

NORTH CAROLINA REGISTER

VOLUME 26 • ISSUE 07 • Pages 550 - 643

October 3, 2011

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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.

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NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603
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NC League of Municipalities (919) 715-4000
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Joint Legislative Administrative Procedure Oversight Committee
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300 North Salisbury Street (919) 733-2578
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NORTH CAROLINA REGISTER
 Publication Schedule for January 2011 – December 2011

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
25:13	01/03/11	12/08/10	01/18/11	03/04/11	03/21/11	05/01/11	05/2012	09/30/11
25:14	01/18/11	12/22/10	02/02/11	03/21/11	03/21/11	05/01/11	05/2012	10/15/11
25:15	02/01/11	01/10/11	02/16/11	04/04/11	04/20/11	06/01/11	05/2012	10/29/11
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26:11	12/01/11	11/07/11	12/16/11	01/30/12	02/20/12	04/01/12	05/2012	08/27/12
26:12	12/15/11	11/22/11	12/30/11	02/13/12	02/20/12	04/01/12	05/2012	09/10/12

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.

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 103

PROCLAMATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

Pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina:

Section 1.

I declare that a state of emergency exists in the following counties in North Carolina due to the approach of Hurricane Irene:

Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Washington, Wayne, Wilson

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3.

I delegate to Reuben F. Young, Secretary of Crime Control and Public Safety, or his designee, all power and authority granted to me and required of me by Article 1 of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Young, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G. S. § 143B-476.

Section 5.

I further direct Secretary Young to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

Section 6.

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) unless the circumstances of the state of emergency prevent or impede, 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 assure proper implementation of this proclamation.

Section 7.

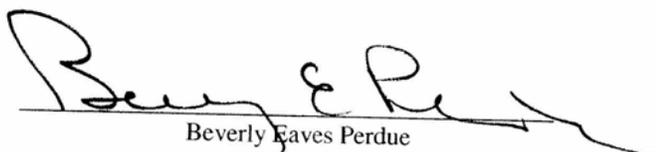
This order is adopted pursuant to my powers under Article 1 of Chapter 166A of the General Statutes and under Article 36A of Chapter 14 of the General Statutes. It does not trigger the limitations on weapons in G.S. § 14-288.7 or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages.

Section 8.

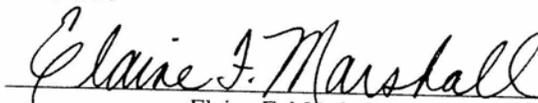
This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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 24th day of August in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 104

TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE RESTORATION OF UTILITY SERVICES, TRANSPORTING ESSENTIALS AND REMOVING DEBRIS THROUGHOUT THE STATE

WHEREAS, I have determined that a State of Emergency exists due to the approach of Hurricane Irene and its likely effects in North Carolina, thereby justifying an exemption from 49 CFR Part 395 (Federal Motor Carrier Safety Regulations); and

WHEREAS, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, and medical supplies to residential and commercial establishments is essential during and after the hurricane and any interruption in the delivery of those commodities threatens the public welfare; and

WHEREAS, the prompt restoration of utility services to citizens is essential to their safety and well being; and

WHEREAS, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Part 395 for up to 30 days if the Governor determines that an emergency condition exists; and

WHEREAS, under N.C.G.S. §§ 166A-4 and 166A-6.03(b), the Governor may declare that the health, safety, or economic well-being of persons or property in this State require that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels, food, water, medical supplies, and restoration of utility services; and

WHEREAS, under the provisions of N.C.G.S. §§ 166A-4 and 166A-6(c)(3), the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles transporting equipment and supplies for the restoration of utility services, and those used to remove debris from any damage caused by the hurricane must adhere to the registration

requirements of N.C.G.S. § 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116 and 20-118 and;

WHEREAS, with the concurrence of the Council of State, I have found that certain motor vehicle restrictions need to be waived to facilitate the expeditious removal of debris from the hurricane.

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.

The Department of Crime Control and Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Crime Control and Public Safety pursuant to N.C.G.S. § 20-381.

Section 2.

The waiver of regulations under 49 CFR Part 395 (Federal Motor Carrier Safety Regulations) does not apply to the commercial drivers' licenses and insurance requirements.

Section 3.

The Department of Crime Control & Public Safety in conjunction with the North Carolina Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116 and 20-118, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, 105-449.49, for the vehicles transporting equipment and supplies to residential and commercial establishments, and for the restoration of utility services, and for the removal of debris along North Carolina roadways to our impacted counties.

Section 4.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of a yellow banner on the

front and rear measuring a total length of 7 feet by 18 inches bearing the legend oversized load in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise a certified escort shall be required for loads exceeding 8 feet 6 inches in width.

Section 5.

Vehicles referenced under Sections 1 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

Section 6.

The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

Section 7.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1-6 of this Executive Order in a manner which will implement this rule without endangering motorists in North Carolina.

Section 8.

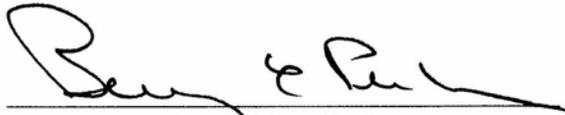
Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for relief efforts associated with Hurricane Irene and its after-effects in North Carolina.

Section 9.

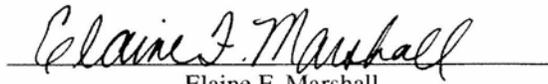
This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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 25th day of August in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 105

RELIEF FOR CITIZENS TO REMOVE DEBRIS DUE TO STATE OF EMERGENCY CAUSED BY HURRICANE IRENE

WHEREAS, on August 24, 2011, I issued Executive Order No. 103 declaring a state of emergency due to severe weather that impacted the State, including a hurricane, flooding and severe winds; and

WHEREAS, on August 25, 2011, I also issued Executive Order No. 104 suspending certain motor vehicle regulations on certain weight and size restrictions related to vehicles removing debris; and

WHEREAS, as a result of the severe weather, many of our citizens have accumulated vegetative and other debris on their property; and

WHEREAS, it is necessary to issue this Executive Order to ensure that our citizens get the assistance they need to remove and dispose of debris without delay.

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. Piling of Debris for Removal

To facilitate the removal and disposal of debris on citizens' property caused by the severe weather that began on August 26, 2011, I hereby direct the Department of Transportation, in conjunction with the Department of Environment and Natural Resources, the Department of Agriculture and Consumer Services, the Department of Correction, and local county officials, to assist citizens in piling debris for removal.

Section 2. Appropriate Removal and Disposal of Debris

For purposes of Section 1, citizens should move debris to the edge of their property to facilitate removal. I hereby direct the Department of Transportation to assist local governments with removal of debris from the right of way on state roads for purposes of disposing of the debris in an approved disposal site. The Department of Transportation is authorized to enter into agreements with local governments for debris removal that may include provisions related to reimbursement of costs incurred by the Department of Transportation from federal disaster relief and public assistance funds.

In the event removal to the edge of the property is impossible, citizens may dispose of vegetative debris, building material or other debris in an appropriate manner on the property, consistent with any applicable local ordinances and state laws or regulations. Citizens should coordinate with the N.C. Forestry Service of the North Carolina Department of Agriculture and Consumer Services, the Department of Environment and Natural Resources, and their local officials to ensure that burning of vegetative debris or burial of any type of debris on site can be done in a manner consistent with federal, state or local law.

Section 3. Compliance Assistance by the Department of Environment and Natural Resources

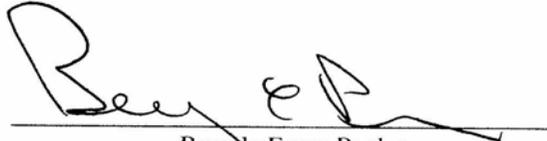
The Department of Environment and Natural Resources is hereby directed to coordinate with local county officials to ensure compliance with open burning regulations and burial of debris regulations and to provide assistance in identification and approval of additional debris disposal sites as necessary to receive storm-related debris.

Section 4. Effect and Duration

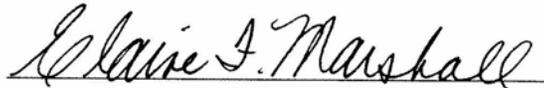
This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

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 first day of September in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.




Beverly Eaves Perdue
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 106

AMENDING AND EXTENDING EXECUTIVE ORDER NO. 128, GOVERNOR'S ADVISORY COUNCIL ON HISPANIC/LATINO AFFAIRS

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

Section 2 of Executive Order No. 128, issued on September 7, 2007, and amended on September 4, 2009 through Executive Order No. 22, is hereby amended as follows:

Section 2. Board Officers and Meetings

The Governor shall appoint a Chair of the Advisory Council who shall serve at the pleasure of the Governor. The Advisory Council may elect a Vice Chair and other officers. The Advisory Council shall meet quarterly or at the call of the Chair. The Chair shall set the agenda for the Advisory Council's meetings. The Chair may establish such committees or other working groups as are necessary to assist the Advisory Council in performing its duties.

Except as amended herein, Executive Order No. 128, as previously amended by Executive Order No. 22, remains in full force and effect. Executive Order No. 128 is hereby extended until September 1, 2013, pursuant to N.C. Gen. Stat. § 147-16.2, or until rescinded by the Governor.

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 first day of September in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.



Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

State of North Carolina



BEVERLY EAVES PERDUE
GOVERNOR

EXECUTIVE ORDER NO. 107

ALLOWING FOR THE EXPEDITED MOVEMENT OF TEMPORARY HOUSING
FOR VICTIMS OF HURRICANE IRENE

WHEREAS, on August 24, 2011, I issued Executive Order No. 103 declaring a state of emergency due to the approach of Hurricane Irene; and

WHEREAS, on August 25, 2011, with the concurrence of the Council of State, I also issued Executive Order No. 104 suspending certain motor vehicle regulations on certain weight and size restrictions related to vehicles transporting supplies and equipment to support relief efforts for Hurricane Irene; and

WHEREAS, under the provisions of N.C.G.S. §§ 166A-4 and 166A-6(c)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing mobile homes or other forms of temporary housing to relieve our afflicted counties currently must adhere to the registration requirements of N.C.G.S. §§ 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116 and 20-118; and

WHEREAS, I have found that certain motor vehicle restrictions need to be waived to facilitate the expeditious movement of temporary housing in the afflicted counties.

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.

The Department of Crime Control and Public Safety, in conjunction with the North Carolina Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116 and 20-118, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for the

vehicles transporting mobile homes or other forms of temporary housing along North Carolina roadways to our impacted counties.

Section 2.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of placing a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend "Oversized Load" in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding 8 feet 6 inches in width.

Section 3.

Vehicles referenced under Sections 1 and 2 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.
- d. The fees listed in N.C.G.S. § 20-119 for an annual permit and a single trip permit to transport mobile homes only applies to mobile homes being transported under contract with the Federal Emergency Management Agency (FEMA) as part of the relief effort for Hurricane Irene. Transporters moving mobile homes under this section are

exempted from the requirement to enter weigh stations as required under N.C.G.S. §20-118.1. However, these same transporters shall have in the transport vehicle a copy of the Transport Authorization letter from FEMA, the permit from the North Carolina Department of Transportation, and the manufacturer's bill of lading for the mobile home being transported. This does not exempt transporters from the requirements of the regulations regarding escorts, flags, signs, and other safety requirements. Movement of these mobile homes required to obtain a permit shall be permitted from sunrise to sunset seven days a week.

- e. The requirement of a permit shall be waived for transporters under contract with FEMA as part of the relief effort for Hurricane Irene whose overall combination tractor and mobile home units do not exceed 14 feet wide, 13 feet 6 inches high, and a length of 105 feet. However, transporters moving mobile homes whose overall combination tractor and mobile home unit that does not exceed 14 feet wide, 13 feet 6 inches high, and a length of 105 feet are required to have escort vehicles as would be required under normal conditions. Transporters moving mobile homes under this section are exempted from the requirement to enter weigh stations as required under N.C.G.S. § 20-118.1. However, these same transporters shall have in the transport vehicle a copy of the Transport Authorization letter from FEMA and the manufacturer's bill of lading for the mobile home being transported. This does not exempt transporters from the requirements of the regulations regarding escorts, flags, signs, and other safety requirements. Movement of these mobile homes shall be permitted from sunrise to sunset seven days a week.

Section 4.

The size and weight exemptions for vehicles set out herein will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This Order shall not apply on bridges posted pursuant to N.C.G.S. § 136-72.

Section 5.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1 through 4 of this Executive Order in a manner which will implement these provisions without endangering motorists in North Carolina.

Section 6.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for relief efforts associated with bringing in mobile homes or other forms of temporary housing due to the severe weather that impacted the State including a hurricane, flooding and severe winds.

Section 7.

This Executive Order is effective immediately and shall remain in effect for sixty (60) days or the duration of the emergency, whichever is less.

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 eighth day of September in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.



Beverly Eaves Perdue
Governor

ATTEST:

Elaine F. Marshall
Secretary of State



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 16, 2011

Mr. Jason Kay, General Counsel
Office of Speaker Thom Tillis
NC House of Representatives
16 W. Jones Street, Room 2304
Raleigh, North Carolina 27601-1096

Re: Request for Advisory Opinion

Dear Mr. Kay:

I write in response to your request for an advisory opinion pursuant to N.C. Gen. Stat. § 163-278.23. By email on June 16, 2011, you requested guidance regarding the acceptance of contributions by legislators during time the General Assembly has adjourned or recessed. More specifically, you asked when a legislator may accept contributions when the General Assembly has adjourned or recessed for a time certain that is more than 10 days.

North Carolina law prohibits a "limited contributee" from accepting or soliciting contributions from "limited contributors" while the General Assembly is in "regular session."¹ As you know, legislators cannot receive contributions from lobbyists at any time. However, outside of regular sessions of the General Assembly, "limited contributees" may accept contributions from other "limited contributors."

The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days." N.C. Gen. Stat. § 163-278.13B(3).

If the General Assembly adjourns or recesses for a time certain that is more than 10 days, legislators and other "limited contributees" could accept contributions immediately after the General Assembly has adjourned or recessed. If a time certain that is more than 10 days is not

¹ "Limited contributee" means a member of or candidate for the Council of State, a member of or candidate for the General Assembly." N.C. Gen. Stat. § 163-278.13B(a)(2). "Limited contributor" means a lobbyist registered under Chapter 120C of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in G.S. 120C-100(11) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered under Chapter 120C of the General Statutes." N.C. Gen. Stat. § 163-278.13B(a)(1).

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

designated at the time of adjournment or recess, legislators and other "limited contributees" must wait until day 11 after the General Assembly adjourns or recesses to accept contributions from "limited contributors" other than lobbyists.

If the General Assembly adjourns or recesses for a time certain that is more than 10 days and a legislator or other "limited contributee" accepts a contribution on the same day of adjournment or recess, that legislator or other "limited contributee" should obtain a statement from the permitted "limited contributor" specifying that the contribution is being made after the General Assembly has adjourned or recessed. This statement should include a declaration signed by the legislator or other "limited contributee" that the contribution was received after the General Assembly had adjourned or recessed.

This opinion is based upon the information provided in your June 16, 2011, request for advisory opinion. If any information in that request should change, you should consult with our office to ensure that this opinion would still be binding. Finally, 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.

If you have any further questions, please contact me or Kim Strach, Deputy Director-Campaign Finance.

Sincerely,

Gary O. Bartlett

Gary O. Bartlett
Executive Director

cc: Julian Mann, Codifier of Rules



U.S. Department of Justice
Civil Rights Division

TCH:RSB:KR:LJM:par
DJ 166-012-3
2011-2560

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

August 19, 2011

Mr. Gary O. Bartlett
Executive Director
State Board of Elections
P.O. Box 27255
Raleigh, North Carolina 27611-7255

Dear Mr. Bartlett:

This refers to Session Law 2011-214 (S.B. 356), which removes the advisory council from the process of administering the North Carolina Public Campaign Financing Fund; and Session Law 2011-266 (S.B. 593), which prohibits candidates from running for two separate offices on the general election ballot unless one of the offices is for the remainder of an unexpired term of office, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on June 30, 2011.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin Reynolds".

for T. Christian Herren, Jr.
Chief, Voting Section

RECEIVED

AUG 24 2011

N.C. BOARD OF ELECTIONS



U.S. Department of Justice
Civil Rights Division

TCH:RSB:MSR:SHH:par
DJ 166-012-3
2011-1570

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

June 9, 2011

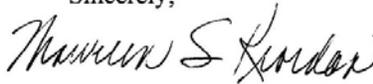
Don Wright, Esq.
General Counsel
North Carolina State Board of Elections
P.O. Box 27255
Raleigh, North Carolina 27611

Dear Mr. Wright:

This refers to S.L. 2011-31 (HB 21) (2011), which repeals North Carolina Statute Sections 163-281(e), which authorized the appointment of political party observers at partisan municipal elections and Section 163-285(b), which required municipalities to provide county boards of elections with maps and election boundaries, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on April 21, 2011.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,


T. Christian Herren, Jr.
Chief, Voting Section

RECEIVED

JUN 13 2011

N.C. BOARD OF ELECTIONS

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 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Sheriffs' Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 10B .0908, .2004 and .2005.

Link to agency website pursuant to G.S. 150B.19.1(c): <http://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Sheriffs-Education-and-Training-Standards/All-Commission-Forms-and-Publications.aspx>

Proposed Effective Date: December 1, 2012

Public Hearing:

Date: December 8, 2011

Time: 8:30 a.m.

Location: 1705 Tryon Park Drive, Raleigh, NC 27610

Reason for Proposed Action:

12 NCAC 10B .0908 – Description: Revision sets out that the requirements for an individual seeking a limited lecturer certification to teach the Fire Emergencies in the Jail block of instruction in the Detention Officer Certification Course. **Purpose:** This topic requires the instructor to be knowledgeable in the specific techniques for Fire Emergencies; and the proposed amendment is being made to increase the number of individuals who can qualify to teach this block of instruction. **Baseline:** Current rules specify that an individual may qualify to teach the Fire Emergencies block of instruction if the person is a certified Fire Instructor.

12 NCAC 10B .2004 – Description: Revision sets out that the optional topic of Subject Control Arrest Techniques must be taught by a Subject Control Arrest Technique Instructor. **Purpose:** This topic requires the instructor to be knowledgeable in the specific techniques for Subject Control Arrest Techniques. **Baseline:** Current rule specifies what may qualify an individual to teach various in-service training topics, but does not include the topic of Subject Control Arrest Techniques: Equipment Retention. If this rule is not amended, then a person who only holds a General Instructor certification would be eligible to teach this topical area.

12 NCAC 10B .2005 – Description: The revisions set out what will be required for in-service training in 2012. These in-service training programs began in 2005 with Deputies completing 4 hours of Domestic Violence; then since 2006 Deputies are required to complete 24 hours of in-service. Since 2007 Detention Officers and Telecommunicators are required to complete 16 hours. In the year of 2012, Deputies must likewise complete 24 hours, and Detention Officers and

Telecommunicators must complete 16 hours. The only changes are in the topical areas. **Purpose:** To improve performance, reduce errors and reduce the number of lawsuits, and protect the public health, safety and welfare by ensuring each officer remains knowledgeable in their areas of enforcement, corrections or communications. **Baseline:** Current rules only lay out the in-service training requirements through 2011. Without these rule changes there would not be requirements for 2112 with the exception of Firearms Qualification which is separately required in 12 NCAC 10B Section .2000. Firearms may be conducted at a minimum in 4 hours. Therefore the impact of these rules is cost related to the training requirements for Deputies, Detention Officers and Telecommunicators.

Procedure by which a person can object to the agency on a proposed rule: Objections shall be submitted in writing explaining the reasons for objection and specifying the portion of the rule to which the objection is being made. Such objection(s) should be sent to: Julia Lohman, Sheriffs' Standards Division, NC Department of Justice, P. O. Box 629, Raleigh, NC 27602.

Comments may be submitted to: Julia Lohman, Sheriffs' Standards Division, NC Department of Justice, P. O. Box 629, Raleigh, NC 27602; phone (919) 662-4370; fax (919) 662-4516; email Jlohman@ncdoj.gov

Comment period ends: December 2, 2011

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

Fiscal impact (check all that apply).

- State funds affected** 12 NCAC 10B .2005
- Environmental permitting of DOT affected**
- Analysis submitted to Board of Transportation**

- Local funds affected** 12 NCAC 10B .2005
- Substantial economic impact (≥\$500,000)** 12 NCAC 10B .2005
- Approved by OSBM** 12 NCAC 10B .0908, 12 NCAC 10B .2004, 12 NCAC 10B .2005
- Approval by OSBM not required**

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0900 - MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS

12 NCAC 10B .0908 LIMITED LECTURER CERTIFICATION

(a) The Commission may issue a Limited Lecturer Certification to an applicant who has developed specific or special skills by virtue of specific or special training. Limited Lecturer Certification may be issued in the following topical areas:

- (1) First Aid and CPR;
- (2) Subject Control Techniques;
- (3) Fire Emergencies in the Jail;
- (4) Medical Care in the Jail;
- (5) Physical Fitness for Detention Officers.

(b) To be eligible for a Limited Lecturer Certificate for topic areas set forth in Rule .0908(a), the applicant must meet the qualifications as follows:

- (1) First Aid and CPR: first aid and CPR instructor with the American Red Cross, American Heart Association (AHA), American Safety and Health Institute (ASHI), or National Safety Council (NSC); or a licensed physician, Family Nurse Practitioner, Licensed Practical Nurse (LPN), Registered Nurse (RN), Physician's Assistant, or EMT;
- (2) Subject Control Techniques: certified by N.C. Criminal Justice Education and Training Standards Commission as Defensive Tactics Instructor and compliance with Rule .0903(c) of this Section;
- (3) Fire Emergencies in the Jail: Certified Fire Instructor (Level II or higher) through the North Carolina Department of Insurance Office of State Fire ~~Marshal~~, Marshall, or a Specialized Instructor in the Explosive and Hazardous Material Emergencies topical area through the NC Criminal Justice Commission;
- (4) Medical Care in a Jail: A Licensed Physician, Family Nurse Practitioner, LPN, RN, or EMT, or Physician's Assistant;
- (5) Physical Fitness for Detention Officer: certified as a Physical Fitness Instructor by the North Carolina Criminal Justice Education and Training Standards Commission.

(c) In addition to the requirements set out in Paragraph (b) of this Rule, applicants for Limited Lecturer Certification must

possess current certification to perform CPR and which was obtained through the applicant having shown proficiency both cognitively and through skills testing.

Authority G.S. 17E-4.

SECTION .2000 – IN-SERVICE TRAINING FOR JUSTICE OFFICERS

12 NCAC 10B .2004 INSTRUCTORS

The following requirements and responsibilities are hereby established for instructors who conduct a Commission-mandated In-Service Training Program:

- (1) The instructors shall:
 - (a) hold General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302, .0304, and .0306;
 - (b) hold Professional Lecturer Instructor certification issued by either the Commission as set out in either 12 NCAC 10B .0906 or .0916, or the Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, or General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302, .0304, and .0306, when teaching a legal block of instruction;
 - (c) hold Professional Lecturer Instructor certification issued by the Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, when teaching a medical or psychological block of instruction; or
 - (d) hold Specific Instructor Certification issued by the Criminal Justice Education and Training Standards Commission when teaching the lesson plans published by the NC Justice Academy as follows:
 - (i) Firearms must be taught by a Firearms Instructor certified in accordance with 12 NCAC 09B .0304(e);
 - (ii) Weapons Retention and Disarming Techniques must be taught by Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(e);
 - (iii) Spontaneous Attack Defense and Subject Control/Arrest

- Techniques must be taught by a Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(b);
- (iv) Handcuffing and Impact Weapons Refresher and Subject Control Arrest Techniques: Equipment Retention must be taught by a Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(e);
 - (v) Wellness and Stress Awareness and Health and Fitness for Detention Officers must be taught by a Physical Fitness Instructor certified in accordance with 12 NCAC 09B .0304(g);
 - (vi) Law Enforcement Driver Training (classroom and practical) must be taught by a Specialized Law Enforcement Driver Training Instructor certified in accordance with 12 NCAC 09B .0304(f).
 - (vii) Active Shooter: Practical Refresher must be taught by a Firearms Instructor certified in accordance with 12 NCAC 09B .0304(e).

In addition, each instructor certified by the Criminal Justice Commission to teach in a Commission-certified course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

- (2) The use of guest participants is permitted provided they are subject to the direct on-site supervision of a commission-certified instructor.
- (3) The instructor shall deliver the training consistent with the specifications as established in the rules in this Section.
- (4) The instructor shall document the successful or unsuccessful completion of training for each person attending a training program and forward a record of their completion to each person's Sheriff or Department Head.

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy, or may use a lesson plan for any of the topical areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training in 12 NCAC 09B .0209.

~~(b) The 2010 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:~~

- ~~(1) Legal Update;~~
- ~~(2) Juvenile Minority Sensitivity Training: Race Matters;~~
- ~~(3) Career Survival: Positive Ways to be Successful;~~
- ~~(4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and~~
- ~~(5) Any topic areas of the Sheriff's choosing.~~

~~(c) The 2010 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:~~

- ~~(1) Cryptology and Contraband via Mail;~~
- ~~(2) Legal Update for Detention Officers;~~
- ~~(3) Career Survival for Detention Officers; and~~
- ~~(4) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(d) The 2010 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:~~

- ~~(1) Amber and Silver Alerts;~~
- ~~(2) Call Taking Procedures in Emergency Services;~~
- ~~(3) Critical Incident Stress Management; and~~
- ~~(4) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(e)(b) The 2011 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:~~

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: Interactions, Communications, and Understanding;
- (3) Career Survival: Leadership and Mentoring;
- (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter;
- (5) Domestic Violence: Lesbian, Gay, Bi-Sexual and Transgender (LGBT) Relationships; and
- (6) Any topic areas of the Sheriff's choosing.

~~(c)(c) The 2011 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:~~

- (1) Legal Update for Detention Officers;
- (2) Career Survival for Detention Officers; Interpersonal Communications;
- (3) Communicable Diseases and Pandemics; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

Authority G.S. 17E-4; 17E-7.

(d) The 2011 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Elder Abuse Awareness and the Telecommunicator;
- (2) Tactical Dispatch;
- (3) Handling Difficult Callers; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2012 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training; Interactions Skills in Building Rapport;
- (3) Career Survival: Social Networking and Digital Communications;
- (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter;
- (5) Awareness of Issues Surrounding Returning Military Personnel; and
- (6) Any topic areas of the Sheriff's choosing.

(f) The 2012 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Inmate Movement;
- (2) Career Survival for Detention Officers; Social Networking and Digital Communications;
- (3) Any topic areas of the Sheriff's or Department Head's choosing.

(g) The 2012 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Legal Update for Telecommunicators;
- (2) Career Survival for Telecommunicators; Social Networking and Digital Communications;
- (3) Any topic areas of the Sheriff's or Department Head's choosing.

Authority G.S. 17E-4; 17E-7.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 52 - BOARD OF PODIATRY EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Podiatry Examiners intends to amend the rule cited as 21 NCAC 52 .0208.

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

Proposed Effective Date: February 1, 2012

Public Hearing:

Date: December 1, 2011

Time: 10:00 a.m.

Location: Upton Associates, 3733 Benson Dr, Raleigh, NC 27609

Reason for Proposed Action: To permit podiatrists still in residency to use their residency hours to meet their continuing education requirement for renewal. To clarify when a podiatrist may submit continuing education certificates to the Board. To identify the Board's retention policy for continuing education certificates. To allow for issuance of waiver of continuing requirements or of conditional license in the case of undue hardship (military leave, medical issues, natural disaster, etc.)

Procedure by which a person can object to the agency on a proposed rule: Any person wishing to object to a proposed rule shall address their request to: Board of Podiatry Examiners, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607. The caption of the objection should bear the notation: RULEMAKING OBJECTION RE: and then the subject area.

The written objection should include the following information: (1) an indication of the subject area to which the objection is directed. For example: "This objection concerns the rulemaking hearing to amend Rule 0000"; (2) either a draft of the proposed rule or a summary of its contents; (3) reason for the objection; (4) the effect on existing rules; (5) any data supporting the objection; (6) effect of the proposed rule on existing practices in the area involved, including cost factors; (7) names of those most likely to be affected by the rule with addresses if reasonably known; and (8) name(s) and address(es) of objector(s).

Comments may be submitted to: Penney De Pas, Rulemaking Coordinator, Board of Podiatry Examiners, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607-5151, Fax (919)787-4916, email info@ncbpe.org

Comment period ends: December 2, 2011

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

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected

- Date submitted to OSBM:
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- Approval by OSBM not required

Note: The text in italics is pending approval by the Rules Review Commission

SECTION .0200 - EXAMINATION AND LICENSING

21 NCAC 52 .0208 CONTINUING EDUCATION

(a) An additional requirement for issuance of the annual renewal certificate shall be certification to the board of proof of having complied with the continuing education provisions of the General Statutes. The board shall notify all podiatrists that 25 hours are required annually.

(b) General CME policy – Minimum of 25 hours / year

- (1) Completion of 25 hours of Continuing Medical Education (CME) is required per year (July 1- June 30) for renewal of licensure. CME credits cannot be carried over from the previous licensure year.
- (2) It shall be the responsibility of the individual podiatrist to ascertain in advance that the courses which he/she attends have received proper approval of the certifying organizations. The Board shall respond in writing or by email with approval or denial to individuals requesting approval of CME courses and credit hours. All decisions by the Board are final.
- (3) Certificates of completion of courses other than that sponsored by the NC Foot and Ankle Society (NCF&AS) must be submitted to the Board along with the podiatrist’s annual license renewal documents. Completion certificates must contain the following information:
 - (A) Podiatrist’s name;
 - (B) Course name, location, and date;
 - (C) Number of hours CME completed;
 - (D) Signature of seminar chairperson; and
 - (E) Name of certifying/sponsored agency.

Handwritten certificates are not acceptable. It is the podiatrist’s responsibility to contact the seminar organizer to secure a printed certificate before submitting to the Board for approval along with a renewal.

- (4) In the case of a licensed podiatrist participating in the second or third year of a medical residency, a letter signed by the podiatric residency director indicating podiatrist’s name and the dates the podiatrist has been in residency will substitute for the 25-credit hour requirement and a CME certificate.
- (5) A podiatrist has the choice of submitting his CME certificates along with the other required

renewal documents or in advance of the renewal to the Board in hardcopy, facsimile, or electronic methods.

- (6) The Board shall retain CME documentation along with the individual podiatrist’s license renewal information.

(c) Category 1: Minimum requirement 20 hours / year.

- (1) Continuing medical education (CME) credit shall be allowed for attendance at educational seminars offered by the North Carolina Foot and Ankle Society (NCF&AS). The number of qualifying hours of continuing education shall be determined and approved by the Board in advance based on the standards in 90-202.11. NCF&AS shall provide the Board directly with a listing of individuals attending its CME events and credits earned.
- (2) Continuing medical education credit shall be recognized for attendance at educational seminars offered by other national, state and podiatric education providers, as certified by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association (APMA). The number of qualifying hours of continuing education shall be determined and approved by the Council on Podiatric Medical Education.
- (3) Lecturers may receive one hour of credit for each hour of CPME- or APMA- approved lectures given, but such credit shall be limited to one hour for each discrete topic. A brief summary of the content of each lecture must be submitted for approval.
- (4) Category 1 is limited to educational seminars either offered by NCF&AS or by sponsors pre-approved by CPME: <http://www.apma.org/Members/Education/CPMEAccreditation/ContinuingEducation/CPME700.aspx?FT=.pdf>
- (5) (N.B. APMA- or CPME- approved **online** or **journal** courses are considered Category 2.)

(d) Category 2: Only a maximum of 5 of the total 25 CME hours will be allowed

- (1) Continuing medical education (CME) credit shall be allowed for educational programs approved for Category 1 credit by the American Medical Association (AMA) and the American Osteopathic Association (AOA) or their affiliated organizations.
- (2) Continuing medical education (CME) credit shall be allowed for courses approved by North Carolina Area Health Education Center (AHEC).
- (3) Online or medical journal courses approved by CPME are permitted.
- (4) For courses not pre-approved by AHEC, AOA, or AMA, all requests for CME approval should contain a timeline and course description.

(e) Waiver for Certified Illness, Medical Condition, Natural Disaster, or Undue Hardship

Since continuing education is one of the methods whereby a podiatrist keeps his medical knowledge and skills up-to-date, in the case of an unexpected, certified illness or medical condition of the licensee or immediate family member (as certified by a letter from a licensed physician) or undue hardship (e.g., active military service or natural disaster) which precludes a licensed podiatrist from completing his continuing education requirement within the 18-month timeframe from July 1 of the year of last license or renewal issuance through December 31 of the following year, the Board may waive the continuing education

requirement for license renewal by issuing the podiatrist a conditional license predicated on the licensee acquiring all of the required continuing education credits in a mutually-agreeable timeframe, but no later than 24 months after December 31 of the year following the year of license or renewal issuance. The Board reserves the right to require additional information to support the licensee's claim. The Board will notify the licensee of its decision in writing.

Authority G.S. 90-202.4(g); 90-202.11.

Note: *This emergency rule was adopted under the procedure set out in G.S. 150B-21.1B. Adoption of rule to implement the American Recovery and Reinvestment Act.*

TITLE 04 – DEPARTMENT OF COMMERCE

Rule-making Agency: *Tax Reform Allocation Committee*

Rule Citation: *04 NCAC 01H .0501*

Effective Date: *September 8, 2011*

Received by Codifier for entry into the NCAC on August 30, 2011. See G.S. 150B-21.1B.

Reason for Action: *Section 1112 of Title 1 of Division B of the American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. No. 111-5, 123 Stat. 115 (2009), amended 26 USC 54D(d) to increase the national bond volume cap authorization for Qualified Energy Conservation Bonds ("QECBs") from \$800 million to \$3.2 billion. Additionally, that section in the ARRA created the availability of "green community programs" as a tool for utilization of QECB capacity. North Carolina general statutes provided that the TRAC is the appropriate state entity to allocate QECB capacity and directed the TRAC to create procedures regarding such allocation. See, e.g., G.S. 143-433.8 and G.S. 143-433.9(a). Finally, 150B-21.1B provides that "It is the policy of the State...to quickly and efficiently complete the awards of grants and contracts under the ARRA" and provides that ARRA rule-making provisions be "liberally construed to allow agencies maximum flexibility in implementing the ARRA." The TRAC has been informed that a substantial number of energy conservation projects are anxiously awaiting the allocation of QECB capacity, and the TRAC is in need of rules in which to allocate such capacity to eligible issuers. As such, it is imperative that QECB capacity be allocated immediately so that energy conservation projects can be commenced.*

In any event, the ARRA itself provided in Section 5 ("Emergency Designations") that: "Each amount in this Act is designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204(a) of S. Con. Res. 21 (110th Congress) and section 301(b)(2) of S. Con. Res. 70 (110th Congress), the concurrent resolutions on the budget for fiscal years 2008 and 2009."

To the extent, if any, that such may be necessary, the Agency requests the Commission and/or the Codifier to waive any 210-day requirement under 150B-21.1(a2) or other law upon consideration of the degree of public benefit, the lack of control by the Agency, the need for a waiver, and other relevant factors in order to comport with the liberal construction contemplated by 150-21.1B ("Adoption of rules to implement the American Recovery and Reinvestment Act").

CHAPTER 01 - DEPARTMENTAL RULES

**SUBCHAPTER 01H - PRIVATE ACTIVITY BOND
VOLUME CAPACITY PROGRAM**

**SECTION .0500 - QUALIFIED ENERGY
CONSERVATION BONDS**

**04 NCAC 01H .0501 PROCEDURES AND CRITERIA
FOR ALLOCATION OF QUALIFIED ENERGY
CONSERVATION BONDS**

The North Carolina Tax Reform Allocation Committee (the "Committee") is directed to allocate Qualified Energy Conservation Bond ("QECB") capacity to eligible issuers of such bonds as follows:

- (1) To "large local governments," as such term is used in 26 U.S.C.S. 54D(e)(2) in such amounts and manner as specifically directed by the United States Internal Revenue Service ("IRS") in 26 U.S.C.S. 54D and all relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented. For purposes of calculating the populations of local governments to determine which constitutes a "large local government," the Committee shall use population estimates as of July 1, 2007, as directed by the IRS.
- (2) To "Indian tribal governments," as such term is used in 26 U.S.C.S. 54D(h) in such amounts as may be specifically directed by the IRS in 26 U.S.C.S. 54D and relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented.
- (3) Following the allocations described in Items (1) and (2) of this Rule, the Committee shall allocate the remaining QECB capacity to eligible issuers. Such allocation shall be made by the Committee in its sole discretion, upon completed application by an eligible issuer, and after consideration of any factor the Committee deems relevant in its good faith and discretion, including (without limitation) some or all of the following factors:
 - (a) The ability of the State to ensure that at least 70 percent of the State's allocation is used for government projects, and no more than 30 percent for projects considered QECB private activity bonds under IRS rules, regulations and guidelines;
 - (b) The extent to which the project constitutes an eligible conservation purpose under 26 U.S.C.S. 54D and all relevant implementing notices provided by the IRS (including IRS Notice 2009-29), as may be modified, amended or supplemented;
 - (c) The extent to which the project demonstrates the potential to directly conserve energy;

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| <p>(d) <u>The extent to which the project supports the development or implementation of innovative energy conservation technology;</u></p> <p>(e) <u>The extent to which the project uses renewable resources to produce energy;</u></p> <p>(f) <u>The number of citizens benefiting from the project;</u></p> <p>(g) <u>The estimated number of jobs to be produced by the projects (for private activity allocations) and the amount of QECCB authority per job produced;</u></p> <p>(h) <u>The readiness of the project to proceed;</u></p> <p>(i) <u>The certainty of the issuer using the allocation within the estimated timelines;</u></p> <p>(j) <u>The amount of other public and private funding leveraged by the QECCB allocation;</u></p> <p>(k) <u>The amount of local community support for the project;</u></p> <p>(l) <u>The best interests of the State of North Carolina with regard to economic development, energy conservation, green initiatives and the general prosperity of the State;</u></p> <p>(m) <u>Whether the unit of local government is in competition with another state for project benefits such as jobs and tax base;</u></p> <p>(n) <u>Whether the availability of the allocation is a crucial part of attracting a new company or keeping an existing company in place;</u></p> <p>(o) <u>Whether the requested allocation will benefit a project for which an eligible issuer is already issuing QECCBs;</u></p> <p>(p) <u>The ability of the unit of local government or company benefiting from the QECCB to obtain financing and close the issue in a timely manner, including demonstration of a</u></p> | <p><u>commitment from a bank or other financial institution to purchase or underwrite the QECCBs;</u></p> <p>(q) <u>The total amount of capacity available to the Committee for allocation.</u></p> <p>(4) <u>Where required by law, local governments shall coordinate issuance of QECCBs with and through the North Carolina Local Government Commission (the "LGC") in the Office of the North Carolina State Treasurer, and shall obtain approval from the LGC for QECCB issuance.</u></p> <p>(5) <u>Entities allocated QECCB capacity by the Committee and/or entities who issue QECCBs shall ensure compliance with all federal and state laws, rules, regulations and requirements applicable to such allocation or issue.</u></p> <p>(6) <u>Entities receiving an allocation under Items (1) and (2) of this Rule ("large local governments" and "Indian tribal governments") have the right to waive and/or reallocate to the State of North Carolina all or a portion of their allocation. Upon the State's receipt of any additional QECCB capacity through any such waiver or reallocation, the Committee shall allocate such capacity to eligible issuers in the manner described in Item (3) of this Rule.</u></p> <p>(7) <u>The Committee shall attach such contingencies upon any allocation of QECCB capacity made under Item (3) of this Rule as the Committee may deem appropriate, including (without limitation) contingencies relating to a time deadline for issuance of the QECCBs pursuant to the allocated capacity and contingencies limiting the use of the allocated QECCB capacity for public or private activity bonds.</u></p> |
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History Note: Authority G.S. 143-433.6(d); 143-433.8; 143-433.9(a); 150B-21.1B; S.L. 2009-140; S.L. 2009-475; Emergency Adoption Eff. July 15, 2011; Temporary Adoption Eff. September 8, 2011.

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 August 18, 2011.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

PUBLIC LIBRARIAN CERTIFICATION COMMISSION

<u>Purpose of the Commission</u>	07	NCAC	02F	.0101	25:21 NCR
<u>Full Certification</u>	07	NCAC	02F	.0102	25:21 NCR
<u>Application Procedure for Public Librarian Certification</u>	07	NCAC	02F	.0103	25:21 NCR
<u>Purpose of the Commission</u>	07	NCAC	02J	.0101	25:21 NCR
<u>Full Certification</u>	07	NCAC	02J	.0102	25:21 NCR
<u>Application Procedure for Public Librarian Certification</u>	07	NCAC	02J	.0103	25:21 NCR

SOCIAL SERVICES COMMISSION

<u>Licensure</u>	10A	NCAC	70G	.0403*	25:19 NCR
<u>Licensure</u>	10A	NCAC	70H	.0114*	25:19 NCR
<u>Buildings and Ground Equipment</u>	10A	NCAC	70J	.0106*	25:19 NCR

HOME INSPECTOR LICENSURE BOARD

<u>Definitions</u>	11	NCAC	08	.1020	25:20 NCR
<u>Program Structuring and Admission Requirements</u>	11	NCAC	08	.1021	25:20 NCR
<u>Program Sponsors</u>	11	NCAC	08	.1022	25:20 NCR
<u>Application for Program Sponsor</u>	11	NCAC	08	.1023*	25:20 NCR
<u>Course Requirements</u>	11	NCAC	08	.1024*	25:20 NCR
<u>Course Completion Standards</u>	11	NCAC	08	.1025*	25:20 NCR
<u>Course Scheduling</u>	11	NCAC	08	.1026	25:20 NCR
<u>Textbooks</u>	11	NCAC	08	.1027*	25:20 NCR
<u>Course Completion</u>	11	NCAC	08	.1028*	25:20 NCR
<u>Purpose and Scope</u>	11	NCAC	08	.1103	25:20 NCR

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Jordan Water Supply Nutrient Strategy: Purpose and...</u>	15A	NCAC	02B	.0262*	n/a G.S. 150B-21.5(a)(4)
<u>Jordan Water Supply Nutrient Strategy: Protection of...</u>	15A	NCAC	02B	.0267*	n/a G.S. 150B-21.5(a)(5)
<u>Jordan Water Supply Nutrient Strategy: Mitigation of...</u>	15A	NCAC	02B	.0268*	n/a G.S. 150B-21.5(a)(5)
<u>Jordan Water Supply Nutrient Strategy: Stormwater...</u>	15A	NCAC	02B	.0271*	n/a G.S. 150B-21.5(a)(5)
<u>Sulfur Oxides</u>	15A	NCAC	02D	.0402	25:19 NCR
<u>Nitrogen Dioxide</u>	15A	NCAC	02D	.0407	25:19 NCR

WILDLIFE RESOURCES COMMISSION

<u>Tyrell County</u>	15A	NCAC	10F	.0365*	25:20 NCR
<u>Appointment of Wildlife Service Agents</u>	15A	NCAC	10G	.0402	25:18 NCR
<u>Wildlife Service Agent Agreement</u>	15A	NCAC	10G	.0403*	25:18 NCR

APPROVED RULES

Wildlife Service Agent Terms and Conditions 15A NCAC 10G .0405* 25:18 NCR

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

Fee Schedule 15A NCAC 28 .0302 25:21 NCR

COSMETIC ART EXAMINERS, BOARD OF

Prerequisites 21 NCAC 14C .0202 25:18 NCR

Renewals, Expired Licenses, Licenses Required 21 NCAC 14P .0105 25:18 NCR

Revocation of Licenses and Other Disciplinary Measures 21 NCAC 14P .0108 25:18 NCR

MASSAGE AND BODYWORK THERAPY, BOARD OF

Standards of Professional Conduct 21 NCAC 30 .0624* 25:18 NCR

ENGINEERS AND SURVEYORS, BOARD OF EXAMINERS FOR

Rules of Professional Conduct 21 NCAC 56 .0701* 25:20 NCR

Surveying Procedures 21 NCAC 56 .1602* 25:20 NCR

REFRIGERATION EXAMINERS, BOARD OF

Office of the Board 21 NCAC 60 .0102* 25:17 NCR

**TITLE 07 – DEPARTMENT OF CULTURAL
RESOURCES**

**07 NCAC 02F .0101 PURPOSE OF THE
COMMISSION**
07 NCAC 02F .0102 FULL CERTIFICATION
**07 NCAC 02F .0103 APPLICATION PROCEDURE
FOR PUBLIC LIBRARIAN CERTIFICATION**

*History Note: Authority G.S. 143B-67;
Eff. February 10, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. August 1, 1995; June 1, 1989; June 1, 1981;
Repealed Eff. September 1, 2011.*

**07 NCAC 02J .0101 PURPOSE OF THE
COMMISSION**
(a) The North Carolina Public Librarian Certification Commission sets minimum standards for certification for public librarians to accomplish the following purposes:

- (1) Guarantee the best possible public library service for all North Carolinians;
- (2) Protect and maintain public library resources;
- (3) Assure professional management and administration of library programs; and
- (4) Provide certified professionals to meet the Department of Cultural Resources' personnel requirements for State and other aid administered by the State Library of North Carolina.

(b) The Commission shall review applications and certify those librarians who meet the certification requirements enumerated in Rule .0102 of this Subchapter.
*History Note: Authority G.S. 143B-67;
Eff. September 1, 2011.*

07 NCAC 02J .0102 FULL CERTIFICATION
(a) The North Carolina Public Librarian Certification Commission shall issue public librarian certificates to applicants who have received graduate degrees in library and information science from programs accredited by the American Library Association or from regionally-accredited programs of higher education in North Carolina.
(b) Coursework must include the following core courses:

- (1) cataloging,
- (2) reference,
- (3) collection development, and
- (4) library management.

(c) Courses specifically designed for school, media center, academic, or special librarianship, must reflect general principles of librarianship.

*History Note: Authority G.S. 143B-67;
Eff. September 1, 2011.*

**07 NCAC 02J .0103 APPLICATION PROCEDURE
FOR PUBLIC LIBRARIAN CERTIFICATION**
Applicants shall send a completed application form for public librarian certification, accompanied by an official transcript

which contains the date of conferral of the degree, to the Library Development Section of the State Library of North Carolina.

History Note: Authority G.S. 143B-67; Eff. September 1, 2011.

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 70G .0403 LICENSURE

(a) License.

- (1) Licensure is required in accordance with G.S. 131D-10.3 and with rules in Subchapters 70F and 70G of this Chapter.
- (2) Licenses shall be in effect for two years unless suspended or revoked. Appeal procedures specified in 10A NCAC 70L .0301 apply for persons seeking an appeal of the licensing authority's decision to deny, suspend, or revoke a license.
- (3) Child-placing agencies for foster care licensed after September 1, 2011 shall have a three year or longer accreditation from either the Council on Accreditation (COA), The Joint Commission, formerly known as the Joint Commission on Accreditation of Healthcare Organizations (TJC), The Commission on Accreditation and Rehabilitation Facilities (CARF) or The Council on Quality and Leadership (CQL).
- (4) Applicants shall inform the licensing authority of any current licenses or licenses held in the past five years for child-placing agencies, maternity homes, or residential child-care facilities in other states. Applicants shall provide written documentation from the licensing authority in other states regarding violations, penalties, or probationary status imposed in other states.

(b) Changes in any information on the license.

- (1) The licensing authority shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters 70F and 70G of this Chapter.
- (2) A child-placing agency for foster care shall notify the licensing authority in writing of its request for a change in license, including information that is necessary to assure the change is in compliance with the rules in Subchapters 70F and 70G of this Chapter.

(c) Termination.

- (1) When a child-placing agency for foster care voluntarily discontinues operations, either temporarily or permanently, the child-placing agency for foster care shall notify the licensing authority in writing of the date, reason and anticipated length of closing.

- (2) If a license is not renewed by the end of the licensure period, the licensing authority shall automatically terminate the license.
- (3) When the license of a child-placing agency for foster care is terminated, the agency shall meet all requirements of a new agency prior to being licensed.

(d) Adverse licensure action.

- (1) The licensing authority shall deny, suspend or revoke a license when a child-placing agency for foster care is not in compliance with the rules in Subchapters 70F and 70G of this Chapter unless the agency within 10 working days from the date the agency received the deficiency report from the licensing authority submits a plan of correction. The plan of correction shall specify the following:
 - (A) the measures that will be put in place to correct the deficiency;
 - (B) the systems that will be put in place to prevent a re-occurrence of the deficiency;
 - (C) the individual or individuals who will monitor the corrective action; and
 - (D) the date the deficiency will be corrected which is no later than 60 days from the date the routine monitoring was concluded.
- (2) The licensing authority shall notify a child-placing agency for foster care in writing of the decision to deny, suspend or revoke a license.
- (3) Appeal procedures specified in 10A NCAC 70L .0301 are applicable for persons seeking an appeal to the licensing authority's decision to deny, suspend or revoke a license.

(e) Licensure shall be denied when any of the following conditions apply:

- (1) the applicant owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or any combination thereof, and any one of the following conditions exist:
 - (A) A single violation has been assessed in the six months prior to the application.
 - (B) Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.
 - (C) Three violations have been assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.
 - (D) Four or more violations have been assessed in the 60 months prior to application and 60 months have not

- passed from the date of the most recent violation.
- (2) the Department of Health and Human Services has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that was previously held by the applicant and the applicant voluntarily relinquished the license and 60 months have not passed from the date of the revocation or summary suspension;
- (3) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that is owned by the applicant;
- (4) the applicant has an individual as part of their governing body or management who previously held a license that was revoked or summarily suspended under G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; and G.S. 110, Article 7 and the rules adopted under these laws and 60 months have not passed from the date of the revocation or summary suspension;
- (5) the applicant is an individual who has a finding or pending investigation by the Health Care Personnel Registry in accordance with G.S. 131E-256; or
- (6) the applicant is an individual who has a finding on the Responsible Individual's List as described in 10A NCAC 70A .0102.

History Note: Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153; Eff. September 1, 2011.

10A NCAC 70H .0114 LICENSURE

(a) License.

- (1) Licensure is required in accordance with G.S. 131D-10.3 and with rules in Subchapters 70F and 70H of this Chapter.
- (2) Licenses shall be in effect for two years unless suspended or revoked. Appeal procedures specified in 10A NCAC 70L .0301 apply for persons seeking an appeal of the licensing authority's decision to deny, suspend, or revoke a license.
- (3) Child-placing agencies for adoption licensed after September 1, 2011 shall have a three year or longer accreditation from either the Council on Accreditation (COA), The Joint Commission, formerly known as the Joint Commission on Accreditation of Healthcare Organizations (TJC), The Commission on Accreditation and Rehabilitation Facilities (CARF) or The Council on Quality and Leadership (CQL).

- (4) Applicants shall inform the licensing authority of any current licenses or licenses held in the past five years for child-placing agencies, maternity homes, or residential child-care facilities in other states. Applicants shall provide written documentation from the licensing authority in other states regarding violations, penalties, or probationary status imposed in other states.
- (b) Changes in any information on the license.
 - (1) The licensing authority shall change a license during the period of time it is in effect if the change is in compliance with rules in Subchapters 70F and 70H of this Chapter.
 - (2) A child-placing agency for adoption shall notify the licensing authority in writing of its request for a change in license, including information that is necessary to assure the change is in compliance with the rules in Subchapters 70F and 70H of this Chapter.
- (c) Termination.
 - (1) When a child-placing agency for adoption voluntarily discontinues operations, either temporarily or permanently, the child-placing agency for adoption shall notify the licensing authority in writing of the date, reason and anticipated length of closing.
 - (2) If a license is not renewed by the end of the licensure period, the licensing authority shall automatically terminate the license.
 - (3) When the license of a child-placing agency for adoption is terminated, the agency shall meet all requirements of a new agency prior to being licensed.
- (d) Adverse licensure action.
 - (1) The licensing authority shall deny, suspend or revoke a license when a child-placing agency for adoption is not in compliance with the rules in Subchapters 70F and 70H of this Chapter unless the agency within 10 working days from the date the agency received the deficiency report from the licensing authority submits a plan of correction. The plan of correction shall specify the following:
 - (A) the measures that will be put in place to correct the deficiency;
 - (B) the systems that will be put in place to prevent a re-occurrence of the deficiency;
 - (C) the individual or individuals who will monitor the corrective action; and
 - (D) the date the deficiency will be corrected which are no later than 60 days from the date the routine monitoring was concluded.
 - (2) The licensing authority shall notify a child-placing agency for adoption in writing of the decision to deny, suspend or revoke a license.

- (3) Appeal procedures specified in 10A NCAC 70L .0301 are applicable for persons seeking an appeal to the licensing authority's decision to deny, suspend or revoke a license.
- (e) Licensure shall be denied when any of the following conditions apply:
 - (1) the applicant owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or any combination thereof, and any one of the following conditions exist:
 - (A) A single violation has been assessed in the six months prior to the application.
 - (B) Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.
 - (C) Three violations have been assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.
 - (D) Four or more violations have been assessed in the 60 months prior to application and 60 months have not passed from the date of the most recent violation.
 - (2) the Department of Health and Human Services has initiated revocation or summary suspension proceedings against any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that was previously held by the applicant and the applicant voluntarily relinquished the license and 60 months have not passed from the date of the revocation or summary suspension;
 - (3) there is a pending appeal of a denial, revocation or summary suspension of any facility licensed pursuant to G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; or G.S. 110, Article 7 that is owned by the applicant;
 - (4) the applicant has an individual as part of their governing body or management who previously held a license that was revoked or summarily suspended under G.S. 122C, Article 2; G.S. 131D, Articles 1 or 1A; and G.S. 110, Article 7 and the rules adopted under these laws and 60 months have not passed from the date of the revocation or summary suspension;
 - (5) the applicant is an individual who has a finding or pending investigation by the Health Care Personnel Registry in accordance with G.S. 131E-256; or

- (6) the applicant is an individual who has a finding on the Responsible Individual's List as described in 10A NCAC 70A .0102.

History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153; Eff. September 1, 2011.

10A NCAC 70J .0106 BUILDINGS AND GROUND EQUIPMENT

- (a) Facilities:
 - (1) All sleeping units must provide at least the following space:
 - (A) 50 square feet per person;
 - (B) 30 inches between sides of beds.
 - (2) All camper sleeping facilities shall be limited to one level structures.
 - (3) Any structure, sleeping or otherwise, with an occupancy of more than 12 persons, including staff, shall have at least two separate and independent means of exit.
 - (4) Open flame lighting shall not be used in sleeping shelters for lighting and heating.
- (b) Grounds:
 - (1) There shall be potable water available at each camp site.
 - (2) At each children's camp there shall be provided a minimum of:
 - (A) one shower head for each 20 children;
 - (B) one flush toilet for each 20 children;
 - (C) one urinal for each 30 male children (urinals may not be substituted for flush toilets);
 - (D) one handwashing facility, adjacent to toilet facilities, for each 20 children; and
 - (E) a wilderness latrine facility approved pursuant to the rules of the Commission for Health Services.
 - (3) The hot water temperature at all fixtures used by residents shall be maintained at a minimum of 100 degrees F (38 degrees C) and shall not exceed 116 degrees F (46.7 degrees C).
- (c) Equipment:
 - (1) Laundry facilities or equipment shall be available at each camp for all staff and children.
 - (2) Gasoline, kerosene, and other flammable materials shall be stored in covered safe containers, labeled for contents.
 - (3) Power tools:
 - (A) All power tools, including mowers and trimmers, must have safety devices and be used according to manufacturer's instruction, maintained in good repair, and used only by those persons trained and experienced in their safety.

- (B) Campers shall receive safety instructions before using such equipment.
- (C) When campers are using such equipment, a trained and responsible adult must be present.
- (D) When not in use, all power tools shall be stored in a locked place not occupied by children.
- (4) Fire extinguishers shall be available in all areas so designated by fire safety officials, shall be properly charged and shall have current inspection labels.

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. September 1, 2011; July 18, 2002.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 08 .1020 DEFINITIONS

- (a) As used in Rules .1020 through .1028 of this Section:
 - (1) "Course Sponsor" means a person approved by the Board to conduct home inspection preclicensing courses.
 - (2) "Credit hour" means one continuing education course hour, comprising at least 50 minutes of instruction.
 - (3) "License period" means October 1 through the following September 30.
 - (4) "Licensee" means a home inspector or associate home inspector licensed by the Board under G.S. 143, Article 9F.
 - (5) "Person" means an individual, partnership, firm, association, corporation, joint-stock company, trust, any similar entity, or any combination of the foregoing acting in concert.
- (b) The definitions contained in G.S. 143-151.45 apply to this Section.

History Note: Authority G.S. 143-151.45; 143-151.49; 143-151.51; Eff. October 1, 2011.

11 NCAC 08 .1021 PROGRAM STRUCTURING AND ADMISSION REQUIREMENTS

- The home inspection preclicensing education program shall consist of a minimum total of 200 hours consisting of classroom and field training as follows:
- (1) Academic education consisting of at least 120 hours classroom instruction; and
 - (2) Training consisting of at least 80 hours of field instruction with at least 10 site visits.

History Note: Authority G.S. 143-151.49; 143-151.51; Eff. October 1, 2011.

11 NCAC 08 .1022 PROGRAM SPONSORS

The course sponsor of a home inspection preclicensing program shall obtain approval of the Board for its educational program.

History Note: Authority G.S. 143-151.49; 143-151.51; 143-151.64; Eff. October 1, 2011.

11 NCAC 08 .1023 APPLICATION FOR PROGRAM SPONSOR APPROVAL

- (a) An entity seeking approval to sponsor a home inspection preclicensing education program must make written applications to the Board upon a form provided by the Board.
- (b) An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleading.
- (c) The applicant shall submit separate applications to sponsor the academic classroom and practical training portions of the program.
- (d) The application shall be accompanied by a program plan outline, course description materials, instructor's guide and textbook, North Carolina Standards of Practice and Code of Ethics (Section .1100 of Chapter 8), sample exams, and report formats.
- (e) The sponsor must obtain approval by the Board 45 days prior to the commencement of any courses or training.

History Note: Authority G.S. 143-151.49; 143-151.51; 143-151.57; Eff. October 1, 2011.

11 NCAC 08 .1024 COURSE REQUIREMENTS

- (a) Preclicensing programs shall be comprised of the following subject areas:
 - (1) Introduction to Home Inspection N.C. General Statutes, Standards of Practice and Code of Ethics, and
 - (2) Inspection defect and report writing including:
 - (A) Structural Components;
 - (B) Exteriors;
 - (C) Roofing;
 - (D) Plumbing;
 - (E) Electrical;
 - (F) Heating;
 - (g) Air Conditioning;
 - (H) Insulation and Ventilation;
 - (I) Interiors; and
 - (J) Built in Kitchen Appliances.
- (b) Courses may include coverage of additional related subject areas not prescribed by the Board; however, any such course shall provide additional class time above the minimum requirement for the coverage of such additional subject areas.
- (c) Classroom time and instructional materials shall be utilized for instructional purposes only and not for promoting the interests of or recruiting employees or members for any particular home inspector, home inspection firm or franchise.
- (d) Practical training time and instructional materials shall be utilized for instructional purposes only and not for promoting the

interests of or recruiting employees or members for any particular home inspector, home inspection firm or franchise.

History Note: Authority G.S. 143-151.49; 143-151.51; Eff. October 1, 2011.

11 NCAC 08 .1025 COURSE COMPLETION STANDARDS

(a) An applicant must attend at least 90 percent of all scheduled classroom hours.

(b) A student's grade shall be based solely on his performance on examinations, on graded homework and class work assignments.

(c) An applicant for licensure shall obtain a grade of at least 75 percent on a comprehensive final course examination that covers all prescribed subject areas. Take home or open book final course examinations are prohibited. Sponsors and instructors may utilize other course quizzes and tests in addition to the final course examination provided that a student's grade on the final course examination accounts for at least 75 percent of the student's grade for the course.

(d) Prelicensing course final examinations may be provided by the Board for use by approved sponsors and instructors. If the Board does not provide such examinations, or if a sponsor or instructor elects not to use Board-provided examinations, the sponsor or instructor shall use a comprehensive examination which tests student's knowledge and mastery of the course subject matter. The examination is subject to review and approval by the Board. Sponsors may, within 90 days of the course ending date, allow a prelicensing course student one opportunity to make up any missed course final examination or to retake any failed course final examination without repeating the course. If examinations provided by the Board are used, any makeup or repeat examination shall consist of a different form of the examination than the one previously administered in the student's course. If examinations not provided by the Board are used, any makeup or repeat examination shall be comparable to the initial examination with regard to the number of questions, subject areas tested and overall difficulty, and at least 75 percent of the questions shall be different from those used on the initial examination.

(e) Sponsors shall protect the security and integrity of course examinations at all times. This includes:

- (1) Maintaining examinations and answer keys in a secure place accessible only to the instructor or sponsor;
- (2) Prohibiting students from retaining copies of examinations, answer sheets, scratch paper containing notes or calculations that jeopardize examination security; and
- (3) Monitoring students at all times when examinations are being administered.

(f) Any student who gives or receives assistance during the examination shall turn in all exam materials and leave the room. Under these circumstances, the student's answer sheet shall not be scored and information regarding the giving of assistance shall be reported by the course sponsor to the Board within 10 days of the incident.

History Note: Authority G.S. 143-151.49; 143-151.51; Eff. October 1, 2011.

11 NCAC 08 .1026 COURSE SCHEDULING

(a) All courses must have fixed beginning and ending dates.

(b) Sponsors may not utilize a scheduling system that allows students to enroll late for a course and then complete their course work in a subsequently scheduled course.

(c) Late enrollment is permitted only if the enrolling student can satisfy the minimum attendance requirements set forth in Rule .1025 of this Section.

(d) Courses shall not have practical training field exercises that exceed a total of eight hours in any given day.

History Note: Authority G.S. 143-151.49; 143-151.51; Eff. October 1, 2011.

11 NCAC 08 .1027 TEXTBOOKS

(a) Each course shall utilize a textbook or course materials which are approved by the Board

(b) A request for Board approval of a proposed textbook or similar course materials shall be submitted in writing to the Board and accompanied by two copies of the proposed textbook or course materials.

(c) Approval of a textbook or other course materials applies only to the edition reviewed by the Board.

(d) A request for approval of a new edition of an approved textbook shall be made in writing to the Board.

(e) If requested by the Board, the sponsor shall provide a copy of the new edition to the Board or shall submit a list of changes.

(f) Approval is for an indefinite period; however, such approval may be terminated by the Board at any time upon determining that the approved edition no longer complies with the criteria for approval. The criteria for approval is:

- (1) The textbook or materials shall provide accurate, current and complete coverage of the subject matter required by the Board for the course for which approval of the textbook or materials is sought, including coverage of unique North Carolina home inspection related laws, rules and practices that are integrated into the basic coverage; and
- (2) The information provided shall be logically organized.

History Note: Authority G.S. 143-151.49; 143-151.51; Eff. October 1, 2011.

11 NCAC 08 .1028 COURSE COMPLETION REPORTING

(a) Program sponsors shall submit to the Board verification of each student who completes a prelicensing course that is in compliance with Board rules.

(b) Sponsors shall provide students a certificate of course completion upon completing a prelicensing course that is in compliance with the Board rules.

(c) A course completion certificate shall be prepared in the following format:

- (1) the certificate shall be printed on the official sponsor letterhead offering the preclicensing course;
- (2) the title of the completed preclicensing course;
- (3) the first and last name of the student who completed the preclicensing course;
- (4) the instructor's name; and
- (5) the signature certifying the completion of the course program shall be either an original signature, an electronic signature or stamped signature of the director, dean or other official and shall be in a color other than black ink.

History Note: Authority G.S. 143-151.49; 143-151.51; Eff. October 1, 2011.

11 NCAC 08 .1103 PURPOSE AND SCOPE

(a) Home inspections performed according to this Section shall provide the client with an understanding of the property conditions, as inspected at the time of the home inspection.

(b) Home inspectors shall:

- (1) Provide a written contract, signed by the client, before the home inspection is performed that shall:
 - (A) State that the home inspection is in accordance with the Standards of Practice of the North Carolina Home Inspector Licensure Board;
 - (B) Describe what services shall be provided and their cost; and
 - (C) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components;
- (2) Inspect readily visible and readily accessible installed systems and components listed in this Section; and
- (3) Submit a written report to the client that shall:
 - (A) Describe those systems and components required to be described in Rules .1106 through .1115 of this Section;
 - (B) State which systems and components present at the home and designated for inspection in this Section were not inspected, and the reason for not inspecting;
 - (C) State any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling;
 - (D) State whether the condition reported requires repair or subsequent observation, or warrants further investigation by a specialist. The statements shall describe the component or system and how the

condition is defective, explain the consequences of the condition, and direct the recipient to a course of action with regard to the condition or refer the recipient to a specialist; and

(E) State the name, license number, and signature of the person supervising the inspection and the name, license number, and signature of the person conducting the inspection.

(c) This Section does not limit home inspectors from:

- (1) Reporting observations and conditions or rendering opinions of items in addition to those required in Paragraph (b) of this Rule; or
- (2) Excluding systems and components from the inspection if requested by the client, and so stated in the written contract.

History Note: Authority G.S. 143-151.49; 143-151.58; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. October 1, 2011; March 1, 2010; February 1, 2009; February 1, 2007; April 1, 2005; May 1, 2003; July 1, 2000.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02B .0262 JORDAN WATER SUPPLY NUTRIENT STRATEGY: PURPOSE AND SCOPE

PURPOSE. The purpose of this Rule, 15A NCAC 02B .0263 through .0273 and .0311(p) shall be to restore and maintain nutrient-related water quality standards in B. Everett Jordan Reservoir; protect its classified uses as set out in 15A NCAC 02B .0216, including use as a source of water supply for drinking water, culinary and food processing purposes; and maintain or enhance protections currently implemented by local governments in existing water supply watersheds. These Rules, as further enumerated in Item (3) of this Rule, together shall constitute the Jordan water supply nutrient strategy, or Jordan nutrient strategy. Additional provisions of this Rule include establishing the geographic and regulatory scope of the Jordan nutrient strategy, defining its relationship to existing water quality regulations, setting specific nutrient mass load goals for Jordan Reservoir, providing for the use of adaptive management to restore Jordan Reservoir, and citing general enforcement authorities. The following provisions further establish the framework of the Jordan water supply nutrient strategy:

- (1) **SCOPE.** B. Everett Jordan Reservoir is hereafter referred to as Jordan Reservoir. All lands and waters draining to Jordan Reservoir are hereafter referred to as the Jordan watershed. Jordan Reservoir and all waters draining to it have been supplementally classified as Nutrient Sensitive Waters (NSW)

pursuant to 15A NCAC 02B .0101(e)(3) and 15A NCAC 02B .0223. Water supply waters designated WS-II, WS-III, and WS-IV within the Jordan watershed shall retain their classifications. The remaining waters in the Jordan watershed shall be classified WS-V. The requirements of all of these water supply classifications shall be retained and applied except as specifically noted in Item (6) of this Rule and elsewhere within the Jordan nutrient strategy. Pursuant to G.S. 143-214.5(b), the entire Jordan watershed shall be designated a critical water supply watershed and through the Jordan nutrient strategy given additional, more stringent requirements than the state minimum water supply watershed management requirements. These requirements supplement the water quality standards applicable to Class C waters, as described in Rule .0211 of this Section, which apply throughout the Jordan watershed.

- (2) STRATEGY GOAL. Pursuant to G.S. 143-215.1(c5), 143-215.8B, and 143B-282(c) and (d) of the Clean Water Responsibility Act of 1997, the Environmental Management Commission establishes the goal of reducing the average annual loads of nitrogen and phosphorus delivered to Jordan Reservoir from all point and nonpoint sources of these nutrients located within its watershed, as specified in Item (5) of this Rule, and provides for adaptive management of the strategy and goal, as specified in Item (8) of this Rule.
- (3) RULES ENUMERATED. The second rule in the following list provides definitions for terms that are used in more than one rule of the Jordan nutrient strategy. An individual rule may contain additional definitions that are specific to that rule. The rules of the Jordan nutrient strategy shall be titled as follows:
 - (a) Rule .0262 Purpose and Scope;
 - (b) Rule .0263 Definitions;
 - (c) Rule .0264 Agriculture;
 - (d) Rule .0265 Stormwater Management for New Development;
 - (e) Rule .0266 Stormwater Management for Existing Development;
 - (f) Rule .0267 Protection of Existing Riparian Buffers;
 - (g) Rule .0268 Mitigation for Riparian Buffers;
 - (h) Rule .0269 Riparian Buffer Mitigation Fees to the NC Ecosystem Enhancement Program;
 - (i) Rule .0270 Wastewater Discharge Requirements;
 - (j) Rule .0271 Stormwater Requirements for State and Federal Entities;
 - (k) Rule .0272 Fertilizer Management;

- (l) Rule .0273 Options for Offsetting Nutrient Loads; and
- (m) Rule .0311 Cape Fear River Basin.
- (4) RESERVOIR ARMS AND SUBWATERSHEDS. For the purpose of the Jordan nutrient strategy, Jordan Reservoir is divided into three arms and the Jordan watershed is divided into three tributary subwatersheds as follows:
 - (a) The Upper New Hope arm of the reservoir, identified by index numbers 16-41-1-(14), 16-41-2-(9.5), and 16-41-(0.5) in the Schedule of Classifications for the Cape Fear River Basin, 15A NCAC 02B .0311, encompasses the upper end of the reservoir upstream of SR 1008, and its subwatershed encompasses all lands and waters draining into it.
 - (b) The Lower New Hope arm of the reservoir, identified by index number 16-41-(3.5) in the Schedule of Classifications for the Cape Fear River Basin, 15A NCAC 02B .0311, lies downstream of SR 1008 and upstream of the Jordan Lake Dam, excluding the Haw River arm of the reservoir, and its subwatershed encompasses all lands and waters draining into the Lower New Hope arm of the reservoir excluding those that drain to the Upper New Hope arm of the reservoir and the Haw River arm of the reservoir.
 - (c) The Haw River arm of the reservoir, identified by index number 16-(37.5) in the Schedule of Classifications for the Cape Fear River Basin, 15A NCAC 02B .0311, lies immediately upstream of Jordan Lake Dam, and its subwatershed includes all lands and waters draining into the Haw River arm of the reservoir excluding those draining into the Upper and Lower New Hope arms.
- (5) NUTRIENT REDUCTION GOALS. Each arm of the lake has reduction goals, total allowable loads, point source wasteload allocations, and nonpoint source load allocations for both nitrogen and phosphorus based on a field-calibrated nutrient response model developed pursuant to provisions of the Clean Water Responsibility Act of 1997, G.S. 143-215.1(c5). The reduction goals and allocations are to be met collectively by the sources regulated under the Jordan nutrient strategy. The reduction goals are expressed in terms of a percentage reduction in delivered loads from the baseline years, 1997-2001,

while allocations are expressed in pounds per year of allowable delivered load. Each arm and subwatershed shall conform to its respective allocations for nitrogen and phosphorus as follows:

- (a) The at-lake nitrogen load reduction goals for the arms of Jordan Reservoir are as follows:
 - (i) The Upper New Hope arm has a 1997-2001 baseline nitrogen load of 986,186 pounds per year and a TMDL reduction goal of 35 percent. The resulting TMDL includes a total allowable load of 641,021 pounds of nitrogen per year: a point source mass wasteload allocation of 336,079 pounds of nitrogen per year, and a nonpoint source mass load allocation of 304,942 pounds of nitrogen per year.
 - (ii) The Lower New Hope arm has a 1997-2001 baseline nitrogen load of 221,929 pounds per year and a nitrogen TMDL capped at the baseline nitrogen load. The resulting TMDL includes a total allowable load of 221,929 pounds of nitrogen per year: a point source mass wasteload allocation of 6,836 pounds of nitrogen per year, and a nonpoint source mass load allocation of 215,093 pounds of nitrogen per year.
 - (iii) The Haw River arm has a 1997-2001 baseline nitrogen load of 2,790,217 pounds per year and a TMDL percentage reduction of 8 percent. The resulting TMDL includes a total allowable load of 2,567,000 pounds of nitrogen per year: a point source mass wasteload allocation of 895,127 pounds of nitrogen per year, and a nonpoint source mass load allocation of 1,671,873 pounds of nitrogen per year.
- (b) The at-lake phosphorus load reduction goals for the arms of Jordan Reservoir are as follows:

- (i) The Upper New Hope arm has a 1997-2001 baseline phosphorus load of 87,245 pounds per year and a TMDL percentage reduction of five percent. The resulting TMDL includes a total allowable load of 82,883 pounds of phosphorus per year: a point source mass wasteload allocation of 23,108 pounds of phosphorus per year, and a nonpoint source mass load allocation of 59,775 pounds of phosphorus per year.
 - (ii) The Lower New Hope arm has a 1997-2001 baseline phosphorus load of 26,574 pounds per year and a phosphorus TMDL capped at the baseline phosphorus load. The resulting TMDL includes a total allowable load of 26,574 pounds of phosphorus per year: a point source mass wasteload allocation of 498 pounds of phosphorus per year, and a nonpoint source mass load allocation of 26,078 pounds of phosphorus per year.
 - (iii) The Haw River arm has a 1997-2001 baseline phosphorus load of 378,569 pounds per year and a TMDL percentage reduction of five percent. The resulting TMDL includes a total allowable load of 359,641 pounds of phosphorus per year: a point source mass wasteload allocation of 106,001 pounds of phosphorus per year, and a nonpoint source mass load allocation of 253,640 pounds of phosphorus per year.
- (c) The allocations established in this Item may change as a result of allocation transfer between point and nonpoint sources to the extent provided for in rules of the Jordan nutrient strategy and pursuant to requirements on the sale and purchase of load reduction credit set out in 15A NCAC 02B .0273.

(6) RELATION TO WATER SUPPLY REQUIREMENTS. For all waters designated

as WS-II, WS-III, or WS-IV within the Jordan watershed, the requirements of water supply 15A NCAC 02B .0214 through .0216 shall remain in effect with the exception of Sub-Item (3)(b) of those rules addressing nonpoint sources. The nonpoint source requirements of Sub-Item (3)(b) of those rules are superseded by the requirements of this Rule and 15A NCAC 02B .0263 through .0269, and .0271 through .0273, except as specifically stated in any of these Rules. For the remaining waters of Jordan watershed, the requirements of water supply Rule .0218 and Rules .0263 through .0273 and .0311 shall be applied. For WS-II, WS-III, and WS-IV waters, the retained requirements of 15A NCAC 02B .0214 through .0216 are the following:

- (a) Item (1) of 15A NCAC 02B .0214 through .0216 addressing best usages;
- (b) Item (2) of 15A NCAC 02B .0214 through .0216 addressing predominant watershed development conditions, discharges expressly allowed watershed-wide, general prohibitions on and allowances for domestic and industrial discharges, Maximum Contaminant Levels following treatment, and the local option to seek more protective classifications for portions of existing water supply watersheds;
- (c) Sub-Item (3)(a) of 15A NCAC 02B .0214 through .0216 addressing waste discharge limitations; and
- (d) Sub-Items (3)(c) through (3)(h) of 15A NCAC 02B .0214 through .0216 addressing aesthetic and human health standards.

(7) **APPLICABILITY.** Types of parties responsible for implementing rules within the Jordan nutrient strategy and, as applicable, their geographic scope of responsibility, are identified in each rule. The specific local governments responsible for implementing Rules .0265, .0266, .0267, .0268, and .0273 shall be as follows:

- (a) Rules .0265, .0266, .0267, .0268, and .0273 shall be implemented by all incorporated municipalities, as identified by the Office of the Secretary of State, with planning jurisdiction within or partially within the Jordan watershed. Those municipalities currently are:
 - (i) Alamance;
 - (ii) Apex;
 - (iii) Burlington;
 - (iv) Carrboro;
 - (v) Cary;

- (vi) Chapel Hill;
- (vii) Durham;
- (viii) Elon;
- (ix) Gibsonville;
- (x) Graham;
- (xi) Green Level;
- (xii) Greensboro;
- (xiii) Haw River;
- (xiv) Kernersville;
- (xv) Mebane;
- (xvi) Morrisville;
- (xvii) Oak Ridge;
- (xviii) Ossipee;
- (xix) Pittsboro;
- (xx) Pleasant Garden;
- (xxi) Reidsville;
- (xxii) Sedalia;
- (xxiii) Stokesdale;
- (xxiv) Summerfield; and
- (xxv) Whitsett.

(b) Rules .0265, .0266, .0267, .0268, and .0273 shall be implemented by the following counties for the portions of the counties where the municipalities listed in Sub-Item (7)(a) do not have an implementation requirement:

- (i) Alamance;
- (ii) Caswell;
- (iii) Chatham;
- (iv) Durham;
- (v) Guilford;
- (vi) Orange;
- (vii) Rockingham; and
- (viii) Wake.

(c) A unit of government may arrange through interlocal agreement or other instrument of mutual agreement for another unit of government to implement portions or the entirety of a program required or allowed under any of the rules listed in Item (3) of this Rule to the extent that such an arrangement is otherwise allowed by statute. The governments involved shall submit documentation of any such agreement to the Division. No such agreement shall relieve a unit of government from its responsibilities under these Rules.

(8) **ADAPTIVE MANAGEMENT.** The Division shall evaluate the effectiveness of the Jordan nutrient strategy after at least ten years following the effective date and periodically thereafter as part of the review of the *Cape Fear River Basinwide Water Quality Plan*. The Division shall base its evaluation on, at a minimum, trend analyses as described in the monitoring section of the *B. Everett Jordan Reservoir, North Carolina Nutrient*

Management Strategy and Total Maximum Daily Load, and lake use support assessments. The Division may also develop additional watershed modeling or other source characterization work. Any nutrient response modeling and monitoring on which any recommendation for adjustment to strategy goals may be based shall meet the criteria set forth in G.S. 143-215.1(c5), also known as the Clean Water Responsibility Act, and meet or exceed criteria used by the Division for the monitoring and modeling used to establish the goals in Item (5) of this Rule. Any modification to these rules as a result of such evaluations would require additional rulemaking.

- (9) **LIMITATION.** The Jordan nutrient strategy may not fully address significant nutrient sources in the Jordan watershed in that the rules do not directly address atmospheric sources of nitrogen to the watershed from sources located both within and outside of the watershed. As better information becomes available from ongoing research on atmospheric nitrogen loading to the watershed from these sources, and on measures to control this loading, the Commission may undertake separate rule making to require such measures it deems necessary from these sources to support the goals of the Jordan nutrient strategy.
- (10) **ENFORCEMENT.** Failure to meet requirements of Rules .0262, .0264, .0265, .0266, .0267, .0268, .0269, .0270, .0271, .0272 and .0273 of this Section may result in imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a)(1); 143-215.6A; 143-215.6A; 143-215.6B; 143 215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; Eff. August 11, 2009; Amended Eff. September 1, 2011.

15A NCAC 02B .0267 JORDAN WATER SUPPLY NUTRIENT STRATEGY: PROTECTION OF EXISTING RIPARIAN BUFFERS

(See S.L. 2009-216 and S.L. 2009-484)

Protection of the nutrient removal and other water quality benefits provided by riparian buffers throughout the watershed is an important element of the overall Jordan water supply nutrient strategy. The following is the strategy for riparian buffer protection and maintenance in the Jordan watershed, as prefaced in 15A NCAC 02B .0262:

- (1) **PURPOSE.** The purposes of this Rule shall be to protect and preserve existing riparian buffers throughout the Jordan watershed as generally described in 15A NCAC 02B .0262, in order to maintain their nutrient removal and stream protection functions. Additionally this Rule will help protect the water supply uses of Jordan Reservoir and of designated water supplies throughout the Jordan watershed. Local governments shall establish programs to meet or exceed the minimum requirements of this Rule. The requirements of this Rule shall supersede all locally implemented buffer requirements stated in 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Jordan watershed. Local governments subject to this Rule may choose to implement more stringent requirements, including requiring additional buffer width.
- (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 boardwalks, steps, rails, and signage.
 - (b) 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions 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, which 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, in which case they are included in the definition of 'airport facilities'.
- (c) 'Forest management plan' means as defined in Chapter 160A-458.5(4).
- (d) '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.
- (e) 'Greenway / Hiking Trails' means pedestrian trails constructed of pervious or impervious surfaces and related structures including but not limited to boardwalks, steps, rails,

and signage, and that generally run parallel to the shoreline.

- (f) '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; or for hardwoods and wetland species, 16-inch DBH or greater or 24-inch or greater stump diameter.
 - (g) '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, riprap, or gabions, while providing bank stabilization, shall not be considered stream restoration.
 - (h) '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.
 - (i) 'Stump diameter' means the diameter of a tree measured at six inches above the ground surface level.
 - (j) 'Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts, pipes or water dependent structures, or to maintain public traffic during construction.
- (3) **APPLICABILITY.** This Rule applies to all landowners and other persons conducting activities in the Jordan watershed, including

state and federal entities, and to all local governments in the Jordan watershed, as described in 15A NCAC 02B .0262. Local governments shall develop riparian buffer protection programs for approval by the Commission, incorporating the minimum standards set out throughout this Rule and shall apply the requirements of this Rule throughout their jurisdictions within the Jordan watershed except where The Division shall exercise jurisdiction. For the following types of buffer activities in the Jordan 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 the 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 (14) of this Rule.
 - (f) Agricultural activities.
 - (g) Activities conducted in a location where there is no local government program implementing NPDES stormwater requirements, Water Supply Watershed requirements, or a voluntary local stormwater or buffer initiative at the time of the activity.
- (4) **BUFFERS PROTECTED.** The following minimum criteria shall be used for identifying regulated buffers:
- (a) This Rule shall apply to activities conducted within, or outside of with impacts upon, 50-foot wide riparian buffers directly adjacent to surface waters in the Jordan watershed (intermittent streams, perennial streams, lakes, reservoirs and ponds), excluding wetlands.
 - (b) 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.
 - (c) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references, and shall not be subject if it does not appear on any of these references:
 - (i) The most recent version of the soil survey map prepared

- by the Natural Resources Conservation Service of the United States Department of Agriculture.
- (ii) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS).
- (iii) The maps approved by the Commission as more accurate than those identified in Sub-Item (4)(c)(i) and (4)(c)(ii) of this Rule.
- (d) Where the specific origination point of a stream regulated under this Item is in question, upon request of the Division or another party, the local government shall make an on-site determination. A local government representative who has successfully completed the Division's *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall establish that point using the latest version of the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*, available at http://h2o.enr.state.nc.us/ncwetlands/documents/NC_Stream_ID_Manual.pdf or from the Division of Water Quality, 401/Wetlands Unit, 1650 Mail Service Center, Raleigh, NC, 27699-1650. A local government may accept the results of a site assessment made by another party who meets these criteria. Any disputes over on-site determinations made according to this Sub-Item shall be referred to the Director in writing. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.
- (e) Riparian buffers protected by this Rule shall be measured pursuant to Item (7) of this Rule.
- (f) Parties subject to this rule shall abide by all State rules and laws regarding waters of the state including but not limited to 15A NCAC 02H .0500, 15A NCAC 02H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.

- (g) A riparian buffer may be exempt from this Rule as described in Item (5) or (6) of this Rule.
 - (h) No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this Rule.
- (5) **EXEMPTION BASED ON ON-SITE DETERMINATION.** When a landowner or other affected party including the Division believes that the maps have inaccurately depicted surface waters, he or she shall consult the appropriate local government. Upon request, a local government representative who has successfully completed the Division's *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall make an on-site determination. Local governments may also accept the results of site assessments made by other parties who have successfully completed such training. Any disputes over on-site determinations 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 a site evaluation reveals any of the following cases:
- (a) Man-made ponds and lakes that are not part of a natural drainage way that is classified in accordance with 15A NCAC 02B .0100, including ponds and lakes created for animal watering, irrigation, or other agricultural uses. A pond or lake is part of a natural drainage way when it is fed by an intermittent or perennial stream or when it has a direct discharge point to an intermittent or perennial stream.
 - (b) Ephemeral streams.
 - (c) The absence on the ground of a corresponding intermittent or perennial stream, lake, reservoir, or pond.
 - (d) Ditches or other man-made water conveyances, other than modified natural streams.
- (6) **EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING.** This Rule shall not apply to uses that are existing and ongoing; however, this Rule shall apply at the time an existing, ongoing use is changed to another use. Change of use shall involve the initiation of any activity that does not meet either of the following criteria for existing, ongoing activity:
- (a) It was present within the riparian buffer as of the effective date of a local program enforcing this Rule and has continued to exist since that time. For any Division-administered activities listed in Item (3) of this Rule, 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 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 occupied by 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 a local program enforcing this Rule, or for Division-administered activities listed in Item (3) of this Rule as of the effective date of this Rule, and existing diffuse flow is maintained. Grading and revegetating Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised, the ground is stabilized and existing diffuse flow is maintained.
 - (b) Projects or proposed development that are determined by the local government 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 prior to the effective date of the local program implementing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) 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.
- (7) **ZONES OF THE RIPARIAN BUFFER.** The protected riparian buffer shall have two zones as follows:
 - (a) Zone One shall consist of a vegetated area that is undisturbed except for uses provided for in Item (9) of this Rule. The location of Zone One shall be as follows:
 - (i) For intermittent and perennial streams, Zone One shall begin at the top of the bank 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 top of the bank.
 - (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone One shall begin at the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the normal water level.
 - (b) Zone Two shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Item (9) of this Rule. Grading and revegetating in Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised. Zone Two shall begin at the outer edge of Zone One and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones One and Two 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 prior to its entry into the buffer and reestablishing vegetation as follows:
 - (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone Two of the riparian buffer;
 - (b) Periodic corrective action to restore diffuse flow shall be taken as necessary and shall be designed to

- impede the formation of erosion gullies; and
- (c) As set out in Items (7) and (9) of this Rule, 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.

outside the buffer with impacts on the buffer, and categorizes them as exempt, allowable, or allowable with mitigation. All uses not categorized as exempt, allowable, or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer or outside the buffer if the use would impact the 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.

- (9) **TABLE OF USES.** The following chart sets out potential new uses within the buffer, or

Use	Exempt*	Allowable *	Allowable with Mitigation *
Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities: <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	
Airport facilities: <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
Archaeological activities	X		
Bridges		X	
Canoe Access 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 buffer.	X		

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt*	Allowable *	Allowable with Mitigation *
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 25 linear 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	X X	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 (14) of this Rule			
Fertilizer application: one-time application to establish vegetation	X		
Grading and revegetation in Zone Two provided that diffuse flow and the health of existing vegetation in Zone One is not compromised and disturbed areas are stabilized until they are revegetated.	X		

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt*	Allowable *	Allowable with Mitigation *
Greenway/hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.		X	
Historic preservation	X		
Maintenance access on 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 or 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	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt*	Allowable *	Allowable with Mitigation *
Ponds created by impounding streams and not used as stormwater BMPs: <ul style="list-style-type: none"> • New ponds provided that a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of Items (7) and (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 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	X	X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt*	Allowable *	Allowable with Mitigation *
Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> • Wet detention, bioretention, and constructed wetlands in Zone Two if diffuse flow of discharge is provided into Zone One • Wet detention, bioretention, and constructed wetlands in Zone One 		X	X
Scientific studies and stream gauging	X		
Streambank or shoreline stabilization		X	
Temporary roads, 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 (8) of 15A NCAC 02B .0268: <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 or bridge construction or replacement. 	X	X X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt*	Allowable *	Allowable with Mitigation *
Utility, electric, aerial, other than perpendicular crossings ⁵ : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One^{2,3} 		X	X
Utility, electric, underground, perpendicular crossings ^{3,4,5} : <ul style="list-style-type: none"> • Disturb less than or equal to 40 linear feet of riparian buffer • Disturb greater than 40 linear feet of riparian buffer 	X	X	
Utility, electric, underground, other than perpendicular crossings ⁴ : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One¹ 	X X		
Utility, non-electric, perpendicular crossings of streams and other surface waters subject to this Rule ^{3,5} : <ul style="list-style-type: none"> • Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • 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 • 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 • Disturb greater than 150 linear feet of riparian buffer 	X	X X	X X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt*	Allowable *	Allowable with Mitigation *
Utility, non-electric, other than perpendicular crossings ^{4,5} : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One¹ 		X	X
Vegetation management: <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Mowing or harvesting of plant products in Zone Two • 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 that are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering stability of the streambank. • Removal of individual trees which are dead, diseased or damaged. • Removal of poison ivy • Removal of invasive exotic vegetation as defined in: <i>Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</i>	X X X X X X X		
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 minimum practicable width not exceeding ten feet.		X	
Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers.		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt*	Allowable *	Allowable with Mitigation *
Water supply reservoirs: <ul style="list-style-type: none"> • New reservoirs where 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 residential water wells • All other water wells 	X	X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> • Wetland, stream and buffer restoration that requires Division approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does not require Division approval for the use of a 401 Water Quality Certification 	X	X	
Wildlife passage structures		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

- ¹ Provided that:
- No heavy equipment is used in Zone One.
 - Vegetation in undisturbed portions of the buffer is not compromised.
 - Felled trees are removed by chain.
 - No permanent felling of trees occurs in protected buffers or streams.
 - Stumps are removed only by grinding.
 - At the completion of the project the disturbed area is stabilized with native vegetation.
 - Zones one and two meet the requirements of Sub-Items (7) and (8) of this Rule.
- ² Provided that, in Zone One, 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, as defined in Item (11) 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 aerial infrastructure shall not be installed within 10 feet of a water body unless the local government completes a no practical alternative evaluation as defined in Item (11) of this Rule.
- ⁴ Provided that, in Zone One, 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, 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.
 - Measures shall be taken upon completion of 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 in Item (9) of this Rule as exempt, allowable, and allowable with mitigation within a riparian buffer shall have the following requirements:

- (a) **EXEMPT.** Uses designated as exempt are permissible without local government authorization provided that they adhere to the limitations of the activity as defined in Item (9). In addition, 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.
- (b) **ALLOWABLE.** Uses designated as allowable may proceed provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule. This includes construction, monitoring, and maintenance activities. These uses require written authorization from the local government.
- (c) **ALLOWABLE WITH MITIGATION.** Uses designated as allowable with mitigation may proceed 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 (13) of this Rule. These uses require written authorization from the local government.

certify that the project meets all the following criteria for finding "no practical alternatives":

- (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 necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality;

(b) The applicant shall also submit at least the following information in support of their assertion of "no practical alternatives":

- (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;

(11) **DETERMINATION OF "NO PRACTICAL ALTERNATIVES."**

- (a) 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. The applicant shall

- (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.
 - (c) Within 60 days of a submission that addresses Sub-Item (11)(b) of this Rule, the local government shall review the entire project and make a finding of fact as to whether the criteria in Sub-Item (11)(a) have been met. A finding of "no practical alternatives" shall result in issuance of an Authorization Certificate. Failure to act within 60 days shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued to the applicant unless one of the following occurs:
 - (i) The applicant agrees, in writing, to a longer period;
 - (ii) The local government determines that the applicant has failed to furnish requested information necessary to the local government's decision;
 - (iii) The final decision is to be made pursuant to a public hearing; or
 - (iv) The applicant refuses access to its records or premises for the purpose of gathering information necessary to the local government's decision.
 - (d) The local government may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program.
 - (e) Any appeals of determinations regarding Authorization Certificates shall be referred to the Director. 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 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) For any variance request, the local government shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:
 - (i) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/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 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, such that compliance with provisions of this rule would not allow reasonable use of the property;
 - (iv) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule;
 - (v) The applicant did not purchase the property after the effective date of this Rule, and then request a variance; and

- (vi) The hardship is rare or unique to the applicant's property.
- (b) For any variance request, the local government shall make a finding of fact as to whether 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) For any variance request, the local government shall make a finding of fact as to whether, in granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (d) **MINOR VARIANCES.** A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Items (12)(a) through (12)(c) 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 governments shall be made in writing to the Director. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.
- (e) **MAJOR VARIANCES.** A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of the riparian buffer. If the local government has determined that a major variance request meets the requirements in Sub-Items (12)(a) through (12)(c) 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, the Commission shall review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Commission decision on a major variance request are made on judicial review to Superior Court.
- (13) **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 .0268.
- (14) **REQUIREMENTS SPECIFIC TO FOREST HARVESTING.** The following requirements shall apply for forest harvesting operations and practices:
 - (a) All the following measures shall apply in the entire riparian buffer as applicable:
 - (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 waterbody;
 - (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 as necessary to prevent or control the spread of 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 the rule. The Division of Forest Resources must notify the Division 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;
 - (ix) High-intensity prescribed burns shall not be allowed; and
 - (x) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer 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 One, 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. A plan drafted under either option shall meet the standards set out in this Item. 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 practice guidelines for water quality as defined in 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.
- (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 One 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, Sub-Item (9) of this Rule;
 - (ii) In the outer 20 feet of Zone One, 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 Two, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 through .0200 as enforced by the Division of Forest Resources.
- (15) **RULE IMPLEMENTATION.** This Rule shall be implemented as follows:
- (a) For Division-administered activities listed in Item (3) of this Rule, the Division shall implement the requirements of this Rule as of its effective date;
 - (b) Within two months after the effective date of this Rule, the Division shall submit a model local riparian buffer protection ordinance that embodies

- the standards set out in this Rule and 15A NCAC 02B .0268 to the Commission for approval;
- (c) Within six months after the Commission's approval of a model local buffer ordinance, local governments shall submit local programs to the Division for review based on the standards set out in this Rule and 15A NCAC 02B .0268. A local program shall also detail implementation including but not limited to such factors as a method for making variance determinations, a plan for record keeping, and a plan for enforcement. Local governments shall use the latest version of the Division's publication, Identification Methods for the Origins of Intermittent and Perennial Streams, available at http://h2o.enr.state.nc.us/ncwetlands/documents/NC_Stream_ID_Manual.pdf or at the 401/Wetlands Unit of the North Carolina Division of Water Quality at: Mail Service Center 1650, Raleigh, NC, 27699-1650, to establish the existence of streams;
- (d) Within one year after the Commission's approval of a model local buffer ordinance, the Division shall provide recommendations to the Commission on local buffer programs. The Commission shall either approve the programs or require changes based on the standards set out in this Rule and 15A NCAC 02B .0268. Should the Commission require changes, the applicable local government shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;
- (e) Within two months after the Commission's approval of local buffer programs, local governments shall implement programs to ensure that existing land use activities and proposed development complies with local programs. A local government shall issue an approval for new development only if the development application proposes to avoid impacts to riparian buffers defined in Item (4) of this Rule, or where the application proposes to impact such buffers, it demonstrates that the applicant has done the following, as applicable:
- (i) Determined that the activity is exempt from requirements of this Rule;
 - (ii) Received an Authorization Certificate from the Division pursuant to Item (11) of this Rule for uses designated as Allowable or Allowable with Mitigation;
 - (iii) For uses designated as Allowable with Mitigation, received approval of a mitigation plan pursuant to 15A NCAC 02B .0268; and
 - (iv) Received a variance pursuant to Item (12) of this Rule;
- (f) Upon implementation, local governments shall submit annual reports to the Division summarizing their activities in implementing the requirements of this Rule;
- (g) 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; and
- (h) LOCAL OVERSIGHT. The Division shall periodically inspect local programs to ensure that they are being implemented and enforced in keeping with the requirements of this Rule. Local governments shall maintain on-site records for a minimum of five years, and shall furnish a copy of these records to the Division within 30 days of receipt of a written request for them. Local programs' records shall include the following:
- (i) A copy of all variance requests;
 - (ii) Findings of fact on all variance requests;
 - (iii) Results of all variance proceedings;
 - (iv) A record of complaints and action taken as a result of complaints;
 - (v) Records for stream origin calls and stream ratings; and

- (vi) Copies of all requests for authorization, records approving authorization and Authorization Certificates.
- (16) **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 laws, regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, or any other landscape feature or water quality-related activity.

History Note: Authority 143-214.1; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d) S.L. 1999-329, s. 7.1.; S.L. 2005-190; S.L. 2006-259; Eff. August 11, 2009; See S.L. 2009-216 and S.L. 2009-484; Amended Eff. September 1, 2011.

15A NCAC 02B .0268 JORDAN WATER SUPPLY NUTRIENT STRATEGY: MITIGATION FOR RIPARIAN BUFFERS

The following are requirements for the Riparian Buffer Mitigation Program for the Jordan watershed, as prefaced in 15A NCAC 02B .0262:

- (1) **PURPOSE.** The purpose of this Rule is to set forth the mitigation requirements that the local governments in the Jordan watershed and listed in 15A NCAC 02B .0262, and in the cases stated in 15A NCAC 02B .0267(3) the Division, shall apply to the riparian buffer protection program called for in 15A NCAC 02B .0267. Additionally this Rule will help to protect the water supply uses of Jordan Reservoir and of designated water supplies throughout the Jordan watershed. Local programs shall be established to meet or exceed the minimum requirements of this Rule. For the types of buffer activities listed in 15A NCAC 02B .0267(3), the Division shall apply the requirements of this Rule wherever local governments are referenced. The requirements of this Rule shall supersede all locally implemented buffer requirements stated in 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Jordan watershed. Local governments may choose to implement more stringent requirements, including the one-hundred foot buffer requirement set out in Sub-Items (3)(b)(i) of 15A NCAC 02B .0214 through .0216 for high-density developments.
- (2) **APPLICABILITY.** This Rule applies to persons who wish to impact a riparian buffer

in the Jordan watershed when one of the following applies:

- (a) A person has received an Authorization Certificate pursuant to 15A NCAC 02B .0267 for a proposed use that is designated as "allowable with mitigation;" or
- (b) A person has received a variance pursuant to 15A NCAC 02B .0267 and is required to perform mitigation as a condition of a variance approval.
- (3) **ISSUANCE OF THE MITIGATION APPROVAL.** The local government shall issue a mitigation approval upon determining that a proposal meets the requirements set out in this Rule. The approval shall identify at a minimum the option chosen, the required and proposed areas, and either the mitigation location or the offset payment amount as applicable.
- (4) **OPTIONS FOR MEETING THE MITIGATION REQUIREMENT.** The mitigation requirement may be met through one of the following options:
 - (a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0269 contingent upon acceptance of payments by the NC Ecosystem Enhancement Program, or to a private mitigation bank that complies with banking requirements of the US Army Corps of Engineers, currently set out at <http://www.saw.usace.army.mil/WETLANDS/Mitigation/mitbanks.html> or from the US Army Corps of Engineers, P.O. Box 1890, Wilmington, NC, 28402-1890, and the applicable trading criteria in 15A NCAC 02B .0273;
 - (b) Donation of real property or of an interest in real property pursuant to Item (7) of this Rule; or
 - (c) Restoration or enhancement of a non-forested riparian buffer pursuant to the requirements of Item (8) of this Rule.
- (5) **THE AREA OF MITIGATION.** The local government shall determine the required area of mitigation, which shall apply to all mitigation options identified in Item (4) of this Rule and as further specified in the requirements for each option set out in this Rule, according to the following:
 - (a) The impacts in square feet to each zone of the riparian buffer shall be determined by the local government 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.
- (b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub-item (5)(a) of this Rule to each zone of the riparian buffer:
 - (i) Impacts to Zone One of the riparian buffer shall be multiplied by three;
 - (ii) Impacts to Zone Two of the riparian buffer shall be multiplied by one and one-half; and
 - (iii) Impacts to wetlands within Zones One and Two 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.
- (6) **THE LOCATION OF MITIGATION.** For any option chosen, the mitigation effort shall be located within the same subwatershed of the Jordan watershed, as defined in Rule .0262 of this Section, and the same distance from the Jordan Reservoir as the proposed impact, or closer to the Reservoir than the impact, and as close to the location of the impact as feasible. Alternatively, the applicant may propose mitigation anywhere within the same subwatershed of the Jordan watershed, as defined in Rule .0262 of this Section, provided that the mitigation proposal accounts for differences in delivery of nutrients to the affected arm of Jordan Reservoir resulting from differences between the locations of the buffer impact and mitigation. Additional location requirements for the property donation option are enumerated in Sub-Item (7)(c)(i) of this Rule.
- (7) **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 15A NCAC 02B .0269. The value of the property interest shall be determined by an appraisal performed in accordance with Sub-item (7)(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 15A NCAC 02B .0269, the applicant shall pay the remaining balance due;
 - (b) 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) In addition to the location requirements of Item (6), the property shall be located within an area that is identified as a priority for restoration in, or is otherwise consistent with the goals of, the *Basinwide Wetlands and Riparian Restoration Plan for the Cape Fear River Basin* developed by the Department pursuant to G.S. 143-214.10;
 - (ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration as defined in Sub-Item (8)(d) of this Rule;
 - (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 area of

- mitigation responsibility determined pursuant to Item (5) of this Rule;
- (v) Restoration shall not require removal of man-made structures or infrastructure;
 - (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 transaction costs;
 - (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;
- (d) At the expense of the applicant or donor, the following information shall be submitted to the local government 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 (7)(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.
- (8) **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 (5) of this Rule; or
 - (ii) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (5) of this Rule;
- (b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (6) 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 restoration based on existing buffer conditions. Where existing trees are 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 .0267. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the local government. 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 local government has approved the restoration or enhancement plan, the applicant shall present proof to the local government 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 both the State's and the local government'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 nutrient 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; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 1999-329, s. 7.1.; S.L. 2005-190; S.L. 2006-259; Eff. August 11, 2009; Amended Eff. September 1, 2011.

15A NCAC 02B .0271 JORDAN WATER SUPPLY NUTRIENT STRATEGY: STORMWATER REQUIREMENTS FOR STATE AND FEDERAL ENTITIES

(See S.L. 2009-216 and 2009-484)

The following is the stormwater strategy for the activities of state and federal entities within the Jordan watershed, as prefaced in Rule 02B .0262.

- (1) PURPOSE. The purposes of this Rule are as follows.
 - (a) To achieve and maintain, on new non-road development lands, the nonpoint source nitrogen and phosphorus percentage reduction goals established for Jordan Reservoir in 15A NCAC 02B .0262 relative to the baseline period defined in that Rule, to provide the highest

- practicable level of treatment on new road development, and to achieve and maintain the percentage goals on existing developed lands by reducing loading from state-maintained roadways and facilities, and from lands controlled by other state and federal entities in the Jordan watershed;
- (b) To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows from state-maintained roadways and facilities and from lands controlled by other state and federal entities in the Jordan watershed; and
 - (c) To protect the water supply uses of Jordan Reservoir and of designated water supplies throughout the Jordan watershed.
- (2) **APPLICABILITY.** This Rule shall apply to all existing and new development, both as defined in 15A NCAC 02B .0263, that lies within or partially within the Jordan watershed under the control of the NC Department of Transportation (NCDOT), including roadways and facilities, and to all lands controlled by other state and federal entities in the Jordan watershed.
- (3) **NON-NCDOT REQUIREMENTS.** With the exception of the NCDOT, all state and federal entities that control lands within the Jordan watershed shall meet the following requirements:
- (a) For any new development proposed within their jurisdictions that would disturb one-half acre or more, non-NCDOT state and federal entities shall develop stormwater management plans for submission to and approval by the Division. These stormwater plans shall not be approved by the Division unless the following criteria are met:
 - (i) The nitrogen and phosphorus loads contributed by the proposed new development activity in a given subwatershed shall not exceed the unit-area mass loading rates applicable to that subwatershed as follows for nitrogen and phosphorus, respectively, expressed in units of pounds per acre per year: 2.2 and 0.82 in the Upper New Hope; 4.4 and 0.78 in the Lower New Hope; and 3.8 and 1.43 in the Haw. The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the loading calculation method called for in this Section or other equivalent method acceptable to the Division.
 - (ii) Proposed new development subject to NPDES, water supply, and other state-mandated stormwater regulations shall comply with those regulations in addition to the other requirements of this Sub-Item. Proposed new development in any water supply watershed in the Jordan watershed designated WS-II, WS-III, or WS-IV shall comply with the density-based restrictions, obligations, and requirements for engineered stormwater controls, clustering options, and 10/70 provisions described in Sub-Items (3)(b)(i) and (3)(b)(ii) of the applicable Rule among 15A NCAC 02B .0214 through .0216;
 - (iii) Stormwater systems shall be designed to control and treat the runoff generated from all surfaces by one inch of rainfall. The treatment volume shall be drawn down pursuant to guidance specific to each practice as provided in the most recent version of the *Stormwater Best Management Practices Manual* published by the Division, or other technically at least equivalent guidance acceptable to the Division. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the development

shall not contribute to degradation of waters of the State. At a minimum, the development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm event;

- (iv) Proposed new development that would replace or expand structures or improvements that existed as of December 2001, the end of the baseline period, and which would not result in a net increase in built-upon area shall not be required to meet the nutrient loading targets or high-density requirements except to the extent that it shall provide stormwater control at least equal to the previous development. Proposed new development that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option either to achieve at least the percentage load reduction goals stated in 15A NCAC 02B .0262 as applied to nitrogen and phosphorus loading from the previous development for the entire project site, or to meet the loading rate targets described in Sub-Item (3)(a)(i);
- (v) Proposed new development shall comply with the riparian buffer protection requirements of 15A NCAC 02B .0267 and .0268;
- (vi) The entity shall have the option of offsetting part of the nitrogen and phosphorus loads by implementing or funding offsite management measures as follows: Before using offsite offset options, a development shall meet any requirements for engineered stormwater controls described in Sub-Item (3)(a)(iii) of this Rule, and shall attain a maximum

nitrogen loading rate on-site of four pounds per acre per year for single-family, detached and duplex residential development and eight pounds per acre per year for other development, including multi-family residential, commercial and industrial and shall meet any requirements for engineered stormwater controls described in Sub-Item (3)(a)(iii) of this Rule. An entity may make offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. An entity may propose other offset measures to the Division, including providing its own offsite offset or utilizing a private seller. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0273(2)-(4); and

- (vii) The non-NCDOT state or federal entity shall include measures to ensure maintenance of best management practices (BMPs) implemented as a result of the provisions in Sub-Item (3)(a) of this Rule for the life of the development.
- (b) For existing development, non-NCDOT state and federal entities shall develop and implement load reduction programs for achieving and maintaining nutrient load reductions from existing development based on the standards set out in this Sub-Item. Such entities shall submit these programs for approval by the Division. A load reduction program shall include the following elements and meet the associated criteria:
 - (i) The long-term objective of this program shall be for the entity to achieve the percentage nutrient load reduction goals in Item (5) of 15A NCAC 02B .0262 relative to annual mass loads, in pounds per year,

representative of the baseline period defined in that Rule and reaching Jordan Reservoir from existing developed lands within each subwatershed under its control. Loads shall be calculated by applying the Tar-Pamlico Nutrient Export Calculation Worksheet, Piedmont Version, dated October 2004, or an equivalent or more accurate method acceptable to the Division, to acreages of different types of existing developed lands as defined in this Sub-Item and in Item (2) of this Rule. To provide entities spatial latitude to obtain reductions in different locations, loads thus calculated shall be converted to delivered loads to Jordan Reservoir using transport factors established in the Division document, *Nitrogen and Phosphorus Delivery from Small Watersheds to Jordan Lake*, dated June 30, 2002. Subject entities shall include estimates of, and plans for offsetting, nutrient load increases from lands developed subsequent to the baseline period but prior to implementation of new development programs. For these post-baseline developed lands, the new loading rate shall be compared to the applicable loading rate target in Sub-Item (3)(a)(i) of this Rule for the subwatershed and acres involved, and the difference shall constitute the load reduction need. Should percentage reduction goals be adjusted pursuant to Item (8) of 15A NCAC 02B .0262, then the annual load goals established in this Sub-Item shall be adjusted accordingly. Entities may seek to fund implementation of load-reducing activities through grant sources such as the North Carolina Clean

Water Act Section 319 Grant Program, or other funding programs for nonpoint sources;

- (ii) The load reduction program shall include a plan and supporting technical analysis for achieving half of each load reduction goal within 10 years after the effective date of this Rule, and a plan and timeframes for achieving the remaining half subject to modification based on technical analysis at 10 years after effective date. A load reduction program may propose an alternative compliance timeframe provided it includes a technical analysis that demonstrates the need for that timeframe. A program technical analysis shall examine the feasibility of achieving stated goals and shall consider factors such as magnitude of reduction need relative to area within a subwatershed, the potential for utilizing the range of load-reducing activities listed in Sub-Item (3)(b)(iv), and relative costs and efficiencies of each activity to the extent information is available. The load reduction program shall propose implementation rates and timeframes for each activity, and shall provide for proportionate annual progress toward meeting the reduction goals as practicable, that is capable of being put into practice, done, or accomplished;
- (iii) The load reduction program shall identify specific load-reducing practices implemented to date subsequent to the baseline period and for which it is seeking credit. It shall estimate load reductions for these practices using methods provided for in Item (8), and their anticipated duration;

- (iv) The load reduction program shall identify the types of activities the entity intends to implement and types of existing development affected, relative proportions or a prioritization of practices, and the relative magnitude of reductions it expects to achieve from each. An entity may credit any nitrogen or phosphorus load reductions in excess of those required by other rules in this Chapter. The program shall identify the duration of anticipated load reductions, and may seek activities that provide sustained, long-term reductions. The load reduction program shall meet the requirements of 15A NCAC 02B .0273. Potential load-reducing activities may include stormwater activities such as street sweeping, improvement of existing ponds and stormwater structures, removal of existing built-upon area, retrofitting of existing development with engineered best management practices (BMPs), treatment of runoff in redevelopment projects, over-treatment of runoff in new development projects, source control activities such as pet waste reduction and fertilization reduction, alternative stormwater practices such as rain barrels, cisterns, downspout disconnections, and stormwater capture and reuse, restoration of ecological communities such as streams and riparian buffers, and wastewater activities such as creation of surplus allocation through advanced treatment at wastewater facilities, expansion of surplus allocation through regionalization, collection system improvements, and removal of illegal discharges;
- (v) The load reduction program shall identify anticipated funding mechanisms or sources and discuss steps taken or planned to secure such funding;
- (vi) An entity shall have the option of working with municipalities or counties within its subwatershed to jointly meet the load targets from all existing development within their combined jurisdictions. An entity may utilize private or third party sellers. All reductions shall meet the requirements of 15A NCAC 02B .0273;
- (vii) The entity shall include measures to provide for operation and maintenance of retrofitted stormwater controls to ensure that they meet the load targets required in Sub-Item (3)(b) of this Rule for the life of the development; and
- (viii) An entity may choose to conduct monitoring of stream flows and runoff from catchments to quantify disproportionately high loading rates relative to those used in the accounting methods stipulated under Item (8), and to subsequently target load-reducing activities to demonstrated high-loading source areas within such catchments for proportionately greater load reduction credit. An entity may propose such actions in its initial load reduction program submittal or at any time subsequent, and shall obtain Division approval of the monitoring design. It shall also obtain Division approval of any resulting load reduction benefits based on the standards set out in this Rule. As detailed in Item (5), an entity that chooses such monitoring initially may delay submittal

of its load reduction program by one year for the purpose of incorporating monitoring findings into its program design provided it submits to the Division within six months of the effective date of this Rule a satisfactory monitoring proposal involving at least one year of up-front monitoring, executes the monitoring, and provides the results to the Division as part of its load reduction program submittal.

- (4) **NCDOT REQUIREMENTS** The NCDOT shall develop a single Stormwater Management Program that will be applicable to the entire Jordan watershed and submit this program for approval by the Division according to the following standards:
- (a) Identify NCDOT stormwater outfalls from Interstate, US, and NC primary routes;
 - (b) Identify and eliminate illegal discharges into the NCDOT's stormwater conveyance system;
 - (c) Establish a program for post-construction stormwater runoff control for new development, including new and widening NCDOT roads and facilities. The program shall establish a process by which the Division shall review and approve stormwater designs for new NCDOT development projects. The program shall delineate the scope of vested projects that would be considered as existing development, and shall define lower thresholds of significance for activities considered new development. In addition, the following criteria shall apply:
 - (i) For new and widening roads, compliance with the riparian buffer protection requirements of Rules 15A NCAC 02B .0267 and .0268 which are expected to achieve a 30 percent nitrogen reduction efficiency in runoff treatment through either diffuse flow into buffers or other practices) shall be deemed as compliance with the purposes of this Rule.
 - (ii) New non-road development shall achieve and maintain

the nitrogen and phosphorus percentage load reduction goals established for each subwatershed in 15A NCAC 02B .0262 relative to either area-weighted average loading rates of all developable lands as of the baseline period defined in 15A NCAC 02B .0262, or to project-specific pre-development loading rates. Values for area-weighted average loading rate targets for nitrogen and phosphorus, respectively, in each subwatershed shall be the following, expressed in units of pounds per acre per year: 2.2 and 0.82 in the Upper New Hope; 4.4 and 0.78 in the Lower New Hope; and 3.8 and 1.43 in the Haw. The NCDOT shall determine the need for engineered stormwater controls to meet these loading rate targets by using the loading calculation method called for in Item (8) or other equivalent method acceptable to the Division. Where stormwater treatment systems are needed to meet these targets, they shall be designed to control and treat the runoff generated from all surfaces by one inch of rainfall. Such systems shall be assumed to achieve the nutrient removal efficiencies identified in the most recent version of the *Stormwater Best Management Practices Manual* published by the Division provided that they meet associated drawdown and other design specifications included in the same document. The NCDOT may propose to the Division nutrient removal rates for practices currently included in the BMP Toolbox required under its NPDES stormwater permit, or may propose revisions to those practices or additional practices with associated nutrient removal rates. The

NCDOT may use any such practices approved by the Division to meet loading rate targets identified in this Sub-Item. New non-road development shall also control runoff flows to meet the purpose of this Rule regarding protection of the nutrient functions and integrity of receiving waters.

(iii) For new non-road development, the NCDOT shall have the option of partially offsetting its nitrogen and phosphorus loads by implementing or funding offsite management measures. These offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus load to the remaining reduction needed onsite to comply with Sub-Item (4)(c)(ii) of this Rule. Before using offsite offset options, a development shall attain a maximum nitrogen loading rate of 8 pounds per acre per year. The NCDOT may make offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. The NCDOT may propose other offset measures to the Division. All offset measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0273.

(d) Establish a program to identify and implement load-reducing opportunities on existing development within the watershed. The long-term objective of this effort shall be for the NCDOT to achieve the nutrient load goals in 15A NCAC 02B .0262 as applied to existing development under its control, including roads and facilities.

(i) For existing non-roadway development, the program shall include estimates of, and plans for offsetting, nutrient load increases from lands developed subsequent

to the baseline period but prior to implementation of its new development program. It shall include a technical analysis that includes a proposed implementation rate and schedule. This schedule shall provide for proportionate annual progress toward reduction goals as practicable throughout the proposed compliance period. The program shall identify the types of activities NCDOT intends to implement and types of existing non-roadway development affected, relative proportions or a prioritization of practices, and the relative magnitude of reductions it expects to achieve from each.

(ii) For existing roadway development, NCDOT may meet minimum implementation rate and schedule requirements by implementing retrofits or other load-reducing measures in the watershed to achieve load reductions at the rate of 500 pounds of nitrogen reduction per 5-year period and at least 50 pounds per year. To the maximum extent practicable, retrofits shall be designed to treat the runoff generated from all surfaces by 1 inch of rainfall, and shall conform to the standards and criteria established in the most recent version of the Division-approved NCDOT BMP Toolbox required under NCDOT's NPDES stormwater permit. To establish removal rates for nutrients in the Toolbox, design criteria for individual practices therein shall be modified as needed consistent with such criteria in the most recent version of the *Stormwater Best Management Practices Manual* published by the

- Division, or other technically at least equivalent guidance acceptable to the Division, and the Division shall approve such modifications as part of the accounting process defined in Item (8) of this Rule. Other aspects of nutrient mass load calculations shall be based on the accounting process defined in Item (8) of this Rule.
- (e) Initiate a "Nutrient Management Education Program" for NCDOT staff and contractors engaged in the application of fertilizers on highway rights of way. The purpose of this program shall be to contribute to the load reduction goals established in 15A NCAC 02B .0262 through proper application of nutrients, both inorganic fertilizer and organic nutrients, to highway rights of way in the Jordan watershed in keeping with the most current state-recognized technical guidance on proper nutrient management; and
 - (f) Address compliance with the riparian buffer protection requirements of 15A NCAC 02B .0267 and .0268 through a Division approval process.
- (5) **NON-NCDOT RULE IMPLEMENTATION.** For all state and federal entities that control lands within the Jordan watershed with the exception of the NCDOT, this Rule shall be implemented as follows:
- (a) Within six months after the effective date of this Rule, any entity that intends to use water quality monitoring to guide the initial design of its load reduction program shall provide a monitoring design to the Division. The Division shall notify any such entity of the adequacy of its design within three months of submittal. When an entity's monitoring design is deemed adequate, it may delay submittal of its load reduction program by up to one year from the timeframe given in Sub-Item (5)(c) of this Rule, whereupon the same time interval would be added to the approval and implementation timeframes given in Sub-Items (5)(d) through (5)(f) of this Rule;
 - (b) Upon Commission approval of the accounting methods required by Item (8) of this Rule, subject entities shall comply with the requirements of Sub-Item (3)(a) of this Rule for any new development proposed within their jurisdictions;
 - (c) Within 24 months after the Commission's approval of the accounting methods, subject entities shall submit load reduction programs to the Division for preliminary approval according to the standards set out in Sub-Item (3)(b) of this Rule;
 - (d) Within 34 months after the Commission's approval of the accounting methods, the Division shall request the Commission's approval of entities' load reduction programs. The Commission shall either approve the programs or require changes. Should the Commission require changes, the Division shall seek Commission approval at the earliest feasible date subsequent to the original request;
 - (e) Within 36 months after the Commission's approval of the accounting methods, or within two months following Commission approval of a load reduction program, whichever is later, entities shall begin to implement load reduction programs; and
 - (f) Upon implementation of the requirements of Item (3) of this Rule, subject entities shall provide annual reports to the Division documenting their progress in implementing those requirements.
- (6) **NCDOT RULE IMPLEMENTATION.** For the NCDOT, this Rule shall be implemented as follows:
- (a) Within 30 months of the effective date of this Rule, the NCDOT shall submit the Stormwater Management Program for the Jordan watershed to the Division for approval. This Program shall meet or exceed the requirements in Item (4) of this Rule;
 - (b) Within 40 months of the effective date of this Rule, the Division shall request the Commission's approval of the NCDOT Stormwater Management Program;
 - (c) Within 42 months of the effective date of this Rule, the NCDOT shall

implement the approved Stormwater Management Program; and
 (d) Upon implementation, the NCDOT shall submit annual reports to the Division summarizing its activities in implementing each of the requirements in Item (4) of this Rule. This annual reporting may be incorporated into annual reporting required under NCDOT's NPDES stormwater permit.

(7) **RELATIONSHIP TO OTHER REQUIREMENTS.** A party may in its program submittal under Item (5) or (6) of this Rule request that the Division accept its implementation of another stormwater program or programs, such as NPDES stormwater requirements, as satisfying one or more of the requirements set forth in Item (3) or (4) of this Rule. The Division shall provide determination on acceptability of any such alternatives prior to requesting Commission approval of programs as required in Items (5) and (6) of this Rule. The party shall include in its program submittal technical information demonstrating the adequacy of the alternative requirements.

(8) **ACCOUNTING METHODS.** Within 18 months after the effective date of this Rule, the Division shall submit a nutrient accounting framework to the Commission for approval. This framework shall include tools for quantifying load reduction assignments on existing development for parties subject to this Rule, load reduction credits from various activities on existing developed lands, and a tool that will allow subject parties to account for loading from new and existing development and loading changes due to BMP implementation. The Division shall work in cooperation with subject parties and other watershed interests in developing this framework. The Division shall periodically revisit these accounting methods to determine the need for revisions to both the methods and to existing development load reduction assignments made using the methods set out in this Rule. It shall do so no less frequently than every 10 years. Its review shall include values subject to change over time independent of changes resulting from implementation of this Rule, such as untreated export rates that may change with changes in atmospheric deposition. It shall also review values subject to refinement, such as BMP nutrient removal efficiencies.

143-215.6A; 143-215.6B; 143-215.6C; 143 215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; Eff. August 11, 2009; See S.L. 2009-216 and S.L. 2009-484; Amended Eff. September 1, 2011.

15A NCAC 02D .0402 SULFUR OXIDES

(a) The ambient air quality standards for sulfur oxides measured as sulfur dioxide are:

- (1) 80 micrograms per cubic meter (0.03 ppm) annual arithmetic mean,
- (2) 365 micrograms per cubic meter (0.14 ppm) maximum 24-hour concentration not to be exceeded more than once per year,
- (3) 1300 micrograms per cubic meter (0.5 ppm) maximum three-hour concentration not to be exceeded more than once per year.

(b) Sampling and analysis shall be in accordance with procedures in Appendix A or A-1 40 CFR Part 50 or by a Federal Equivalent Method (FEM) designated in accordance with 40 CFR Part 53.

(c) Applicability of the standards listed in Subparagraph (a)(1) and (2) of this Rule is in effect until one year after the effective date of initial designations under Section 107(d) of the Clean Air Act for the sulfur dioxide standard in Paragraph (d) of this Rule.

(d) The primary one-hour annual ambient air quality standard for oxides of sulfur is 75 parts per billion (ppb, which is 1 part in 1,000,000,000), measured in the ambient air as sulfur dioxide.

(e) The one-hour primary standard is met at an ambient air quality monitoring site when the three-year average of the annual (99th percentile) of the daily maximum one-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with Appendix T of 40 CFR Part 50.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); Eff. February 1, 1976; Amended Eff. September 1, 2011; July 1, 1984; December 1, 1976.

15A NCAC 02D .0407 NITROGEN DIOXIDE

(a) The primary annual ambient air quality standard for oxides of nitrogen is 53 parts per billion annual average concentration measured in the ambient air as nitrogen dioxide.

(b) The primary one hour ambient air quality standard for oxides of nitrogen is 100 parts per billion one hour annual average concentration measured in the ambient air as nitrogen dioxide.

(c) The secondary ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter) annual arithmetic mean concentration.

(d) Sampling and analysis shall be in accordance with:

- (1) procedures in Appendix F 40 CFR Part 50; or
- (2) by a Federal Equivalent Method (FEM) designated in accordance with 40 CFR Part 53.

(e) The annual primary standard is attained when the annual average concentration in a calendar year is less than or equal to 53 parts per billion, as determined in accordance with Appendix S of 40 CFR Part 50 for the annual standard.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.5(i); 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1);

(f) The one hour primary standard is attained when the three-year average of the annual 98th percentile of the daily maximum one-hour average concentration is less than or equal to 100 ppb, as determined in accordance with Appendix S of 40 CFR Part 50 for one hour standard.

(g) The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 parts per million, rounded to three decimal places (fractional parts equal to or greater than 0.0005 parts per million are rounded up). To demonstrate attainment, an annual mean must be based on hourly data that are at least 75 percent complete or on data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); Eff. February 1, 1976; Amended Eff. September 1, 2011; October 1, 1989; July 1, 1984; December 1, 1976.

15A NCAC 10F .0365 TYRRELL COUNTY

(a) Regulated Area. This Rule applies to the following waters in Tyrrell County:

- (1) That portion of the Scuppernong River from 300 yards west of the Highway 64 bridge to 100 yards east of the Highway 64 bridge as designated by the appropriate markers.
- (2) That portion of the Scuppernong River from the Columbia Boat Ramp extending 200 feet into the river as designated by the appropriate markers.
- (3) The entire waters of the canal that leads to the marina at Taylor's Beach on Albemarle Sound in Columbia, beginning at a point at 35.95559 N, 76.30219 W.

(b) Speed Limit. It is unlawful to operate a vessel at greater than no-wake speed in the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Tyrrell County is designated as the suitable agency for the placement and maintenance of the markers implementing this Rule.

History Note: Authority G.S. 75A-3; 75A-15; Eff. December 1, 1993; Amended Eff. September 1, 2011; December 1, 1994.

15A NCAC 10G .0402 APPOINTMENT OF WILDLIFE SERVICE AGENTS

(a) Any business operating from a fixed location in North Carolina may apply to the Commission for appointment as a Wildlife Service Agent by completing an application provided by the Commission.

(b) Application. Applications for Wildlife Service Agent appointment shall contain the business name, address, county where the business is located, agent contact information, bank

account information, business hours, and any other information requested by the Commission that is reasonably necessary to determine the fitness of the applicant to serve as a Wildlife Service Agent.

(c) Qualifications and Requirements. Applicants shall meet the following qualifications in order to be appointed as a Wildlife Service Agent.

- (1) Businesses shall operate from a fixed location in North Carolina and shall sell a minimum of one thousand dollars (\$1,000) in transaction sales annually. This minimum requirement may be waived by the Executive Director if he finds the applicant's services necessary to maintain adequate agent services to the public in that geographic area.
- (2) An applicant shall have a minimum of one year's experience in operating the business for which the application is made or other equivalent business experience or training. In those cases where other equivalent business experience or training is accepted in lieu of the minimum one year's experience, the applicant shall submit financial statements of the business so that the solvency of the business can be judged.
- (3) Applicants shall provide a bank account for the purpose of transferring net proceeds from all Wildlife Service Agent transactions to the Commission's account in the State Treasury every week via an electronic transfer of funds.

(d) The qualifications as provided by Paragraphs (b) and (c) of this Rule shall be met prior to appointment. Failure to comply with the qualifications and requirements as provided by Paragraph (c) of this Rule, throughout the term of the appointment, may result in termination of the agent appointment. All agents are subject to monitoring of their performance by the Customer Support Section of the Commission.

History Note: Authority G.S. 113-134; 113-270.1; Eff. April 1, 1997; Amended Eff. September 1, 2011; May 1, 2007; July 1, 1998.

15A NCAC 10G .0403 WILDLIFE SERVICE AGENT AGREEMENT

Each Wildlife Service Agent shall execute an Agreement with the Commission and shall comply with all rules and statutes related to the sale of licenses and the registration of vessels. All terms and conditions shall be set forth in the Agreement at the time of execution. The business shall operate as a public convenience and shall serve the public in an efficient and helpful manner with all reasonable requests for assistance related to the duties of a Wildlife Service Agent whenever open for business. The agent shall be informed and knowledgeable of the laws and rules governing requirements for licenses and vessel transactions and stay abreast of changes in these requirements so that the agent can provide accurate and reliable information and instruction to persons who seek assistance in these matters. The appointment as a Wildlife Service Agent and the Agreement under which the appointment is made are singularly valid for the

person named thereon who is authorized to act on behalf of the business and applies only to the business and location named and is non-transferable.

History Note: Authority G.S. 113-134; 113-270.1; Eff. April 1, 1997; Amended Eff. September 1, 2011; June 1, 2007; July 1, 1998.

15A NCAC 10G .0405 WILDLIFE SERVICE AGENT TERMS AND CONDITIONS

(a) A Wildlife Service Agent's appointment and service is subject to the following terms and conditions:

- (1) Public Service. Wildlife Service Agents shall serve all persons seeking assistance with matters related to the duties of a Wildlife Service Agent.
- (2) Training. New Wildlife Service Agents shall attend a training session at a location specified by the Commission prior to activation of agent status and prior to receiving any equipment or supplies from the Commission.
- (3) Activation of Agent Status. Upon completion of training and receipt of equipment and supplies, Wildlife Service Agents shall have their equipment set up and ready for operation 10 days after the date they receive the equipment and supplies.
- (4) Application. Each Wildlife Service Agent shall notify the Commission of any changes to the original application for appointment such as business name, address, agent contact information, bank account information, business hours and other information related to agent appointment, within five business days of its change.
- (5) Business Change of Ownership, Location, or Management. If the ownership of the business, location or management changes, then the Agreement becomes null and void. Written notice of any change in ownership, location, or management shall be sent to the Commission at least 10 days prior to the change along with an application for a new Wildlife Service Agreement, if desired, pursuant to the rules in this Section.
- (6) Cancellation. A Wildlife Service Agent may cancel the Agreement at any time by sending written notice to the Commission. The Commission shall instruct resigning agents on the procedures for returning all equipment and supplies and to settle their account. Upon resignation of appointment as a Wildlife Service Agent, the former agent must return all consigned equipment and supplies to the Commission and settle the agent financial account within 10 days of the resignation letter's date.

(b) Suspension. The Commission shall temporarily suspend any Wildlife Service Agent appointment for:

- (1) Failure to deposit sufficient funds one or two times to cover the electronic transfer of funds each week.
- (2) Failure to operate as a public convenience as specified in the Agreement one or two times.
- (3) Failure to provide proper and correct information one or two times about wildlife transactions and related issues to customers as documented by customer complaints or agency inspections.
- (4) Failure to submit or return all required documentation for transactions as outlined in the Agreement one or two times.

Temporary suspension is effective immediately upon communication of that fact to the Wildlife Service Agent. Such communication shall state the grounds for temporary suspension and that the agent may request a hearing within 5 working days if he contests the grounds for temporary suspension. If the initial notification is not in writing, it shall be followed by written notice of temporary suspension containing the same information. If the Commission determines it is necessary to protect State property, an employee of the Commission may enter the premises and impound all property and supplies issued or entitled to by the Commission such as equipment, moneys, record books, reports, license forms, other documents and materials pertinent to the agent being suspended. The Commission must make the impounded property, or copies of it, available to the agent during the period of temporary suspension. If a hearing is requested, it shall be before the Executive Director or his designee and shall be held at a location specified by the Executive Director.

Temporary suspension remains in effect until the hearing. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if, at the end of the suspension period, the agent has not corrected the deficiency or deficiencies that resulted in the suspension. A Wildlife Service Agent may at any time after a hearing appeal his suspension to the Commission. A new suspension shall comply with the provisions of this Paragraph.

(c) Termination. The Commission shall terminate any Wildlife Service Agent appointment for any of the deficiencies listed below unless it determines that such deficiency may be corrected, is not likely to be repeated during the term of the current agreement, and not maintaining the Agent Agreement will result in insufficient Commission services to the public in the area served by the Agent. Deficiencies that may result in termination include:

- (1) Failure to comply with the terms and conditions as outlined in the wildlife service agreement.
- (2) Failure to deposit sufficient funds three or more times to cover the electronic transfer of funds each week.
- (3) Failure to meet the minimum transaction sales requirement of one thousand dollars (\$1,000) annually.
- (4) Failure to operate as a public convenience as specified in the Agreement three or more times.

- (5) Failure to provide proper and correct information three or more times about wildlife transactions and related issues to customers as documented by customer complaints or agency inspections.
- (6) Failure to submit or return all required documentation for transactions as outlined in the Agreement three or more times.

Notice of termination of the appointment may be sent to the Wildlife Service Agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the agent's right to a hearing if he has not previously been afforded one. If the appointment is to be terminated, the notice must state the effective date and hour of termination. If the agent has not been previously afforded a hearing, the agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at a location specified by the Executive Director. If the Executive Director upholds the decision to terminate the appointment, an agent may appeal his termination to the Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no transaction may be made once the agent's termination effective date and time have passed.

Upon termination of appointment as a Wildlife Service Agent, the former agent must return all consigned equipment and supplies to the Commission and settle the agent financial account within 10 days of the date of receiving written notice from the Commission. Employees of the Commission may conduct inspections and audits when terminating an agent.

The Executive Director or his designee holding any hearing under this Paragraph must keep a written record of evidence considered and findings made. Upon appeal to the Commission, the Commission Chairman or another presiding officer must cause such a written record of evidence and findings to be made and kept.

No person denied appointment or whose appointment was terminated under this Paragraph may apply again for an appointment as a Wildlife Service Agent for two years. Upon application, the Commission may not grant the appointment as a Wildlife Service Agent unless the applicant produces evidence, convincing to the Commission, that he meets all standards and qualifications and will comply with all requirements of statutes and rules pertaining to Wildlife Service Agents.

(d) Use of customer identifying information. Customer identifying information for customers of the Commission is protected by G.S. 143-254.5. Wildlife Service Agents shall not disclose any customer identifying information to any third party without written authorization of the Commission. Wildlife Service Agents shall not use such customer identifying information for any purpose other than the processing of Commission transactions requested by the customer. Failure to abide by provisions in this Paragraph is grounds for termination of the agency.

History Note: Authority G.S. 113-134; 113-270.1; Eff. June 1, 2007; Amended Eff. September 1, 2011.

15A NCAC 28 .0302 FEE SCHEDULE

(a) The following schedule of fees is applicable to govern admission to the North Carolina Aquariums:

- (1) Roanoke Island:
 - Adult, 13 and over \$8.00
 - Senior, 62 and over \$7.00
 - Child, 3 through 12 \$6.00
- (2) Fort Fisher:
 - Adult, 13 and over \$8.00
 - Senior, 62 and over \$7.00
 - Child, 3 through 12 \$6.00
- (3) Pine Knoll Shores:
 - Adult, 13 and over \$8.00
 - Senior, 62 and over \$7.00
 - Child, 3 through 12 \$6.00

(b) Free admission to the North Carolina Aquariums on Roanoke Island, at Pine Knoll Shores and at Fort Fisher is offered to the following groups:

- (1) Aquarium Society Members;
- (2) Preregistered North Carolina School groups;
- (3) Association of Zoos and Aquariums' reciprocals; and
- (4) Children under the age of three.

Free admission is offered on the following days: Martin Luther King, Jr. holiday and Veteran's Day on November 11.

(c) The following schedule of fees is applicable to govern admission for fishing on the educational fishing piers of the North Carolina Aquariums:

- (1) Daily Fishing Pass \$12.00 (maximum 24 hour period; two rods maximum; (Ages 13 and over) \$2.00 for each rod over two)
- (2) Youth Fishing Pass \$6.00 (maximum 24 hour period; two rods maximum; (Ages 12 and under) \$1.00 for each rod over two)
- (3) Pin Fishing Rigs \$3.00 addition to fishing pass fee (live bait)

History Note: Authority G.S. 143B-289.41(b); 143B-289.44; Eff. March 1, 2004; Amended Eff. January 1, 2006; Transferred and Recodified from 15A NCAC 01R .0101 Eff. August 1, 2007; Amended Eff. September 1, 2011; January 1, 2011; April 1, 2010.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14C .0202 PREREQUISITES

History Note: Authority G.S. 88B-4; 150B-38(h); Eff. February 1, 1976; Amended Eff. August 1, 2000; July 1, 1993; August 1, 1988; Repealed Eff. September 1, 2011.

21 NCAC 14P .0105 RENEWALS; EXPIRED LICENSES; LICENSES REQUIRED

(a) The presumptive civil penalty for operating a cosmetic art shop/school with an expired license is:

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

(b) The presumptive civil penalty for practicing cosmetology, manicuring, or esthetics with an expired license is:

- (1) 1st offense \$ 50.00
(2) 2nd offense \$100.00
(3) 3rd offense \$250.00

(c) The presumptive civil penalty for allowing an apprentice or someone with a temporary permit to practice cosmetic art without direct supervision is:

- (1) 1st offense \$100.00
(2) 2nd offense \$300.00
(3) 3rd offense \$500.00

(d) The presumptive civil penalty for practicing in a cosmetic art shop with an apprentice license or a temporary permit without direct supervision is:

- (1) 1st offense \$100.00
(2) 2nd offense \$300.00
(3) 3rd offense \$500.00

(e) The presumptive civil penalty for an improperly licensed cosmetic art shop (incorrect number of chairs licensed) is:

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

(f) The presumptive civil penalty for teaching with an expired license is:

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

History Note: Authority G.S. 88B-4; 88B-11; 88B-21; 88B-22; 88B- 23(a); 88B-24; 88B-29;

Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000;

Amended Eff. September 1, 2011; December 1, 2008; September 1, 2006; February 1, 2004; August 1, 2002; April 1, 2001.

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 \$500.00
(2) 2nd offense \$750.00
(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 \$500.00
(2) 2nd offense \$800.00
(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 \$500.00
(2) 2nd offense \$800.00
(3) 3rd offense \$1000.00

(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 \$ 50.00
(2) 2nd offense \$100.00
(3) 3rd offense \$250.00

(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. September 1, 2011; July 1, 2010; December 1, 2008; January 1, 2006; April 1, 2004; August 1, 2002; April 1, 2001.

CHAPTER 30 - NC BOARD OF MASSAGE AND BODYWORK THERAPY

21 NCAC 30 .0624 STANDARDS OF PROFESSIONAL CONDUCT

(a) The following standards of professional conduct shall apply to instructional staff, key administrative staff and students, and shall apply to all school facilities as well as any other location where staff or students are demonstrating or delivering therapeutic treatments as a part of course requirements:

- (1) Conduct shall be in accordance with Standards of Conduct set forth in Section .0500 of this Chapter.
- (2) Nudity is not permitted where massage and bodywork therapy is taught or practiced. For the purpose of this Section, "nudity" is defined as exposure of the genital or anal area for men or women, or exposure of the breast area for women. The only exception shall be for treatment to the breast area while utilizing therapeutic techniques.
- (3) The school shall provide a private area where persons receiving therapeutic treatments may dress or undress, whether for in-class practice or treatments performed in a student clinic. As an alternative, the school may provide instruction to persons receiving therapeutic treatments in the procedure of undressing while on the treatment table under a full sheet covering.

(b) Members of the instructional staff or key administrative staff of the massage and bodywork therapy school or program shall not engage in sexual activity, as defined in Rule .0508 and prohibited by Rule .0509 of this Chapter, with students, whether consensual or otherwise. The only exception to this is a personal relationship between a staff member and prospective student that exists before the student applies for enrollment in the school. In such case, the relationship shall be documented in writing and placed in the student's file.

History Note: Authority G.S. 90-626(9); 90-631; Eff. October 1, 2007; Amended Eff. September 1, 2011.

21 NCAC 56 .0701 RULES OF PROFESSIONAL CONDUCT

(a) In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the professions of engineering and land surveying, the Rules of Professional Conduct in this Rule are adopted in accordance with G.S. 89C-20 and are binding upon every person holding a certificate of licensure as a Professional Engineer or Professional Land Surveyor (licensee), and on all business entities authorized to offer or perform engineering or land surveying services in this state. All persons licensed under the provisions of Chapter 89C of the General Statutes are charged with having knowledge of the Board Rules, including the Rules of Professional Conduct, and are deemed to be familiar with their provisions and to understand them.

(b) A licensee shall conduct the practice in order to protect the public health, safety and welfare. The licensee shall at all times recognize the primary obligation to protect the public in the performance of the professional duties. If the licensee's engineering or land surveying judgment is overruled under

circumstances where the safety, health and welfare of the public are endangered, the licensee shall inform the employer, the client, the contractor, other affected parties and any appropriate regulatory agency of the possible consequences of the situation.

(c) A licensee shall perform services only in areas of the licensee's competence and:

- (1) Shall undertake to perform engineering and land surveying assignments only when qualified by education or experience in the specific technical field of professional engineering or land surveying involved;
- (2) May accept an assignment or project requiring education or experience outside of the licensee's own field of competence, but only to the extent that the services are restricted to those portions or disciplines of the project in which the licensee is qualified. All other portions or disciplines of such project shall be performed by associates, consultants, or employees who are licensed and competent in those portions or disciplines;
- (3) Shall not affix the signature or seal to any engineering or land surveying plan or document dealing with subject matter for which the licensee lacks competence by virtue of education or experience, nor to any such plan or document not prepared under the licensee's direct supervisory control. Direct supervisory control (responsible charge) requires a licensee or employee to carry out all client contacts, provide internal and external financial control, oversee employee training, and exercise control and supervision over all job requirements to include research, planning, design, field supervision and work product review. Direct supervisory control may be accomplished face to face or by other means of communication. A licensee shall not contract with a non-licensed individual to provide these professional services. Research, such as title searches and soil testing, may be contracted to a non-licensed individual, provided that individual is qualified or licensed to provide such service and provided the licensee reviews the work. The licensee may affix the seal and signature to drawings and documents depicting the work of two or more professionals provided it is designated by a note under the seal the specific subject matter for which each is responsible; and
- (4) In circumstances where a licensee in responsible charge of the work is unavailable to complete the work, or the work is a design plan signed and sealed by an out-of-jurisdiction licensee (not a site adaptation of a standard design plan under Rule 21 NCAC 56 .1106) a successor licensee may take responsible charge by performing and documenting all professional services to

include developing a design file including work or design criteria, calculations, code research, and any necessary and appropriate changes to the work. The non-professional services, such as drafting, need not be redone by the successor licensee but must distinguish in a clean and obvious manner and accurately reflect the successor licensee's work. The burden is on the successor licensee to show such compliance. The successor licensee shall have control of and responsibility for the work product and the signed and sealed originals of all documents.

(d) A licensee shall issue public statements only in an objective and truthful manner and:

- (1) Shall be objective and truthful in all professional reports, statements or testimony. The licensee shall include all relevant and pertinent information in such reports, statements or testimony;
- (2) When serving as an expert or technical witness before any court, commission, or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of the licensee's testimony;
- (3) Shall issue no statements, criticisms, or arguments on engineering or land surveying matters connected with public policy which are inspired or paid for by an interested party, or parties, unless the licensee has prefaced the comment by explicitly identifying the licensee's name, by disclosing the identities of the party or parties on whose behalf the licensee is speaking, and by revealing the existence of any pecuniary interest the licensee may have in the matters; and
- (4) Shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another engineer or land surveyor, nor indiscriminately criticize another engineer or land surveyor's work in public. Indiscriminate criticism includes statements without valid basis or cause or that are not objective and truthful or that fail to include all relevant and pertinent information. If the licensee believes that another engineer or land surveyor is guilty of misconduct or illegal practice, such information shall be presented to the North Carolina Board of Examiners in the form of a complaint.

(e) A licensee shall avoid conflicts of interest and:

- (1) Shall inform the employer or client, and any reviewing agency, of any business association, interests, or circumstances which could influence judgment or the quality of services;

- (2) Shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are disclosed to, and agreed to, in writing, by all interested parties;
- (3) Shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products;
- (4) Shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with the client or employer in connection with work for which the licensee is responsible;
- (5) When in public service as a member, advisor, or employee of a governmental body or department, shall not participate in considerations or actions with respect to services provided by the licensee or the licensee's firm in private engineering and land surveying practices;
- (6) Shall not solicit or accept an engineering or land surveying contract from a governmental body on which a principal or officer of the licensee's firm serves as a member; and
- (7) Shall not attempt to supplant another engineer or land surveyor in a particular employment after becoming aware that the other has been selected for the employment.

(f) A licensee shall solicit or accept work only on the basis of qualifications and:

- (1) Shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies;
- (2) Shall compete for employment on the basis of professional qualification and competence to perform the work. The licensee shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive or unfair statement or claim regarding the cost, quality or extent of services to be rendered;
- (3) Shall, with regard to fee bidding on public projects, comply with the provisions of G.S. 143-64.31 et seq., (or for federal projects, the Brooks Act, 40 U.S. Code 541 et seq.) and shall not knowingly cooperate in a violation of any provision of G.S. 143-64.31 et seq. (or of 40 U.S. Code 541 et seq.); and
- (4) Shall not falsify or permit misrepresentation of academic or professional qualifications and shall only report educational qualifications when a degree or certificate was awarded, unless it is stated that no degree or certificate was awarded. The licensee shall not

misrepresent degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments with the intent and purpose of enhancing qualifications and work.

(g) A licensee shall perform services in an ethical manner, as required by the Rules of Professional Conduct (21 NCAC 56 .0701), and in a lawful manner and:

- (1) Shall not knowingly associate with or permit the use of the licensee's name or firm name in a business venture by any person or firm which the licensee knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature or is not properly licensed; and
- (2) If the licensee has knowledge or reason to believe that another person or firm may be in violation of the Board Rules (21 NCAC 56) or of the North Carolina Engineering and Land Surveying Act (G.S. 89C), shall present such information to the Board in writing in the form of a complaint and shall cooperate with the Board in furnishing such further information or assistance as may be required by the Board. The licensee shall timely respond to all inquiries and correspondence from the Board and shall timely claim correspondence from the U. S. Postal Service, or other delivery service, sent to the licensee from the Board. Timely is defined as within the time specified in the correspondence, or if no time is specified, within 30 days of receipt. Certified mail is timely claimed if prior to being returned by the Post Office to the Board office.

(h) A Professional Engineer or Professional Land Surveyor who has received a reprimand or civil penalty or whose professional license is revoked, suspended, denied, refused renewal, refused reinstatement, put on probation, restricted, or surrendered as a result of disciplinary action by another jurisdiction is subject to discipline by the Board if the licensee's action constitutes a violation of G.S. 89C or the rules adopted by the Board.

History Note: Authority G.S. 89C-17; 89C-20; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. September 1, 2011; May 1, 2009; August 1, 2002; August 1, 2000; August 1, 1998; November 2, 1992; April 1, 1989; January 1, 1982; March 1, 1979.

CHAPTER 56 – BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS

21 NCAC 56 .1602 SURVEYING PROCEDURES

(a) A Professional Land Surveyor shall spend the necessary time and effort to make investigation to determine if there are encroachments, gaps, lappages, or other irregularities along each line surveyed. Points may be placed on the line from closed or verified traverses and the necessary investigations made from these points. If these investigations are not made, then the surveyor shall not certify to an actual survey of that line and the plat must contain the appropriate qualifications in accordance with the rules in this Section.

(b) Any and all visible or determined encroachments or easements on the property being surveyed shall be accurately located and indicated.

(c) With respect to investigation of property boundaries and recorded easements, the surveyor shall examine the most recent deeds and recorded plats adjacent to the subject property as well as all deeds and plats recorded after the date of the deed or plat upon which the survey is being based (the survey reference deed or plat).

(d) Except as provided in Paragraph (e) of the Rule, metal stakes or materials of comparable permanence shall be placed at all corners.

(e) Where a corner falls in a right-of-way, in a tree, in a stream, or on a fence post, boulder, stone, or similar object, one or more monuments or metal stakes shall be placed in the boundary so that the inaccessible point may be located accurately on the ground and the map.

(f) The results of a survey shall be reported to the user of that survey as a map or report of survey and, whether in written or graphic form, shall be prepared in a clear and factual manner. All reference sources shall be identified. Artificial monuments called for in such reports shall be described as found or set. When no monument is found or set for points described in Paragraph (e) of this Rule, that fact shall be noted.

(g) Where the results of a survey are reported in the form of a plat or a written description, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the North Carolina Geodetic Survey, where such monument is within 2000 feet of the subject property, right-of-way, easement or other surveyed entity. Where the North Carolina grid system coordinates of said monument are on file in the North Carolina Geodetic Survey Section in the Division of Land Resources of the Department of Environment and Natural Resources, the coordinates of both the referenced corner or point and the monument(s) shall be shown in X (easting) and Y (northing) coordinates on the plat or in the written description or document. The coordinates shall be identified as based on 'NAD 83', indicating North American Datum of 1983 or as 'NAD 27' indicating North American Datum of 1927. The tie lines to the monuments must be sufficient to establish true north or grid north bearings for the plat or description if the monuments exist in pairs. Control monuments within a previously recorded subdivision may be used in lieu of grid control. In the interest of bearing consistency with previously recorded plats, existing bearing control may be used where practical. In the absence of Grid Control, other natural or artificial monuments or landmarks shall be used. In all cases, the tie lines shall be sufficient to

accurately reproduce the subject lands from the control or reference points used.

(h) Area is to be computed by double meridian distance or equally accurate method and shown on the face of the plat, written description or other document. Area computations by estimation, by planimeter, by scale, or by copying from another source are not acceptable methods, except in the case of tracts containing inaccessible areas and in these areas the method of computation shall be stated.

History Note: Authority G.S. 89C-10; 89C-20; Eff. July 1, 1989; Amended Eff. September 1, 2011; May 1, 2009; August 1, 2000; August 1, 1998; February 1, 1996.

CHAPTER 60 - BOARD OF REFRIGERATION EXAMINERS

21 NCAC 60 .0102 OFFICE OF BOARD

The Board's office is located at 889 Highway 70, West, Suite 208, Garner, North Carolina. The Board's mailing address is 889 Highway 70 West, Garner, North Carolina, NC 27529. The Board's rules are available for inspection at this office during regular office hours. The materials used in rule-making decisions are available for inspection at said office.

History Note: Authority G.S. 87-54; 150B-11(2); Eff. February 1, 1976; Readopted Eff. April 17, 1978; Amended Eff. September 1, 2011; August 1, 2004; July 1, 2000; August 1, 1995; December 1, 1993; October 1, 1994.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday September 15 and October 20, 2011 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 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Addison Bell
Margaret Currin
Pete Osborne
Bob Rippy
Faylene Whitaker

Appointed by House

Ralph A. Walker
Curtis Venable
George Lucier
Garth K. Dunklin
Stephanie Simpson

COMMISSION COUNSEL

Joe Deluca (919)431-3081
Bobby Bryan (919)431-3079

RULES REVIEW COMMISSION MEETING DATES

October 20, 2011 November 17, 2011
December 15, 2011 January 19, 2012

RULES REVIEW COMMISSION

September 15, 2011

MINUTES

The Rules Review Commission met on Thursday, September 15, 2011, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Addison Bell, Margaret Currin, Garth K. Dunklin, George Lucier, Pete Osborne, Stephanie Simpson, Curtis Venable, Ralph Walker and Faylene Whitaker.

Staff members present were: Commission Counsels Joe DeLuca and Bobby Bryan, Dana Vojtko, Julie Edwards and Tammara Chalmers

The meeting was called to order at 10:09 a.m. with Judge Walker presiding. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

APPROVAL OF MINUTES

Chairman Walker asked for any discussion, comments, or corrections concerning the minutes of the August 18, 2011 meeting. There were none and the minutes were approved as distributed.

FOLLOW-UP MATTERS

11 NCAC 08 .1006 – Home Inspector Licensure Board. The Commission approved the rewritten rule submitted by the agency.

12 NCAC 0720 .1303 – Private Protective Services Board. The Commission approved the rewritten rule submitted by the agency.

Prior to the review of the rule from the Environmental Management Commission, Commissioner Osborne recused himself and did not participate in any discussion or vote concerning these rules because he owns property on the Dan River.

15A NCAC 02B .0313 – Environmental Management Commission. Elizabeth Kountis from the Division of Water Quality addressed the Commission. The Commission approved the rewritten rule submitted by the agency.

The Commission received more than 10 written letters of objection to 15A NCAC 02B .0313. This Rule is now subject to legislative review and a delayed effective date.

21 NCAC 31 .0201, .0501, .0801 – Marriage and Family Therapy Licensure Board. The Commission approved the rewritten rules submitted by the agency contingent upon receiving a technical change. The technical change was received after the meeting.

LOG OF FILINGS

Chairman Walker presided over the review of the log of permanent rules.

Department of Agriculture

David McLeod with the Department of Agriculture addressed the Commission.

All rules were approved unanimously with the following exceptions:

02 NCAC 38 .0701 – The Commission objected to this Rule based on ambiguity. In Sub-item (1)(c), it is not clear what is meant by "anticipated" weather and ground moisture conditions.

02 NCAC 43L .0309 – The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (a), it is not clear what the amount of the "established admission fee" is. Paragraphs (d) and (e) had established the fees, but they are being deleted. G.S. 150B-2(8a) specifically includes the establishment of a fee in the definition of "rule." Pursuant to G.S. 150B-18 a rule (thus any fee established) is not valid if it is not adopted in substantial compliance with the Administrative Procedure Act (APA). G.S. 106-6.1 gives the Board the authority to establish a rate schedule for facilities operated by the Department, subject to the provisions of Chapter 146 of the General Statutes. There does not appear to be anything in Chapter 146 that would remove the establishment of this fee from the requirement that it be adjusted as a rule.

Office of the Commissioner of Banks

04 NCAC 03C .1302 was approved by the Commission.

04 NCAC 03C .0807 and .1001, 16A, 16C, 16D, 16E, 16F (all the remaining rules in each subchapter except 16A.0301 and .0302 which are set out below) – The Commission extended the period of review on the above captioned rules in accordance with G.S. 150B-21.13.

The Commission did so in order to give the agency and RRC counsel an opportunity to see if some agreement could be reached on staff's requested technical changes. If no agreement can be reached then the Commission Counsel at the October meeting will identify the rules he will recommend that the Commission object to and the basis for that recommendation.

Although the Commission had approved the two Subchapter 03C rules referred to above, that approval is always contingent on the technical changes being made as set out in G.S. 150B-21.10. The agency has not made those changes and the condition has not been complied with. Since the Commission extended the period of review on the remaining rules primarily because the requested technical changes had not been made, the approval is rescinded and those two rules are included within this group of rules for which the review period has been extended.

04 NCAC 16A .0301 - The Commission objected to this Rule based on lack of statutory authority. In (a) the rule requires a petitioner to "possess such an interest in the question to be ruled on that the petitioner's need to have such a ruling ... shall be apparent from the petition."

G.S. 150B-4 sets out the only statutory requirement for the status of a person seeking a declaratory ruling. The person must be a "person aggrieved." G.S. 150B-2(6) defines a "person aggrieved" as "any person ... directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision." There is no authority cited for the agency's changing this requirement. If that is not what is meant or intended by this rule, then the rule is unclear.

04 NCAC 16A .0302 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. There is no authority cited for the Commissioner to wait 60 days to deny a request for a declaratory ruling as set out in (a). G.S. 150B-4(a1) requires the Commissioner to grant or deny the request within 30 days of receiving the petition.

For the same reason as set out in the recommendation to object to Rule .0301 there is no authority to deny a request because the "petitioner does not ... possess sufficient interest in the question to be ruled on" as set out in (b)(4). If a petitioner is a "person aggrieved" under the APA then by definition they have "sufficient interest" to petition and the agency must deny the petition for some other reason.

Social Services Commission

Commissioners Dunklin and Osborne were not present during this vote.

10A NCAC 70M .0403 was approved unanimously.

Department of Insurance

11 NCAC 13 .0308 was withdrawn by the agency.

Commission for Public Health

Commissioners Dunklin and Osborne were not present during this vote.

15A NCAC 18A .1970 was approved unanimously.

Interpreter and Transliterater Licensing Board

James Wellons representing the Board addressed the Commission.

21 NCAC 25 .0209 - The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for the agency to refuse to renew the license of a licensee because of failure to pay a civil penalty. G.S. 90D-12 lists reasons that the Board may deny, suspend, revoke or refuse to license a licensee and failure to pay a civil penalty is not one of them. There is no authority cited to set renewal requirements beyond those set by the statute.

Onsite Wastewater Contractors and Inspectors Certification Board

Commissioner Venable was not present during this vote.

All rules were approved unanimously with the following exceptions:

21 NCAC 39 .0801 - The Commission objected to this Rule based on ambiguity. Paragraph (a) is too vague for anyone to know exactly what is required.

21 NAC 39 .1003 was withdrawn by the agency.

Board of Examiners for Plumbing, Heating and Fire Sprinkler Contractors

All rules were approved unanimously.

TEMPORARY RULES

Department of Cultural Resources

07 NCAC 04N .0202 was approved unanimously.

Wildlife Resources Commission

All rules were approved unanimously.

COMMISSION PROCEDURES AND OTHER BUSINESS

The meeting adjourned at 12:18 p.m.

That afternoon between 1:00 and 3:00 p.m., Ms Mary Shuping, the Ethics Training Director from the State Board of Ethics presented Commissioners Bell, Currin, Dunklin, Simpson, Venable, Walker and Whitaker their required ethics training. Mr DeLuca as ethics liaison for the Commission also received training.

The next scheduled meeting of the Commission is Thursday, October 20 at 10:00 a.m.

Respectfully Submitted,

Julie Edwards
Editorial Assistant

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Rules Review Commission
Meeting
Please **Print** Legibly

September 15, 2011
~~OCTOBER 20, 2011~~

Name	Agency
✓ Nancy Pate	DENR
✓ Elizabeth Kouris	" Please Print Legibly
✓ Jamie McNeel	" Please Print Legibly
Mike Hedges	NCHIB
Carlotta Dixon	DSS
DANIEL GARNER	OCD/B
LONNIE CHRISTOPHER	" Please Print Legibly
Helen Landi	NC DOT
Karen Waddell	NC DDI
May Maule Asbill	Southern env. law center
Reed Fountain	Please Print Legibly
Norman Yong	NC DOJ / NC ARE
Thomas S. Warren Jr	city of Roxboro
Bob MARTIN	NC DPH
David McGowan	NC Realtors
David McLeod	NC DACS
Jim Wellons	NC DRS
<i>[Signature]</i>	<i>[Signature]</i>
Jan Kobering	D/HHS
John Bartley	NC DOW for NCDWETC
Don Conrad	NCCN

CRH

Rules Review Commission
Meeting
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Name	Agency
Nick Fountain	C. Horney
Will Morgan	NC Sterry
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**LIST OF APPROVED PERMANENT RULES
September 15, 2011 Meeting**

AGRICULTURE, BOARD OF

<u>Price Posting/Cash Discounts for Retail Motor Fuel Sales</u>	02	NCAC	38	.0604
<u>Noxious Weeds</u>	02	NCAC	48A	.1702
<u>Regulated Areas</u>	02	NCAC	48A	.1703

BANKS, OFFICE OF THE COMMISSIONER OF

<u>Share Purchase and Option Plans</u>	04	NCAC	03C	.1302
<u>Permissible Investments</u>	04	NCAC	03F	.0202
<u>Issuance of a License</u>	04	NCAC	03F	.0302
<u>License Fees</u>	04	NCAC	03F	.0303
<u>Agent Location Fee</u>	04	NCAC	03F	.0304
<u>Certificate of Authority</u>	04	NCAC	03F	.0401
<u>Statement of Net Worth</u>	04	NCAC	03F	.0502
<u>Annual Statement</u>	04	NCAC	03F	.0503
<u>Hearings</u>	04	NCAC	03F	.0701

SOCIAL SERVICES COMMISSION

<u>Procedures/Reimbursement of Adoption Assistance Benefits</u>	10A	NCAC	70M	.0403
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HOME INSPECTOR LICENSURE BOARD

<u>Insurance Requirements</u>	11	NCAC	08	.1006
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PRIVATE PROTECTIVE SERVICES BOARD

<u>Accreditation Standards</u>	12	NCAC	07D	.1303
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Roanoke River Basin</u>	15A	NCAC	02B	.0313
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PUBLIC HEALTH, COMMISSION FOR

<u>Advanced Wastewater Pretreatment System</u>	15A	NCAC	18A	.1970
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MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

<u>Credentials Required</u>	21	NCAC	31	.0201
<u>Appropriate Course of Study</u>	21	NCAC	31	.0501
<u>Licensed Marriage and Family Therapy Associate Credential...</u>	21	NCAC	31	.0801

ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

<u>Definitions</u>	21	NCAC	39	.1001
<u>General Requirements</u>	21	NCAC	39	.1002
<u>General Exclusions of an Inspection</u>	21	NCAC	39	.1004
<u>On-Site Wastewater System Components</u>	21	NCAC	39	.1005

RULES REVIEW COMMISSION

Minimum On-Site Wastewater System Inspection [21](#) [NCAC 39](#) [.1006](#)

PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS FOR

Petition for Rulemaking Hearings [21](#) [NCAC 50](#) [.1201](#)
Disposition of Petitions [21](#) [NCAC 50](#) [.1203](#)
Request to Participate [21](#) [NCAC 50](#) [.1207](#)
Written Submissions [21](#) [NCAC 50](#) [.1210](#)
Submission of Request for Ruling [21](#) [NCAC 50](#) [.1302](#)

**LIST OF APPROVED TEMPORARY RULES
September 15, 2011 Meeting**

CULTURAL RESOURCES, DEPARTMENT OF

Admission Fees 07 NCAC 04N .0202

WILDLIFE RESOURCES COMMISSION

Crows 15A NCAC 10B .0215
Coyote 15A NCAC 10B .0219
Feral Swine 15A NCAC 10B .0223

**AGENDA
RULES REVIEW COMMISSION
Thursday, October 20, 2011 10:00 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. Board of Agriculture – 02 NCAC 38 .0701 (Bryan)
 - B. Board of Agriculture – 02 NCAC 43L .0309 (Bryan)
 - C. Office of the Commissioner of Banks – 04 NCAC 03C .0807 .1001; 16A .0101, .0105, .0201, .0202, .0401, .0402, .0403, .0405, .0407, .0409; 16C .0102, .0103, .0202, .0203, .0304, .0305; 16D .0103, .0301, .0407, .0901, .0902; 16E .0104, .0301, .0405, .0702; 16F .0105, .0108, .0109, .0111, .0112, .0113 (DeLuca)
 - D. Office of the Commissioner of Banks – 04 NCAC 16A .0301, .0302 (DeLuca)
 - E. Interpreter and Transliterator Licensing Board – 21 NCAC 25 .0209 (Bryan)
 - F. Onsite Wastewater Contractors and Inspectors Certification Board – 21 NCAC 39 .0801 (Bryan)
 - IV. Review of Log of Filings (Permanent Rules) for rules filed between August 23, 2011 and September 20, 2011
 - V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
 - VI. Commission Business
 - Consideration of one proposed rule amendment and one proposed new rule
 - Next meeting: November 17, 2011
-

Commission Review
Log of Permanent Rule Filings
August 23, 2011 through September 20, 2011

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>Maintenance of Working Capital</u> Amend/*	04	NCAC	02R	.0902
<u>Stores: Appearance and State List</u> Amend/*	04	NCAC	02R	.1703
<u>Customer Service</u> Amend/*	04	NCAC	02R	.1706
<u>Shelf Management</u> Adopt/*	04	NCAC	02R	.1711

The rules in Subchapter 2S concern retail beer, wine, mixed beverages, brownbagging, advertising, and special permits. The rules include definitions and permit application procedures (.0100); general rules affecting retailers and brownbagging permittees (.0200); malt beverages and the wine retailer/wholesaler relationship (.0300); additional requirements for brownbagging permittees (.0400); additional requirements for mixed beverages permittees (.0500); special requirements for convention centers, community theatres, sports clubs, and nonprofit and political organizations (.0600); special occasions permits (.0700); culinary permits (.0800); wine and beer tastings (.0900); advertising (.1000); and effect of administrative action, fines, and offers in compromise (.1100).

<u>General Guidelines</u> Amend/*	04	NCAC	02S	.0201
<u>Advertising of Mixed Beverages</u> Amend/*	04	NCAC	02S	.1010
<u>Advertising of Spirituous Liquors</u> Amend/*	04	NCAC	02S	.1011

SOCIAL SERVICES COMMISSION

The rules in Chapter 10 concern subsidized child care and include identifying and general information (.0100); requirements for the purchase of child care (.0200); requirements for child care service funds (.0300); start-up funds (.0400); requirements for contracts with private agencies (.0500); requirements for child care centers (.0600); requirements for family child care homes (.0700); requirements for nonlicensed child care homes (.0800); general policies for provision of subsidized child care services (.0900); eligibility for services (.1000); and client fees for child care services (.1100).

<u>Definitions</u> Amend/*	10A	NCAC	10	.0102
<u>Rates for Subsidized Child Care</u> Amend/**	10A	NCAC	10	.0203

<u>Sanctions and Appeals for Fraudulent Misrepresentation</u> Amend/**	10A NCAC 10 .0308
<u>Correction of Overpayments and Underpayments</u> Amend/**	10A NCAC 10 .0309
<u>Requirements for the Administration of the Subsidized Chi...</u> Amend/**	10A NCAC 10 .0310
<u>Provider Appeal to Local Purchasing Agency</u> Adopt/**	10A NCAC 10 .0311
<u>Appeal to Division of Child Development and Early Educati...</u> Adopt/**	10A NCAC 10 .0312
<u>Effect of Administrative Action</u> Adopt/*	10A NCAC 10 .0313
<u>Definition of Start-up Funds</u> Repeal/*	10A NCAC 10 .0401
<u>Review Criteria for Start-up Funds</u> Repeal/*	10A NCAC 10 .0402
<u>Records</u> Amend/**	10A NCAC 10 .0506
<u>Appeals</u> Repeal/*	10A NCAC 10 .0603
<u>Appeals</u> Repeal/*	10A NCAC 10 .0703
<u>Local Purchasing Agency Responsibility</u> Amend/*	10A NCAC 10 .0803
<u>Definition of a Special Needs Child</u> Amend/*	10A NCAC 10 .0910

HHS - DEAF AND HARD OF HEARING, DIVISION OF SERVICES FOR THE

The rules in Subchapter 17D concern interpreter directory and development including interpreter services (.0100); and communications services programs (.0200).

<u>Reports from Local Agencies</u> Repeal/*	10A NCAC 17D .0217
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MENTAL HEALTH, COMMISSION FOR

The rules in Chapter 26 are general mental health rules.

The rules in Subchapter 26E concern the manufacture, distribution, and dispensing of controlled substances including general provisions and registration (.0100); labeling, packaging, and record keeping (.0200); prescriptions (.0300); some miscellaneous provisions (.0400); administrative functions, practices, and procedures (.0500); and controlled substance reporting system (.0600).

<u>Requirements for Transmission of Data</u> Amend/*	10A NCAC 26E .0603
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The rules in Chapter 27 concern mental health community facilities and services.

The rules in Subchapter 27B concern rules governing area programs and contracted programs utilizing social services block grant (Title XX) funds including general requirements (.0100); adult developmental vocational programs (ADVP) for individuals with developmental disabilities (.0200); residential treatment/rehabilitation programs for individuals who are alcohol or other drug abusers (.0300); day treatment programs for children and adolescents who are emotionally

disturbed (.0400); developmental day services for children with or at risk for developmental delay, developmental disabilities or atypical development (.0500); early childhood intervention services (ECIA) for developmental delays, developmental disabilities or atypical development and their families (.0600); residential treatment programs for children and adolescents who are emotionally disturbed or who have a mental illness (.0700); outpatient services for individuals of all disability groups (.0800); partial hospitalization services for adult and elderly individuals who are acutely mentally ill or are substance abusers (.0900); before/after school and summer developmental day for children with or at risk for developmental delays, developmental disabilities or atypical development (.1000); transitional residence programs for adult and elderly individuals who are mentally ill (.1100); and social setting and nonhospital medical substance abusers (.1200).

<u>Definition of Goals</u>	10A NCAC 27B .0601
Repeal/*	
<u>Eligibility Requirements</u>	10A NCAC 27B .0602
Repeal/*	
<u>Criteria</u>	10A NCAC 27B .0603
Repeal/*	

The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); facility licensing procedures (.0400); area program requirements (.0500); area authority or county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); intensive residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1500); residential treatment staff secure facilities for children or adolescents (.1700); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2400); early childhood intervention services (ECIS) for children with an at risk for developmental delays or disabilities, or atypical development and their families (.2500); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500); specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); consultation and education services (.6900); local management entity response to complaints (.7000); and target population (.7100).

<u>Scope</u>	10A NCAC 27G .2501
Repeal/*	
<u>Definitions</u>	10A NCAC 27G .2502
Repeal/*	

<u>Staff Requirements</u>	10A NCAC 27G .2503
Repeal/*	
<u>Follow-along</u>	10A NCAC 27G .2504
Repeal/*	

INSURANCE, DEPARTMENT OF

The rules in Chapter 17 concern seniors' health insurance information program.

<u>Location, Mailing Address, and Telephone</u>	11 NCAC 17 .0103
Amend/*	

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 faculty license (.0800); special volunteer license (.0900) prescribing (.1000); reactivation of full license (.1100); reinstatement of full license (.1200); general (.1300); resident's training license (.1400); and faculty limited license (.1500).

<u>Application for Physician License</u>	21 NCAC 32B .1303
Amend/*	
<u>Reinstatement of Physician License</u>	21 NCAC 32B .1350
Amend/*	
<u>Application of Resident's Training License</u>	21 NCAC 32B .1402
Amend/*	

The rules in Subchapter 32C concern professional corporations.

<u>Name of Corporation</u>	21 NCAC 32C .0102
Amend/**	
<u>Prerequisites for Incorporation</u>	21 NCAC 32C .0103
Amend/*	
<u>Certification of Registration</u>	21 NCAC 32C .0104
Amend/*	
<u>Stock and Financial Matters</u>	21 NCAC 32C .0105
Amend/**	
<u>Charter Amendments and Stock Transfers</u>	21 NCAC 32C .0106
Amend/**	
<u>Documents</u>	21 NCAC 32C .0107
Amend/**	
<u>Fees</u>	21 NCAC 32C .0108
Amend/**	
<u>Registration of Foreign Professional Corporation</u>	21 NCAC 32C .0109
Adopt/*	

The rules in Subchapter 32R concern Continuing Medical Education (CME) Requirements.

<u>Waiver for Licensees Serving as Members of the General As...</u>	21 NCAC 32R .0106
Adopt/**	

NC MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE

The rules in Subchapter 32V are rules covering licensure of perfusionists and the practice of perfusion. Perfusion primarily concerns operating cardiopulmonary bypass systems during cardiac surgery cases.

<u>Continuing Education</u>	21	NCAC 32V .0105
Amend/*		
<u>Fees</u>	21	NCAC 32V .0115
Amend/*		

PODIATRY EXAMINERS, BOARD OF

The rules in Chapter 52 concern Board of Podiatry Examiners including organization of the Board (.0100); examination and licensing (.0200); professional corporations (.0300); revocation or suspension of license (.0400); certification of podiatric assistants (.0500); general provisions (.0600); petitions for rules (.0700); notice of rulemaking hearings (.0800); rulemaking hearings (.0900); declaratory rulings (.1000); administrative hearing procedures (.1100); administrative hearings decisions related rights and procedures (.1200); nominations for podiatrist members of the board of podiatry examiners; the board of podiatry examiners constituting a board of podiatry elections; and procedures for holding an election (.1300); and scope of practice (.1400).

<u>Continuing Education</u>	21	NCAC 52 .0208
Amend/*		

STATE PERSONNEL COMMISSION

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).

<u>Agency and Employee Responsibilities</u>	25	NCAC 01H .0904
Amend/*		
<u>Office of State Personnel Responsibilities</u>	25	NCAC 01H .0905
Amend/*		
<u>Agency and Employee Responsibilities</u>	25	NCAC 01H .1003
Amend/*		
<u>Office of State Personnel Responsibilities</u>	25	NCAC 01H .1004
Amend/*		

The rules in Subchapter 1N are workplace environment and health rules including State Employees Workplace Requirements Program for Safety and Health (.0100); personal protective equipment (.0200); AIDS in the workplace (.0300); communicable disease emergency (.0400) worksite wellness (.0500); and lactation support (.0600).

<u>Policy</u>	25	NCAC 01N .0602
Amend/*		

BUILDING CODE COUNCIL

<u>NC Administrative Code and Procedures - Permits</u>	106
Amend/*	
<u>2012 Building Code - Floors</u>	1210.1
Amend/*	
<u>2012 NC Building Code - Installed Stairway Chairlifts</u>	3409.8.3

Amend/*	
<u>2012 NC Fuel Gas Code - Carbon Monoxide Alarms</u>	311
Amend/*	
<u>NC Mechanical Code - Carbon Monoxide Alarms</u>	313
Amend/*	
<u>2012 NC Plumbing Code - Carbon Monoxide Alarms</u>	315
Amend/*	
<u>2012 NC Plumbing Code - Separate Facilities</u>	403.2
Amend/*	
<u>2009 NC Residential Code - Carbon Monoxide Alarms</u>	313.1
Amend/*	
<u>2012 NC Residential Code - Carbon Monoxide Alarms</u>	315
Amend/*	

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>.

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Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray
Selina Brooks
Melissa Owens Lassiter
Don Overby

Randall May
A. B. Elkins II
Joe Webster

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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