1, 1999 (See S.L. 1999, c.237, s. 11.30);

Amended Eff. June 1, 2010; October 1, 2008.

10A NCAC 701 .0404 PERSONNEL QUALIFICATIONS

(a) Applicants, employees, volunteers or interns who have a history of criminal convictions that would adversely affect their capacity and ability to provide care, safety and security for the children in residence shall not be employed or utilized as volunteers or interns. A signed statement shall be obtained attesting that the applicant, employee, volunteer or intern does not have such a record prior to beginning employment, volunteer duties or internships. Prior to employment or before beginning volunteer duties or internships, a certified criminal record check for the applicant, volunteer or intern shall be obtained, and a search conducted of the North Carolina Sex Offender and Public Protection Registry and the North Carolina Health Care Personnel Registry (pursuant to G.S. 131E-256), and based on these searches, a decision shall be made concerning the individual's fitness to serve as an employee, volunteer or intern. The agency shall submit authorization to the licensing authority to search the Responsible Individuals List, as defined in 10A NCAC 70A .0102, to determine if the applicant, employee, volunteer or intern has had child protective services involvement resulting in a substantiation of child abuse or serious neglect, and based on this search, a determination shall be made concerning the individual's fitness to serve as an employee, volunteer or intern. The agency shall require that each applicant, employee, volunteer or intern provide a signed statement that the applicant, employee, volunteer or intern has not abused or neglected a child or has been a respondent in a juvenile court proceeding that resulted in the removal of a child or has had child protective services involvement that resulted in the removal of a child. A signed statement shall be obtained attesting that the applicant, employee, volunteer or intern has not abused, neglected or exploited a disabled adult and has not been a domestic violence perpetrator.

(b) Applicants, employees, volunteers and interns are not eligible for employment, volunteer or intern positions if they have been convicted of a felony involving:

- (1) child abuse or neglect;
- (2) spouse abuse;
- (3) a crime against a child or children (including child pornography); or
- (4) a crime of rape, sexual assault, or homicide.

(c) Applicants, employees, volunteers and interns are not eligible for employment, volunteer or intern positions if within the last five years they have been convicted of a felony involving:

- (1) assault;
- (2) battery; or
- (3) a drug-related offense.

(d) Employees, volunteers or interns driving a residential child-care facility vehicle shall possess a valid North Carolina driver's license appropriate for the type of vehicle used.

History Note: Authority G.S. 131D-10.5; 131D-10.6; 143B-153;

Eff. July 1, 1999 (See S.L. 1999, c.237 s. 11.30);

Amended Eff. June 1, 2010; October 1, 2008.

10A NCAC 70I .0405 PERSONNEL POSITIONS

(a) Executive Director. There shall be a full-time executive director for an agency with one or more facilities licensed for 20 or more children. At a minimum, there shall be a part-time executive director for an agency with one or more facilities licensed for less than 20 children.

(b) The executive director shall meet the requirements of a Social Services Program Administrator I as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:

(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_0310-0-04099/PDF_Files/04077.pdf). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. This information can be obtained by calling Higher Education Publications, Inc. at 1-888-349-7715.

(c) The executive director shall:

- (1) be responsible for the general management and administration of the residential child-care facility in accordance with policies established by the governing board and licensing requirements;
- (2) explain licensing standards, residential child-care standards and the residential child-care facility's services to the board, the facility's constituency, other human service agencies and the public;
- (3) initiate and carry out the program of residential child-care as approved by the governing board;
- (4) report to the governing board on all phases of operation at least quarterly;
- (5) delegate authority and responsibility to staff qualified to ensure the maintenance of the residential child-care facility's operations;
- (6) establish and oversee fiscal practices, present the annual operating budget and quarterly reports to the governing board;
- (7) evaluate, at least annually, the training needs of the staff; plan and implement staff training and consultation to address identified needs;
- (8) employ and discharge staff and meet on a regular basis with administrative and management staff to review, discuss and formulate policies and procedures;
- (9) supervise staff who report directly to the executive director; and
- (10) conduct an annual individual written evaluation of each staff member who reports directly to the executive director. This evaluation shall contain both a review of job

responsibilities and goals for future job performance.

(d) Clerical, Maintenance and Other Support Personnel. The residential child-care facility shall employ or contract personnel qualified to perform all clerical, support and maintenance duties.

(e) Business and Financial Personnel. The residential child-care facility shall employ or contract personnel to perform all business, accounting and financial functions.

(f) Direct Care Service Personnel. Any staff member who assumes the duties of direct care service personnel in the living unit shall comply with all the standards for direct care services personnel in the living unit.

(1) Direct care service personnel shall:

- (A) have a high school diploma or GED;
- (B) complete a medical history form prior to assuming the position;
- (C) have a medical examination by a licensed medical provider 12 months prior to assuming the position and biennially thereafter. This report shall include a statement indicating the presence of any communicable disease which may pose a risk of transmission in the residential child-care facility. After the initial examination, the cost of the medical examinations as required by licensure shall be at the expense of the facility;
- (D) have a TB skin test or chest x-ray, unless the medical provider advises against this test, prior to assuming the position;
- (E) be 21 years of age.

(2) Standards for direct care service personnel in the living unit:

- (A) There shall be one direct care staff personnel assigned to every six children during waking hours and one direct care staff personnel assigned to every ten children during overnight hours.
- (B) A residential child-care facility shall ensure that a staff member trained in cardiopulmonary resuscitation (CPR) and first aid, such as those provided by the American Red Cross, the American Heart Association or equivalent organizations, is always available to the children in care; and that direct care service personnel shall receive training in first aid and CPR within the first thirty days of employment. Training in CPR shall be appropriate for the ages of children in care. First aid and CPR training shall be updated as required by the American Red Cross, the American Heart Association or equivalent organizations.

(C) A residential child-care facility shall ensure that direct care service personnel receive supervision and training in the areas of child development, permanency planning methodology, group management, preferred discipline techniques, family relationships, human sexuality, health care and socialization, leisure time and recreation. In addition, the residential child-care facility shall provide training to direct care service personnel in accordance with the needs of the client population, including, training in child sexual abuse. Direct care service personnel shall receive 24 hours of continuing education annually.

(D) A residential child-care facility shall ensure that direct care service personnel receive supervision in food preparation and nutrition when meals are prepared in the living unit.

(E) Any duties other than direct care services duties assigned to direct care service personnel shall be specified in writing and assigned in accordance with the residential child-care program.

(3) Direct care service supervisory personnel shall have a high school diploma or GED and be 21 years of age.

(4) Standards for direct care service supervisory personnel:

(A) There shall be at least one supervisor for every 15 direct care service personnel.

(B) Supervisory staff shall be selected on the basis of the knowledge, experience and competence required to manage direct service personnel.

(C) Direct care service supervisory personnel shall receive 24 hours of continuing education annually.

(g) Social work supervisors shall be employed by the residential child-care facility to supervise, evaluate and monitor the work and progress of the social work staff.

(1) Social work supervisors shall meet the requirements of a Social Work Supervisor II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site: (http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_03100-04099/PDF_Files/04016.pdf). The college or university degree shall be from a college or

university listed at the time of the degree in the Higher Education Directory. Social work supervisors shall receive 24 hours of continuing education annually.

(2) Supervision of social workers shall be assigned as follows:

Supervisors Required	Social Workers Employed
0	0-4 (executive director serves as social work supervisor)
1	5
2	6-10
3	11-15
There shall be one additional supervisor for every one to five additional social workers.	

(h) Social workers shall be employed by the residential child-care facility to provide social work services to the children in care and their families in accordance with the out-of-home family services agreement.

(1) Social workers shall meet the requirements of a Social Worker II as defined by the North Carolina Office of State Personnel. A copy of these requirements can be obtained by contacting the Division of Social Services at 828-669-3388 or by reviewing the following web site:

(http://www.osp.state.nc.us/CLASS_SPECS/Spec_Folder_03100-04099/PDF_Files/04012.pdf). The college or university degree shall be from a college or university listed at the time of the degree in the Higher Education Directory. Social workers shall receive 24 hours of continuing education annually.

(2) There shall be at least one social worker assigned for every 15 children.

(3) A residential child-care facility shall ensure that social workers receive supervision and training in the areas of child development, permanency planning methodology, group dynamics, family systems and relationships, and child sexual abuse.

(4) Any duties other than social work duties assigned to staff employed as social workers shall be specified in writing and assigned in accordance with the residential child-care program.

History Note: Authority G.S. 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. June 1, 2010; October 1, 2008; July 18, 2002.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 07F .0205 STEEL ERECTION

Subpart R—Steel Erection – additions and amendments to 29 CFR 1926.750 *Scope*, through 1926.754 *Structural steel assembly*, are applicable as follows:

"Section 1926.750 *Scope*:

(b)(1) Steel erection activities include hoisting, laying out, placing, connecting, welding, burning, guying, bracing, bolting, plumbing and rigging structural steel, steel joists, bridge steel girders and metal buildings; installing metal decking and moving point-to-point while performing these activities.

(b)(2) There may be activities that occur during and are part of steel erection where conventional fall protection methods may not offer adequate protection for employees. The employer shall establish and determine when to implement employee fall protection measures as described in 1926.760 or the more protective measures described in 1926.502 "Fall Protection Systems Criteria and Practices". Where non-traditional steel or iron workers (employees not meeting requirements of 1926.761(c)) are engaged in leading edge work activities six (6) feet or more above lower levels, those employees shall be protected from falling by guardrail systems, personal fall arrest systems or safety nets. Such leading edge work activities include off loading, stacking, laying out and fastening steel floor decking and metal and non-metal roof decking; positioning and securing exterior curtain walls, window walls, exterior siding systems; and moving from point to point while performing these activities.

1926.754(c)(1) Tripping hazards.

Employees shall be protected from falls due to tripping hazards created by shear connectors (including headed steel studs, steel bars or steel lugs), reinforcing bars, deformed anchors, or threaded studs attached to the top flanges of beams, joists or beam attachments. Such protection from falls may be accomplished by any of the following:

(1) Not welding or applying shear connectors that project vertically or horizontally across the top flange of a member until the metal decking or other walking/working surface is

installed (field-installed shear connectors).

(2) Providing all employees that are exposed to falling hazards greater than six feet with a suitable fall protection system, as defined in 1926.32(s), including guardrail systems, personal fall arrest systems, or safety nets.

(3) Covering shop or pre-installed connectors that project vertically from or horizontally across the top flange of the member with a temporary decking, metal or wood box until the metal decking, or other walking/working surface, is installed or until final construction covers the shear connectors.

History Note: Authority G.S. 95-131; 150B-21.6; Recodified from 13 NCAC 07F .0201(4) Eff. December 17, 2007;

Amended Eff. June 1, 2010.

13 NCAC 07F .0909 DESIGN, CONSTRUCTION AND TESTING

The following requirements apply to equipment that has a manufacturer-rated hoisting/lifting capacity of more than 2,000 pounds:

(1) Equipment manufactured prior to the effective date of this Rule shall meet the applicable requirements for design, construction, and testing as prescribed in ANSI B30.5-1968, Safety Code for Crawler, Locomotive, and Truck Cranes, Power Crane Shovel Association (PCSA) Standard No. 2," the requirements in Item (2) of this Rule, or the applicable German Institute For Standardization (DIN) standards that were in effect at the time of manufacture.

(2) Mobile (including crawler and truck) and locomotive cranes manufactured on or after the effective date of this Rule shall meet the following portions of ANSI/ASME B30.5-2004, Safety Code for Mobile and Locomotive Cranes, as applicable:

(a) In section 5-1.1.1 ("Load Ratings – Where Stability Governs Lifting Performance"), Paragraphs (a) through (d) (including Subparagraphs).

(b) In section 5-1.1.2 ("Load Ratings – Where Structural Competence

- Governs Lifting Performance"), Paragraph (b).
 - (c) Section 5-1.2 ("Stability (Backward and Forward)").
 - (d) In section 5-1.3.1 ("Boom Hoist Mechanism"), Paragraphs (a), (b)(1), and (b)(2), except that when using rotation resistant rope, 13 NCAC 07F .0914 applies.
 - (e) In section 5-1.3.2 ("Load Hoist Mechanism"), Paragraphs (a)(2) through (a)(4) (including Subparagraphs), (b) (including Subparagraphs), (c) (first sentence only) and (d).
 - (f) Section 5-1.3.3 ("Telescoping Boom").
 - (g) Section 5-1.4 ("Swing Mechanism").
 - (h) In section 5-1.5 ("Crane Travel"), all provisions except 5-1.5.3 (d).
 - (i) In section 5-1.6 ("Controls"), all provisions except 5-1.6.1 (c).
 - (j) Section 5-1.7.4 ("Sheaves").
 - (k) Section 5-1.7.5 ("Sheave sizes").
 - (l) In section 5-1.9.1 ("Booms"), Paragraph (f).
 - (m) Section 5-1.9.3 ("Outriggers").
 - (n) Section 5-1.9.4 ("Locomotive Crane Equipment").
 - (o) Section 5-1.9.7 ("Clutch and Brake Protection").
 - (p) In section 5-1.9.11 (Miscellaneous Equipment"), Paragraphs (a), (c), (e), and (f).
- (3) Prototype testing: mobile (including crawler and truck) and locomotive cranes manufactured on or after the effective date of this Rule shall meet the prototype testing requirements in Test Option A or Test Option B.
 Note: Prototype testing of crawler, locomotive and truck cranes manufactured prior to the effective date of the Section must conform to Item (1) of this Rule.
 - (a) Test Option A.
 - (i) The following applies to equipment with the cantilevered booms (such as hydraulic boom cranes): All the tests listed in SAE J1063-1993, Table 1, shall be performed to load all critical structural elements to their respective limits. All the strength margins listed in SAE J1063-1993, Table 2, shall be met.
 - (ii) The following applies to equipment with pendant supported lattice booms: All the tests listed in SAE J987-2003, Table 1, shall be performed to load all critical structural elements to their respective limits. All the strength margins listed in SAE J987-2003, Table 2, shall be met.
 - (b) Test Option B. The testing and verification requirements of CEN's EN 13000 (2004) shall be met. In applying the CEN standard, the following additional requirements shall be met:
 - (i) The following applies to equipment with cantilevered booms (such as hydraulic boom cranes): The analysis methodology (computer modeling) shall demonstrate that all load cases listed in the SAE J1063-1993 meet the strength margins listed in SAE J1063-1993, Table 2.
 - (ii) The following applies to equipment with pendant supported lattice booms: The analysis methodology (computer modeling) shall demonstrate that all load cases listed in SAE J987-2003 meet the strength margins listed in SAE J987-2003, Table 2.
 - (iii) Analysis Verification: The physical testing requirements under SAE J1063-1993 and SAE J987-2003 shall be met unless the reliability of the analysis methodology (computer modeling) has been demonstrated by a documented history of certification through strain gauge measuring or strain gauge measuring in combination with other physical testing.
- (4) All equipment covered by this Section shall meet the following requirements:
 - (a) Rated Capacity and Related Information: The information available in the cab (see 13 NCAC 07F .0916(c)) regarding "rated capacity" and related information shall include the following information:

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| <p>(i) A complete range of the manufacturer's equipment rated capacities, as follows:</p> <p style="padding-left: 20px;">(A) At all manufacturer's approved operating radii, boom angles, work areas, boom lengths, and configurations, jib lengths and angles (or offset).</p> <p style="padding-left: 20px;">(B) Alternate ratings for use and nonuse of option equipment which affects rated capacities, such as outriggers and extra counterweights.</p> <p>(ii) A work area chart for which capacities are listed in the load chart. (Note: an example of this type of chart is in ANSI/ASME B 30.5-2004, Section 5-1.1.3, Figure 11).</p> <p>(iii) The work area figure and load chart shall indicate the areas where no load is to be handled.</p> <p>(iv) Manufacturer-recommended reeving for the hoist lines shall be shown.</p> <p>(v) Manufacturer-recommended parts of hoist reeving, size, and type of wire rope for various equipment loads.</p> <p>(vi) Manufacturer-recommended boom hoist reeving diagram, where applicable; size, type, and length of rope wire.</p> <p>(vii) Tire pressure (where applicable).</p> <p>(vii) Caution or warnings relative to limitations on equipment and operating procedures, including an indication of the least stable direction.</p> <p>(ix) Position of the gantry and requirements for intermediate boom suspension (where applicable).</p> <p>(x) Instructions for the boom erection and conditions under which the boom, or boom and jib combinations, may be raised or lowered.</p> | <p>(xi) Whether the hoist holding mechanism is automatically or manually controlled, whether free fall is available, or any combination of these.</p> <p>(xii) The maximum telescopic travel length of each boom telescopic section.</p> <p>(xiii) Whether sections are telescoped manually or with power.</p> <p>(xiv) The sequence and procedure for extending and retracting the telescopic boom section.</p> <p>(xv) Maximum loads permitted during the boom extending operation, and any limiting conditions or cautions.</p> <p>(xvi) Hydraulic relief valve settings specified by the manufacturer.</p> <p>(b) Load Hooks (including latched and unlatched types), ball assemblies and load blocks shall be of sufficient weight to overhaul the line from the highest hook position for boom or boom and jib lengths and the number of parts of the line in use.</p> <p>(c) Hook and ball assemblies and load blocks shall be marked with their rated capacity and weight.</p> <p>(d) Latching Hooks:</p> <p style="padding-left: 20px;">(i) Hooks shall be equipped with latches, except where the requirements of the Sub-Item (4)(d)(ii) of this Rule are met.</p> <p style="padding-left: 20px;">(ii) Hooks without latches, or with latches removed or disabled, shall not be used unless:</p> <p style="padding-left: 40px;">(A) A qualified person has determined that it is safer to hoist and place the load without latches (or with the latches removed/tied-back);</p> <p style="padding-left: 40px;">(B) Routes for the loads are pre-planned to ensure that no employee is required to work in the fall zone except for employees necessary for the hooking or</p> |
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- unhooking of the load; and
 - (C) The latch shall close the throat opening and be designed to retain slings or other lifting devices/accessories in the hook when the rigging apparatus is slack.
- (e) Posted Warnings. Posted Warnings required by this Section as well as those originally supplied with the equipment by the manufacturer shall be maintained in legible condition.
- (f) An accessible fire extinguisher shall be on the equipment.
- (g) Cabs. Equipment with cabs shall meet the following requirements:
 - (i) Cabs shall be designed with a form of adjustable ventilation and method for clearing the windshield for maintaining visibility and air circulation. Examples of means for adjustable ventilation include air conditioner or window that can be opened (for ventilation and air circulation); examples of means for maintaining visibility include heater (for preventing windshield icing), defroster, fan, windshield wiper.
 - (ii) Cab doors (swinging, sliding) shall be designed to prevent inadvertent opening or closing while traveling or operating the machine. Swinging doors adjacent to the operator shall open outward. Sliding operator doors shall open rearward.
 - (iii) Windows.
 - (A) The cab shall have windows in front and on both sides of the operator. Forward vertical visibility shall be sufficient to give the operator a view of the boom point at all times.
- (B) Windows may have sections designed to be opened or readily removed. Windows with sections designed to be opened shall be designed so that they can be secured to prevent inadvertent closure.
- (C) Windows shall be of safety glass or material with similar optical and safety properties that introduce no visible distortion or otherwise obscure visibility that interferes with the safe operation of the equipment.
- (iv) A clear passageway shall be provided from the operator's station to an exit door on the operator's side.
- (v) Areas of the cab roof that serve as a workstation for rigging, maintenance or other equipment-related tasks shall be capable of supporting 250 pounds without permanent distortion.
- (h) Belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, chains, and other parts or components that reciprocate, rotate or otherwise move shall be guarded where contact by employees (except for maintenance and repair employees) is possible in the performance of normal duties.
- (i) All exhaust pipes, turbochargers, and charge air coolers shall be insulated or guarded where contact by employees (except for maintenance and repair employees) is possible in the performance of normal duties.
- (j) Hydraulic and pneumatic lines shall be protected from damage to the extent feasible.
- (k) The equipment shall be designed so that exhaust fumes are not discharged in the cab and are discharged in a direction away from the operator.
- (l) Friction mechanisms. Where friction mechanisms (such as brakes and

- clutches) are used to control the boom hoist or load line hoist, they shall be:
 - (i) Of a size and thermal capacity sufficient to control loads with the minimum recommended reeving.
 - (ii) Adjustable to permit compensation for lining wear to maintain proper operation.
- (m) Hydraulic load hoists. Hydraulic drums shall have an integrally mounted holding device or internal static brake to prevent load hoist movement in the event of hydraulic failure.
- (5) The employer's obligations under Items (1) through (3) and Sub-Items (4)(g) through (4)(m) of this Rule are met where the equipment has not changed (except in accordance with 13 NCAC 07F .0911) and it can refer to documentation from the manufacturer showing that the equipment has been designed, constructed and tested in accordance with those Items.

*History Note: Authority G.S. 95-131;
Eff. October 1, 2009;
Amended Eff. June 1, 2010.*

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02B .0250 RANDLEMAN LAKE WATER SUPPLY WATERSHED: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

Protection of the pollutant removal and other water quality services provided by riparian buffers throughout the watershed is an important element of the overall Randleman water supply pollutant strategy. The following is the management strategy for maintaining and protecting riparian areas in the Randleman Lake watershed:

- (1) **PURPOSE.** The purposes of this Rule shall be for the local governments listed in this Rule, and in certain cases stated in this Rule the Division, to protect and preserve existing riparian buffers throughout the Randleman Lake watershed as generally described in this Rule, in order to maintain their nutrient removal and stream protection functions. Additionally this Rule will help protect the water supply uses of Randleman Lake and of designated water supplies throughout the Randleman Lake water supply watershed. Local governments with jurisdictions in Randleman Lake watershed shall establish programs to meet or exceed the minimum

requirements of this Rule. However, the Division shall assume responsibility for applying the requirements of this Rule to activities listed in Item (3) of this Rule. The requirements of this Rule shall supersede all buffer requirements stated in Rules 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Randleman Lake watershed. Parties subject to this Rule may choose to implement more stringent rules, including the one-hundred foot buffer requirement set out in Sub-item (3)(b)(i) of Rules 15A NCAC 02B .0214 through .0216 for high-density developments.

- (2) **DEFINITIONS.** For the purpose of this Rule, these terms shall be defined as follows:

- (a) 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including (but not limited to) boardwalks, steps, rails, signage;
- (b) 'Archaeological Activities' means activities conducted by a Registered Professional Archaeologist (RPA);
- (c) 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definition or uses of the words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-48(b)(1); the phrase 'aeronautical facilities' as defined in G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements' as used in Article V, Section 13, of the North Carolina Constitution. Airport facilities shall include without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other

instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of 'airport facilities':

- (i) Satellite parking facilities;
- (ii) Retail and commercial development outside of the terminal area, such as rental car facilities; and
- (iii) Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority;
- (d) 'Channel' means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water;
- (e) 'DBH' means diameter at breast height of a tree measured at 4.5 feet above ground surface level;
- (f) Ditch means a man-made, open drainage way in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either continuously or intermittently;
- (g) 'Ephemeral stream' means a feature that carries stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An

ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water;

- (h) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site;
- (i) 'Greenway / Hiking Trails' means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the surface water;
- (j) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter;
- (k) 'Intermittent stream' means a well-defined channel that contains a continuous flow of water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water;
- (l) 'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water;
- (m) 'Perennial stream' means a well-defined channel that contains water

- year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water;
- (n) 'Perennial waterbody' means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream);
- (o) 'Shoreline stabilization' is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip rap, or gabions, while providing bank stabilization, shall not be considered stream restoration;
- (p) 'Stream restoration' is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced reach' means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects. 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface;
- (q) 'Stump diameter' means the diameter of a tree measured at six inches above the ground surface level;
- (r) 'Surface waters' means all waters of the state as defined in G.S. 143-212 except underground waters and wetlands;
- (s) 'Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts or pipes or water dependent structures, or to maintain public traffic during construction; and
- (t) 'Tree' means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.
- (3) **APPLICABILITY.** This Rule shall apply to all local governments with jurisdictions in the Randleman Lake watershed. Local governments shall develop riparian buffer protection programs for approval by the Division incorporating the minimum standards set out throughout this Rule and shall apply the requirements of this Rule throughout their jurisdictions within the Randleman watershed except where the Division shall exercise jurisdiction. For the following types of buffer activities in the Randleman watershed, wherever local governments are referenced in this Rule, the Division shall implement applicable requirements to the exclusion of local governments:
- (a) Activities conducted under authority of the State;
- (b) Activities conducted under the authority of the United States;
- (c) Activities conducted under the authority of multiple jurisdictions;
- (d) Activities conducted under the authority of local units of government;
- (e) Forest harvesting activities described in Item 16 of this Rule; and
- (f) Agricultural activities.
- (4) **REQUIREMENTS.** The following minimum criteria shall be used for identifying regulated buffers. All local governments subject to this Rule shall develop riparian buffer protection programs and ordinances for approval by the Commission, incorporating the minimum standards contained in Rule. This Rule shall apply to 50 foot wide riparian buffers directly adjacent to surface waters in the Randleman watershed (intermittent and perennial streams, lakes, reservoirs, and ponds) excluding

wetlands. Wetlands adjacent to surface waters or within 50 feet of surface waters, shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H. 0506.

(a) Surface waters shall be subject to this Rule if the feature is approximately shown on any of the following references, or if there is other site specific evidence that indicates to the Division or local government the presence of waters not shown on any of these maps:

(i) The most recent version of the United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps;

(ii) The most recent version of the hardcopy soil survey maps developed by USDA-Natural Resource Conservation Service; or

(iii) A map approved by the Geographic Information Coordinating Council and by the Commission. Prior to approving a map under this sub-division the Commission shall provide a 30-day public notice and opportunity for comment;

(b) Where the specific origination point of an intermittent or perennial stream is in question, parties subject to this Rule shall use the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*, v 3.1 February 28, 2005 available at: <http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations> to establish that point;

(c) Local governments may develop stream network maps for the watershed based on maps referenced in Sub-Item (4)(a) of this Rule or criteria identified in Sub-Item (4)(b) and of this Rule. These maps shall be submitted to the Director for review to establish that proper methods were used by any local government wishing to use such maps for implementation of riparian area protection. The local map must be at least as accurate as the map identified in Sub-Items (4)(a)(i) and (4)(a)(ii) and must use the stream identification manual as referenced in Item (4)(b) of

this Rule. Riparian areas shall be protected and maintained in accordance with this Rule on all sides of surface waters in the Randleman Lake watershed as delineated on these approved stream network maps;

(d) Personnel from delegated local governments that are assigned to perform stream determinations, shall successfully complete the Division's Surface Water Identification Training and Certification Class within three years of the effective revision date of this Rule. A delegated local government shall retain personnel on staff who have successfully completed the Division's class at all times with the exception of staff vacancies and class scheduling problems. At any time that a local government does not have a certified individual retained on staff they shall notify the Division and indicate a proposed schedule to secure a certified staff member;

(e) All local governments that have land use authority within the Randleman Lake water supply watershed shall adopt and enforce this Rule through local water supply and other local ordinances. Ordinances shall require that all riparian protection areas are recorded on new or modified plats. No new clearing, grading, or development shall take place and no new building permits shall be issued in violation of this Rule; and

(f) Parties subject to this Rule shall abide by all State rules and laws regarding waters of the state including Rules 15A NCAC 02H .0500, 15A NCAC 02H .1300, and Sections 401 and 404 of the Federal Clean Water Act.

(5) EXEMPTION REQUIREMENTS TO WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT. When a landowner or other affected party believes that the maps have inaccurately depicted surface waters, he or she shall consult the delegated local authority. Upon request, the delegated local authority shall make onsite determinations. Local governments may also accept the results of site assessments made by other parties who have successfully completed the Division's Surface Water Identification Training Certification course and are sanctioned by the Division to make such determinations. Any disputes over on-site determinations shall be referred to the

local Board of Adjustment or other local appeals process in writing. For projects proposed for state and federal lands, any disputes shall be referred to the Director in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories:

- (a) Ditches and manmade conveyances, to include manmade stormwater conveyances, other than modified natural streams, unless the ditch or manmade conveyance delivers untreated stormwater runoff from an adjacent source directly to an intermittent or perennial stream;
 - (b) Areas mapped as intermittent streams, perennial streams, lakes, ponds, or estuaries on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps, hard-copy soil survey maps or other EMC approved stream maps where no perennial waterbody, intermittent waterbody, lake, pond or estuary actually exists on the ground;
 - (c) Ephemeral streams; and
 - (d) Ponds and lakes created for animal watering, irrigation, or other agricultural uses that are not part of a natural drainage way that is classified in accordance with 15A NCAC 02B .0100. Ponds are part of a natural drainage way when they are hydrologically connected (i.e. the pond is fed by an intermittent or perennial stream) or when they have a direct discharge point to an intermittent or perennial stream.
- (6) EXEMPTION TO REQUIREMENTS WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following:
- (a) A use shall be considered existing and ongoing if it was present within the riparian buffer as of the effective date of the local ordinance or local ordinances enforcing this Rule and has continued to exist since that time. For state and federal entities, a use shall be considered existing and ongoing if it was present within the riparian buffer as of the effective date

of this Rule and has continued to exist since that time. Existing uses shall include, but not limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within 50 feet of the surface water where it did not previously exist as of the effective date of the local ordinance or local ordinances enforcing this Rule, and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained;

- (b) A use shall be considered existing if projects or proposed development are determined by the local government, or the Director for the cases involving state or federal entities, to meet at least one of the following criteria:
 - (i) Project requires a 401 Certification/404 permit and these were issued prior to the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;
 - (ii) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications

- (7) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:
- (c) This Rule shall apply at the time an existing use is changed to another use. Change of use shall include, but not limited to the initiation of any activity not defined as existing and ongoing in either Sub-Item (6)(a) or (6)(b) of this Rule.
- (iii) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for state and federal entities; or
- (iv) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the local government prior to the effective date of the local program enforcing this Rule, or the written approval of the Division prior to the effective date of this Rule for state and federal entities:
- and
- (a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item (9) of this Rule. The location of Zone 1 shall be as follows:
- (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of the bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank; and
- (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the surface water or rooted herbaceous vegetation: and
- (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Item (9) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.
- (8) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.
- (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer;
- (b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies; and

- (c) No new stormwater conveyances are allowed through the buffers except for those specified in Item (9) of this Rule addressing stormwater management ponds drainage ditches, roadside ditches, and stormwater conveyances.
- (9) TABLE OF USES. The following chart sets out the uses and their designation under this Rule as exempt, potentially allowable, or potentially allowable with mitigation. All uses not designated as exempt, potentially allowable, or potentially allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (12) of this Rule. The requirements for each category are given in Item (10) of this Rule.

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer 	X	X	
<p>Airport facilities:</p> <ul style="list-style-type: none"> • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer • Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)¹ 		X X	X
<p>Archaeological activities:</p> <ul style="list-style-type: none"> • In Zones 1 and 2 and are designed, constructed and maintained to provide the maximum sediment removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical. 	X		
Bridges		X	
Canoe access provided that installation and use does not result in removal of trees as defined in the Rule and no impervious surface is added to the buffer.	X		
<p>Dam maintenance activities:</p> <ul style="list-style-type: none"> • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under a U.S. Army Corps of Engineers Nationwide Permit • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under a U.S. Army Corps of Engineers Nationwide Permit 	X	X	
<p>Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:</p> <ul style="list-style-type: none"> • New stormwater flows to existing drainage ditches, 	X		

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Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies <ul style="list-style-type: none"> • Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations • New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer • New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed 		<div>X</div> <div>X</div>	X
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the new channel.	X		
Driveway crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> • Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer • Driveway crossings on single family residential lots that disturb greater than 25linear feet or 2,500 square feet of riparian buffer • In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer • In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer 	X	<div>X</div> <div>X</div>	X
Driveway impacts other than crossing of a stream or other surface waters subject to this Rule			X
Fences: <ul style="list-style-type: none"> • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Rule • Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Rule 	X	X	
Forest harvesting - see Item (16) of this Rule			
Fertilizer Application:			
One-time fertilizer application to establish vegetation	X		
Grading and revegetation in Zone 2 provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are revegetated with native vegetation	X		

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Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
Greenway / hiking trails: Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical.		X	
Historic preservation: Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical	X		
Maintenance access of modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	
Mining activities: <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (7) and (8) of this Rule are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act or where new riparian buffers that meet the requirements of Items (7) and (8) of this Rule are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X
Playground equipment: <ul style="list-style-type: none"> • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	X	X	
Ponds in natural drainage ways, excluding dry ponds: <ul style="list-style-type: none"> • New ponds provided that a riparian buffer that meets the requirements of Items (7) & (8) of this Rule is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of Items (7) & (8) of this Rule is NOT established adjacent to the pond 		X	X
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Rule.			X
Railroad crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear 	X	X	

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Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer			X
Recreational and accessory structures: • Total footprint of gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance less than or equal to 150 square feet per lot • Total footprint gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance of more than 150 square feet per lot • Wooden-slatted decks (and associated steps) that are at least 8 feet in height and vegetation is not removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule • Wooden-slatted decks (and associated steps) that are not at least 8 feet in height or vegetation is removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule		X X	 X X
Removal of previous fill or debris provided that diffuse flow is maintained and vegetation is restored	X		
Road crossings of streams and other surface waters subject to this Rule: • Road crossings that impact equal to or less than 40 linear feet of riparian buffer • Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer	X	 X	 X
Road impacts other than crossings of streams and other surface waters subject to this Rule			X
Road relocation of existing private access roads associated with public road projects where necessary for public safety: • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact		 X	 X
Stormwater BMPs: • Wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1 • Wet detention, bioretention, and constructed wetlands in Zone 1		 X	 X
Scientific studies and stream gauging: • In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical.	X		
Streambank or shoreline stabilization		X	
Temporary roads provided that the disturbed area is			

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
<p>restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that the tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria in Item (9) of Rule 15A NCAC 02B .0252:</p> <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation, bridge construction or replacement 	X	X X	
<p>Temporary sediment and erosion control devices provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria in Item (9) of Rule 15A NCAC 02B .0252:</p> <ul style="list-style-type: none"> • In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act and that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (8) of this Rule • In Zones 1 and 2 to control impacts associated with uses approved by the local government or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer • In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Section 401 and 404 of the Federal Water Pollution Control Act • In-stream temporary erosion and sediment control measures for authorized work within a stream channel 	X X	X X	
<p>Utility- Non-electric utility lines:</p> <ul style="list-style-type: none"> • Impacts other than perpendicular crossings in Zone 2 only^{4, 5} • Impacts other than perpendicular crossings in Zone 1 only^{4, 5} 		X	X
<p>Utility-Non-electric utility line perpendicular crossings of streams and other surface waters subject to this Rule^{4, 5}:</p> <ul style="list-style-type: none"> • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a 	X		

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Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer		X X	 X X
Utility-Overhead electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only ^{4, 5} • Impacts other than perpendicular crossings in Zone 1 ^{2, 3, 4, 5}		X	X
Utility-Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule ^{2, 3, 4, 5} : • Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer	X	X	
Utility-Underground electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only ² • Impacts other than perpendicular crossings in Zone 1 ^{1, 4}	X X		
Utility-Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule: • Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer ^{3, 4, 5} • Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer ^{3, 4, 5}	X	X	
Vegetation management: • Emergency fire control measures provided that topography is restored • Periodic mowing and harvesting of plant products in Zone 2 only • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life • Removal of individual trees that are dead, diseased or damaged.	X X X X X X		

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
<ul style="list-style-type: none"> Removal of poison ivy Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30 	X X		
Vehicle access to water dependent structures <ul style="list-style-type: none"> Vehicular access roads leading to water dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have a minimum practicable width not exceeding ten feet 		X	
Water dependent structures as defined in 15A NCAC 02B .0202		X	
Water supply reservoirs: <ul style="list-style-type: none"> New reservoirs provided that a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the reservoir New reservoirs where a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is not established adjacent to the reservoir 		X	X
Water wells <ul style="list-style-type: none"> Single family water wells All water wells other than single family water wells 	X	X	
Wetland stream and buffer restoration <ul style="list-style-type: none"> Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification Wetland, stream and buffer restoration that does NOT require DWQ approval for the use of a 401 Water Quality Certification 	X	X	
Wildlife passage structures		X	

¹ Provided that:

- Heavy equipment is not used in Zone 1
- Vegetation is not compromised in the portions of Zone 1 and Zone 2 that are not impacted
- Trees that are cut down are removed by chain
- No permanent felling of trees occurs in the protected buffers or in the streams
- Stump removal is performed only by grinding
- At the completion of the project the disturbed area is stabilized with native vegetation
- Zones 1 & 2 meet the requirements of (7) and (8) of this Rule.

² Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only

vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

³ Provided that poles or towers shall not be installed within 10 feet of a water body unless the local government or the Director for the cases involving activities listed in Item (3) of this Rule completes a no practical alternative evaluation as defined in Item (11) of this Rule.

⁴ Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the local government or the Director for the cases involving activities listed in Item (3) of this Rule, as defined in Item (11) of this Rule.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

⁵ Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

(10) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, potentially allowable, and potentially allowable with mitigation in Item (9) of this Rule shall have the following requirements:

- (a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, exempt uses shall meet requirements listed in Item (9) of this Rule for the specific use;
- (b) POTENTIALLY ALLOWABLE. Uses designated as potentially allowable require a written buffer authorization from the local government, or the Director for the cases involving activities listed in Item (3) of this Rule for impacts within the riparian buffer provided

that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule;

- (c) POTENTIALLY ALLOWABLE WITH MITIGATION. Uses designated as potentially allowable with mitigation require written authorization from the local government, or the Director for the cases involving activities listed in Item (3) of this Rule for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (15) of this Rule; and
- (d) PROHIBITED. Uses that are not designated in Item (9) of this Rule are considered prohibited in the riparian buffers.

(11) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the local government or the Director for the cases involving activities listed in Item (3) of this Rule. The applicant shall certify that the criteria identified in Sub-Item (a) of this Item are met. The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

- (a) For any request for an Authorization Certificate, the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
 - (i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
 - (ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic

- life and habitat, and protect water quality; and
 - (iii) Best management practices shall be used if required to minimize disturbance, preserve aquatic life and habitat, and protect water quality;
 - (b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (a) of this Item and the local ordinance or ordinances enforcing this Rule by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." An Authorization Certificate shall be issued to the applicant, unless:
 - (i) The applicant agrees, in writing, to a longer period; and
 - (ii) Applicant fails to furnish requested information necessary to the local government's decision or the Director's decision for the cases involving activities listed in Item (3) of this Rule;
 - (c) The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:
 - (i) The name, address and phone number of the applicant;
 - (ii) The nature of the activity to be conducted by the applicant;
 - (iii) The location of the activity, including the jurisdiction;
 - (iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
- (v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
- (vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity: and
- (d) Any disputes over determinations regarding Authorization Certificates shall be referred to the local government's appeals process for a decision, or to the Director for determinations involving lands of activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.
- (12) **VARIANCES.** Persons who wish to undertake prohibited uses may pursue a variance. The local government may grant only minor variances. For major variances, local governments shall prepare preliminary findings and submit them to the Commission for approval. The variance request procedure shall be as follows:
 - (a) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with all of the following:
 - (i) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the local government, or the Director for the cases involving activities listed in Item (3) of

- this Rule, shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;
- (ii) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship;
 - (iii) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, and is unique to the applicant's property rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice; and
 - (iv) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.
- (b) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and
 - (c) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (13) **MINOR VARIANCES.** A minor variance request pertains to activities that are proposed to impact only Zone 2 or any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (12)(a) of this Rule by the local government pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The local government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the local government shall be made through the local government's appeals process, or to the Director for determinations involving activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.
- (14) **MAJOR VARIANCES.** A major variance request pertains to activities that are proposed to impact any portion of Zone 1 of the riparian buffer. If the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, has determined that a major variance request meets the requirements in Sub-Item (12)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission for approval. Within 90 days after receipt by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, the Commission shall review preliminary findings on major variance requests. The Commission may choose to approve, approve with conditions, or deny the major variance.
- (15) **MITIGATION.** Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use.
- (a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item (11) of this Rule; and
 - (b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0252.
- (16) **REQUIREMENTS SPECIFIC TO FOREST HARVESTING.** The following requirements shall apply for forest harvesting operations and practices:
- (a) The following measures shall apply in the entire riparian buffer:
 - (i) Logging decks and sawmill sites shall not be placed in the riparian buffer;
 - (ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed;
 - (iii) Timber felling shall be directed away from the stream or water body;
 - (iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes

- soil disturbance and prevents the creation of channels or ruts;
- (v) Individual trees may be treated to maintain or improve their health, form or vigor;
- (vi) Harvesting of dead or infected trees or other timber cutting techniques necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to 15A NCAC 01I .0100-.0209. The Division of Forest Resources must notify the local government of all approvals;
- (vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;
- (viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species;
- (ix) High-intensity prescribed burns shall not be allowed;
- (x) Application of fertilizer shall not be allowed except as a one-time use that is necessary for permanent stabilization; and
- (xi) Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer;
- (b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:
 - (i) Tracked or wheeled vehicles are permitted for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees provided activities comply with forest practices guidelines for water quality as defined in Rule 15A NCAC 01I .0101 through .0209, and provided no equipment shall operate within the first 10 feet immediately adjacent to the stream except at stream crossings designed, constructed and maintained in accordance with Rule 15A NCAC 01I .0203;
 - (ii) Soil disturbing site preparation activities are not allowed; and
 - (iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation; and
- (c) In addition to the requirements of (b) in this Item, the following provisions for selective harvesting shall be met:
 - (i) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut unless listed as an exempt activity under Vegetation Management in the Table of Uses (9) of this Rule.
 - (ii) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years,

- except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible; and
- (iii) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 through .0209 as enforced by the Division of Forest Resources.
- (17) **RULE IMPLEMENTATION.** This Rule shall be implemented as follows:
- (a) For activities listed in Item (3) of this Rule, the Division shall implement the requirements of this Rule as of its effective date;
- (b) Within six months of the effective revision date of this Rule, local governments shall review, revise as necessary, and submit a local program including all necessary ordinances to the Division for review. The local program shall detail local government buffer program implementation including but not limited to such factors as a method for resolution of disputes involving Authorization Certificate or variance determinations, a plan for record keeping, and a plan for enforcement. Local governments shall use the Division's publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*, v 3.1 February 28, 2005 available at <http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations> to establish the existence of streams;
- (c) Within six months of the Division approval of the revised local ordinance, the local government shall implement their revised buffer program;
- (d) Upon implementation, subject local governments shall submit annual reports to the Division summarizing their activities in implementing each of the requirements in Item (4) of this Rule;
- (e) The Division shall regularly audit local programs to ensure rule implementation; and
- (f) If a local government fails to adopt or adequately implement its program as called for in this Rule, the Division may take appropriate enforcement action as authorized by statute, and may choose to assume responsibility for implementing that program until such time as it determines that the local government is prepared to comply with its responsibilities.
- (18) Where the standards and management requirements for riparian areas are in conflict with other laws, regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, or other environmental protection areas, the more restrictive shall apply.
- (19) The existing water supply requirement in Rule .0216(3)(b) of this Section that stipulates a 100 foot vegetated buffer, adjacent to perennial streams, for all new development activities which utilize the high density option, applies to the entire Randleman Lake watershed. The first 50 feet of these riparian areas on either side of these waters must also be protected in accordance with all the requirements of this Rule.
- (20) **OTHER LAWS, REGULATIONS AND PERMITS.** In all cases, compliance with this Rule does not preclude the requirement to comply with all other federal, state and local regulations and laws.
- History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); Eff. April 1, 1999; Amended Eff. June 1, 2010.*
- 15A NCAC 02B .0252 RANDLEMAN LAKE WATER SUPPLY WATERSHED: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS**
- The following are the requirements for the Riparian Buffer Mitigation Program for the Randleman Lake Water Supply Watershed.
- (1) **PURPOSE.** The purpose of this Rule is to set forth the mitigation requirements that apply to the Randleman Lake Water Supply Watershed existing riparian buffer protection program, as described in Rule 15A NCAC 02B .0250.
- (2) **APPLICABILITY.** This Rule applies to persons who wish to impact a riparian buffer in the Randleman Lake water supply watershed when one of the following applies:
- (a) A person has received an Authorization Certificate pursuant to 15A NCAC 02B .0250 for a proposed

- use that is designated as potentially allowable with mitigation; and
- (b) A person has received a variance pursuant to 15A NCAC 02B .0250 and is required to perform mitigation as a condition of a variance approval.
- (3) **THE AREA OF MITIGATION.** The required area of mitigation shall be determined by either the Division or the delegated local authority according to the following:
- (a) The impacts in square feet to each zone of the riparian buffer shall be determined by the Division or the delegated local authority by adding the following:
- (i) The area of the footprint of the use causing the impact to the riparian buffer;
- (ii) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use; and
- (iii) The area of any ongoing maintenance corridors within the riparian buffer associated with the use; and
- (b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub-item (3)(a) of this Rule to each zone of the riparian buffer:
- (i) Impacts to Zone 1 of the riparian buffer shall be multiplied by 3;
- (ii) Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5; and
- (iii) Impacts to wetlands within Zones 1 and 2 of the riparian buffer that are subject to mitigation under 15A NCAC 02H .0506 shall comply with the mitigation ratios in 15A NCAC 02H .0506.
- (4) **THE LOCATION OF MITIGATION.** The mitigation effort shall be the same distance from the Cape Fear River or its tributaries and within the watershed of Lake Randleman as the proposed impact, or closer to the Cape Fear River and within the watershed of Lake Randleman than the impact, and as close to the location of the impact as feasible.
- (5) **ISSUANCE OF THE MITIGATION DETERMINATION.** The Division or the delegated local authority shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.
- (6) **OPTIONS FOR MEETING THE MITIGATION DETERMINATION.** The mitigation determination made pursuant to Item (5) of this Rule may be met through one of the following options:
- (a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule;
- (b) Donation of real property or of an interest in real property pursuant to Item (8) of this Rule; and
- (c) Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Rule.
- (7) **PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND.** Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall do so in accordance with 15A NCAC 02B .0269.
- (8) **DONATION OF PROPERTY.** Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:
- (a) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Sub-Item (8)(d) (iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Item (7) of this Rule, the applicant shall pay the remaining balance due;
- (b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity;
- (c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such

- property meets all of the following requirements:
- (i) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Riparian Restoration Plan;
 - (ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration;
 - (iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;
 - (iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule;
 - (v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use;
 - (vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;
 - (vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition cost;

- (viii) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended;
 - (ix) The property shall not contain any hazardous substance or solid waste;
 - (x) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations;
 - (xi) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort; and
 - (xii) The property shall not have any encumbrances or conditions on the transfer of the property interests; and
 - (xiii) The location of the donation of real property shall comply with the requirements in Item (4) of this Rule.
- (d) At the expense of the applicant or donor, the following information shall be submitted to the local governments, except state and federal entities shall submit to the Division, with any proposal for donations or dedications of interest in real property:
- (i) Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Rule;
 - (ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing

- site conditions, vegetation types, presence of existing structures and easements;

(iii) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609;

(iv) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734; and

(v) A title certificate.

(9) **RIPARIAN BUFFER RESTORATION OR ENHANCEMENT.** Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:

(a) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:

(i) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (3) of this Rule; and

(ii) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (3) of this Rule;

(b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Rule;

(c) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;

(d) Enhancement and restoration shall both have the objective of establishing a forested riparian buffer according to the requirements of this Item. Enhancement, shall be distinguished from the restoration based on existing buffer conditions. Where existing woody vegetation is sparse, that is greater than or equal to 100 trees per acre, but less than 200 trees per acre, a buffer may be enhanced. Where existing woody vegetation is absent, that is less than 100 trees per acre, a buffer may be restored;

(e) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 02B .0250. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the local government, except for state and federal entities that shall submit a restoration or enhancement plan for approval to the Division. The restoration or enhancement plan shall contain the following:

(i) A map of the proposed restoration or enhancement site;

(ii) A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity;

(iii) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;

(iv) A fertilization plan; and

(v) A schedule for implementation;

(f) Within one year after the Division has approved the restoration or

- enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of the State's or the delegated local authority's riparian buffer protection program;
- (g) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's sediment removal functions; and
- (h) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

History Note: Authority 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1998, c. 221; Eff. June 1, 2010.

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

- (1) Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches.
- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:
- (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic

vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas.

- (B) Development shall comply with state and federal water and air quality standards.
- (C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Cultural Resources.
- (D) Development shall not increase siltation.
- (E) Development shall not create stagnant water bodies.
- (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources.
- (G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.
- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits outweigh the long range adverse effects of the project, that there is no reasonable alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that will:
- (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (B) restore the affected environment; or
- (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) Primary nursery areas are those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC).
- (5) Outstanding Resource Waters are those estuarine waters and public trust areas

classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values.

- (6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(b) Specific Use Standards

- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

- (A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative that would avoid the wetland losses.
- (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands.
- (C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no

circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10).

- (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation.
- (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland.
- (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters.
- (G) Construction of finger canal systems shall not be allowed. Canals shall be either straight or meandering with no right angle corners.
- (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics.
- (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:
 - (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
 - (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
 - (iii) Excavated material can be removed and placed in a disposal area in accordance

- with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
- (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.
- This Part does not affect restrictions placed on permits issued after March 1, 1991.
- (2) **Hydraulic Dredging**
- (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids.
- (B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment, if the material is suitable in accordance with the Rules in this Subchapter except as provided in Part (G) of this Subparagraph.
- (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands.
- (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level.
- (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged.
- (F) A water control structure shall be installed at the intake end of the effluent pipe.
- (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule.
- (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- (3) **Drainage Ditches**
- (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary.
- (B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include relic disposal sites.
- (C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies.
- (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates and retention structures are examples of design alternatives that may be used to minimize sediment introduction.
- (4) **Nonagricultural Drainage**
- (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water.
- (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth.
- (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.
- (5) **Marinas.** Marinas are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient

docking spaces, dry storage, fueling facilities, haulout facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall comply with these standards for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:

- (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the MFC, or wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
 - (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;
 - (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;
 - (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
 - (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
- (B) Marinas which require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery

areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule.

- (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible.
- (D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation shall not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces.
- (E) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development.
- (F) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that

- have been leased from the state or deeded by the state.
- (G) Marina basins shall be designed to promote flushing through the following design criteria:
 - (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
 - (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation.
- (H) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters.
- (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes mooring sites (permanent or temporary); speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.
- (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.
- (K) Marinas which require dredging shall provide areas in accordance with Part (b)(1)(B) of this Rule to accommodate disposal needs for future maintenance dredging, including the ability to remove the dredged material from the marina site.
- (L) Marina design shall comply with all applicable EMC requirements for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d).
- (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services.
- (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters.
- (O) All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule.
- (P) All applications for marinas shall be reviewed by the Division of Coastal Management to determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review shall also consider the cumulative impacts of marina development in accordance with G.S. 113A-120(10).
- (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.
- (6) Piers and Docking Facilities.
 - (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur.
 - (B) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas.
 - (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
 - (D) A boathouse shall not exceed 400 square feet except to accommodate a

- documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Size restrictions shall not apply to marinas.
- (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift.
- (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use.
- (G) Pier and docking facility length shall be limited by:
- (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use; (This restriction shall not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);
 - (ii) not extending into the channel portion of the water body; and
 - (iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation shall not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.
- (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body.
- (I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(q) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline

- configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management.
- (J) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.
- (7) Bulkheads
- (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the location of normal high water or normal water level.
- (B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant adverse impacts to the resources.
- (C) Bulkhead backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead.
- (D) Bulkheads shall be permitted below normal high water or normal water level only when the following standards are met:
- (i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;
- (ii) the bulkhead alignment extends no further below normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;
- (iii) the bulkhead alignment will not adversely impact public trust rights or the property of adjacent riparian owners;
- (iv) the need for a bulkhead below normal high water or normal water level is documented by the Division of Coastal Management; and
- (v) the property to be bulkheaded is in a non-oceanfront area.
- (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.
- (8) Beach Nourishment
- (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use consistent with the following:
- (i) Beaches may be created or maintained in areas where they have historically been found due to natural processes.
- (ii) Material placed in the water and along the shoreline shall be clean sand and free from pollutants. Grain size shall be equal to that found naturally at the site.
- (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds.
- (iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by MFC.
- (v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the Division of Marine Fisheries during the permit review.
- (vi) Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins.

- (B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control.
- (C) Material from dredging projects may be used for beach nourishment if:
 - (i) it is first handled in a manner consistent with dredged material disposal as set forth in this Rule.
 - (ii) it is allowed to dry prior to being placed on the beach; and
 - (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
- (D) Beach construction shall comply with state and federal water quality standards.
- (E) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any adverse impacts of the original work.
- (F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time. Permits may be renewed or modified for maintenance work or repeated need for nourishment.
- (9) Groins
 - (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process.
 - (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin.
- (C) Groins shall pose no threat to navigation.
- (D) The height of groins shall not exceed one foot above normal high water or normal water level.
- (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.
- (F) "L" and "T" sections shall not be allowed at the end of groins.
- (G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant and of a size sufficient to prevent its movement from the site by wave and current action.
- (10) "Freestanding Moorings".
 - (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).
 - (B) Freestanding moorings shall be permitted only:
 - (i) to riparian property owners within their riparian corridors; or
 - (ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan.
 - (C) All mooring fields shall provide an area for access to any mooring(s) and other land based operations that shall include wastewater pumpout, trash disposal and vehicle parking.
 - (D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33

- U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development.
- (E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the state.
 - (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted.
 - (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC standards.
 - (H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff.
 - (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal.
 - (J) Freestanding moorings associated with commercial shipping, public service or temporary construction/salvage operations may be permitted without a public sponsor.
 - (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels, deep water, etc. which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access.
 - (L) Freestanding moorings shall not be established in submerged cable/pipe crossing areas or in a manner that interferes with the operations of an access through any bridge.
 - (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s).
 - (N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.
- (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:
- (A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;
 - (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;
 - (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right or public trust usage; and
 - (D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.
- (12) "Submerged Lands Mining"
- (A) Development Standards. Mining of submerged lands shall meet all the following standards:
 - (i) The biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction,

- shall be evaluated for significant adverse impacts and a protection strategy for these natural functions and values provided with the state approval request or permit application;
- (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
 - (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this Subchapter; shipwrecks identified by the Department of Cultural Resources; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Land Resources pursuant to G.S. 113A-113(b)(4)(g);
 - (iv) Mining activities shall not be conducted on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC; such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
 - (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources; and
 - (vi) Mining activities shall not affect potable groundwater supplies, wildlife, freshwater, estuarine, or marine fisheries.
- (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant amending the mining proposal to include measures necessary to insure compliance with the provisions of the Mining Act and the rules for development set out in this Subchapter. Permit conditions shall also include:
- (i) Monitoring shall be required of the applicant to ensure compliance with all applicable development standards; and
 - (ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.
- (C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in this Rule.
 - (D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 7M .0700.
 - (E) Public Benefits Exception. Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.
- History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 9, 1977; Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992; RRC Objection due to ambiguity Eff. March 21, 1996; Amended Eff. June 1, 2010; August 1, 1998; May 1, 1996.*

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet;
- (4) beach accessways consistent with Rule .0308(c) of this Subchapter;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands;
- (8) sand fences; and
- (9) swimming pools.

In all cases, this development shall be permitted only if it is landward of the vegetation line or static vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback requirements of this Subchapter.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Subchapter would preclude placement of permanent substantial structures on lots existing as of June 1, 1979, buildings shall be permitted seaward of the applicable setback line in ocean erodible areas, but not inlet hazard areas or unvegetated beach areas, if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line or static vegetation line, whichever is applicable;
- (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Subchapter.
 - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
 - (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure

shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;

- (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases concrete, asphalt or turfstone may also be used;
- (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent building. When the geometry or orientation of a lot precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.

(c) Reconfiguration and development of lots and projects that have a grandfather status under Paragraph (b) of this Rule shall be allowed provided that the following conditions are met:

- (1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;
- (2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences.

For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.

(d) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) piers providing public access; and
- (2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.

(e) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:

- (1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
- (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
- (3) The pier house shall be limited to a maximum of two stories;
- (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
- (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
- (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
- (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.

(f) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted on those non-oceanfront portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 07K .0203.

(g) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule 07H .0305, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and

- (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124;

Eff. February 2, 1981;

Amended Eff. June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 02D .0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS

(a) Vehicle/vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet. After review of documentation of variances, the State Highway Administrator or his designee may authorize the issuance of a permit for movement of loads in excess of 15 feet wide in accordance with 19A NCAC 02D .0600 et seq. Exception: A mobile/modular unit with maximum measurements of 16 feet wide unit and a 3 inch gutter edge may be issued a permit. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 14 feet across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured may be hauled with the equipment without being considered a divisible load. A 14 feet wide mobile/modular home unit with a roof overhang not to exceed a total of 12 inches may be transported with a bay window, room extension, or porch providing the protrusion does not extend beyond the maximum 12 inches of roof overhang or the total width of overhang on the appropriate side of the home. An extender shall be placed on the front and rear of the mobile home with a length to extend horizontally equal to but not beyond the extreme outermost edge of the home's extension. The extenders shall have retro-reflective sheeting, a minimum of 4 inches, which shall be Type III high intensity (encapsulated lens) or Type IV high performance (prismatic) with alternating fluorescent yellow and black diagonal stripes sloping towards the outside of the home with a minimum area of 288 square inches. The bottom of the extenders shall be 6 feet to 8 feet above the road surface with a 5 inch amber flashing beacon mounted on the top of each extender. Authorization to move commodities wider than 15 feet in width shall be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width.

(b) A single trip permit shall be issued vehicle specific not to exceed a width in excess of 15 feet for all movements unless authorized by the State Highway Administrator or his designee after analysis of the proposed load and evaluation of the proposed route of travel. Exception: A mobile/modular unit with maximum measurements of 16 feet wide unit and a 3 inch

gutter edge may be issued a permit. Permits for house moves may be issued as specified in G.S. 20-356 through G.S. 20-372.

(c) An annual oversize/overweight permit may be issued as follows:

- (1) for unlimited movement without an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for vehicle/vehicle combinations transporting general non-divisible commodities which has a minimum extreme wheelbase of 51 feet and which does not exceed: width of 12 feet; height of 13 feet, 6 inches; length of 75 feet; gross weight of 90,000 pounds; and axle weights of 12,000 pounds steer axle, 25,000 pounds single axle, 50,000 pounds tandem axle, and 60,000 pounds for a three or more axle grouping.
- (2) for unlimited movement without the requirement of an escort on all North Carolina highways, where permitted by the posted road and bridge limits, for four or five axle self-propelled equipment or special mobile equipment capable of traveling at a highway speed of 45 miles per hour which has a minimum wheel base of 30 feet and which does not exceed: width of 10 feet; height of 13 feet, 6 inches; length of 45 feet with front and rear overhang not to exceed a total of 10 feet; gross weight of 90,000 pounds; axle weights of 20,000 pounds single axle; 50,000 pounds tandem axle; and 60,000 pounds for a three or more axle grouping.
- (3) for unlimited movement with the requirement of an escort vehicle on all North Carolina highways, where permitted by the posted bridge and load limits, for vehicles/vehicle combinations transporting farm equipment and which does not exceed: a width of 14 feet; a height of 13 feet 6 inches; and a weight as set forth in G.S. 20-118(b)(3).
- (4) for mobile/modular homes with a maximum height of 13 feet 6 inches being transported from the manufacturer to a North Carolina mobile/modular home dealership with a width not to exceed a 14 feet unit with an allowable roof overhang not to exceed a total of 12 inches or a 16 feet wide unit with a 3 inch gutter edge. These mobile/modular homes shall be authorized to travel on designated routes approved by the Department of Transportation considering construction work zones, highway lane widths, origin and destination or other factors to ensure safe movement.
- (5) to the North Carolina licensed mobile/modular home retail dealer and the transporter for delivery of mobile/modular homes not to exceed a maximum width of a 14 feet unit with a total roof overhang not to exceed 12

inches and a height of 13 feet 6 inches. The annual permit shall be valid for delivery of mobile/modular homes within a maximum 25-mile radius of the dealer location. Confirmation of destination for delivery shall be carried in the permitted towing unit readily available for law enforcement inspection.

(d) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. The route traveled from a specific origin to a specific destination must be included within one permitted route of travel. Moves exceeding weight limits for highways or bridge structures shall be denied if considered by the issuing agent to be unsafe or if they may cause damage to such highway or structure. A surety bond shall be required if the Department determines it is necessary to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.

(e) The standards for analysis, extreme wheelbase requirements, weight distribution and axle configuration requirements are based on a Department of Transportation engineering study with consideration of the infrastructure being crossed along the permitted route of travel. The maximum permissible weights are as follows:

- (1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not including off highway construction equipment without an engineering study is:

Steer Axle	12,000 pounds
Single axle	25,000 pounds
2 axle tandem	50,000 pounds
3 or more axle group	60,000 pounds

3 axle single vehicle may have a maximum gross weight up to 70,000 pounds based on the engineering study.

4 axle single vehicle may have a maximum gross weight up to 90,000 pounds based on the engineering study.

5 axle single vehicle may have a maximum gross weight up to 94,500 pounds based on the engineering study.

5 axle vehicle combination may have a maximum gross weight up to 112,000 pounds based on the engineering study.

6 axle single vehicle may have a maximum gross weight up to 108,000 pounds based on the engineering study.

6 axle vehicle combination may have a maximum gross weight up to 120,000 pounds based on the engineering study.

7 axle single vehicle may have a maximum gross weight up to 122,000 pounds based on the engineering study.

7 axle vehicle combination may have a maximum gross weight up to 132,000 pounds based on the engineering study.

7 or more axle vehicle combination with a gross weight exceeding 132,000 pounds requires the engineering study.

- (2) The maximum permit weight allowed for self propelled off highway construction equipment with low pressure/flotation tires is:

Single axle 37,000 pounds

Tandem axle 50,000 pounds

2 axle single vehicle may have a maximum gross weight up to 70,000 pounds based on the engineering study.

3 axle single vehicle may have a maximum gross weight up to 80,000 pounds based on the engineering study.

4 axle single vehicle may have a maximum gross weight up to 90,000 pounds based on the engineering study.

- (3) A vehicle combination consisting of a power unit and trailer hauling a sealed ship container may qualify for a specific route overweight permit not to exceed 94,500 pounds provided the vehicle:

(A) Is going to or from a designated seaport (to include in state and out of state) and has been or shall be transported by marine shipment;

(B) Is licensed for the maximum allowable weight for a 51 feet extreme wheelbase measurement specified in G.S. 20-118;

(C) Does not exceed maximum dimensions of width, height and length specified in Chapter 20 of the General Statutes;

(D) Is a vehicle combination with at least five axles; and

(E) Has proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being transported available for law enforcement officer inspection.

- (f) Overlength permits shall be limited as follows:

- (1) Single trip permits are limited to 105 feet inclusive of the towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 105 feet after review of geographic route of travel, consideration of local construction projects and other dimensions of the load. Mobile/modular home units shall not exceed a length of 80 feet inclusive of a 4 foot trailer tongue. Total length inclusive of the towing vehicle is 105 feet.

- (2) Annual (blanket) permits shall not be issued for lengths to exceed 75 feet. Mobile/modular home permits may be issued for a length not to exceed 105 feet.

- (3) Front overhang may not exceed the length of 3 feet specified in Chapter 20 unless if

transported otherwise would create a safety hazard. If the front overhang exceeds 3 feet, an overlength permit may be issued.

- (g) An Overheight Permit Application for heights in excess of 14 feet must be submitted in writing to the Central Permit Office at least two working days prior to the anticipated date of movement. The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances shall be checked by the permittee prior to movement underneath.

(h) Movement shall be made between sunrise and sunset Monday through Saturday. Sunday travel may be authorized from sunrise to sunset after consideration of the overall permitted dimensions. Exception: A 16 feet wide mobile/modular home unit with a maximum 3 inch gutter edge is restricted to travel from 9:00 a.m. to 2:30 p.m. Monday through Saturday. A 16 feet wide unit is authorized to continue operation after 2:30 p.m., but not beyond sunset, when traveling on an approved route as determined by an engineering study and the unit is being exported out-of-state. Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite flow of traffic. No movement is permitted for a vehicle/vehicle combination after noon on the weekday preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement is permitted until noon on the weekday following a holiday. If the observed holiday falls on the weekend, travel is restricted from 12:00 noon on the preceding Friday through 12:00 noon on the following Monday. Continuous travel (24 hour/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a permitted gross weight of 112,000 pounds provided the permitted vehicle has no other over legal dimension of width, height or length included in the permitted move. Exception: Self-propelled equipment may be authorized for continuous travel with overhang (front or rear or both) not to exceed a total of 10 feet provided overhang is marked with high intensity glass bead retro-reflective sheeting tape measuring 2 inches by 12 inches displayed on both sides and the end of the extension and on each side of the self-propelled vehicle 24 inches from the road surface at nearest feasible center point between the steer and drive axles. Any rear overhang must display a temporarily mounted brake light and a flashing amber light, 8 inches in diameter with a minimum candlepower of 800 watts. Permitted vehicles owned or leased by the same company or permitted vehicles originating at the same location shall travel at a distance of not less than two miles apart. Convoy travel is not authorized except as directed by law enforcement escort.

(i) The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. A towing unit and mobile/modular home combination shall not exceed a maximum speed of 60 miles per hour. The driver of the permitted vehicle shall avoid creating traffic congestion by periodically relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs.

- (j) Additional safety measures are as follows:

- (1) A yellow banner measuring a total length of 7 feet x 18 inches high bearing the legend "Oversize Load" in 10 inches black letters 1.5 inches wide brush stroke shall be displayed in one or two pieces totaling the required length on the front and rear bumpers of a permitted vehicle/vehicle combination with a width greater than 10 feet. A towing unit mobile/modular home combination shall display banners of the size specified bearing the legend "Oversize ----- feet Load" identifying the nominal width of the unit in transport. Escort vehicles shall display banners as previously specified with the exception of length to extend the entire width of the bumpers;
- (2) Red or orange flags measuring 18 inches square shall be displayed on all sides at the widest point of load for all loads in excess of 8 feet 6 inches wide but the flags shall be so mounted as to not increase the overall width of the load;
- (3) All permitted vehicles/vehicle combinations shall be equipped with tires of the size specified and the required number of axles equipped with operable brakes in good working condition as provided in North Carolina Statutes and Motor Carrier and Housing and Urban Development (HUD) regulations;
- (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load; and
- (5) Flashing amber lights shall be used as determined by the issuing permit office.

(k) The object to be transported shall not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit after confirmation of an emergency condition.

(l) No move shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular unit exceeding a width of 10 feet is prohibited when wind velocities exceed 25 miles per hour in gusts.

(m) All obstructions, including traffic signals, signs and utility lines shall be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the Division of Highways District Engineer having jurisdiction over the area involved. In determining whether to grant approval, the district engineer shall consider the species, age and appearance

of the tree or shrub in question and its contribution to the aesthetics of the immediate area.

(n) The Department of Transportation may require escort vehicles to accompany oversize or overweight loads. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel shall be considered to determine escort requirements.

History Note: Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978;

Eff. July 1, 1978;

Amended Eff. October 1, 1994; December 29, 1993; October 1, 1991; October 1, 1990;

Temporary Amendment Eff. January 10, 2002; December 31, 2000; October 1, 2000;

Amended Eff. June 1, 2010; April 1, 2009; August 1, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

21 NCAC 12 .0208 CONSTRUCTION MANAGEMENT

(a) The term "undertakes to superintend or manage" as used in G.S. §87-1 to describe a person, firm, or corporation deemed to be a general contractor means that the person, firm, or corporation is responsible for superintending or managing the construction of an entire project, and either contracts directly with subcontractors to perform the construction for the project or is compensated for superintending or managing the project based upon the cost of the project or the time taken to complete the project. The person, firm, or corporation must hold a general contracting license in the classifications and limitation applicable to the construction of the project.

(b) The term "undertakes to superintend or manage" described in Paragraph (a) of this Rule does not include the following:

- (1) an architect or engineer licensed in North Carolina who is supervising the execution of design plans for the project owner and who does not contract directly with subcontractors to perform the construction for the project; or
- (2) subject to the conditions stated within this Subparagraph and Paragraph (c), any person, firm, or corporation retained by an owner of real property as a consultant, agent, or advisor to perform development-related functions, including:
 - (A) assisting with site planning and design,
 - (B) formulating a development scheme,
 - (C) obtaining zoning and other entitlements,

- (D) tenant selection and negotiation,
- (E) interfacing and negotiating with the general contractor, engineer, architect, other construction and design professionals and other development consultants with whom the land owner separately contracts, including, negotiating contracts on the owner's behalf, assisting with scheduling issues, ensuring that any disputes between such parties are resolved to the owner's satisfaction, and otherwise ensuring that such parties are proceeding in an efficient, coordinated manner to complete the project,
- (F) providing cost estimates and budgeting,
- (G) monitoring the progress of development activities performed by other parties,
- (H) arranging and negotiating governmental incentives and entitlements, and
- (I) selecting and sequencing sites for development.

(c) The exclusions set forth in Subparagraph (b)(2) do not apply, however, unless the following conditions are satisfied:

- (1) the owner has retained a licensed general contractor or licensed general contractors to construct the entire project or to directly superintend and manage all construction work in which the person, firm or corporation has any involvement and which would otherwise require the use of a licensed general contractor, and
- (2) the use of the person, firm or corporation will not impair the general contractor's ability to communicate directly with the owner and to verify the owner's informed consent and ratification of the directions and decisions made by the person, firm or corporation to the extent that such directions or decisions affect the construction activities otherwise requiring the use of a licensed general contractor. For the purposes of this Subparagraph, the general contractor is entitled to make a written demand for written verification from the owner of any directions given or decisions made by such a person, firm or corporation on the owner's behalf. In that regard, if the general contractor delivers a written request directly to the owner asking that the owner confirm in writing that the owner desires that the general contractor perform consistent with a direction or decision made by such person, firm or corporation:
 - (A) the general contractor shall not be obligated to follow such direction or decision in question until such time as

- (B) the owner provides written verification of the direction or decision; and
- (B) if the third party person, firm or corporation whose direction or decision is being questioned by the general contractor attempts to itself provide the confirmation requested from the owner by the general contractor as provided above, such person, firm or corporation shall be deemed to be "undertaking to superintend or manage" as described in Paragraph (a) of this Rule.

*History Note: Authority G.S. 87-1; 87-4;
Eff. May 1, 1995;
Amended Eff. June 1, 2010.*

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14A .0401 LICENSE RENEWAL WAIVER FOR ARMED FORCES

Licensees in good stand and serving in the armed forces of the United States are allowed an extension on license renewal payment and required continuing education hours as permitted G.S. 93B-15.

*History Note: Authority G.S. 93B-15;
Eff. June 1, 2010.*

21 NCAC 14G .0103 SPACE REQUIREMENTS

(a) The Cosmetic Art Board shall issue letters of approval only to cosmetic art schools that have at least 2,800 square feet of inside floor space for 20 stations or 4,200 square feet of inside floor space for 30 stations located within the same building. An additional 140 square feet of floor space is required for each station above 20 stations, up to and including a total of 30 stations. Thereafter, an additional 40 square feet is required for each station in excess of 30 stations. For purpose of this Rule, the day and night classes is counted as separate enrollments. A school may have a recitation room located in an adjacent building or another building within 500 feet of the main cosmetology building.

(b) Each cosmetic art school must have no less than 20 hairdressing stations, arranged to accommodate not less than 20 students and arranged so that the course of study and training cosmetology, as prescribed in 21 NCAC 14J .0306, may be given. All stations must be numbered numerically.

(c) Cosmetic art schools must have a beginner department containing sufficient space to comfortably accommodate at least 10 students and having at least 40 inches between mannequins.

(d) The Board shall issue a letter of approval only to manicurist schools that have at least 1,000 square feet of inside floor space located within the same building.

- (e) Manicurist schools with 1,000 square feet of inside floor space shall enroll no more than 20 students at one time, and for each student enrolled in addition to 20 students, 40 square feet of inside floor space must be provided.
- (f) Manicurist schools must have 10 manicurist tables and chairs a minimum of two feet apart, side to side, arranged to comfortably accommodate ten students.
- (g) The Board shall issue a letter of approval only to esthetician schools that have at least 1,500 square feet of inside floor space located within the same building.
- (h) Esthetician schools with 1,500 square feet of inside floor space shall enroll no more than 20 students at one time, and for each student enrolled in addition to 20 students, 50 square feet of inside floor space must be provided.
- (i) The Board shall issue a letter of approval only to natural hair care schools that have at least 2000 square feet of inside floor space located within the same building.
- (j) Natural hair care schools with 2000 square feet of inside floor space shall enroll no more than 20 students at one time, and for each student enrolled in addition to 20 students, 50 square feet of inside floor space must be provided. Schools combining manicuring, esthetics and natural hair care training programs with 2000 feet of inside floor space shall enroll no more than a total of 20 students at one time and for each student enrolled in addition to 20 students, 50 square feet of inside floor space must be provided. Equipment requirements for manicuring, esthetics and natural hair care schools shall be followed.

History Note: Authority G.S. 88B-4; Eff. February 1, 1976; Amended Eff. April 1, 1995; January 1, 1992; May 1, 1991; January 1, 1989; May 1, 1998; Temporary Amendment Eff. January 1, 1999; Amended Eff. July 1, 2010; August 1, 2002; April 1, 2001; August 1, 2000.

21 NCAC 14G .0107 EQUIPMENT AND TEACHERS

- (a) A cosmetic art school shall have the necessary classrooms and equipment for teaching as required by Subchapters 14I, 14J, 14K and 14O and shall provide a staff of cosmetic art teachers licensed by the Board.
- (b) The Board shall not accept an application for a letter of approval until all furniture, supplies and equipment as prescribed by the Rules in this Chapter have been installed and the entire school is complete.
- (c) All courses in a cosmetic art school must be taught by a licensed cosmetology teacher, except that manicuring courses may be taught by either a licensed cosmetology teacher or a licensed manicurist teacher, natural hair care courses may be taught by either a licensed cosmetology teacher or a licensed natural hair care teacher, and esthetics courses may be taught by either a licensed cosmetology teacher or a licensed esthetician teacher.
- (d) Notwithstanding Paragraph (c) of this Rule, a licensed cosmetologist not licensed to teach cosmetic art may substitute for a cosmetology, esthetician, natural hair care or manicurist teacher; a licensed manicurist not licensed as a manicurist teacher may substitute for a manicurist teacher; a licensed natural hair care specialist not licensed as a natural natural hair

care teacher may substitute for a natural hair care teacher; and a licensed esthetician not licensed as an esthetic teacher may substitute for an esthetician teacher. In no event may such a substitution last for more than 15 working days per year per teacher.

History Note: Authority G.S. 88B-4; 88B-11; 88B-16; 88B-22; Eff. February 1, 1976; Amended Eff. July 1, 2010; December 1, 2008; November 1, 2005; August 1, 1998; May 1, 1991; January 1, 1989.

21 NCAC 14I .0105 TRANSFER OF CREDIT

- (a) In order that hours may be transferred from one cosmetic art school to another, a student must pass an entrance examination given by the school to which the student is transferring.
- (b) A cosmetology student must complete at least 500 hours in the cosmetic art school certifying his or her application for the state board examination.
- (c) Upon written petition by the student, the Board shall make an exception to the requirements set forth in Paragraph (b) of this Rule if the student shows that circumstances beyond the student's control prohibited him or her from completing 500 hours at the school that certifies his or her application.
- (d) A student who transfers from a cosmetology curriculum to a manicuring, natural hair care or an esthetics curriculum shall not receive credit for hours received in the cosmetology curriculum.
- (e) A student who transfers from a manicuring, natural hair care or an esthetic curriculum to a cosmetology curriculum shall not receive credit for hours received in the manicuring, natural hair care or an esthetic curriculum.
- (f) If a student is transferring from another state, the student shall submit certification of hours and performances to the cosmetic art school in which they are enrolled.
- (g) Licensed manicuring, natural hair care or estheticians may apply up to 50 percent of required hours earned toward another cosmetic art curriculum.
- (h) Up to 50 percent of all credit earned in an approved esthetician, natural hair care or manicurist teacher training program may be transferred to a cosmetology teacher training program. A maximum of 160 hours earned in either an esthetician, natural hair care or manicurist teacher training program may be transferred between programs.

History Note: Authority G.S. 88B-4; 88B-7; 88B-8; 88B-9; 88B-10; 88B-10.1; Eff. February 1, 1976; Amended Eff. July 1, 2010; December 1, 2008; July 1, 2006; December 1, 2004; February 1, 2004; August 1, 1998; December 1, 1993; January 1, 1991; January 1, 1989; April 1, 1988.

21 NCAC 14I .0107 REPORT OF ENROLLMENT

- (a) A cosmetic art school shall report cosmetology enrollments to the Board not later than 30 working days after a student enrolls in school. A cosmetic art school shall report manicurist, natural hair care specialist and esthetician enrollments to the Board not later than 15 working days after a student enrolls in school. If a student's enrollment is not reported within 30

working days for cosmetology and 15 working days for esthetician, natural hair care specialist and manicurist, the cosmetic art school shall file a copy of the student's daily time records when it reports the student's enrollment.

(b) The school must report the enrollment of students prior to the student applying for the cosmetologist, manicurist, natural hair care specialist or esthetician examination and before any hours can be credited.

History Note: Authority G.S. 88B-4; 88B-9; 88B-10; 88B-10.1;

Eff. February 1, 1976;

Amended Eff. August 1, 1998; April 1, 1991; January 1, 1989; April 1, 1988;

Temporary Amendment Eff. January 1, 1999;

Amendment Eff. July 1, 2010; December 1, 2008; August 1, 2000; April 1, 1999.

21 NCAC 14I .0108 SEAL

Each cosmetic art school must have a unique, raised seal identifying the school and physical location to be used on all applications, reports, drop-out notices, and other official papers. Electronically sent enrollments and drop-out notices are exempted from this requirement.

History Note: Authority G.S. 88B-4;

Eff. February 1, 1976;

Amended Eff. June 1, 2010; July 1, 2006; April 1, 1991; January 1, 1989.

21 NCAC 14I .0301 RECITATION ROOM

(a) Each cosmetic art school shall have a recitation room, of no less than 300 square feet with a minimum one-side width or depth of 12 feet and shall accommodate no more than 20 students, which shall be equipped with desks or chairs suitable for classroom work, chair(s) suitable for demonstrating cosmetology practices, a dry erase board, and charts, except that the demonstration chair(s) in a manicurist school need be suitable only for demonstrating manicuring and pedicuring practices.

(b) Charts in the recitation room shall include those with illustrations of the skin, bones, muscles, and nerves of the head, neck, feet, and hands, except that the set of charts in a manicurist school need not include those illustrating the head and neck. The set of charts in a natural hair care school need not include those illustrating the feet and hands.

History Note: Authority G.S. 88B-4; 88B-16;

Eff. February 1, 1976;

Amended Eff. July 1, 2010; December 1, 2008; April 1, 1991; January 1, 1989.

21 NCAC 14J .0207 LIVE MODEL/MANNEQUIN PERFORMANCE REQUIREMENTS

(a) The following live model/mannequin performance completions shall be done by each student in the advanced department before the student is eligible to take the cosmetologist's examination. Sharing of performance completions is not allowed. Credit for a performance shall be given to only one student.

21 NCAC 14J .0106 EQUIPMENT FOR BEGINNER DEPARTMENT

The beginner department shall be equipped with the following minimum equipment for every 20 students in the department:

- (1) one manicure table and stool;
- (2) two shampoo bowls and chairs, each bowl must be at least 40 inches apart center of bowl to center of bowl;
- (3) one mannequin with hair per student;
- (4) thermal styling equipment for the purpose of curling or straightening the hair;
- (5) visual aids;
- (6) one mannequin practice table to accommodate at least ten students; and
- (7) five dozen cold wave rods for each student in the department.

History Note: Authority G.S. 88B-4;

Eff. February 1, 1976;

Amended Eff. June 1, 2010; May 1, 2007; January 1, 1989; April 1, 1988.

21 NCAC 14J .0206 EQUIPMENT IN ADVANCED DEPARTMENT

The advanced department must be equipped with the following equipment:

- (1) for departments with 20 to 29 stations, two manicure tables and stools;
- (2) for departments with 30 or more stations, four manicure tables and stools;
- (3) for departments with 20 to 29 stations, eight dryers and chairs;
- (4) for departments with 30 or more stations, 12 dryers and chairs;
- (5) eight shampoo bowls and chairs, each bowl must be at least 40 inches apart center of bowl to center of bowl;
- (6) 20 dressing tables and styling chairs;
- (7) for departments with 20 to 29 stations, one facial chair;
- (8) for departments with 30 or more stations, two facial chairs; and
- (9) thermal styling equipment for the purpose of curling or straightening the hair.

History Note: Authority G.S. 88B-4;

Eff. February 1, 1976;

Amended Eff. June 1, 2010; May 1, 2007; April 1, 2004; August 1, 1998; October 1, 1990; January 1, 1989; April 1, 1988.

1200 Hours	1500 Hours
Live Model	Maniq. Live Model Maniq.

(1)	scalp and hair treatments with massage	8		10		
(2)	fullhead fingerwave and style	3	OR	3	5	OR 5
(3)	fullhead pincurl and style	3	OR	3	5	OR 5
(4)	Hair Styling – sets, blowdrying Thermal press/flat iron, artificial hair	80		56	100	70
(5)	haircuts	60		8	75	10
(6)	chemical reformation or permanent waving and relaxers	16		12	20	15
(7)	temporary color	3			5	
(8)	Color Application – semi, demi, Permanent color, and hair lightening	24		8	30	10
(9)	Multidimensional Color – low/high Lighting, cap, bleach	3		8	5	10
(10)	lash and brow tinting	2			4	
(11)	Nail Care – manicures and pedicures	12				15
(12)	artificial nails (sets)	4	OR	4	4	OR 4
(13)	facials with massage/makeup	3			10	
(14)	hair removal	3			5	

(b) Certification of live model or mannequin performance completions is required along with the application for the examination.

(c) A live model may be substituted for a mannequin for any mannequin service.

(d) All mannequin services may be performed using a simulated product.

(e) Simulated product is not allowed for credit for live model performance.

History Note: Authority G.S. 88B-4;

Eff. August 1, 1998;

Amended Eff. June 1, 2010; July 1, 2009; November 1, 2005.

21 NCAC 14J .0208 INTERNSHIPS

Schools and cosmetic art shops desiring to implement an internship program shall follow these requirements:

- (1) Schools wishing to participate in an internship program must notify the Board of intent to implement a program before credit for an internship may be granted. Cosmetic art shops and student selection criteria must be submitted along with the notification.
- (2) Schools shall report to the Board all cosmetic art shops contracted and students selected to participate in the program.
- (3) Internships may be arranged in various time frames but shall never exceed 10 percent of a student's training period.
- (4) Credit for an internship shall be granted upon submission of student hours verification based on a daily attendance record. Hours must be recorded on a form approved by the school.
- (5) Students may be assigned a variety of duties, but client services are restricted. Cosmetology and natural hair care students may only provide shampoo services, manicurist students may only remove nail polish and esthetician students may only drape and prep clients. Cosmetic art shop violation of restrictions or school requirements may result in the termination of the internship contract and the loss of student training hours.
- (6) Students must follow all cosmetic art shop employee rules and regulations. Violations of

cosmetic art shop rules or any misconduct may result in dismissal of the intern or loss of training hours.

- (7) A licensed teacher need not be in attendance during this internship.
- (8) Students participating in the program shall not receive compensation for duties performed in the cosmetic art shop.

History Note: Authority G.S. 88B-4;

Temporary Adoption Eff. January 1, 1999;

Eff. August 1, 2000;

Amended Eff. July 1, 2010; August 1, 2002.

21 NCAC 14L .0208 SUPERVISION OF COSMETIC ART TEACHER TRAINEE

- (a) A cosmetic art teacher trainee shall be supervised by a cosmetic art teacher at all times when the trainee is at a cosmetic art school except as set out in Paragraph (b) of this Rule.
- (b) A manicurist, natural hair care or esthetician teacher may not supervise a cosmetologist teacher trainee with regard to any cosmetic art other than manicuring or esthetics, as appropriate.
- (c) Violation of this Rule is just cause to revoke the Board's approval of the cosmetic art school's teacher trainee program for a period of one year.

History Note: Authority G.S. 88B-11;

Eff. February 1, 1976;

Amended Eff. July 1, 2010; December 1, 2008; April 1, 1991; August 1, 1989.

**21 NCAC 14P .0108 REVOCATION OF LICENSES
AND OTHER DISCIPLINARY MEASURES**

(a) The presumptive civil penalty for allowing unlicensed practitioners to practice in a licensed cosmetic art shop is:

- | | | |
|-----|-------------|-----------|
| (1) | 1st offense | \$250.00 |
| (2) | 2nd offense | \$500.00 |
| (3) | 3rd offense | \$1000.00 |

(b) The presumptive civil penalty for practicing cosmetology, natural hair care, manicuring or esthetics with a license issued to another person is:

- | | | |
|-----|-------------|------------|
| (1) | 1st offense | \$300.00 |
| (2) | 2nd offense | \$500.00 |
| (3) | 3rd offense | \$1,000.00 |

(c) The presumptive civil penalty for altering a license, permit or authorization issued by the Board is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$300.00 |
| (2) | 2nd offense | \$400.00 |
| (3) | 3rd offense | \$500.00 |

(d) The presumptive civil penalty for submitting false or fraudulent documents is:

- | | | |
|-----|-------------|------------|
| (1) | 1st offense | \$500.00 |
| (2) | 2nd offense | \$800.00 |
| (3) | 3rd offense | \$1,000.00 |

(e) The presumptive civil penalty for refusing to present photographic identification is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$250.00 |
| (3) | 3rd offense | \$500.00 |

(f) The presumptive civil penalty for advertising by means of knowingly false or deceptive statement is:

- | | | |
|-----|-------------|--------------------|
| (1) | 1st offense | warning (\$300.00) |
| (2) | 2nd offense | \$400.00 |
| (3) | 3rd offense | \$500.00 |

(g) The presumptive civil penalty for permitting an individual to practice cosmetic art with an expired license is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$300.00 |
| (2) | 2nd offense | \$400.00 |
| (3) | 3rd offense | \$500.00 |

(h) The presumptive civil penalty for practicing or attempting to practice by fraudulent misrepresentation is:

- | | | |
|-----|-------------|-----------|
| (1) | 1st offense | \$500.00 |
| (2) | 2nd offense | \$800.00 |
| (3) | 3rd offense | \$1000.00 |

(i) The presumptive civil penalty for the illegal use or possession of equipment or Methyl Methacrylate Monomer (MMA) in a cosmetic art shop or school is:

- | | | |
|-----|-------------|-----------|
| (1) | 1st offense | \$300.00 |
| (2) | 2nd offense | \$500.00 |
| (3) | 3rd offense | \$1000.00 |

(j) The presumptive civil penalty for failure to maintain footspa sanitation records is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$200.00 |
| (3) | 3rd offense | \$300.00 |

History Note: Authority G.S. 88B-4; 88B-24; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;

*Amended Eff. July 1, 2010; December 1, 2008; January 1, 2006;
April 1, 2004; August 1, 2002; April 1, 2001.*

**21 NCAC 14P .0113 OPERATIONS OF SCHOOLS OF
COSMETIC ART**

(a) The presumptive civil penalty for failure to record student's hours of daily attendance is:

- | | | |
|-----|-------------------------|--------------------|
| (1) | 1 st offense | warning (\$100.00) |
| (2) | 2 nd offense | \$200.00 |
| (3) | 3 rd offense | \$300.00 |

(b) The presumptive civil penalty for failure to report withdrawal or graduation of a student within 30 working days is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |

(c) The presumptive civil penalty for failure to submit cosmetology enrollments within 30 working days or manicurist, natural hair care specialist and esthetician enrollments within 15 working days is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |

(d) The presumptive civil penalty for failure to display a copy of the sanitation rules is:

- | | | |
|-----|-------------------------|-------------------|
| (1) | 1 st offense | warning (\$50.00) |
| (2) | 2 nd offense | \$100.00 |
| (3) | 3 rd offense | \$200.00 |

(e) The presumptive civil penalty for failure to post consumer sign "Cosmetic Art School - Work Done Exclusively by Students" is:

- | | | |
|-----|-------------------------|-------------------|
| (1) | 1 st offense | warning (\$50.00) |
| (2) | 2 nd offense | \$100.00 |
| (3) | 3 rd offense | \$200.00 |

(f) The presumptive civil penalty for allowing a cosmetic art shop to operate within a cosmetic art school is:

- | | | |
|-----|-------------------------|----------|
| (1) | 1 st offense | \$200.00 |
| (2) | 2 nd offense | \$400.00 |
| (3) | 3 rd offense | \$600.00 |

(g) The presumptive civil penalty for a cosmetic art school that is not separated from a cosmetic art shop or other business by a solid wall, floor to ceiling, with an separate entrance and a door that stays closed at all times is:

- | | | |
|-----|-------------------------|----------|
| (1) | 1 st offense | \$200.00 |
| (2) | 2 nd offense | \$400.00 |
| (3) | 3 rd offense | \$600.00 |

History Note: Authority G.S. 88B-4; 88B-16; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;

Amended Eff. July 1, 2010; December 1, 2008; April 1, 2004.

**21 NCAC 14P .0114 COSMETOLOGY
CURRICULUM**

(a) The presumptive civil penalty for a school allowing cosmetology students with less than 300 hours credit to work on the public. (Shampoo and scalp manipulations are exempt) is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$200.00 |
| (3) | 3rd offense | \$300.00 |

(b) The presumptive civil penalty for a school for manicurist students with less than 16 hours credit working on the public is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$200.00 |
| (3) | 3rd offense | \$300.00 |

(c) The presumptive civil penalty for a school for esthetician students with less than 60 hours credit working on the public is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$200.00 |
| (3) | 3rd offense | \$300.00 |

(d) The presumptive civil penalty for a school for natural hair care students with less than 16 hours credit working on the public is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$200.00 |
| (3) | 3rd offense | \$300.00 |

*History Note: Authority G.S. 88B-4; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;
Amended Eff. July 1, 2010.*

CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .2513 DRUG, SUPPLIES AND MEDICAL DEVICE REPOSITORY PROGRAM

(a) This Rule establishes the Drug, Supplies and Medical Device Repository Program as specified in G.S. 90-85.44.

(b) Definitions. Any term defined in G.S. 90-85.44(a) shall have the same definition under this Rule.

(c) Requirements For a Pharmacy to Participate in Accepting and Dispensing Donated Drugs, Supplies and Medical Devices.

- (1) Any pharmacy or free clinic holding a valid, current North Carolina pharmacy permit may accept and dispense donated drugs, supplies and medical devices in accordance with the requirements of this Rule and G.S. 90-85.44.
- (2) A dispensing physician registered with the Board in compliance with G.S. 90-85.21(b) and providing services to patients of a free clinic that does not hold a pharmacy permit may accept and dispense donated drugs, supplies and medical devices in accordance with the requirements of this Rule and G.S. 90-85.44.
- (3) A participating pharmacy or dispensing physician shall notify the Board in writing of such participation at the time participation begins and annually on its permit or registration renewal application.
- (4) A participating pharmacy or dispensing physician that ceases participation in the program shall notify the Board in writing within 30 days of doing so and shall submit a written report detailing the final disposition of all donated drugs, supplies and medical

devices held by the participating pharmacy or dispensing physician.

(d) Drugs, Supplies and Medical Devices Eligible for Donation.

(1) A participating pharmacy or dispensing physician may accept donation of a drug, supply or medical device meeting the criteria specified in G.S. 90-85.44(c).

(2) The following categories of drugs, supplies and medical devices shall not be accepted by a participating pharmacy or dispensing physician:

- (A) A controlled substance, unless acceptance of a donated controlled substance is authorized by federal law.
- (B) Any prescription drug or medical device subject to a restricted distribution system mandated by the United States Food and Drug Administration.
- (C) Biologicals, unless donated by the manufacturer or a prescription drug wholesaler. A pharmacy may donate a biological if the biological has been stored according to the manufacturer's labeling and has not previously been dispensed to a patient or other person.
- (D) Compounded drugs or parenteral admixtures.
- (E) Any drug requiring refrigerated storage, unless donated by either (a) the manufacturer, (b) a prescription drug wholesaler or (c) a pharmacy that has stored the drug according to the manufacturer's labeling and has not previously dispensed the drug to a patient or other person.

(e) Required Records.

(1) A participating pharmacy or dispensing physician that dispenses donated drugs, supplies or medical devices to an eligible patient shall maintain a written or electronic inventory of each donated drug, supply and medical device that shall include the following:

- (A) The name, strength, dosage form, number of units, manufacturer's lot number and expiration date.
- (B) The name, address and phone number of the eligible donor providing each drug, supply or medical device.

(2) A participating pharmacy or dispensing physician shall keep all donated drugs, supplies and medical devices physically separated from other inventory. The physically separate storage area for donated drugs, supplies and medical devices shall be identified.

- (3) In addition to all records required for dispensing a prescription drug, supply or medical device under the North Carolina Pharmacy Practice Act and rules, a participating pharmacy or dispensing physician that dispenses donated drugs, supplies or medical devices to an eligible patient shall note – either on the face of a written prescription or in the electronic record of a prescription – that a donated prescription drug, supply or medical device was dispensed to the patient.

- (4) A participating pharmacy or dispensing physician that dispenses donated drugs, supplies or medical devices to an eligible patient shall maintain patient-specific written or electronic documentation of any dispensing of a donated non-prescription drug, supply or medical device.

(f) Eligible Patient.

- (1) A participating pharmacy or dispensing physician shall establish and maintain a written patient eligibility policy that shall conform to the priorities specified in G.S. 90-85.44(f).
- (2) Donated drugs, supplies or medical devices shall be dispensed to patients who are residents of North Carolina and meet the participating pharmacy's or dispensing physician's eligibility criteria.

(g) Handling Fee.

- (1) A participating pharmacy or dispensing physician may charge a prescription drug handling fee to an eligible patient that shall not exceed the co-payment established by North Carolina Medicaid and required of a North Carolina Medicaid beneficiary who receives the same prescription drug in the same quantity.
- (2) A participating pharmacy or dispensing physician may charge a medical device or supply handling fee to an eligible patient that shall not exceed the co-payment established by North Carolina Medicaid and required of a North Carolina Medicaid beneficiary to whom a brand-name prescription drug is dispensed.
- (3) Nothing in this Rule shall require a participating pharmacy or dispensing physician to charge an eligible patient a handling fee, nor shall a participating pharmacy or dispensing physician charge a handling fee where doing so is otherwise prohibited by law.

(h) Confidentiality of Records.

- (1) A participating pharmacy or dispensing physician that dispenses donated drugs, medical devices or supplies to an eligible patient shall remove or alter any labeling or other material from a donated drug, supply or

medical device that could identify the patient to whom the donated product was originally dispensed so that the identity of that patient cannot be determined.

- (2) Records required by this Rule shall be governed by the confidentiality provisions of G.S. 90-85.36 and the Health Insurance Portability and Accountability Act of 1996.

- (3) Records required by this Rule shall be maintained by the participating pharmacy or dispensing physician for a period of three years.

*History Note: Authority G.S. 90-85.6; 90-85.26; 90-85.32; 90-85.44;
Eff. June 1, 2010.*

CHAPTER 58 – REAL ESTATE COMMISSION

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office at a time. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No office or branch office of a firm shall have more than one designated broker-in-charge. A broker who is a sole proprietor shall designate himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more other brokers affiliated with him or her in the real estate business. Maintenance of a trust or escrow account by a broker solely for holding residential tenant security deposits received by the broker on properties owned by the broker in compliance with G.S. 42-50 shall not, standing alone, subject the broker to the requirement to designate himself or herself as a broker-in-charge. A broker desiring to be a broker-in-charge shall declare in writing his or her designation as broker-in-charge of an office to the Commission on a form prescribed by the Commission within 10 days following the broker's designation as broker in charge of any office. The broker-in-charge shall, in accordance with the requirements of G.S. 93A and the rules adopted by the Commission, assume the responsibility at his or her office for:

- (1) the retention of current license renewal pocket cards by all brokers employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
- (2) the proper notification to the Commission of any change of business address or trade name

- (3) of the firm and the registration of any assumed business name adopted by the firm for its use;
- (4) the proper conduct of advertising by or in the name of the firm at such office;
- (5) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
- (6) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
- (7) the proper supervision of 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;
- (8) the proper supervision of all licensees employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.

(b) When used in this Rule, the term:

- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and
- (2) "Office" means any place of business where acts are performed for which a real estate license is required or where monies received by a licensee acting in a fiduciary capacity are handled or records for such trust monies are maintained.

(c) To qualify to become a broker-in-charge, a broker shall:

- (1) have a license on active status but not on provisional status;
- (2) possess at least two years of full-time real estate brokerage experience or equivalent part-time real estate brokerage experience within the previous five years or real estate education or experience in real estate transactions that the Commission finds equivalent to such experience; and
- (3) complete the Commission's 12 classroom hour broker-in-charge course either within three years prior to designation as a broker-in-charge or within 120 days following designation as a broker-in-charge.

By submission of a broker-in-charge declaration to the Commission, a broker certifies that he or she possesses the experience required to become a broker-in-charge and upon acknowledgement by the Commission of a completed declaration, the broker shall receive his or her broker-in-charge designation and be authorized to act as a broker-in-charge. Upon his or her designation as broker-in-charge and completion of the broker-in-charge course within the time period prescribed in Subparagraph (c)(3) of this Rule, the designated broker-in-charge acquires the eligibility to be re-designated as a broker-in-charge at any time in the future after a period of not actively serving as a broker-in-charge without having to again satisfy the

qualification requirements for initial designation stated in this Paragraph so long as the broker continuously satisfies the requirements to retain such eligibility described in Paragraph (e) of this Rule. A broker-in-charge designation shall be immediately terminated if a broker-in-charge fails to complete the broker-in-charge course during the required time period or if the Commission finds the broker-in-charge does not possess the required experience. Upon the request of the Commission, a broker shall provide to the Commission evidence that he or she possesses the required experience. A broker who is removed as broker-in-charge for failure to timely complete the Commission's 12 hour broker-in-charge course must first complete the 12 hour broker-in-charge course before he or she may again be designated as broker-in-charge. A broker-in-charge, upon written request of the Commission or a broker who has been affiliated with the broker-in-charge within the previous five years, shall provide the Commission or broker an accurate written statement regarding the broker's work at the office of the broker-in-charge, including the dates of affiliation, average number of hours worked per week, and the number and type of properties listed, sold, bought, leased, or rented for others by the licensee during his or her affiliation with the broker-in-charge.

(d) A broker who was the broker-in-charge of a real estate office on April 1, 2006, whose broker-in-charge declaration was received by the Commission prior to that date, and who completed the Commission's broker-in-charge course prior to April 1, 2006 or within 120 days following designation as a broker-in-charge, may continue to serve as a broker-in-charge thereafter until his or her eligibility to serve as a broker-in-charge is terminated as provided in Paragraph (f) of this Rule.

(e) Once a broker has been designated as a broker-in-charge and completed the 12 hour broker-in-charge course as prescribed by Paragraph (c) of this Rule, the broker may maintain broker-in-charge eligibility by timely annual renewal of his or her broker license, completion each license year of the four hour mandatory continuing education update course prescribed for all licensees and known as the "Real Estate Update Course," and completion each license year of the four hour special continuing education course prescribed by the Commission only for brokers-in-charge and known as the "Broker-In-Charge Annual Review Course." The Broker-In-Charge Annual Review Course must be taken initially by a broker-in-charge during the first full license year following the license year in which the broker was designated as a broker-in-charge and must be taken each license year thereafter in order for the broker to maintain broker-in-charge eligibility. The Broker-In-Charge Annual Review Course shall satisfy the broker's general continuing education elective course requirement, but the broker must also take the mandatory continuing education Real Estate Update Course each license year. The Broker-In-Charge Annual Review Course is reserved exclusively for current brokers-in-charge, and brokers who are not currently acting as a broker-in-charge but who desire to retain their broker-in-charge eligibility. Only these brokers shall receive continuing education elective credit for taking the course.

(f) A broker's broker-in-charge eligibility and, if currently designated as a broker-in-charge, his or her broker-in-charge designation shall be terminated upon the occurrence of any of the following events:

- (1) The broker's license expires or the broker's license is suspended, revoked or surrendered;
- (2) the broker's license is made inactive for any reason, including failure to satisfy the continuing education requirements described in Rule .1702 of this Subchapter;
- (3) the broker fails to complete the Broker-In-Charge Annual Review Course described in Paragraph (e) of this Rule; or
- (4) the broker is found by the Commission to have not possessed the experience required in Paragraph (c) of this Rule at the time of either initial designation as a broker-in-charge or re-designation as a broker-in-charge.

When a broker who is a former broker-in-charge desires to be re-designated as a broker-in-charge following termination of his or her broker-in-charge designation or eligibility, he or she must first have a license on active status. The broker then must satisfy the experience requirements for initial designation set forth in Paragraph (c) of this Rule, and the broker must complete the 12 hour broker-in-charge course within 120 days following re-designation, except that if the broker has taken the 12 hour broker-in-charge course within the preceding three years, he or she has the option to complete the Broker-In-Charge Annual Review Course for the current license year within 120 days following re-designation as a broker-in-charge in lieu of repeating the 12 hour broker-in-charge course. If a broker who has been re-designated as a broker-in-charge and then removed as broker-in-charge due to failure to satisfy his education requirement within 120 days following re-designation subsequently seeks another re-designation as broker-in-charge, the broker must first complete the 12 hour broker-in-charge course before he or she may again be designated as a broker-in-charge, even if the broker has completed the 12 hour broker-in-charge course within the preceding three years.

(g) A broker-in-charge shall notify the Commission in writing that he or she no longer is serving as broker-in-charge of a particular office within 10 days following any such change.

(h) A licensed real estate firm is not required to designate a broker-in-charge if it:

- (1) has been 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 by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no person associated with it other than its qualifying broker.

(i) A broker-in-charge residing outside of North Carolina who is the broker-in-charge of a principal or branch office not located in North Carolina is not required to complete the broker-in-charge course or the special continuing education course prescribed for brokers-in-charge under Paragraph (e) of this Rule. However, if such broker-in-charge either becomes a resident of North Carolina or becomes broker-in-charge of an office located within North Carolina, then he or she must take the 12 hour broker-in-charge course within 120 days of such change, unless he or she

has taken the 12 hour course within the preceding three years. Such broker-in-charge shall take the special broker-in-charge continuing education course prescribed in Paragraph (e) of this Rule during the first full license year following the change and each license year thereafter so long as the broker-in-charge remains a resident of North Carolina or continues to manage an office located in North Carolina.

(j) 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.

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

Eff. September 1, 1983;

Amended Eff. July 1, 2010; July 1, 2009; January 1, 2008; April 1, 2006; July 1, 2005; July 1, 2004; April 1, 2004; September 1, 2002; July 1, 2001; October 1, 2000; August 1, 1998; April 1, 1997; July 1, 1995; July 1, 1994.

21 NCAC 58A .0112 OFFERS AND SALES CONTRACTS

(a) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form unless the form describes or specifically requires the entry of the following information:

- (1) the names of the buyer and seller;
- (2) a legal description of the real property sufficient to identify and distinguish it from all other property;
- (3) an itemization of any personal property to be included in the transaction;
- (4) the purchase price and manner of payment;
- (5) any portion of the purchase price that is to be paid by a promissory note, including the amount, interest rate, payment terms, whether or not the note is to be secured, and other material terms;
- (6) any portion of the purchase price that is to be paid by the assumption of an existing loan, including the amount of such loan, costs to be paid by the buyer or seller, the interest rate and number of discount points and a condition that the buyer must be able to qualify for the assumption of the loan and must make every reasonable effort to qualify for the assumption of the loan;
- (7) the amount of earnest money, if any, the method of payment, the name of the broker or firm that will serve as escrow agent, an acknowledgment of earnest money receipt by the escrow agent, and the criteria for determining disposition of the earnest money, including disputed earnest money, consistent with Commission Rule .0107 of this Subchapter;
- (8) any loan that must be obtained by the buyer as a condition of the contract, including the amount and type of loan, interest rate and

- number of discount points, loan term, and who shall pay loan closing costs, and a condition that the buyer shall make every reasonable effort to obtain the loan;
- (9) a general statement of the buyer's intended use of the property and a condition that such use must not be prohibited by private restriction or governmental regulation;
 - (10) the amount and purpose of any special assessment to which the property is subject and the responsibility of the parties for any unpaid charges;
 - (11) the date for closing and transfer of possession;
 - (12) the signatures of the buyer and seller;
 - (13) the date of offer and acceptance;
 - (14) a provision that title to the property must be delivered at closing by general warranty deed and must be fee simple marketable title, free of all encumbrances except ad valorem taxes for the current year, utility easements, and any other encumbrances specifically approved by the buyer or a provision otherwise describing the estate to be conveyed with encumbrances, and the form of conveyance;
 - (15) the items to be prorated or adjusted at closing;
 - (16) who shall pay closing expenses;
 - (17) the buyer's right to inspect the property prior to closing and who shall pay for repairs and improvements, if any;
 - (18) a provision that the property shall at closing be in substantially the same condition as on the date of the offer (reasonable wear and tear excepted), or a description of the required property condition at closing; and
 - (19) a provision setting forth the identity of each real estate agent and firm involved in the transaction and disclosing the party each agent and firm represents.
- (b) A broker acting as an agent in a real estate transaction shall not use a preprinted offer or sales contract form containing:
- (1) any provision concerning the payment of a commission or compensation, including the forfeiture of earnest money, to any broker or firm; or
 - (2) any provision that attempts to disclaim the liability of a broker for his or her representations in connection with the transaction.
- A broker or anyone acting for or at the direction of the broker shall not insert or cause such provisions or terms to be inserted into any such preprinted form, even at the direction of the parties or their attorneys.
- (c) The provisions of this Rule shall apply only to preprinted offer and sales contract forms which a broker acting as an agent in a real estate transaction proposes for use by the buyer and seller. Nothing contained in this Rule shall be construed to prohibit the buyer and seller in a real estate transaction from altering, amending or deleting any provision in a form offer to purchase or contract nor shall this Rule be construed to limit the rights of the buyer and seller to draft their own offers or contracts or to have the same drafted by an attorney at law.

*History Note: Authority G.S. 93A-3(c);
Eff. July 1, 1988;
Amended Eff. July 1, 2010; July 1, 2009; April 1, 2006; October 1, 2000; July 1, 1995; July 1, 1989; February 1, 1989.*

21 NCAC 58A .0114 RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type contemplated by Chapter 47E of the General Statutes, shall complete the following residential property disclosure statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

STATE OF NORTH CAROLINA RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

Instructions to Property Owners

1. G.S. 47E requires owners of residential real estate (single-family homes and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement. This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must check ☒ one of the boxes for each of the questions on the reverse side of this form.
 - a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be

liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.

- b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
- c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.
- * If you check "Yes" or "No" and something happens to the property to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.
- 3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Statement to the purchasers; and the broker must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.
- 4. You must give the completed Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "Note to Purchasers" below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers

If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

- 5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____	
Owner's Name(s): _____	
Owner(s) acknowledge having examined this Statement before signing and that all information is true and correct as of the date signed.	
Owner Signature: _____	Date _____, ____
Owner Signature: _____	Date _____, ____
Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional.	
Purchaser Signature: _____	Date _____, ____
Purchaser Signature: _____	Date _____, ____

Property Address/Description: _____

[Note: In this form, "property" refers only to dwelling unit(s) and not sheds, detached garages or other buildings.]

Regarding the property identified above, do you know of any problem (malfunction or defect) with any of the following:

	No Repr-	
Yes*	No	sentation

APPROVED RULES

1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them? ☐ ☐ ☐
- a. Siding is: ☐ Masonry ☐ Wood ☐ Composition/Hardboard ☐ Vinyl ☐ Synthetic Stucco
☐ Other _____ ☐
- b. Approximate age of structure? _____ ☐
2. ROOF (leakage or other problem)? ☐ ☐ ☐
- a. Approximate age of roof covering? _____ ☐
3. WATER SEEPAGE, LEAKAGE, DAMPNESS OR STANDING WATER in the basement, crawl space or slab? ☐ ☐ ☐
4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)? ☐ ☐ ☐
5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)? ☐ ☐ ☐
6. HEATING AND/OR AIR CONDITIONING? ☐ ☐ ☐
- a. Heat Source is: ☐ Furnace ☐ Heat Pump ☐ Baseboard ☐ Other _____ ☐
- b. Cooling Source is: ☐ Central Forced Air ☐ Wall/Window Unit(s)
☐ Other _____ ☐
- c. Fuel Source is: ☐ Electricity ☐ Natural Gas ☐ Propane ☐ Oil ☐ Other _____ ☐
7. WATER SUPPLY (including water quality, quantity and water pressure)? ☐ ☐ ☐
- a. Water supply is: ☐ City/County ☐ Community System ☐ Private Well
☐ Other _____ ☐
- b. Water pipes are: ☐ Copper ☐ Galvanized ☐ Plastic ☐ Other _____
☐ Unknown ☐
8. SEWER AND/OR SEPTIC SYSTEM? ☐ ☐ ☐
- a. Sewage disposal system is: ☐ Septic Tank ☐ Septic Tank with Pump
☐ Community System ☐ Connected to City/County System
☐ City/County System available ☐ Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates state law]) ☐
☐ Other _____
9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc.)? ☐ ☐ ☐
10. PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired? ☐ ☐ ☐
11. DRAINAGE, GRADING OR SOIL STABILITY OF LOT? ☐ ☐ ☐
12. OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS? ☐ ☐ ☐

Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you have any

- | | | | | |
|-----|--|--------------------------|--------------------------|--------------------------|
| 13. | ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. | ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. | COMMERCIAL, INDUSTRIAL, OR MILITARY NOISE, ODOR, SMOKE, ETC. AFFECTING THE PROPERTY? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. | VIOLATIONS OF ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS, OR BUILDING CODES INCLUDING THE FAILURE TO OBTAIN PROPER PERMITS FOR ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES(S)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. | UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. | LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. | OWNERS' ASSOCIATION OR "COMMON AREA" EXPENSES OR ASSESSMENTS? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. | FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOOD PLAIN? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 21. | PRIVATE ROAD(S) OR STREETS adjoining the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | a. If yes, do you know of an existing owner's association or maintenance agreement to maintain the road or street? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

* If you answered "Yes" to any of the above questions, please explain (Attach additional sheets, if necessary):

In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the form shall not be altered or amended in any way.

History Note: Authority G.S. 47E-4(b); 93A-3(c); 93A-6;

Eff. October 1, 1998;

Amended Eff. July 1, 2010; July 1, 2009; January 1, 2008; July 1, 2006; September 1, 2002; July 1, 2000.

21 NCAC 58A .1705 ATTENDANCE AND PARTICIPATION REQUIREMENTS

In order to receive any credit for satisfactorily completing an approved continuing education course, a licensee must attend at least 90 percent of the scheduled classroom hours for the course, regardless of the length of the course, and must comply with student participation standards described in Rule .0511 of

Subchapter 58E. No credit shall be awarded for attending less than 90 percent of the scheduled classroom hours. The 10 percent absence allowance is permitted for any reason at any time during the course except that it may not be used to skip the last 10 percent of the course unless the absence is for circumstances beyond the licensee's control that could not have been reasonably foreseen by the licensee and is approved by the

instructor. With regard to the Commission's 12-hour Broker-In-Charge Course that is taught over two days, a licensee must attend at least 90 percent of the scheduled classroom hours on each day of the course and the 10 percent absence allowance cited above shall apply to each day of the course.

History Note: Authority G.S. 93A-3(c); 93A-4A;
Eff. July 1, 1994;
Amended Eff. July 1, 2010.

21 NCAC 58A .2001 FILING

Each year, the Commission shall compile the reports required by G.S. 93B-2(a) and (b) and shall, no later than October 31, file the reports with the officials and agencies set forth in the statute.

History Note: Authority G.S. 93B-2(d);
Eff. July 1, 2010.

21 NCAC 58A .2002 ESCROW ACCOUNT

(a) The Commission shall establish an escrow account or accounts with a financial institution or institutions lawfully doing business in this state into which the Commission shall deposit and hold fees tendered during any period of time when, pursuant to G.S. 93B-2(d). The Commission's authority to expend funds has been suspended. The Commission shall keep funds deposited into its escrow account or accounts segregated from other assets, monies, and receipts for the duration of the suspension of the Commission's authority to expend funds.

(b) The Commission may deposit into and maintain in its escrow account such monies as may be required to avoid or eliminate costs associated with the account or accounts.

History Note: Authority G.S. 93B-2(d);
Eff. July 1, 2010.

21 NCAC 58A .2101 APPLICABILITY

This Section shall apply to every broker whose license is not revoked, suspended, or surrendered, or who is otherwise the subject of a disciplinary order, and who is eligible for an extension of time to file a tax return under the provisions of G.S. 150-249.2 and 26 U.S.C. 7508.

History Note: Authority G.S. 93B-15(b);
Eff. July 1, 2010.

21 NCAC 58A .2102 POSTPONEMENT OF FEES

(a) A Broker described in 21 NCAC 58A .2101 shall not be required to pay renewal fees accrued during the time to be disregarded described in 26 U.S.C. 7508 until the June 30 immediately following the end of such time. The provisions of 21 NCAC 58A .0504 notwithstanding, during such time and until the June 30 immediately thereafter, the license of a broker other than a provisional broker shall remain on active status. During such time, the license of a provisional broker shall not expire, but shall remain on active status only if the provisional broker remains under the supervision of a broker-in-charge.

(b) All fees postponed by operation of this subsection shall be due and payable on June 30 immediately following the time to be disregarded as described in 26 U.S.C. 7508.

History Note: Authority G.S. 93A-3(c); 93B-15(b);
Eff. July 1, 2010.

21 NCAC 58A .2103 POSTPONEMENT OF CONTINUING EDUCATION

(a) A broker described by 21 NCAC 58A .2101 shall not be required to complete the continuing education required as a condition of license renewal for any June 30 license expiration date if that date falls during the time to be disregarded described in 26 U.S.C. 7508 until the June 10 immediately following the end of such time to be disregarded. If such time ends on or after May 1, the broker shall have until September 1 of the same year to complete the required continuing education.

(b) If a broker entitled to a postponement of continuing education under this Rule accumulates a deficiency in his or her continuing education of 16 or more hours because of the length of the time to be disregarded under 26 U.S.C. 7508, the broker may satisfy the deficiency by satisfying the requirements of 21 NCAC 58A .1703(c) established for an inactive broker returning to active status.

(c) The license of a broker entitled to postponement of continuing education under this Rule shall not be placed on inactive status for failure to complete continuing education until the deadline for completion set out in Paragraph (a) of this Rule has passed.

History Note: Authority G.S. 93A-3(c); 93B-15(b);
Eff. July 1, 2010.

21 NCAC 58A .2104 POSTPONEMENT OF POSTLICENSING EDUCATION

A broker described by 21 NCAC 58A .2101 who is a provisional broker shall not be required to complete any post-licensing education required to be completed during the period to be disregarded under 26 U.S.C. 5708 until the 180th day following the ending of such period. The broker's license shall not be placed on inactive status or cancelled for his or failure to complete the required post-licensing education prior to the deadline established in this Rule.

History Note: Authority G.S. 93A-3(c); 93B-15(b);
Eff. July 1, 2010.

21 NCAC 58A .2105 PROOF OF ELIGIBILITY

It shall be the responsibility of every broker eligible for the postponement of fees and education requirements established by this section to demonstrate his or her eligibility and the beginning and ending of the time to be disregarded as described in 26 U.S.C. 5708.

History Note: Authority G.S. 93A-3(c); 93B-15(b);
Eff. July 1, 2010.

21 NCAC 58C .0102 APPLICATION FOR APPROVAL

Schools seeking approval to conduct real estate prelicensing or postlicensing courses must make written application to the Commission upon a form provided by the Commission.

History Note: Authority G.S. 93A-4;

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 2010; April 1, 2006; July 1, 1994; May 1, 1990; February 1, 1989; September 1, 1984.

21 NCAC 58C .0103 CRITERIA FOR APPROVAL

(a) After due investigation and consideration, approval shall be granted to a school when it is shown to the satisfaction of the Commission that:

- (1) The school has submitted a complete and accurate application for approval;
- (2) The school is a North Carolina post-secondary educational institution licensed or approved by the State Board of Community Colleges or the Board of Governors of the University of North Carolina or a North Carolina private business or trade school licensed under G.S. 115D-90;
- (3) The courses to be conducted comply with the standards described in Section .0300 of this Subchapter; and
- (4) The school has designated one professional-level employee to serve as the director of all the school's real estate preclicensing and postlicensing course offerings and, in that capacity, be responsible for liaison with the Commission and for assuring compliance with all Commission rules relating to the conduct of such courses regardless of where the courses are offered.

(b) A North Carolina college or university which grants a baccalaureate or higher degree with a major or minor in the field of real estate, real estate brokerage, real estate law, real estate finance, real estate development, or other similar fields shall request that appropriate real estate and related courses in its curriculum be approved by the Commission as equivalent to the real estate preclicensing education program prescribed by G.S. 93A-4(a). The Commission shall grant such approval and shall exempt such school from compliance with the course standards set forth in Section .0300 of this Subchapter.

History Note: Authority G.S. 93A-4;

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 2010; April 1, 2006; July 1, 1994; May 1, 1990; February 1, 1989; November 1, 1987.

21 NCAC 58C .0206 ADMINISTRATION

(a) One person must be designated as the director of the school. The school director shall personally provide direct and active supervision of all school operations related to the conduct of real estate preclicensing and postlicensing courses and shall assure compliance with all statutory and rule requirements governing the licensing and operation of the school. The director shall act as the school's contact person for communication with the Commission.

(b) The school director must be possessed of good character and reputation and must satisfy one of the following qualification standards:

- (1) hold a baccalaureate or higher degree in the field of education; or
- (2) have at least two years full-time experience within the past 10 years as an instructor or school administrator; or
- (3) possess qualifications which are found by the Commission to be substantially equivalent to those described in Subparagraph (1) or (2) of this Paragraph.

History Note: Authority G.S. 93A-4; 93A-33; 93A-34;

Eff. October 1, 1980;

Amended Eff. April 1, 1987;

Transferred and Recodified from 21 NCAC 58A .1306 Eff. November 27, 1989;

Amended Eff. July 1, 2010; January 1, 2008; April 1, 2006.

21 NCAC 58C .0302 PROGRAM STRUCTURING AND ADMISSION REQUIREMENTS

(a) The real estate preclicensing education program shall consist of a single course consisting of at least 75 classroom hours of instruction. Schools may establish course admission standards that require students to demonstrate to the satisfaction of the school that they possess the basic reading, writing and mathematics skills necessary to be successful in the preclicensing course, and these standards may include a requirement to complete additional instruction prior to enrollment.

(b) The real estate postlicensing education program shall consist of three courses, prescribed by the Commission in 21 NCAC 58A .1902, each consisting of at least 30 classroom hours of instruction, which may be taken by students in any sequence.

(c) The prerequisite for enrollment in a postlicensing course is possession of a current North Carolina broker license on provisional status; however, schools may admit an unlicensed individual to a postlicensing course if the individual demonstrates that he or she needs to complete the course for the purpose of qualifying for reinstatement of an expired, canceled, revoked or surrendered license not on provisional status, or may admit any individual regardless of license status if the individual demonstrates that he or she is required to complete the course pursuant to a disciplinary consent order issued by the Commission. A school shall not knowingly enroll an individual in a postlicensing course while the individual is taking another postlicensing course at the same school or a different school if such enrollment would result in the individual being in class for more than 21 classroom hours in any given seven-day period.

History Note: Authority G.S. 93A-4(a1); 93A-33;

Eff. September 1, 1979;

Amended Eff. February 1, 1989; September 1, 1984; September 1, 1983; January 1, 1981;

Transferred and Recodified from 21 NCAC 58A .1102 Eff. November 27, 1989;

Temporary Amendment Eff. July 5, 1990, For a Period of 180 Days to Expire on January 1, 1991;

Amended Eff. January 1, 1991; February 1, 1991;

Temporary Amendment Eff. April 5, 1991, For a Period of 180 Days to Expire on October 2, 1991;

Temporary Amendment Eff. May 9, 1991, For a Period of 146 Days to Expire on October 2, 1991;

Amended Eff. July 1, 2010; January 1, 2008; April 1, 2006; September 1, 2002; October 1, 2000; July 1, 1994; October 1, 1991.

21 NCAC 58E .0304 CRITERIA FOR ELECTIVE COURSE APPROVAL

(a) The following requirements must be satisfied in order to obtain approval of a proposed elective course:

- (1) The applicant must submit all information required by the Commission and pay the application fee, if applicable;
- (2) The applicant must satisfy the requirements of Section .0400 of this Subchapter relating to the qualifications or eligibility of course sponsors;
- (3) The subject matter of the course must satisfy the elective course subject matter requirements set forth in Rule .0305 of this Section and all information to be presented in the course must be current and accurate;
- (4) The course must involve a minimum of four classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of instruction and 10 minutes of break time;
- (5) The applicant and the continuing education coordinator required by Rule .0405 of this Subchapter must be truthful, honest and of high integrity. In this regard, the Commission may consider the reputation and character of any owner, officer and director of any corporation, association or organization applying for sponsor approval;
- (6) The proposed instructor(s) for the course must possess the qualifications described in Rule .0306 of this Section;
- (7) The instructional delivery methods to be utilized in the course must either involve live instruction in a traditional classroom setting or comply with the requirements described in Rule .0310 of this Section;
- (8) The applicant must submit an instructor guide that includes:
 - (A) a course outline describing the subject matter and topics to be taught in sufficient detail to permit an evaluation of the depth and accuracy of the subject matter and topics to be covered;
 - (B) the amount of time to be devoted to each major topic and to breaks;
 - (C) the learning objective(s) for each major topic; and
 - (D) the instructional methods and instructional aids that will be utilized in the course.
- (9) The proposed time allotments shown in the instructor guide must be appropriate for the

proposed subject matter to be taught. Unless the applicant can demonstrate to the satisfaction of the Commission that straight lecture is the most effective instructional method for the course, the instructor guide must provide for the use of an appropriate variety of instructional methods and instructional aids intended to enhance student participation, attentiveness, and learning. Examples of instructional methods that may be appropriate include, but are not limited to, instructor-led class discussion, role-playing, and in-class individual or group work assignments. Examples of instructional aids that may be appropriate include, but are not limited to, PowerPoint slides, overhead transparencies, video recordings, and information from the internet displayed on a large screen;

- (10) The course must include handout materials for students that provide, in narrative or text form, all the information to be presented in the course. This requirement shall not be satisfied by using only copies of PowerPoint slides or a detailed course outline. All information included in the student materials must be current, accurate, explanatory of topics covered, consistent with course learning objectives, grammatically correct, logically organized, and presented in an easy-to-read format. The scope and depth of information presented must be appropriate in view of course learning objectives and subject matter time allotments, and the information presented must, except for instruction on changes in laws, rules, or practices, include substantial coverage of subject matter at a cognitive level higher than that expected of entry-level real estate licensees. The quality of reproduced student materials must be generally comparable to that commonly seen in education materials produced by professional publishers. These standards for student materials also apply, to the extent they are relevant, to student materials other than paper materials such as material to be viewed by computer that are provided for use by students in distance education courses; and

- (11) If an applicant proposes to use copyrighted materials in the course, such materials must be used in a form approved by the copyright holder. If any copyrighted material is to be duplicated by the applicant for use in the course, the sponsor must have the specific permission of the copyright holder.

(b) Applicants requesting approval of distance education courses must also comply with the requirements described in Rule .0310 of this Section.

History Note: Authority G.S. 93A-3(c); 93A-4.1;
Eff. July 1, 1994;
Amended Eff. July 1, 2010; April 1, 2004; July 1, 2000; July 1, 1996; July 1, 1995.

21 NCAC 58E .0412 DENIAL OR WITHDRAWAL OF APPROVAL

(a) The Commission may deny or withdraw approval of any course or course sponsor upon finding that:

- (1) the course sponsor has made any false statements or presented any false, incomplete, or incorrect information in connection with an application for course or sponsor approval or renewal of such approval;
- (2) the course sponsor or any official or instructor in the employ of the course sponsor has refused or failed to comply with any of the provisions of this Subchapter;
- (3) the course sponsor or any official or instructor in the employ of the course sponsor has provided false, incomplete, or incorrect information in connection with any reports the course sponsor is required to submit to the Commission;
- (4) the course sponsor has engaged in a pattern of consistently canceling scheduled courses;
- (5) the course sponsor has provided to the Commission in payment for required fees a check which was dishonored by a bank;
- (6) an instructor in the employ of the course sponsor fails to conduct approved courses in a manner that demonstrates possession of the teaching skills described in Rule .0509 of this Subchapter;
- (7) any court of competent jurisdiction has found the course sponsor or any official or instructor in the employ of the course sponsor to have violated, in connection with the offering of continuing education courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities;
- (8) the course sponsor or any official or instructor in the employ of the course sponsor has been disciplined by the Commission or any other occupational licensing agency in North Carolina or another jurisdiction;
- (9) the course sponsor or any official or instructor in the employ of the course sponsor has collected money from licensees for a continuing education course, but refuses or fails to provide the promised instruction; or
- (10) the course sponsor or any person associated with the sponsor has provided to a licensee any

false, incomplete, or misleading information relating to real estate licensing or education matters or the licensee's education needs or license status.

(b) If a licensee who is an approved course sponsor or an instructor in the employ of an approved course sponsor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as a course sponsor or instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 93A-6.

History Note: Authority G.S. 93A-3(c); 93A-4A;
Eff. July 1, 1994;
Amended Eff. July 1, 2010; April 1, 2004; July 1, 2000.

21 NCAC 58E .0510 MONITORING ATTENDANCE

(a) Sponsors and instructors must monitor attendance for the duration of each class session to assure that all students reported as satisfactorily completing a course according to the criteria in 21 NCAC 58A .1705 have attended at least 90 percent of the scheduled classroom hours. Students shall not be admitted to a class session after 10 percent of the scheduled classroom hours have been conducted. The 10 percent absence allowance is generally permitted for any reason at any time during the course; however sponsors and instructors shall not permit students to use the 10 percent absence allowance to avoid the last 10 percent of the course or to leave the course early unless the absence is for circumstances beyond the student's control that could not have been reasonably foreseen by the student and is approved by the instructor. With regard to the Commission's 12-hour Broker-In-Charge Course that is taught over two days, students must attend at least 90 percent of the scheduled classroom hours on each day of the course to receive any credit for the course, and the 10 percent absence allowance restrictions cited above shall apply to each day of the course. Students shall not be allowed to sign a course completion card, shall not be issued a course completion certificate, and shall not be reported to the Commission as having completed a course unless the student satisfies the attendance requirement. Sponsors and instructors may not make any exceptions to the attendance requirement for any reason.

(b) Sponsors must assure that adequate, personnel are present during all class sessions to assist the instructor in monitoring attendance and performing the necessary administrative tasks associated with conducting a course. A minimum of one person, including the instructor, for every 50 students registered for a class session shall be utilized for this purpose. Only one person, including the instructor, is necessary for this purpose when the class size is 50 or fewer persons.

History Note: Authority G.S. 93A-3(c); 93A-4A;
Eff. July 1, 1994;
Amended Eff. July 1, 2010; April 1, 2004.

21 NCAC 58E .0601 PURPOSE AND APPLICABILITY

This Section describes the continuing education course for brokers-in-charge prescribed by the Commission in 21 NCAC 58A .0110(e) and the continuing education course sponsors and instructors who are permitted to conduct the course.

History Note: Authority G.S. 93A-2; 93A-3(c); 93A-4.1; 93A-4.2;
Eff. July 1, 2010.

21 NCAC 58E .0603 AUTHORITY TO CONDUCT COURSE

Only continuing education update course sponsors approved under Section .0100 of this Subchapter and update course instructors approved under Section .0200 of this Subchapter are authorized to conduct the Broker-In-Charge Annual Review Course. This authority is automatic for approved update course sponsors and instructors and no separate request for approval is required. Loss of approval to sponsor or instruct an update course automatically terminates the authority to sponsor or instruct the Broker-In-Charge Annual Review Course. Any action by a sponsor or instructor that occurs in connection with conducting the Broker-In-Charge Annual Review Course shall be considered the same under Commission rules as if the action had occurred in connection with conducting an update course.

No persons or entities other than approved update course sponsors and instructors will be approved to conduct this course.

History Note: Authority G.S. 93A-3; 93A-3(c); 93A-4.1; 93A-4.2;
Eff. July 1, 2010.

21 NCAC 58E .0604 COURSE OPERATIONAL REQUIREMENTS

Authorized sponsors and instructors must provide students a copy of the course materials developed by the Commission and must conduct the course in accordance with the prescribed course materials and the Commission's operational requirements for continuing education courses described in Sections .0400 and .0500 of this Subchapter.

History Note: Authority G.S. 93A-2; 93A-3(c); 93A-4.1; 93A-4.2;
Eff. July 1, 2010.

This Section contains information for the meeting of the Rules Review Commission on Thursday, November 19, 2009 9:00 a.m. 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 919-431-3100. 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

Jim R. Funderburk - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Ralph A. Walker
Jerry R. Crisp
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Clarence E. Horton, Jr.
Daniel F. McLawhorn
Curtis Venable

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

July 15, 2010 August 15, 2010
September 16, 2010 October 21, 2010

AGENDA

RULES REVIEW COMMISSION

Thursday, July 15, 2010 9:00 A.M.

- 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. Structural Pest Control Committee – 02 NCAC 34 .0331, .1103 (Bryan)
 - B. Board of Agriculture – 02 NCAC 48A .1205, .1209 (Bryan)
 - C. Board of Agriculture – 02 NCAC 52B .0502, .0603 (Bryan)
 - D. Child Care Commission – 10A NCAC 09 .0102, .0511, .2510 (Bryan)
 - E. Commission for Public Health – 15A NCAC 18A .2633 (DeLuca)
 - F. Board of Cosmetic Art Examiners – 21 NCAC 14B .0605 (DeLuca)
 - G. Board of Cosmetic Art Examiners – 21 NCAC 14I .0401 (Bryan)
 - H. Board of Environmental Health Specialist Examiners – 21 NCAC 62 .0404 (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between May 21, 2010 and June 21, 2010
- V. Review of Log of Filings (Temporary Rules)
- VI. Commission Business
 - Next meeting: August 19, 2010

Commission Review

Log of Permanent Rule Filings

May 21, 2010 through June 21, 2010

ALCOHOLIC BEVERAGE CONTROL COMMISSION

The rules in Chapter 2 are from the Alcoholic Beverage Control Commission.

The rules in Subchapter 2R are organizational rules, policies and procedures including general provisions (.0100); structure (.0200); publications, records and copies (.0300); rule-making (.0400); emergency rules (.0500); declaratory rulings (.0600); personnel policies: commission (.0700); adjudication: contested cases (.0800); fiscal rules for local boards (.0900); local abc board: personnel policies (.1000); local ABC Boards: relationship with state commission (.1100); opening and discontinuance of stores (.1200); storage and distribution of spirituous liquors: commercial transportation (.1300); purchase of alcoholic beverages by local boards (.1400); pricing of spirituous liquor (.1500); warehouse storage of spirituous liquors (.1600); retail sales of alcoholic beverages (.1700); purchase-transportation permits for individuals and mix beverages for permittees (.1800); and sales of liquor to mixed beverages permittees (.1900).

<u>Location and Address</u>	04	NCAC 02R .0102
Amend/*		
<u>Petition for Adoption of Rules</u>	04	NCAC 02R .0402
Amend/*		
<u>Direct Shipments</u>	04	NCAC 02R .1305
Amend/*		

FUNERAL SERVICE, BOARD OF

The rules in Chapter 4 are from the Board of Funeral Service and concern the Burial Commission including general provisions (.0100); licensing: supervision and audit of mutual burial associations (.0300); and assumptions of assets and liabilities (.0600).

<u>Name and Address</u>	04	NCAC 04 .0101
Repeal/*		
<u>Purpose</u>	04	NCAC 04 .0102
Repeal/*		
<u>Structure</u>	04	NCAC 04 .0103
Repeal/*		
<u>Merger</u>	04	NCAC 04 .0303
Repeal/*		
<u>Surplus or Reserve Account</u>	04	NCAC 04 .0304
Repeal/*		
<u>Bonding</u>	04	NCAC 04 .0305
Repeal/*		
<u>Definitions</u>	04	NCAC 04 .0601
Repeal/*		
<u>Notice of N.C. Mutual Burial Association Commission</u>	04	NCAC 04 .0602
Repeal/*		
<u>Notice to Members of Domestic Mutual Burial Association</u>	04	NCAC 04 .0603
Repeal/*		
<u>Conduct of Public Meeting</u>	04	NCAC 04 .0604
Repeal/*		
<u>Approval of Assumption</u>	04	NCAC 04 .0605
Repeal/*		
<u>Authority to Continue Issuance of Policies</u>	04	NCAC 04 .0606
Repeal/*		
<u>Issuance of Policies in Excess of Two Hundred Dollars</u>	04	NCAC 04 .0607
Repeal/*		
<u>Requirements of Companies Writing Policies</u>	04	NCAC 04 .0608
Repeal/*		

MENTAL HEALTH, COMMISSION FOR

The rules in Chapter 27 concern Mental Health Community Facilities and Services.

The rules in Chapter 27E concern treatment of habilitation rights including protections regarding interventions procedures (.0100); protections regarding medications (.0200); and North Carolina interventions quality assurance committee (.0300).

<u>Scope</u>	10A NCAC 27E .0301
Adopt/*	
<u>Definitions</u>	10A NCAC 27E .0302
Adopt/*	
<u>Duties of the NCI Quality Assurance Committee</u>	10A NCAC 27E .0303
Adopt/*	
<u>Composition of the NCI Quality Assurance Committee</u>	10A NCAC 27E .0304
Adopt/*	

SOCIAL SERVICES COMMISSION

The rules in Chapter 70 concern children's services.

The rules in Subchapter 70K concern residential maternity homes including general provisions (.0100); minimum licensure standards (.0200); and physical plant (.0300).

<u>Personnel</u>	10A NCAC 70K .0201
Amend/*	

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 are coastal management rules.

The rules in Subchapter 7H are the state guidelines for areas of environmental concern (AECs) including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); construction of sheetpile sill for shoreline protection in estuarine and public trust waters (.2100); construction of freestanding moorings in established waters and public trust areas (.2200); replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); placement of riprap for wetland protection in estuarine and public trust waters (.2400); replacement of structures, the reconstruction of primary or frontal dune systems, and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms (.2500); construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

<u>Application of Erosion Rate Setback Factors</u>	15A NCAC 07H .0104
Amend/*	
<u>Use Standards</u>	15A NCAC 07H .0208
Amend/*	

FORESTERS, BOARD OF REGISTRATION FOR

The rules in Chapter 20 cover registered foresters. North Carolina forbids the use of the title "Forester," "registered forester," or any

other descriptive term including those terms unless the person is registered under this act. It does not forbid the practice of forestry or anything that can be done by a registered forester. Forester means a person who by reason of special knowledge and training is qualified to engage in the practice of forestry, which is defined as giving professional forestry services, including consultation, investigation, evaluation, education, planning, or responsible supervision of any forestry activities requiring knowledge, training, and experience in forestry principles and techniques.

<u>Qualifications for Registration</u>	21	NCAC 20	.0103
Amend/*			
<u>Examinations</u>	21	NCAC 20	.0104
Amend/*			
<u>Registration Fees</u>	21	NCAC 20	.0106
Amend/*			
<u>Delinquent Fees</u>	21	NCAC 20	.0108
Amend/*			
<u>Registration Card</u>	21	NCAC 20	.0109
Amend/*			
<u>Code of Ethics</u>	21	NCAC 20	.0115
Amend/*			
<u>Reciprocity</u>	21	NCAC 20	.0117
Amend/*			
<u>Handling of Complaints</u>	21	NCAC 20	.0122
Amend/*			
<u>Continuing Education</u>	21	NCAC 20	.0123
Amend/*			
<u>Compliance with Annual Reports Requirements</u>	21	NCAC 20	.0124
Adopt/*			
<u>Petition for Rule-Making--Declaratory Rulings</u>	21	NCAC 20	.0125
Adopt/*			
<u>Declaratory Rulings: Availability</u>	21	NCAC 20	.0126
Adopt/*			

MEDICAL BOARD

The rules in Chapter 32 are from the Medical Board.

The rules in Subchapter 32B concern license to practice medicine including general provisions (.0100); license by written examination (.0200); license by endorsement (.0300); temporary license by endorsement of credentials (.0400); resident's training license (.0500); special limited license (.0600); certificate of registration for visiting professors (.0700); medical school facility license (.0800); special volunteer license (.0900) prescribing (.1000); reactivation of full license (.1100); and reinstatement of full license (.1200).

<u>Definitions</u>	21	NCAC 32B	.0101
Repeal/*			
<u>Discarding Application Material</u>	21	NCAC 32B	.0102
Repeal/*			
<u>Criminal Background Check</u>	21	NCAC 32B	.0104
Repeal/*			
<u>Federation Credential Verification Service Profile</u>	21	NCAC 32B	.0105
Repeal/*			
<u>Data Bank Reports</u>	21	NCAC 32B	.0106
Repeal/*			
<u>Medical Education</u>	21	NCAC 32B	.0301
Repeal/*			
<u>ECFMG Certification</u>	21	NCAC 32B	.0302

Repeal/*	
<u>Application Forms</u>	21 NCAC 32B .0304
Repeal/*	
<u>Examination Basis for Endorsement</u>	21 NCAC 32B .0305
Repeal/*	
<u>Letters of Recommendation</u>	21 NCAC 32B .0306
Repeal/*	
<u>Certified Photograph and Certification of Graduation</u>	21 NCAC 32B .0307
Repeal/*	
<u>Fee</u>	21 NCAC 32B .0308
Repeal/*	
<u>Personal Interview</u>	21 NCAC 32B .0309
Repeal/*	
<u>Endorsement Relations</u>	21 NCAC 32B .0311
Repeal/*	
<u>Routine Inquiries</u>	21 NCAC 32B .0312
Repeal/*	
<u>Graduate Medical Education and Training</u>	21 NCAC 32B .0313
Repeal/*	
<u>Passing Exam Score</u>	21 NCAC 32B .0314
Repeal/*	
<u>Ten-Year Qualification</u>	21 NCAC 32B .0315
Repeal/*	
<u>Credentials</u>	21 NCAC 32B .0401
Repeal/*	
<u>Temporary License Fee</u>	21 NCAC 32B .0402
Repeal/*	
<u>Application Form</u>	21 NCAC 32B .0501
Repeal/*	
<u>Certification of Graduation</u>	21 NCAC 32B .0502
Repeal/*	
<u>Certified Photograph</u>	21 NCAC 32B .0503
Repeal/*	
<u>Letters of Recommendation</u>	21 NCAC 32B .0504
Repeal/*	
<u>Appointment Letter</u>	21 NCAC 32B .0505
Repeal/*	
<u>Fee</u>	21 NCAC 32B .0506
Repeal/*	
<u>ECFMG Certification</u>	21 NCAC 32B .0507
Repeal/*	
<u>Medical Education</u>	21 NCAC 32B .0508
Repeal/*	
<u>Certified Photograph</u>	21 NCAC 32B .0603
Repeal/*	
<u>Letters of Recommendation</u>	21 NCAC 32B .0604
Repeal/*	
<u>Diploma of Psychological Medicine</u>	21 NCAC 32B .0605
Repeal/*	
<u>Fee</u>	21 NCAC 32B .0606
Repeal/*	
<u>ECFMG Certification</u>	21 NCAC 32B .0607

Repeal/*	
<u>Personal Interview</u>	21 NCAC 32B .0608
Repeal/*	
<u>Request for the Certificate of Registration</u>	21 NCAC 32B .0701
Repeal/*	
<u>Medical Licensure</u>	21 NCAC 32B .0702
Repeal/*	
<u>Limitation</u>	21 NCAC 32B .0703
Repeal/*	
<u>Duration</u>	21 NCAC 32B .0704
Repeal/*	
<u>Personal Interview</u>	21 NCAC 32B .0705
Repeal/*	
<u>Fee for Visiting Professors Certificate of Registration</u>	21 NCAC 32B .0706
Repeal/*	
<u>Certified Photograph</u>	21 NCAC 32B .0707
Repeal/*	
<u>Definition of Practice</u>	21 NCAC 32B .0901
Repeal/*	
<u>Qualification for Licensure</u>	21 NCAC 32B .0902
Repeal/*	
<u>Application Forms</u>	21 NCAC 32B .1101
Repeal/*	
<u>Fee</u>	21 NCAC 32B .1102
Repeal/*	
<u>Personal Interview</u>	21 NCAC 32B .1103
Repeal/*	
<u>Routine Inquiries</u>	21 NCAC 32B .1104
Repeal/*	
<u>CME</u>	21 NCAC 32B .1105
Repeal/*	
<u>Application Forms</u>	21 NCAC 32B .1201
Repeal/*	
<u>Letters of Recommendation</u>	21 NCAC 32B .1202
Repeal/*	
<u>Fee</u>	21 NCAC 32B .1203
Repeal/*	
<u>Personal Interview</u>	21 NCAC 32B .1204
Repeal/*	
<u>Routine Inquiries</u>	21 NCAC 32B .1205
Repeal/*	
<u>ECFMG Certification</u>	21 NCAC 32B .1206
Repeal/*	
<u>Ten-Year Qualification</u>	21 NCAC 32B .1207
Repeal/*	
<u>Definitions</u>	21 NCAC 32B .1301
Adopt/*	
<u>Scope of Practice Under Physician License</u>	21 NCAC 32B .1302
Adopt/*	
<u>Application for Physician License</u>	21 NCAC 32B .1303
Adopt/*	
<u>Reinstatement of Physician License</u>	21 NCAC 32B .1350

Adopt/*		
<u>Reactivation of Physician License</u>	21	NCAC 32B .1360
Adopt/*		
<u>Scope of Practice Under Resident's Training License</u>	21	NCAC 32B .1401
Adopt/*		
<u>Application of Resident's Training License</u>	21	NCAC 32B .1402
Adopt/*		
<u>Scope of Practice Under Special Purpose License</u>	21	NCAC 32B .1601
Adopt/*		
<u>Special Purpose License - Visiting Instructor</u>	21	NCAC 32B .1602
Adopt/*		
<u>Scope of Practice Under Military Limited Volunteer License</u>	21	NCAC 32B .1701
Adopt/*		
<u>Application for Military Limited Volunteer License</u>	21	NCAC 32B .1702
Adopt/*		
<u>Scope of Practice Under Retired Limited Volunteer License</u>	21	NCAC 32B .1703
Adopt/*		
<u>Application for Retired Limited Volunteer License</u>	21	NCAC 32B .1704
Adopt/*		
<u>Limited Physician License for Disasters and Emergencies</u>	21	NCAC 32B .1705
Adopt/*		
<u>Expedited Application for Physician License</u>	21	NCAC 32B .2001
Adopt/*		

The rules in Subchapter 32F deal with the biennial registration.

<u>Waiver for Licensees Serving on Active Duty in the Armed ...</u>	21	NCAC 32F .0106
Adopt/*		

The rules in Subchapter 32J concern reinstatement of suspended licenses.

<u>Application for Reinstatement</u>	21	NCAC 32J .0101
Repeal/*		
<u>Consideration by Board</u>	21	NCAC 32J .0102
Repeal/*		
<u>Hearing Upon Denial</u>	21	NCAC 32J .0103
Repeal/*		

The rules in Subchapter 32R concern Continuing Medical Education (CME) Requirements.

<u>Waiver for Licensees Serving on Active Duty in the Armed ...</u>	21	NCAC 32R .0105
Adopt/*		

FUNERAL SERVICE, BOARD OF

The rules in Subchapter 34A concern board functions including general provisions (.0100); and fees and other payments (.0200).

<u>Report to General Assembly</u>	21	NCAC 34A .0203
Adopt/*		

The rules in Subchapter 34B are funeral service rules including rules relating to resident trainees (.0100); examinations (.0200); licensing (.0300); continuing education (.0400); out-of-state licensees (.0500); funeral establishments (.0600); and preparation of dead bodies (.0700).

<u>Special Procedures for Licensing of Active Military Perso...</u>	21	NCAC 34B .0311
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Adopt/*

The rules in Subchapter 34D are preneed funeral contract rules including general provisions (.0100); licensing (.0200); operations (.0300); and preneed recovery fund (.0400).

Surety Bonds

21 NCAC 34D .0203

Adopt/*

PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); sterile parenteral pharmaceuticals (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

Suspension of Authority to Expend Funds

21 NCAC 46 .1614

Adopt/*

SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR

The rules in Chapter 64 are from the Board of Examiners for Speech and Language Pathologists and Audiologists and include general provisions (.0100); interpretative rules (.0200); code of ethics (.0300); rulemaking petitions (.0400); notice of rulemaking (.0500); conduct of rulemaking hearings (.0600); declaratory rulings (.0700); contested case hearings (.0800); other matters relating to administrative hearings (.0900); and use of speech/language pathology assistants (.1000).

Remote Location Telepractice

21 NCAC 64 .0219

Adopt/*

COMMUNITY COLLEGES, BOARD OF

The rules in Chapter 2 concern Community Colleges.

The rules in Subchapter 2C deal with the organization and operation of the colleges including trustees and colleges (.0100); personnel (.0200); students (.0300); libraries and learning resource centers (.0400); equipment (.0500); college evaluation (.0600); and civil rights (.0700).

Donated or Loaned Property

23 NCAC 02C .0503

Amend/*

Special Purchasing Delegation

23 NCAC 02C .0506

Adopt/*

STATE PERSONNEL COMMISSION

The rules in Chapter 1 are from the State Personnel Commission.

The rules in Subchapter 1E cover employee benefits including general leave provisions (.0100); vacation leave (.0200); sick leave (.0300); workers compensation leave (.0700); military leave (.0800); holidays (.0900); miscellaneous leave (.1000); other types of leave without pay (.1100); community involvement (.1200); the voluntary shared leave program (.1300); family and medical leave (.1400); child involvement leave (.1500); community services leave (.1600); and administrative leave (.1700).

Purpose

25 NCAC 01E .1601

Amend/*

Applicant Information and Application

25 NCAC 01E .1602

Amend/*

Uses of Community Service Leave

25 NCAC 01E .1604

Amend/*

The rules in Subchapter 1H concern recruitment and selection including general provisions (.0600); general provision for priority consideration (.0700); promotional priority (.0800); reduction-in-force-priority reemployment (.0900); exempt priority consideration (.1000); and veteran's preference (.1100).

Applicant Information and Application
Amend/*

25 NCAC 01H .0632

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Regional Road)	09 ABC 5421	Brooks	04/19/10	
ABC Commission v. Ghulam Khan v. T/A West Green Market	09 ABC 4303	Brooks	04/19/10	
ABC Commission v. Sarabjit Kaur v. T/A G&S Food Market	09 ABC 5257	Brooks	04/19/10	
ABC Commission v. Boulos 2, Inc., T/A Akron Texaco	10 ABC 0027	May	04/21/10	
<u>CRIME VICTIMS COMPENSATION</u>				
Ace Wrecker Service Inc, Secretary of Crime Control and Public Safety	09 CPS 2292	Overby	03/31/10	
Alice Conrad v. Crime Victims Compensation Commission	09 CPS 6168	Brooks	04/01/10	
A list of Child Support Decisions may be obtained by accessing the OAH Website: http://www.ncoah.com/hearings/decisions/				
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
Ward Drug Co. of Nashville Gary Glisson v. DHHS	09 DHR 3830	Webster	04/29/10	
A+ Child Development Center LLC, v. DHHS, Division of Child Development	09 DHR 5443	May	04/27/10	
Gail N. Highsmith v. DHHS	09 DHR 5513	Brooks	05/13/10	
June Rae Crittenden v. Health Care Registry Section, DHHS	09 DHR 6166	Overby	03/29/10	
Elizabeth Ann Holt v. DHHS, Division of Health Service Regulation	09 DHR 6347	Brooks	03/31/10	
Estate of Nora L. Edwards, Wanda Harrington v. DHHS, Div. of Medical Assistance	09 DHR 6836	Overby	03/16/10	
Teresa Dargan Williams v. DHHS, Division of Health Service Regulation	10 DHR 0246	Gray	05/21/10	
Tamekia Cain v. DHHS, Division of Health Service	10 DHR 0488	Gray	05/20/10	
<u>DEPARTMENT OF JUSTICE</u>				
Tony Blaine Drake v. Criminal Justice Education and Training Standards Commission	09 DOJ 4151	Lassiter	04/14/10	
Daniel Brannon Gray v. Sheriff's Education and Training Standards Commission	09 DOJ 4364	May	03/15/10	
Phyllis Ann Johnson v. DOJ, Company Police Program	09 DOJ 5295	Elkins	05/03/10	25:01 NCR 111
Kenneth Maidene, Jr v. Sheriff's Education and Training Standards Commission	09 DOJ 5650	Overby	04/19/10	
Dustin Matthew James v. Sheriffs' Education and Training Standards Commission	09 DOJ 6254	Gray	05/07/10	
Jeffrey Edward Byrd v. Sheriffs' Education and Training Standards Commission	10 DOJ 0389	May	05/26/10	
<u>DEPARTMENT OF STATE TREASURER</u>				
Michael L. Bost Sr., v. Retirement System	09 DST 3781	May	04/15/10	
<u>DEPARTMENT OF INSURANCE</u>				
Tammy A. Lee v. Blue Cross Blue Shield of NC	09 INS 6817	Overby	05/03/10	
<u>OFFICE OF STATE PERSONNEL</u>				
Nedra T. Rollins v. NC State University	09 OSP 1536	Overby	06/07/10	
Pamela D. Shoffner v. Agricultural and Technical State University, Mr. Linc Butler, Assistant Vice Chancellor for Human Resources	09 OSP 4432	Brooks	05/19/10	

CONTESTED CASE DECISIONS

Charolettee Hope v. Cumberland County Department of Social Services
Robert L. Hamm v. Department of Correction
Dwight Steven Murphy v. DHHS, Div. of Services for the Blind

09 OSP 4436	Gray	04/15/10
09 OSP 5320	May	04/15/10
09 OSP 5924	Webster	05/13/10

STATE OF NORTH CAROLINA

Filed

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
09 DOJ 5295

COUNTY OF WAKE

2010 MAY -3 PM 12:15

PHYLLIS ANN JOHNSON,
Petitioner,

Office of
Administrative Hearings

v.

NC DEPARTMENT OF JUSTICE,
COMPANY POLICE PROGRAM,
Respondent.

DECISION

THIS MATTER came on to be heard before the undersigned Administrative Law Judge, Augustus B. Elkins II, on February 8, 2010 in Raleigh, North Carolina. The record was left open for the Parties' submission of materials, including but not limited to supporting Memorandums of Law. After filing by Respondent on March 10, 2010 and Petitioner on March 17, 2010, the record was closed on March 17, 2010.

APPEARANCES

Petitioner: J. Michael McGuinness
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Respondent: J. Joy Strickland, Assistant Attorney General
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ISSUE PRESENTED

Did the Respondent properly propose to revoke Petitioner's company police officer commission due to a violation of 12 NCAC 02I .0304? The review of this central issue was done in light of the following inquiry: Did Petitioner violate a Company Police Program rule by investigating a traffic accident and issuing a speeding citation where damage occurred on property within Petitioner's jurisdiction?

RULES AT ISSUE

12 NCAC 02I .0212(c)(4)

12 NCAC 02I .0304(7)

12 NCAC 02I .0213(a)

EVIDENCE

Petitioner: Exhibits 1-7 including 7a-7z

Respondent: Exhibits 1-11 (Exhibit 10 is a CD)

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact. In making the Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Petitioner Phyllis Johnson currently serves as a law enforcement officer for the Town of Bunn and as a Company Police Officer for the Lake Royale Police Department. Officer Johnson's background includes approximately fourteen years of service with the United States Army receiving an honorable discharge. She attended Basic Law Enforcement Training (BLET) at Nash Community College. Officer Johnson has pursued additional education and is currently enrolled at the University of Maryland and is scheduled to graduate in August, 2010. Petitioner has previously been employed as a correctional officer with the Department of Corrections, a campus police officer with Louisburg College Campus Police and a deputy sheriff with the Franklin County Sheriff's Office.

2. Officer Johnson offered evidence through three witnesses, who attested to very good to excellent observations of her work performance, professionalism, dedication and overall conduct as a law enforcement officer.

3. Officer Johnson was granted General Certification from the North Carolina Criminal Justice Education and Training Standards Commission on November 13, 2008. Respondent has the authority granted under Chapter 74E of the North Carolina General Statutes

and Title 12 of the North Carolina Administrative Code, Chapter 2I, to commission company police officers and to revoke, suspend or deny such certification.

4. Respondent found probable cause to revoke Petitioner's company police officer commission based upon the Petitioner taking enforcement action outside of the territorial jurisdiction of the Lake Royale Police Department. (Respondent's Exhibits 5 and 11)

5. The pending dispute arose from Petitioner's action that occurred on May 5, 2009, where she investigated an automobile accident following communications from the Franklin County Sheriff's Department dispatcher. Officer Johnson was dispatched to investigate an apparent automobile collision that she initially understood occurred at the exit point of The River which is a housing subdivision within Lake Royale. State Road 1611 is a two lane highway near Louisburg, North Carolina, which runs through property owned by Lake Royale, a private community which is policed by a Company Police Department. The Lake Royale Police Department is staffed by the Chief, Jarrett Umstead, and several company police officers under his command including Officer Phyllis Johnson.

6. When Officer Johnson initially responded to the request for assistance, she believed that the accident had occurred on Lake Royale property where the entrance to The River intersects with State Road 1611. Upon arrival to the entrance of the River, Petitioner parked her patrol car and did not see any other cars there. She then drove down the road approximately 300 feet north of The River, on a tree line on Lake Royale property and saw a car that appeared to have been in an accident. She saw a male and a female in that area, that she later identified as Mr. Penrod and his daughter Kayla Penrod. The automobile driven by Kayla Penrod had been traveling north on State Road 1611, when Ms. Penrod lost control of the vehicle causing it to leave the highway and crash into several trees on the property of Lake Royale. Significant damage was done to the automobile, as reflected by the accident and incident reports as well as testimony.

7. Petitioner completed the Respondent's First Set of Requests for Admissions, Interrogatories, and Requests for Production of Documents on December 11, 2009. (Respondent's Exhibit 8) In those responses, Petitioner admitted that she was on duty, in uniform and driving a Lake Royale Police Department car when she responded to the dispatch call regarding Ms. Penrod's accident. She also admitted that she was acting in the capacity of a company police officer at that time. Petitioner admitted that Sledge Road, also known as State Road 1611, is not real property owned by or in the possession and control of Lake Royale. Petitioner also admitted that when she responded to the accident on Sledge Road, also known as State Road 1611, that she was not in immediate or continuous pursuit of any person. (Respondent's Exhibit 8)

8. At the time that she began to investigate the automobile accident, Officer Johnson believed that her jurisdiction and authority included the one mile extraterritorial jurisdiction authorized by N.C.G.S. 160A-286. Although this statute affords a one mile extraterritorial jurisdiction for municipal law enforcement officers, it does not authorize a one mile extraterritorial jurisdiction for company police officers.

9. Petitioner called Franklin County dispatch to report the location of the accident and to advise them of the position of the vehicle. She told the dispatcher "that I could take care of the accident, if highway patrol was busy." She further "asked the dispatcher to call highway patrol to see if it was okay for me to process the scene." "The reason that I volunteered was because it would have been my first accident at the lake and that I was going to get Chief Umstead to look over it to explain to me what I did right or wrong." (Respondent's Exhibit 3)

10. The Franklin County dispatcher told Officer Johnson that the State Highway Patrol said it was okay for her to handle the accident investigation. She testified that she could not hear the conversation that transpired between the dispatcher and the Highway Patrol.

11. Petitioner believed that Kayla Penrod's vehicle had been traveling north on Sledge Road away from the entrance to the River at the time of the accident. Petitioner said it appeared that Ms. Penrod's car went off the left side of the road, hit the wood line and then traveled all the way back across both lanes of travel and came to rest on the right shoulder of the road.

12. As a result of investigating the accident, Officer Johnson issued a speeding citation to Ms. Penrod based upon Ms. Penrod's admission that she was speeding.

13. Officer Johnson's law enforcement purpose was to investigate the reported accident. Officer Johnson determined that the actual site of the accident was on Lake Royale property. Chief Umstead similarly testified that he determined that the actual site of the accident was on Lake Royale property.

14. Ms. Vickie Huskey, the former Company Police Program Administrator, received a telephone call from Jarrett Umstead, Chief of the Lake Royale Police Department, and subsequently received written notification of the incident that Chief Umstead had described in the earlier telephone call in the form of a typewritten memorandum dated May 13, 2009. (Respondent's Exhibit 2).

15. In his memorandum, Chief Umstead relayed that Mr. Penrod had come into his office and "was very irate and accusing Officer Johnson of threatening his daughter." Mr. Penrod told the Chief that Officer Johnson was not allowed "to investigate the accident or write a ticket." Chief Umstead agreed "on the issue of the ticket and advised him I will not forward the citation to the clerk's office and they can just dispose the citation." In fact, the Chief "apologized for the officer issuing the citation, explained she was assisting the Highway Patrol because they were busy, and pulled the citation his daughter was issued." The Chief however recorded in his memorandum that "the crash actually occurred on the edge of the road on Lake Royale property so it is arguable whether we are authorized to investigate the accident." According to the May 13th memorandum from Chief Umstead to Ms. Huskey, "Mr. Penrod was stating to me in a threatening manner that he knew Vickie Huskey and will be reporting the Lake Royale PD to the AG's Office." As a result of Petitioner writing the ticket for Ms. Penrod, Chief Umstead counseled Petitioner for her actions.

16. Vickie Huskey testified that the only notification that she received about this incident came from Chief Umstead. She indicated that she has never spoken to nor received any communication from Mr. Penrod.

17. A copy of the Department of Motor Vehicle form 349 that was prepared by Petitioner involving the accident of Kayla Penrod was submitted to Ms Huskey on June 10, 2009. (Respondent's Exhibit 4) Petitioner also prepared an Incident/Investigation Report for the Lake Royale Police Department. (Respondent's Exhibit 6) The Franklin County Sheriff's Office maintained an audio recording of the calls and a written log between Petitioner and the dispatcher regarding the call for service on May 5, 2009. The written dispatch log indicates Petitioner said that the call would be within the jurisdiction of the State Highway Patrol but that she "would handle same if they wanted her to." (Respondent's Exhibits 9-10)

18. Company police officers do not have the one mile extra-territorial jurisdiction given to municipal officers by N.C.G.S.15A-402 and N.C.G.S. 160A-286. Chief Umstead verified trees on Lake Royale property had been recently struck by a car. Officer Johnson's actions in investigating the accident did not cause any person or entity to suffer any injury or damage.

19. The testimony of Chief Jarrett Umstead of the Lake Royale Police Department, Chief Kent Winstead of the Bunn Police Department and Lieutenant Michael Smith of the Bunn Police Department provided compelling evidence demonstrating that Officer Johnson has consistently exhibited traits and conduct constituting highly commendable and widely respected service as a law enforcement officer for several police agencies. Officer Johnson is a person of excellent character and she has earned an excellent reputation in the law enforcement and general communities.

BASED UPON the foregoing Findings of Fact, and upon the preponderance or greater weight of the evidence, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this action. The parties received proper notice of the hearing in the matter. To the extent that the findings of facts contain conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to the given labels.

2. 12 NCAC 02I .0212(c)(4) provides that a company police commission shall be revoked or denied upon a finding that the officer has committed any act prohibited by 12 NCAC 02I .0304.

3. 12 NCAC 02I .0304(7) indicates that a company police officer shall not do any of the following:

impeding traffic, stopping motorists or pedestrians, or in any manner imposing or attempting to impose his will upon another person as police authority unless:

(a) he is on the property specifically described under G.S. 74E-6; or

(b) when in immediate and continuous pursuit of any person for an offense which occurred within the property jurisdiction limitations specifically described under G.S. 74E-6.

4. N.C.G.S. § 74E-6 sets forth the jurisdiction for company police officers as follows:

All Company Police – Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

5. Officer Johnson did not have jurisdiction or authority under the one mile territorial jurisdiction, however she did have authority and jurisdiction to investigate the accident pursuant to N.C.G.S. 74E-6 because the accident occurred on and damaged private property owned by and within the jurisdiction of Lake Royale. Because Officer Johnson was authorized to investigate accidents and/or property damage on Lake Royale property pursuant to N.C.G.S. 74E-6, that authority necessarily encompassed her ability to initiate law enforcement actions (citation) related to the accident regardless of the fact that the vehicle after entering Lake Royal property and damaging the same came to rest outside that property. Ultimately, however, in this case, the citation was pulled and the evidence is silent as to any other citation being issued for Ms. Penrod's actions.

6. Both logic as well as several cases throughout the country have reasoned that a warrantless arrest outside the arresting officer's jurisdiction is valid if the officer's suspicion was aroused by an activity that occurred within his jurisdiction. See for example *State v. Meyer*, 641 N.W.2d 324, (Minn.App., 2002). Also See *Parker v. State*, 362 So.2d 1033 (Fla.Ct.App.1978),

cert. denied, 373 So.2d 460 (1979) (despite municipal police officer not being authorized to arrest outside of his jurisdiction, absent hot pursuit, nonetheless officer may conduct lawful investigation outside territorial jurisdiction).

7. In addition to, as well as, independent of the reasoning above, the evidence shows Petitioner contacted the State Highway Patrol through a Franklin County dispatcher who told Officer Johnson that the State Highway Patrol said it was okay for her to handle the accident investigation. Many law enforcement entities are entering in cooperation agreements. Though this particular case did not involve a written agreement, the oral agreement between Officer Johnson of the Lake Royale Police Department and the North Carolina State Highway Patrol cannot be ignored. As such, it is reasonable that on-duty officers from one jurisdiction may conduct investigations (that originate in their jurisdiction) in the jurisdiction of another law enforcement agency and take action. See, for example, *Daniel v. State*, 20 So.2d 1008, (Fla.App. 4 Dist., 2009).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. Based on those conclusions and the facts in this case, Petitioner's evidence does create that superiority of weight needed to carry the requisite burden of proof. The weight of the evidence in this case supports a decision that Petitioner, Officer Phyllis Ann Johnson, retain her commission as a company police officer with Lake Royale POA Company Police.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions and to present written arguments regarding this Decision issued by the Undersigned in accordance with N. C. Gen. Stat. § 150B-36.

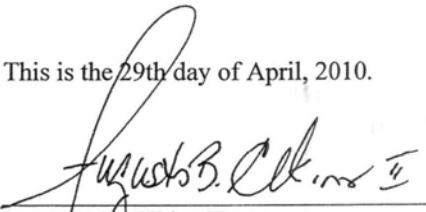
In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the opportunity of the administrative law judge to evaluate the credibility of witnesses. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not

adopting the finding of fact and the evidence in the record relied upon by the agency. Every finding of fact not specifically rejected as required by Chapter 150B shall be deemed accepted for purposes of judicial review. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency establishing that the new finding of fact is supported by a preponderance of the evidence in the official record.

The agency shall adopt the decision of the Administrative Law Judge unless the agency demonstrates that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency that will make the final decision in this case is the North Carolina Department of Justice.

IT IS SO ORDERED.

This is the 29th day of April, 2010.

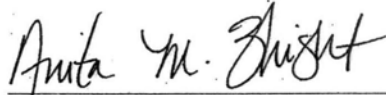

Augustus B. Elkins II
Administrative Law Judge

A copy of the foregoing was mailed to:

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This the 3rd day of May, 2010.



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