

# ***NORTH CAROLINA REGISTER***

**VOLUME 27 • ISSUE 11 • Pages 991 - 1099**

**December 03, 2012**

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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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### **Legislative Process Concerning Rule-making**

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2012 – December 2012

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 <sup>th</sup> day from publication in the Register
26:13	01/03/12	12/08/11	01/18/12	03/05/12	03/20/12	05/01/12	05/16/12	09/29/12
26:14	01/17/12	12/21/11	02/01/12	03/19/12	03/20/12	05/01/12	05/16/12	10/13/12
26:15	02/01/12	01/10/12	02/16/12	04/02/12	04/20/12	06/01/12	01/30/13	10/28/12
26:16	02/15/12	01/25/12	03/01/12	04/16/12	04/20/12	06/01/12	01/30/13	11/11/12
26:17	03/01/12	02/09/12	03/16/12	04/30/12	05/21/12	07/01/12	01/30/13	11/26/12
26:18	03/15/12	02/23/12	03/30/12	05/14/12	05/21/12	07/01/12	01/30/13	12/10/12
26:19	04/02/12	03/12/12	04/17/12	06/01/12	06/20/12	08/01/12	01/30/13	12/28/12
26:20	04/16/12	03/23/12	05/01/12	06/15/12	06/20/12	08/01/12	01/30/13	01/11/13
26:21	05/01/12	04/10/12	05/16/12	07/02/12	07/20/12	09/01/12	01/30/13	01/26/13
26:22	05/15/12	04/24/12	05/30/12	07/16/12	07/20/12	09/01/12	01/30/13	02/09/13
26:23	06/01/12	05/10/12	06/16/12	07/31/12	08/20/12	10/01/12	01/30/13	02/26/13
26:24	06/15/12	05/24/12	06/30/12	08/14/12	08/20/12	10/01/12	01/30/13	03/12/13
27:01	07/02/12	06/11/12	07/17/12	08/31/12	09/20/12	11/01/12	01/30/13	03/29/13
27:02	07/16/12	06/22/12	07/31/12	09/14/12	09/20/12	11/01/12	01/30/13	04/12/13
27:03	08/01/12	07/11/12	08/16/12	10/01/12	10/22/12	12/01/12	01/30/13	04/28/13
27:04	08/15/12	07/25/12	08/30/12	10/15/12	10/22/12	12/01/12	01/30/13	05/12/13
27:05	09/04/12	08/13/12	09/19/12	11/05/12	11/20/12	01/01/13	01/30/13	06/01/13
27:06	09/17/12	08/24/12	10/02/12	11/16/12	11/20/12	01/01/13	01/30/13	06/14/13
27:07	10/01/12	09/10/12	10/16/12	11/30/12	12/20/12	02/01/13	05/2014	06/28/13
27:08	10/15/12	09/24/12	10/30/12	12/14/12	12/20/12	02/01/13	05/2014	07/12/13
27:09	11/01/12	10/11/12	11/16/12	12/31/12	01/22/13	03/01/13	05/2014	07/29/13
27:10	11/15/12	10/24/12	11/30/12	01/14/13	01/22/13	03/01/13	05/2014	08/12/13
27:11	12/03/12	11/07/12	12/18/12	02/01/13	02/20/13	04/01/13	05/2014	08/30/13
27:12	12/17/12	11/26/12	01/01/13	02/15/13	02/20/13	04/01/13	05/2014	09/13/13

## **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.



BEVERLY EAVES PERDUE  
GOVERNOR

**EXECUTIVE ORDER 129**

**DECLARATION 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 of the State of North Carolina and N.C.G.S. §166A-19.20:

**Section 1.**

I hereby declare that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(18) exists in the State of North Carolina. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) includes the following counties: Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Tyrrell, Washington, Wayne.

**Section 2.**

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

**Section 3.**

I delegate to Reuben F. Young, the Secretary of the Department Public Safety, or his designee, all power and authority granted to me and required of me by Article 1A of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and deploying the State Emergency Response Team to take the appropriate actions as are 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-602.

**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 declaration: (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 the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this declaration.

**Section 7.**

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

**Section 8.**

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38.

**Section 9.**

This declaration is effective Saturday, October 27, 2012 at 7:00 a.m. and shall remain in effect until rescinded.

**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 26th day of October in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



*Beverly Eaves Perdue*

Beverly Eaves Perdue  
Governor

ATTEST:

*Elaine F. Marshall*

Elaine F. Marshall by *Rebecca S. Moulden*  
Chief Deputy Secretary of State

**EXECUTIVE ORDER NO. 130****EMERGENCY RELIEF FOR TROPICAL STORM/HURRICANE SANDY**

**WHEREAS**, due to the anticipated impact and disaster associated with Tropical Storm/Hurricane Sandy, vehicles bearing equipment and supplies to relieve the damage to North Carolina and other states impacted by the storm need to be moved on the highways of North Carolina; and

**WHEREAS**, in Executive Order No. 129, I declared a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(18) for portions of the State of North Carolina to respond to the anticipated impact of Hurricane Sandy. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) includes the counties listed in Executive Order No. 129.

**WHEREAS**, under the provisions of N.C.G.S. § 166A-19.30(b)(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 equipment and supplies to relieve North Carolina and other states' grief-stricken areas 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. I have further found that citizens in this and other states have suffered losses and will likely suffer imminent further widespread damage within the meaning of N.C.G.S. § 166A-19.3(3) and N.C.G.S. § 166A-19.21(b); 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-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires 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, and medical supplies, and for restoration of utility services.

**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 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 Public Safety pursuant to N.C.G.S. § 20-381.

**Section 2.**

The Department of 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 equipment and supplies to relieve North Carolina and other states impacted by the storm.

**Section 3.**

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 having 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 4.**

Vehicles referenced under Sections 2 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 5.**

The size and weight exemption for vehicles will be allowed on all North Carolina interstate and intrastate highways except those routes designated as light roads under N.C.G.S § 20-118.

**Section 6.**

The waiver of regulations under Title 49 of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) does not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

**Section 7.**

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1 through 6 of this Executive Order in a manner which will implement these provisions 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 transporting equipment and supplies to relieve the states impacted by the storm.

**Section 9.**

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

**Section 10.**

This Executive Order is effective Saturday, October 27, 2012 at 7:00 a.m. 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 26th day of October in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



  
Beverly S. Perdue  
Governor

ATTEST:

  
Elaine F. Marshall   
Chief Deputy Secretary of State



BEVERLY EAVES PERDUE  
GOVERNOR

**EXECUTIVE ORDER 131**

**DECLARATION 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 of the State of North Carolina and N.C.G.S. §166A-19.20:

**Section 1.**

I hereby declare that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(18) exists in the State of North Carolina as a result of the winter storm associated with Hurricane Sandy. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) includes the following counties: Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Surry, Swain, Transylvania, Watauga, Wilkes, Yancey.

**Section 2.**

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

**Section 3.**

I delegate to Reuben F. Young, the Secretary of the Department Public Safety, or his designee, all power and authority granted to me and required of me by Article 1A of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and deploying the State Emergency Response Team to take the appropriate actions as are 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-602.

**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 expand the emergency area impacted by Hurricane Sandy as referenced in Executive Order No. 130 to include the counties listed in this declaration. Executive Order No. 130 applies in full force and effect to the counties listed herein.

**Section 7.**

I hereby order this declaration: (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 the Department of Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to ensure proper implementation of this declaration.

**Section 8.**

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

**Section 9.**

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. § 75-37 and 75-38.

**Section 10.**

This declaration is effective immediately and shall remain in effect until rescinded.

**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 29th day of October in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



  
Beverly Eaves Perdue  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State



EXECUTIVE ORDER NO. 132

AMENDMENT TO EXECUTIVE ORDER NO. 130  
EMERGENCY RELIEF FOR TROPICAL STORM/HURRICANE SANDY

**WHEREAS**, Executive Order No. 130 was issued to allow for the expedited movement of vehicles transporting equipment and supplies to the impacted areas within and outside of the State of North Carolina due to Hurricane Sandy; and

**WHEREAS**, the waiver on size and weight restrictions currently allowed under Executive Order No. 130 is not sufficient for certain vehicles that are transporting necessary equipment and supplies to the impacted areas; and

**WHEREAS**, without amending the maximum allowable size and weight limits set out in Executive Order No. 130 for certain vehicles transporting equipment and supplies, undue delay in relief efforts to the impacted areas on the eastern seaboard of the United States is likely to occur.

**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.**

Executive Order No. 130 is amended by adding the following Section 3A:

**Section 3A:**

Notwithstanding any other provision herein, vehicle combinations transporting a commodity that cannot be broken down or divided to meet the requirements outlined in this section are exempt from obtaining an oversize/overweight permit:

- a. When the gross weight does not exceed 112,000 pounds, and
- b. When the steer axle weight does not exceed 20,000 pounds, the single axle weight does not exceed 25,000 pounds, the tandem axle weight does not exceed 50,000 pounds, the tridem axle weight does not exceed 60,000 pounds and the 4 or more axle group weight does not exceed 68,000 pounds, and

- c. When the overall width does not exceed 12 feet, and
- d. When the overall length does not exceed 105 feet from bumper to bumper, and
- e. When the vehicle combination has five or more axles, and
- f. When the vehicle combination has a minimum extreme axle spacing of 51 feet from the center of the first axle to the center of the rear most axle, and
- g. When the vehicle combination is traveling on North Carolina interstate highways only.

**Section 2.**

Section 5 of Executive Order No. 130 is amended by adding the following:

This Order shall not apply on posted bridges pursuant to N.C.G.S. 136-72, and on light traffic roads pursuant to N.C.G.S. 20-118.

**Section 3.**


This Executive Order is effective immediately and shall remain in effect for thirty (30) days or until rescinded.

**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 2<sup>nd</sup> day of November in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



  
Beverly Eaves Perdue  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Secretary of State

**EXECUTIVE ORDER NO. 133****ALBEMARLE-PAMLICO NATIONAL ESTUARY PARTNERSHIP**

**WHEREAS**, Congress designated the Albemarle-Pamlico estuarine system “estuary of national significance” in 1987; and

**WHEREAS**, the Albemarle-Pamlico National Estuary Partnership (APNEP), formerly known as the Albemarle-Pamlico Estuary Program, is a cooperative effort established by the State of North Carolina and the United States Environmental Protection Agency in cooperation with the Commonwealth of Virginia; and

**WHEREAS**, the mission of APNEP is to identify, restore, and protect the significant resources in the Albemarle-Pamlico estuarine system; and

**WHEREAS**, APNEP is a collaborative effort involving state, federal, regional, local, educational, public, and private entities in the protection and enhancement of the Albemarle-Pamlico estuarine system; and

**WHEREAS**, APNEP was among the first National Estuary Programs to be designated by Congress under Section 320 of the Clean Water Act; and

**WHEREAS**, APNEP has provided extensive information and supported scientific research to address natural resource and environmental issues facing the Albemarle-Pamlico estuarine system since 1988; and

**WHEREAS**, scientific information from the Albemarle-Pamlico Estuarine Study (1987-1994) was combined with extraordinary involvement by citizens to develop a Comprehensive Conservation and Management Plan (CCMP) that was first adopted in 1994 and revised in 2012; and

**WHEREAS**, APNEP and its CCMP also recognize that from an ecological, societal, and economic standpoint, the most effective means to sustain environmental health of the Albemarle-Pamlico estuarine system is to identify, manage, and protect the resources in the watershed through adaptive, system-based approaches; and

**WHEREAS**, APNEP recognizes the importance of engaging and involving the public in making decisions regarding ecosystem-based management;

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

**Section 1. Establishment and Structure.**

The Albemarle-Pamlico National Estuary Partnership Office (the "APNEP Office") is hereby established to coordinate and facilitate the implementation of the CCMP, and the APNEP mission. The APNEP Office shall serve as a conduit for information, collaborations, and coordination among the state and federal agencies, local governments, tribes, academia, and the public. The Office will be located in the Offices of the Secretary of the North Carolina Department of Environment and Natural Resources ("DENR" or the "Department"). The Department shall be responsible for administrative and fiscal management of the APNEP Office as the federal grant recipient.

**Section 2. Advisory Bodies.**

The following advisory bodies shall be established to support the implementation of the CCMP and to assist the APNEP Office: a Policy Board, an Implementation Committee, and a Science and Technical Advisory Committee. The Secretary of the Department of Environment and Natural Resources, in consultation with the Director of the APNEP Office, shall appoint the initial membership of the advisory bodies and, to the greatest extent possible, shall seek to ensure geographic, demographic and social balance, and willingness to serve. Unless otherwise authorized by the Governor or the Governor's designee, advisory bodies shall have no authority other than to serve in an advisory capacity as provided herein.

A. Policy Board

1. Purpose

The Policy Board shall work with the APNEP Office and other partners to advise, support, evaluate, update, advocate for, and guide CCMP implementation. The Policy Board is the primary guidance body of the APNEP Office.

2. Membership

a. The membership of the Policy Board shall include the following voting members:

- 1) The Secretary of the North Carolina Department of Environment and Natural Resources, or designee;
- 2) Two members of the Implementation Committee;
- 3) Two members of the Science and Technical Advisory Committee;
- 4) A representative of a local or regional council of governments;
- 5) A representative of a local, state, or national conservation organization; and
- 6) Two at-large members.



- b. The Secretary of Natural Resources of the Commonwealth of Virginia, or designee, shall be invited to participate as a voting member.
- c. A representative of the United States Environmental Protection Agency–National Estuary Program shall be invited to participate as a non-voting ex-officio member.
- d. The Policy Board may expand its membership, as it deems necessary, upon two-thirds affirmative vote.

3. Meetings

The Policy Board shall meet as deemed appropriate by the Chair or upon request by the APNEP Director.

B. Implementation Committee

1. Purpose

The Implementation Committee shall work with the Policy Board on CCMP implementation. Committee members shall serve as liaisons to agencies and relevant parties regarding environmental and natural resource management relevant to CCMP implementation.

2. Membership

The membership of the Implementation Committee shall be broad-based and may include the following natural resource management interests within the watershed: local governments; local or regional planning; commerce and industry; education; tourism; fishing or seafood industry; agriculture; forestry; tribal organizations; local, state, or national conservation organizations; soil and water conservation districts; finance; communication and media; education; state agencies; and federal agencies.

3. Meetings

The Implementation Committee shall meet as deemed appropriate by the Chair or upon request by the Director of the APNEP Office.

C. Science and Technical Advisory Committee

1. Purpose

The Science and Technical Advisory Committee shall provide independent advice to the Policy Board and the Implementation Committee on scientific and technical issues, including ecosystem assessment and monitoring in support of CCMP implementation.

2. Membership

- a. The membership of the Science and Technical Advisory Committee shall be broad-based and may include scientists and researchers from local colleges, universities, and research institutes, as well as technical staff from federal and local agencies, industry, and environmental organizations with expertise in science and technology relevant to environment and natural resource management in the Albemarle-Pamlico estuarine system. Representatives of state agencies may serve as non-voting liaisons to the committee.
- b. All members will be expected to have an advanced degree (Master's or above) and/or extensive experience (at least 6 years), with expertise in scientific and technical fields germane to APNEP's mission.
- c. Members should have expertise in science and technology relevant to environment and natural resource management including, but not limited to, landscape ecology, terrestrial ecology, wetlands ecology, submerged aquatic ecology, marine biology, hydrology, remote sensing, ecological assessment, engineering, agricultural technologies, forest technologies, soil conservation, water quality modeling, environmental policy, economics, public policy, planning, spatial statistics, and law.

3. Meetings

The Scientific and Technical Advisory Committee shall meet as deemed appropriate by the Chair or upon request by the Director of the APNEP Office.

D. Administration and Expenses

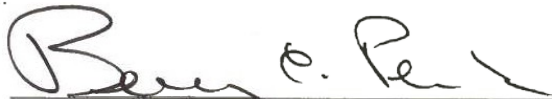
1. Each advisory body shall be responsible for determining its own rules of order, terms of service, bylaws, chairmanship, attendance requirements, ad-hoc committees, and other matters of protocol. All meetings shall be held in accordance with the Open Meetings Law.
2. Vacancies on an advisory body shall be filled by invitation from the remaining members as set forth in each committee's bylaws.
3. The Department of Environment and Natural Resources, through the APNEP Office, shall provide clerical support and other services required by the advisory bodies.
4. Members of the advisory bodies shall serve voluntarily and without compensation or per diems. Extraordinary expenses may be reimbursed subject to approval by the APNEP Director and in accordance with DENR travel policies, State law, and the policies and regulations of the Office of State Budget and Management.

**Section 3. Effect and Duration.**


This Executive Order is effective immediately. It supersedes and replaces all other executive orders on this subject and specifically rescinds Executive Order No. 122 issued on August 2, 2007. It shall remain in effect until November 5, 2016, pursuant to N.C. Gen. Stat. § 147-16.2, unless earlier rescinded.

**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 5th day of November in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



  
Beverly Eaves Perdue  
Governor

**ATTEST:**

  
Elaine F. Marshall *by Rodney Maddox*  
Chief Deputy Secretary of State



BEVERLY EAVES PERDUE  
GOVERNOR

**EXECUTIVE ORDER NO. 134**

**SECOND AMENDMENT TO EXECUTIVE ORDER NO. 130  
EMERGENCY RELIEF FOR TROPICAL STORM/HURRICANE SANDY**

**WHEREAS**, Executive Order No. 130 was issued to allow for the expedited movement of vehicles transporting equipment and supplies to the impacted areas within and outside of the State of North Carolina due to Hurricane Sandy; and

**WHEREAS**, the Federal Emergency Management Agency (FEMA) and other federal agencies are expediting the movement of relief supplies on interstate highways, including the transportation of mobile homes to the areas impacted by Hurricane Sandy as part of the disaster relief effort.

**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.**

Executive Order No. 130 is amended by adding the following Section 3B:

**Section 3B:**

Notwithstanding any other provision herein, vehicles transporting mobile homes for emergency housing relief as outlined in this order shall be exempt from the requirements specified below:

- a. The requirement of a permit and travel restrictions shall be waived for transporters moving mobile homes that do not exceed 14' wide and/or 14' high being transported under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort. Transporters operating under this exemption shall be allowed travel on the interstate routes 24 hours a day, seven days a week with up to three homes in a convoy. However, these transporters are required to have an escort vehicle per convoy 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 requirement of the regulations for escorts, flags, signs and other safety requirements as provided in 19A NCAC 02D.0600. This exemption will be allowed on all North Carolina interstate highways only.

- b. For those transporters that do not qualify for the waiver of a permit outlined in subsection a. of this section, the fees listed in N.C.G.S. § 20-119 for an annual permit and a single trip permit shall be waived for mobile homes being transported under contract with FEMA as part of the disaster relief effort. Transporters moving mobile homes under this subsection 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 annual permit or single trip 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 requirement of the regulations for escorts, flags, signs and other safety requirements as provided in 19A NCAC 02D.0600. Movement of mobile homes required to obtain a permit is hereby authorized from sunrise to sunset seven (7) days a week.

**Section 2.**

This Executive Order is effective immediately and shall remain in effect for the duration of the emergency.

**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 8th day of November in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



  
Beverly Perdue  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Chief Deputy Secretary of State



**EXECUTIVE ORDER NO. 135**

**DISASTER DECLARATION FOR DARE, CURRITUCK,  
HYDE AND TYRRELL COUNTIES**

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, authorizes the issuance of a disaster declaration for an emergency area as defined in N.C.G.S. § 166A-19.3(7) and categorizing the disaster as a Type I, Type II or Type III disaster as defined in N.C.G.S. § 166A-19.21(b); and

**WHEREAS**, beginning on October 27, 2012, Dare County, North Carolina was impacted by the effects of Hurricane Sandy; and

**WHEREAS**, as a result of the approach and impacts of Hurricane Sandy, I declared a state of emergency pursuant to N.C.G.S. § 166A-19.20(b) for numerous eastern North Carolina counties, including Dare, Currituck, Hyde and Tyrrell; and

**WHEREAS**, as a result of the approach and impacts of Hurricane Sandy, Dare County proclaimed a local state of emergency on October 27, 2012; and

**WHEREAS**, a joint preliminary damage assessment was done by local, state and federal emergency management officials on November 2 and November 3, 2012; and

**WHEREAS**, I have determined that a Type I disaster, as defined in N.C.G.S. § 166A-19.21(b)(1), exists in the State of North Carolina, specifically in Dare County and its contiguous counties; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.21(b), the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor and the General Assembly; (2) Dare County has declared a local state of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment has met or exceeded the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.41(b), if a Type I disaster is declared, the Governor may make State funds available for disaster assistance in the form of individual

assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

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

**Section 1.** Pursuant to N.C.G.S. § 166A-19.21(b)(1), a Type I disaster is hereby declared for Dare County and the contiguous counties of Currituck, Hyde and Tyrrell.

**Section 2.** I authorize state disaster assistance in the form of individual assistance grants to eligible individuals and families located within the emergency area that meet the terms and conditions under N.C.G.S. § 166A-19.41(b)(1).

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

**Section 4.** This Type I disaster declaration shall expire 60 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 8th day of November in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



  
Beverly Eaves Perdue  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Chief Deputy Secretary of State

**EXECUTIVE ORDER NO. 136****DISASTER DECLARATION FOR THE CITY OF ROANOKE RAPIDS AND  
THE TOWN OF GASTON**

**WHEREAS**, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, authorizes the issuance of a disaster declaration for an emergency area as defined in N.C.G.S. § 166A-19.3(7) and categorizing the disaster as a Type I, Type II or Type III disaster as defined in N.C.G.S. § 166A-19.21(b); and

**WHEREAS**, on August 25, 2012, the City of Roanoke Rapids, located in Halifax County, North Carolina and the Town of Gaston, located in Northampton County, North Carolina were impacted by severe flooding; and

**WHEREAS**, as a result of the damage from the severe flooding, the City of Roanoke Rapids and Town of Gaston declared local states of emergency on August 25, 2012; and

**WHEREAS**, a joint preliminary damage assessment was done by local, state and federal emergency management officials on August 27, 2012; and

**WHEREAS**, I have determined that a Type I disaster, as defined in N.C.G.S. § 166A-19.21(b)(1), exists in the State of North Carolina, specifically in the City of Roanoke Rapids and Town of Gaston; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.21, the criteria for a Type I disaster are met if: (1) the Secretary of the Department of Public Safety has provided a preliminary damage assessment to the Governor; (2) the City of Roanoke Rapids and Town of Gaston have declared local states of emergency pursuant to N.C.G.S. § 166A-19.22; (3) the preliminary damage assessment has met or exceeded the State infrastructure criteria set out in N.C.G.S. § 166A-19.41(b)(2)a.; and (4) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

**WHEREAS**, pursuant to N.C.G.S. § 166A-19.41(b), if a Type I disaster is declared, the Governor may make State funds available for disaster assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance



under the Stafford Act is either not available or does not adequately meet the needs of the citizens of the State in the emergency area.

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

**Section 1.** Pursuant to N.C.G.S. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the City of Roanoke Rapids and the Town of Gaston.

**Section 2.** I authorize state disaster assistance in the form of public assistance grants to eligible entities located within the emergency area that meet the terms and conditions under N.C.G.S. § 166A-19.41(b)(2). These grants are for costs associated with the following:


- a. Debris clearance.
- b. Emergency protective measures.
- c. Roads and bridges.

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

**Section 4.** This Type I Disaster Declaration shall expire 60 days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 8th day of November in the year of our Lord two thousand and twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.



  
Beverly Eaves Perdue  
Governor

ATTEST:

  
Elaine F. Marshall  
Chief Deputy Secretary of State

**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 04 – DEPARTMENT OF COMMERCE

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Control Commission intends to amend the rule cited as 04 NCAC 02S .0228.

**Agency obtained G.S. 150B-19.1 certification:**

- ☒ **OSBM certified on:** October 19, 2012  
☐ **RRC certified on:**  
☐ **Not Required**

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
[http://abc.nc.gov/legal/statutes\\_regulations.aspx](http://abc.nc.gov/legal/statutes_regulations.aspx)

**Proposed Effective Date:** April 1, 2013

**Public Hearing:**

**Date:** January 16, 2013

**Time:** 10:00 a.m.

**Location:** NC ABC Commission's Office, 400 East Tryon Road, Raleigh, NC 27610

**Reason for Proposed Action:** The proposed rule changes would amend the rule to add to the acceptable types of containers that malt beverage, wine and mixed beverages can be served in. The proposed rule changes would also define and add requirements for multi-use containers. Permittees have previously used the additional containers without administrative action by the Commission. The changes were necessary to alleviate the questions regarding the serving of alcoholic beverage containers that are not within the guidelines of G.S. 130A-248(a) and the FDA Food Code 2009.

**Procedure by which a person can object to the agency on a proposed rule:** Interested persons may present oral or written comments at the Rule-Making Hearing. In addition, the record will be open for receipt of written comments from December 3, 2012 to February 1, 2013. Written comments not presented at the hearing should be directed to Robert Hamilton. The proposed rules are available for public inspection and copies may be obtained at the Commission's office at: 400 East Tryon Road, Raleigh, NC 27610

**Comments may be submitted to:** Robert A. Hamilton, 4307 Mail Service Center, Raleigh, NC 27699-4307, phone (919)779-0700 x 436, fax (919)661-5927, email [robert.hamilton@abc.nc.gov](mailto:robert.hamilton@abc.nc.gov)

**Comment period ends:** February 1, 2013

## 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  
☒ No fiscal note required by G.S. 150B-21.4

## CHAPTER 02 – ALCOHOLIC BEVERAGE CONTROL COMMISSION

### SUBCHAPTER 02S - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS

### SECTION .0200 - GENERAL RULES AFFECTING RETAILERS AND BROWNBAGGING PERMITTEES

#### 04 NCAC 02S .0228 DISPENSING ALCOHOLIC BEVERAGES: PRODUCT IDENTIFICATION

(a) Malt Beverages; On-Premises. Malt beverages may be sold by persons holding on-premise permits in the original containers, by the glass, ~~or~~ by the ~~pitcher-mug~~, by the pitcher or a single-service and single-use container. The brand name of draught malt beverages dispensed in retail outlets shall be shown on the knobs of draught faucets. Covers for these faucets bearing a brand name may be used if the brand name appearing on the cover corresponds with the brand name on the knob of the faucets that are to be used for that brand.

(b) Malt Beverages; Off-Premises. Malt beverages may be sold by persons holding a retail off-premise permit only in the

unopened original container that was filled by the product manufacturer.

(c) Wine; On-premise. A person holding an on-premises wine permit may sell wine in the unopened original container, by the carafe, by the ~~glass, or mixed with non-alcoholic beverages, glass~~ or a single-service and single-use container. A person holding an on-premises wine permit may sell wine mixed with non-alcoholic beverages by the carafe, by the glass or a single-service and single-use container. Wine served in ~~carafes or carafes~~, by the glass or single-service and single-use containers may be dispensed under pressure from nitrogen from sealed bulk containers provided the containers and dispensing systems have been approved by the Commission and the State Commissioner of Health Services.

The vintner, brand and type of wine dispensed by the ~~carafe or carafe, glass, glass or single-service and single-use container~~ except for the house wine, shall appear on the wine list; and where the wine is dispensed from bulk containers, the vintner, brand and type shall be shown on the knobs of draught faucets.

(d) Use of Siphons. The use of siphons or other types of dispensers is allowed if the malt beverage or wine contents are dispensed directly from the original containers.

(e) Mixed Beverages. A person holding a mixed beverages permit may sell mixed beverages in a glass, in a pitcher or in a single-service and single-use container.

(f) Multi-Use Containers. All multi-use containers used by permittees to serve any alcoholic beverages shall meet the requirements as referenced by FDA Food Code 2009, 3-304.11(a). Multi-use containers include glassware, mugs, pitchers and carafes.

Authority G.S. 18B-100; 18B-206; 18B-207; 130A-248(a); FDA Food Code 2009, 3-304.11(a).

## TITLE 15A – DEPARTMENT OF ENVIRONEMENT AND NATURAL RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02D .0530-.0531.*

Agency obtained G.S. 150B-19.1 certification:

- ☒ OSBM certified on: October 10, 2012
- ☐ RRC certified on:
- ☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncair.org/rules/hearing>

Proposed Effective Date: May 1, 2013

Public Hearing:

Date: January 15, 2013

Time: 6:00 p.m.

Location: Kannapolis Train Station, 201 South Main Street, Kannapolis, NC 28081

**Reason for Proposed Action:** 15A NCAC 02D .0530 – Prevention of Significant Deterioration, and 15A NCAC 02D .0531, Sources in Nonattainment Areas, to revise North Carolina's nitrogen oxides (NO<sub>x</sub>) significance level from 140 tons per year (tpy) to 40 tpy. The United States Environmental Protection Agency (USEPA) determined that the state significance level for NO<sub>x</sub> for fine particulate matter (PM<sub>2.5</sub>) must be revised to reflect the federal 40 tpy significance level in the federal implementation rule.

15A NCAC 02D .0530 is also proposed to be amended to update the federal cross-reference to incorporate the new 24 hour and annual PM<sub>2.5</sub> increments as promulgated on October 20, 2010 (75 FR 64864).

**Procedure by which a person can object to the agency on a proposed rule:** If you have any objections to the proposed rule, please mail a letter including your specific reasons to: Ms. Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641

**Comments may be submitted to:** Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919)707-8720, fax (919)707-8720, email [joelle.burleson@ncdenr.gov](mailto:joelle.burleson@ncdenr.gov).

**Comment period ends:** February 1, 2013

### 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
- ☐ No fiscal note required by G.S. 150B-21.4

## CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

**SECTION .0500 – EMISSION CONTROL STANDARDS**

**15A NCAC 02D .0530 PREVENTION OF SIGNIFICANT DETERIORATION**

(a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166.

(b) For the purposes of this Rule the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 apply except the definition of "baseline actual emissions." For the purposes of this Rule:

(1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following apply:

- (i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;
- (ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;
- (iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that

would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;

(iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;

(v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant; and

(vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part;

(B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such

unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and

- (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph;

- (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) is seven years;
- (3) The limitation specified in 40 CFR 51.166(b)(15)(ii) does not apply; and
- (4) Particulate matter PM<sub>2.5</sub> significant levels in 40 CFR 51.166(b)(23)(i) are incorporated by reference except as otherwise provided in this Rule. ~~A net emission increase or the potential of a source to emit nitrogen oxide emissions shall be significant if the rate of emissions would equal or exceed 140 tons per year.~~ Sulfur dioxide and nitrogen oxides are precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas. Volatile organic compounds and ammonia are not significant precursors to PM<sub>2.5</sub>.

(c) All areas of the State are classified as Class II except that the following areas are Class I:

- (1) Great Smoky Mountains National Park;
- (2) Joyce Kilmer Slickrock National Wilderness Area;
- (3) Linville Gorge National Wilderness Area;
- (4) Shining Rock National Wilderness Area; and
- (5) Swanquarter National Wilderness Area.

(d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body.

(e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).

(f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).

(g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i)

and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(h) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G. S. 62-133.6 shall install best available control technology for NO<sub>x</sub> and SO<sub>2</sub>, regardless of applicability of the rest of this Rule.

(i) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

(j) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(k) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(l) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(m) Volatile organic compounds exempted from coverage in 40 CFR 51.100(s) shall be exempted when calculating source applicability and control requirements under this Rule.

(n) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected by:

- (1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good engineering practice; or
- (2) any other dispersion technique not implemented before then.

(o) A substitution or modification of a model as provided for in 40 CFR 51.166(l) is subject to public comment procedures in accordance with the requirements of 40 CFR 51.102.

(p) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to

the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(q) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e), notice to EPA shall be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied.

(r) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(s) Approval of an application with regard to the requirements of this Rule does not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(t) When a source or modification is subject to this Rule the following procedures apply:

- (1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days after receipt of an application, notify the Federal Land Manager with the U.S. Department of Interior and U.S. Department of Agriculture of an application from a source or modification subject to this Rule;
- (2) When a source or modification may affect visibility of a Class I area the Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility;
- (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained; and

- (4) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

(u) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;
- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c);
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
- (5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this rule, the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(v) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule is that as of ~~May 16, 2008~~ October 20, 2010 at <http://www.gpo.gov/fdsys/pkg/FR-2010-10-20/pdf/2010-25132.pdf> and does not include any subsequent amendments or editions to the referenced material.

*Authority* G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6.

#### **15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS**

(a) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 apply except the definition of "baseline actual emissions." For the purposes of this Rule:

(1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following apply:

- (i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;
- (ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;
- (iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an

attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;

(iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;

(v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant; and

(vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part;

(B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and

(C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures

contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph;

- (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) is seven years; and
- (3) Particulate matter PM<sub>2.5</sub> significant levels in 40 CFR 51.165(a)(1)(x)(A) are incorporated by reference except as otherwise provided in this Rule. ~~A net emission increase or the potential of a source to emit nitrogen oxide emissions shall be significant if the rate of emissions would equal or exceed 140 tpy. Sulfur dioxide and nitrogen oxides are precursor to PM<sub>2.5</sub> in all nonattainment areas. Volatile organic compounds and ammonia are not significant precursors to PM<sub>2.5</sub>.~~

(b) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment, all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.

(c) Applicability. 40 CFR 51.165(a)(2) is incorporated by reference. This Rule applies to areas designated as nonattainment in 40 CFR 81.334, including any subsequent amendments or editions.

(d) This Rule is not applicable to:

- (1) complex sources of air pollution regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;
- (2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area that are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone.);
- (3) emission of pollutants for which the source or modification is not major;
- (4) a new source or modification that qualifies for exemption under the provision of 40 CFR 51.165(a)(4); or
- (5) emission of compounds listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity except carbon monoxide.

(e) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(f) To issue a permit to a source to which this Rule applies, the Director shall determine that the source meets the following requirements:

- (1) The new major stationary source or major modification will emit the nonattainment

pollutant at a rate no more than the lowest achievable emission rate;

- (2) The owner or operator of the proposed new major stationary source or major modification has demonstrated that all major stationary sources in the State that are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance that is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter that EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality;

- (3) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of less than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions shall not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect before the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions shall be sufficient to represent reasonable further progress toward attaining the National Ambient Air Quality Standards. The emissions reduction credits shall also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G) and (J); and
- (4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(g) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G. S. 62-133.6 shall install lowest achievable emission rate technology for NO<sub>x</sub> and SO<sub>2</sub>, regardless of the applicability of the rest of this Rule.

(h) 40 CFR 51.165(f) is incorporated by reference except that 40 CFR 51.165(f)(10)(iv)(A) is changed to read: "If the emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80 percent of the PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.165(f)(10)(iv)(B) is not incorporated by reference.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after



August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(j) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in accordance with Section 173(a)(5) of the Clean Air Act and in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for the source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(k) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(l) Approval of an application regarding the requirements of this Rule does not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(m) Except as provided in 40 CFR 52.28(c)(6), for a source or modification subject to this Rule the following procedures shall be followed:

- (1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days after receipt of an application, notify the Federal Land Manager with the U.S. Department of Interior and U.S. Department of Agriculture of an application from a source or modification subject to this Rule;
- (2) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur because of the source or modification and general commercial, industrial and other growth associated with the source or modification;
- (3) When a source or modification may affect the visibility of a Class I area the Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days before the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility;
- (4) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility

will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice where the explanation can be obtained;

- (5) The Director shall issue permits only to those sources whose emissions will be consistent with making reasonable progress, as defined in Section 169A of the Clean Air Act, toward the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from manmade air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source; and

- (6) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph do not apply to nonprofit health or nonprofit educational institutions.

(n) If the owner or operator of a source is using projected actual emissions to avoid applicability of nonattainment new source review, the owner or operator shall notify the director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;
- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.165(a)(1)(xxviii)(B)(3);
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
- (5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a nonattainment new source review evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.165(a)(6)(v)(A) through

(C). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(o) The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. Except for 40 CFR 81.334, the version of the CFR incorporated in this Rule is that as of May 16, 2008 and does not include any subsequent amendments or editions to the referenced material.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b).

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02D .0902, .0903, .0909, .0951, .0961-.0962; 02Q .0102.*

**Agency obtained G.S. 150B-19.1 certification:**

- ☒ OSBM certified on: November 5, 2012  
☐ RRC certified on:  
☐ Not Required

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ncair.org/rules/hearing/>

**Proposed Effective Date:** May 1, 2013

**Public Hearing:**

**Date:** January 15, 2013

**Time:** 6:00 p.m.

**Location:** Kannapolis Train Station, 201 South Main Street, Kannapolis, NC 28081

**Reason for Proposed Action:**

*The proposed amendments are in response to United States Environmental Protection Agency (USEPA) comments on North Carolina's redesignation demonstration and maintenance plan for the North Carolina portion of the Charlotte-Gastonia, NC-Rock Hill, SC 1997 8-hour Ozone National Ambient Air Quality Standard (NAAQS) Nonattainment Area. USEPA identified the need for adjustment of applicability of the state's Reasonably Available Control Technology (RACT) rules to meet the requirements of Section 182(b)(2) of the Clean Air Act which requires RACT for all sources addressed by Control Technique Guidelines (CTGs) in nonattainment areas classified moderate and above. The current RACT rules' applicability is structured such that the RACT requirement for sources in CTG categories applies to major sources with 100 tons of volatile organic compounds or more per year. Amendments to printing related and industrial solvent cleaning RACT rules are in response to industry associations' requests for language clarifications and flexibilities consistent with the CTGs on which they are based.*

**15A NCAC 02D .0902** - Applicability, to reflect applicability to all sources in a CTG category in order to meet the Clean Air Act requirement and thus facilitate the redesignation process and

*include provisions allowing for the shift of requirements to contingency measures upon redesignation of the area consistent with EPA procedures.*

**15A NCAC 02D .0909** - Compliance Schedules For Sources In Ozone Nonattainment And Maintenance Areas, to update the compliance schedule corresponding to the adjustment in applicability.

**15A NCAC 02D .0951** - RACT For Sources of Volatile Organic Compounds, to provide flexibility to comply via the category specific rules in the Section or through approved site specific alternative determinations.

**15A NCAC 02D .0961** - Offset Lithographic Printing and Letterpress Printing, in response to industry associations' comments and requests for language clarification and flexibilities consistent with the CTGs on which it is based including an equivalent rolling, consecutive 12 month applicability threshold consistent with the CTG to provide some relief from a recordkeeping standpoint, clarifying language, and addition of some specificity with respect to recordkeeping.

**15A NCAC 18A 02D .0962** - Industrial Cleaning Solvents, in response to industry associations' comments and requests for language clarification and flexibilities consistent with the CTGs on which it is are based including an alternate VOC content level and compliance options for industrial solvents used for cleaning resins, inks, and coatings manufacturing equipment consistent with the CTG recommendations.

**15A NCAC 02D .0903** - Recordkeeping: Reporting: Monitoring, to update cross-references.

**15A NCAC 02Q .0102** - Exemptions, to update cross-references.

**Procedure by which a person can object to the agency on a proposed rule:** If you have any objections to the proposed rules, please mail a letter including your specific reasons to: Ms. Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641.

**Comments may be submitted to:** Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919)707-8720, fax (919)707-8720, email [joelle.burleson@ncdenr.gov](mailto:joelle.burleson@ncdenr.gov).

**Comment period ends:** February 1, 2013

**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 ( $\geq \$500,000$ )
- ☒ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02D - AIR POLLUTION CONTROL  
REQUIREMENTS**

**SECTION .0900 - VOLATILE ORGANIC COMPOUNDS**

**15A NCAC 02D .0902 APPLICABILITY**

- (a) The rules in this Section do not apply except as specifically set out in this Rule.
- (b) This Section applies to sources that emit greater than or equal to 15 pounds of volatile organic compounds per ~~day-day~~ unless specified otherwise in this Section.
- (c) Rules .0925, .0926, .0927, .0928, .0931, .0932, .0933, and .0958 of this Section apply regardless of the level of emissions of volatile organic ~~compounds. compounds unless provisions specified in Subparagraph (d)(1) of this Rule are applied.~~
- (d) This Section does not apply to:
  - (1) sources that emit less than 800 pounds of volatile organic compounds per calendar month and that are:
    - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
    - (B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
    - (C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
    - (D) research and development laboratory activities provided the activity produces no commercial product or feedstock material; or
  - (2) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the

startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(e) The following rules of this Section apply to facilities located statewide:

- (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;
- (2) .0926, Bulk Gasoline Plants;
- (3) .0927, Bulk Gasoline Terminals;
- (4) .0928, Gasoline Service Stations Stage I;
- (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;
- (6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals;
- (7) .0948, VOC Emissions from Transfer Operations;
- (8) .0949, Storage of Miscellaneous Volatile Organic Compounds; and
- (9) .0958, Work Practices for Sources of Volatile Organic Compounds.

(f) Except as provided in Paragraph (e) of this Rule, ~~the~~ the Rules in this Section apply to facilities subject to Section 182(b)(2) of the Clean Air Act with potential to emit 100 or more tons per year of VOC and to facilities with potential to emit less than 100 tons per year of volatile organic compounds in categories for which the United States Environmental Protection Agency has issued Control Technique Guidelines with the potential to emit greater than or equal to 100 tons of volatile organic compounds per year that are located in the following moderate nonattainment areas: areas for the 1997 8-hour ozone standard as designated in 40 CFR 81.334:

- (1) Cabarrus County;
- (2) Gaston County;
- (3) Lincoln County;
- (4) Mecklenburg County;
- (5) Rowan County;
- (6) Union County; and
- (7) Davidson Township and Coddle Creek Township in Iredell County.

These facilities are subject to reasonably available control technology requirements under this Section and shall comply in accordance with Rule .0909 of this Section through use of Rule .0951 of this Section.

(g) If any county or part of a county to which this Section applies is later designated in 40 CFR 81.334 as ~~attainment~~, attainment and becomes a maintenance area for the 1997 8-hour ozone standard, all sources in that county or part of county subject to Paragraph (f) of this Rule that achieved compliance in accordance with Rule .0909 of this Section ~~subject to this Section before the redesignation to attainment~~ shall continue to comply with this Section. Facilities with potential to emit less than 100 tons of volatile organic compounds per year for which the compliance date in Rule .0909 of this Section has not passed before redesignation of the area to attainment for the 1997 ozone standard shall comply in accordance with Paragraph (h) of this Rule.

(h) ~~If EPA reclassifies a violation of the 1997 ambient air quality standard for ozone occurs in the Charlotte-Gastonia-Rock Hill ozone nonattainment-maintenance area as serious for ozone under Section 182 of the federal Clean Air Act, the rules in this Section shall apply to facilities in Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties and Davidson and Coddle Creek townships in Iredell County with the potential to emit at least 50 tons of volatile organic compounds per year. Within 60 days of the reclassification, area, the Director shall initiate technical analysis to determine the control measures needed to attain and maintain the 1997 8-hour ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the 1997 8-hour ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in the areas listed in Paragraph (f) of this Rule. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall notice the applicability of these Rules to these facilities in the North Carolina Register and shall send written notification to all permitted facilities within the counties in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be according to Rule .0909 of this Section.~~

(i) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rules .0524, .1110, or .1111 of this Subchapter.

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

**15A NCAC 02D .0903 RECORDKEEPING: REPORTING: MONITORING**

(a) The owner or operator of any volatile organic compound emission source or control equipment shall:

- (1) install, operate, and maintain process and control equipment monitoring instruments or procedures as necessary to comply with the requirements of this Section; and
- (2) maintain, in writing, data and reports relating to monitoring instruments or procedures which will, upon review, document the compliance status of the volatile organic compound emission source or control equipment; such data and reports shall, as a minimum, be maintained daily-daily unless otherwise specified in this Section.

(b) The owner or operator of any volatile organic compound emission source or control equipment subject to the requirements of this Section shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.

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

**15A NCAC 02D .0909 COMPLIANCE SCHEDULES FOR SOURCES IN OZONE NONATTAINMENT AND MAINTENANCE AREAS**

(a) Applicability. With the exceptions in Paragraph (b) of this Rule, this Rule applies to ~~all~~ sources located at any facility covered by Paragraphs (f) or (h) of Rule .0902 of this Section.

(b) Exceptions. This Rule does not apply to ~~sources facilities required to comply with the requirements subject to rules listed of this Section under Paragraph (e) of in Rule .0902 of this Section.~~ Facilities subject to rules listed in Paragraph (e) of Rule .0902 shall comply in accordance with the provisions defined in those rules rather than the schedule in Paragraphs (c) and (d) of this Rule.

(c) Maintenance area ~~and Charlotte ozone nonattainment area~~ contingency plan. The owner or operator of any source subject to this Rule ~~because of the application of Paragraph (h) of Rule .0902 of this Section~~ Paragraph (a) in this Rule shall adhere to the following increments of progress and schedules:

- (1) if compliance with applicable rules in this Section is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:
  - (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;
  - (B) The compliance schedule shall contain the following increments of progress:
    - (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
    - (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
    - (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed; and

- (C) Final compliance with applicable rules in this Section shall be achieved within three years after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
- (2) if compliance with applicable rules in this Section is to be achieved by using low solvent content coating technology:
- (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;
- (B) The compliance schedule shall contain the following increments:
- (i) ~~a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed to assure compliance;~~
- (ii) ~~a date by which evaluation of product quality and commercial acceptance shall be completed;~~
- (iii)(i) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
- (iv)(ii) a date by which process modifications shall be initiated; and
- (v)(iii) a date by which process modifications shall be completed and use of low solvent content coatings shall begin; and
- (C) Final compliance with applicable rules in this Section shall be achieved within ~~three years~~ two years after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
- (3) The owner or operator shall certify to the Director within five days after each increment deadline of progress defined in this Paragraph, whether the required increment of progress has been met.
- (d) ~~Moderate Nonattainment~~ nonattainment areas. The owner or operator of any source subject to ~~this Rule because of the application of Paragraph (f) of Rule .0902 of this Section~~ Paragraph (a) of this Rule shall adhere to the following increments of progress and schedules:
- (1) if compliance with applicable rules in this Section is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:
- (A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007;
- (B) The compliance schedule shall contain the following increments of progress:
- (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
- (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
- (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed; and
- (C) For facilities with potential to emit 100 tons or more of volatile organic compounds per year, Final final compliance with applicable rules in this Section shall be achieved no later than April 1, 2009; 2009.
- (D) For facilities with potential to emit less than 100 tons of volatile organic compounds per year, final compliance with applicable rules in this Section shall be achieved no later than May 1, 2016.
- (2) if compliance with applicable rules in this Section is to be achieved by using low solvent content coating technology:
- (A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007;
- (B) The compliance schedule shall contain the following increments:
- (i) ~~a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology~~

~~has not been sufficiently researched and developed;~~

(ii) ~~a date by which evaluation of product quality and commercial acceptance shall be completed;~~

(iii)(i) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;

(iv)(ii) a date by which process modifications shall be initiated; and

(v)(iii) a date by which process modifications shall be completed and use of low solvent content coatings shall begin; and

(C) Final compliance with applicable rules in this Section shall be achieved no later than April 1, 2009-2009;

(D) For facilities with potential to emit less than 100 tons of volatile organic compounds per year, final compliance with applicable rules in this Section shall be achieved no later than May 1, 2015.

(3) The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress defined in this Paragraph, whether the required increment of progress has been met.

(e) If the Director requires a test to demonstrate that compliance has been achieved, the owner or operator of sources subject to this Rule shall conduct a test and submit a final test report within six months after the stated date of final compliance.

(f) Sources already in compliance.

(1) ~~Maintenance area and Charlotte ozone nonattainment area~~ contingency plan. Paragraph (c) of this Rule shall not apply to ~~sources~~ any source subject to Paragraph (a) of this Rule that is in compliance with applicable rules of this Section when the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.

(2) ~~Moderate Nonattainment nonattainment areas. Paragraphs~~ Paragraph (d) of this Rule does not apply to sources ~~in an area named in Paragraph (f) of Rule .0902 of this Section that subject to Paragraph (a) of this Rule if they are in compliance with applicable rules of this Section on March 1, 2007.~~

(g) New sources.

(1) ~~Maintenance area and Charlotte ozone nonattainment area~~ contingency plan. The owner or operator of any ~~new~~ source of ~~volatile organic compounds~~ subject to Paragraph (a) of this Rule not in existence or under construction before the date that the Director notices in the North Carolina Register in accordance with Paragraph (h) of Rule .0902 of this Section the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone, shall comply with all applicable rules in this Section upon start-up of the source.

(2) ~~Moderate Nonattainment nonattainment areas.~~ The owner or operator of any new source of ~~volatile organic compounds~~ subject to Paragraph (a) of this Rule not in existence or under construction before March 1, 2007 in an area identified in Paragraph (f) of Rule .0902 shall comply with all applicable rules in this Section upon start-up of the source.

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

#### **15A NCAC 02D .0951 RACT FOR SOURCES OF VOLATILE ORGANIC COMPOUNDS**

(a) Facilities required to install RACT pursuant to Rule .0902 of this Section shall determine the emissions control level according to this Rule. With the exceptions in Paragraph (b) of this Rule, this Rule applies to all facilities that use volatile organic compounds as solvents, carriers, material processing media, or industrial chemical reactants, or in other similar uses, or that mix, blend, or manufacture volatile organic compounds for which there is no other applicable emissions control rule in this Section except Rule .0958 of this Section. If the only other applicable emissions control rule for the facility in this Section is Rule .0958, then both this Rule and Rule .0958 apply.

(b) This Rule does not apply to architectural or maintenance coating.

(c) The owner or operator of any facility to which this Rule applies ~~shall~~ shall comply by either of the following:

(1) ~~install and operate reasonable available control technology;~~ technology as defined by category specific emission standards defined in this Section; or

(2) ~~limit emissions of volatile organic compounds from coating lines not covered by Rules .0922, .0923, .0924, .0934, .0935, .0936, or .0961 through .0968 from this Section to no more than 6.7 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator.~~ install and operate reasonable available control technology demonstrated to the Director and the U.S. Environmental Protection Agency to advance attainment.

(d) If the owner or operator of a facility chooses to install reasonable available control technology under Subparagraph ~~(e)(1)~~, (c)(2) of this Rule, the owner or operator shall submit:

- (1) the name and location of the facility;
- (2) information identifying the source for which a reasonable available control technology limitation or standard is being proposed;
- (3) a demonstration that shows the proposed reasonable available control technology limitation or standard satisfies the requirements for reasonable available control technology; and
- (4) a proposal for demonstrating compliance with the proposed reasonable control technology limitation or standard.

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

### **15A NCAC 02D .0961 OFFSET LITHOGRAPHIC PRINTING AND LETTERPRESS PRINTING**

(a) For the purpose of this Rule, the following definitions listed in Rules .0101, .0902 of this Section ~~apply~~ and in Paragraph (a)(1) through (10) of this Rule shall apply.

- (1) "Composite partial vapor pressure" means the sum of the partial pressure of the compounds defined as volatile organic compounds. Volatile organic compounds composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^n \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \frac{W_c}{MW_c} + \sum_{i=1}^n \frac{W_i}{MW_i}}$$

Where:

$W_i$  = Weight of the "i" volatile organic compound, in grams

$W_w$  = Weight of water, in grams

$W_c$  = Weight of exempt compound, in grams

$MW_i$  = Molecular weight of the "i" volatile organic compound, in g/g-mole

$MW_w$  = Molecular weight of water, in g/g-mole

$MW_c$  = Molecular weight of exempt compound, in g/g-mole

$PP_c$  = Volatile organic compounds composite partial vapor pressure at 20 degrees Celsius (68 degrees Fahrenheit), in mm Hg

$VP_i$  = Vapor pressure of the "i" volatile organic compound at 20 degrees Celsius (68 degrees Fahrenheit), in mm Hg

- (2) "First installation date" means the actual date when this control device becomes operational. This date does not change if the control device is later redirected to a new press.
- (3) "Fountain solution" means water-based solution that applies to lithographic plate to render the non-image areas unreceptive to the ink.

- (4) "Heatset" means any operation in which heat is required to evaporate ink oils from the printing ink, excluding ultraviolet (UV) curing, electron beam curing and infrared drying.

- (5) "Letterpress printing" means a printing process in which the image area is raised relative to the non-image area and the paste ink is transferred to the substrate directly from the image surface.

- (6) "Non-heatset" means a lithographic printing process where the printing inks are set by absorption or oxidation of the ink oil, not by evaporation of the ink oils in a dryer. For the purposes of this Rule, use of an infrared heater or printing conducted using ultraviolet-cured or electron beam-cured inks is considered non-heatset.

- (7) "Offset lithography" means ~~an indirect method of a printing process that uses sheet-fed or web method of press feeding when and transfers ink transferred from the lithographic plate to a rubber-covered intermediate "blanket" cylinder and then transferred from the blanket cylinder to the substrate.~~

- (8) "Press" means a printing production assembly composed of one or more units used to produce a printed substrate including any associated coating, spray powder application, heatset web dryer, ultraviolet or electron beam curing units, or infrared heating units.

- (9) "Sheet-fed printing" means ~~indirect method of offset lithographic printing when ink transferred from the lithographic plate to a rubber covered intermediate "blanket" cylinder and then transferred from the blanket cylinder to the substrate. individual sheets of paper or other substrate are fed to the press.~~

- (10) "Web printing" means offset lithographic printing when continuous rolls of substrate material are fed to the press and rewound or cut to size after printing.

(b) This Rule applies to any offset lithographic and any letterpress printing operations sources that are not covered by Subparagraph (c)(1) of Rule .0966 of this Section and whose emissions of volatile organic compounds exceed the threshold established in Paragraphs (b) and (f) of Rule .0902 of this Section and is not covered by Subparagraph (c)(1) of Rule .0966 of this Section. exceed:

- (1) the threshold established in Paragraphs (b) and (f) of Rule .0902 of this Section; or
- (2) an equivalent level of three tons per 12-consecutive month rolling period.

(c) Volatile organic compounds content in the fountain solution ~~from for on-press (as-applied) for heatset web offset lithographic printing shall not exceed 1.6 percent alcohol (by weight) in the fountain solution or equivalent. This level of control for volatile organic compounds shall be achieved by meet one of the following requirements or equivalent level of control as determined in permit conditions:~~

- (1) ~~reducing the on press (as applied) alcohol content to contain 1.6 percent alcohol or less, (by weight); by weight, as applied, in the fountain solution; or~~
- (2) ~~use contain three percent alcohol or less (by weight) less, by weight, the on press (as applied) in the fountain solution if the fountain solution is refrigerated to below 60 degrees Fahrenheit; or~~
- (3) ~~use contain five percent alcohol substitute or less (by weight) less, by weight, the on press (as applied) and no alcohol in the fountain solution.~~

(d) Volatile organic compounds content in the fountain solution ~~from for on press (as applied) sheet-fed lithographic printing shall not exceed five percent alcohol (by weight) in the fountain or equivalent. This level of control for volatile organic compounds shall be achieved by meet one of the following requirements or equivalent level of control as determined in permit conditions:~~

- (1) ~~reducing the on press (as applied) alcohol content to contain five percent alcohol or less (by weight); less, by weight, on press (as applied) in the fountain solution; or~~
- (2) ~~use contain 8.5 percent alcohol or less (by weight) the less, by weight, on press (as applied) in the fountain solution if the fountain solution is refrigerated to below 60 degrees Fahrenheit; or~~
- (3) ~~use contain five percent alcohol substitute or less (by weight) the less, by weight, on press (as applied) and no alcohol in the fountain solution.~~

(e) Volatile organic compounds content emissions from fountain solution from on press (as applied) for non-heatset web offset lithographic printing shall not exceed five percent alcohol substitute (by weight) on press (as applied) and no alcohol in the fountain solution.

(f) ~~Emissions of volatile organic compounds from any single letterpress printing heatset press subject to this Rule shall not exceed 25 tons per year. This level of control shall be achieved by using petroleum ink oil with volatile organic compounds content 31.25 tons per year volatile organic compounds or less because of the 20 percent ink oil retention.~~

(g) EPA Method 25A (40CFR Part 60, Appendix A 7) shall be used to determine the volatile organic compounds content of the materials used at offset lithographic printing and letterpress printing facilities ~~unless the facility maintains records to document the volatile organic compounds content of the materials from the manufacturer.~~

(h) Any single letterpress printing heatset dryer owner or operator subject to this Rule, who has chosen to use add on control for letterpress printing operation rather than to comply with the emission limits established in Paragraph (f) of this Rule shall install control equipment with:

- (1) ~~90 percent control efficiency for a control device whose first installation date was prior to July 1, 2010;~~

- (2) ~~95 percent control efficiency for a control device whose first installation date was on or after July 1, 2010.~~

(i) ~~When the inlet of volatile organic compounds concentration is low or there is no identifiable measurable inlet, the control device outlet concentration shall be reduced to 20 parts per million by volume as hexane on a dry basis.~~

(j) ~~Volatile organic compounds capture efficiency can be demonstrated by showing that the dryer is operating at negative pressure relative to the surrounding pressroom. The capture efficiency for volatile organic compounds can be assumed to be 100 percent of the volatile organic compounds (ink oils) volatilized in the dryer. Capture efficiency test is not required in this situation.~~

(f) An owner or operator of an individual web offset lithographic printing press dryer or letterpress printing heatset press subject to this Rule that emits 25 or more tons per year potential emissions of volatile organic compounds shall:

- (1) use an enforceable limitation on potential emissions to keep individual heatset press below 25 tons per year potential to emit volatile organic compounds threshold, which can be achieved by using inks and coatings that contain less than 31.25 tons per year volatile organic compound where 20 percent retention factor of petroleum ink oil applies, or by using other methods established by permit conditions; or

- (2) use an add-on control system for web offset lithographic printing or letterpress printing operations that meets one of the following requirements:

(A) reduces volatile organic compounds emissions from each dryer by at least 90 percent volatile organic compounds emissions control efficiency established by procedures defined in Paragraph (h) of this Rule for a control device from heatset dryers whose first installation date was prior to July 1, 2010; or

(B) reduce volatile organic compounds emissions from each dryer by at least 95 percent volatile organic compounds emissions control efficiency established by procedures defined in Paragraph (h) of this Rule for a control device from heatset dryers whose first installation date was on or after July 1, 2010; or

(C) maintain a maximum volatile organic compounds outlet concentration of 20 parts per million by volume (ppmv), as hexane (C<sub>6</sub>H<sub>14</sub>) on a dry basis.

(k)(g) The control limits established in:

- (1) Paragraphs (c), (d), and (e), shall not be applied to any press with total fountain solution reservoir of less than one gallon; and



- (2) Paragraph (d) shall not be applied to sheet-fed presses with maximum sheet size 11x 17 inches or smaller; and
- (3) ~~Paragraph (f)~~ Subparagraph (f)(2) shall not be applied to a heatset press used for book printing, ~~and/or to a headset-heatset press with maximum web width of 22 inches or less.~~

(h) If the owner or operator of a printing press is required by permit conditions to determine:

- (1) the volatile organic compounds content, the EPA test Method 24 or approved alternative methods shall be used;
- (2) the control efficiency by measuring volatile organic compounds at the control device inlet and outlet, the EPA test Methods 18, 25, 25A, or approved alternative methods shall be used.

~~(4) All cleaning materials used in amount more than 110 gallons per year for cleaning a press, press parts, or to remove dried ink from areas around the press shall contain less than 70 weight percent volatile organic compounds or have volatile organic compounds composite vapor pressure less than 10 mm Hg at 20 degrees Celsius.~~

(i) All test methods defined in Paragraph (h) of this Rule, shall be conducted at typical operating conditions and flow rates.

(j) The owner or operator of any facility subject to this Rule shall demonstrate compliance with RACT applicability requirements by calculating volatile organic compounds emissions and keep records of the basis of the calculations required by the Rules .0605 and .0903 of this Subchapter. Volatile organic compounds emissions from offset lithographic printing and letterpress printing shall be determined by permit condition requirements or by using the following retention and capture efficiency factors:

- (1) retention factors are:
  - (A) 20 percent for heatset petroleum ink oils;
  - (B) 100 percent for heatset vegetable ink oils;
  - (C) 95 percent for sheet-fed and coldset web petroleum ink oils;
  - (D) 100 percent for sheet-fed and coldset web vegetable ink oils.
- (2) retention factor is 50 percent for low volatile organic compounds composite vapor pressure cleaning materials in shop towels where:
  - (A) volatile organic compounds composite vapor pressure of the cleaning material is less than 10 mm Hg at 20 °C; and
  - (B) cleaning materials and used shop towels are kept in closed containers.
- (3) Carryover (capture) factors of volatile organic compounds from automatic blanket wash and fountain solution to offset lithographic heatset dryers are:
  - (A) 40 percent VOC carryover (capture) factor for automatic blanket washing when the volatile organic compounds composite vapor pressure of the

cleaning material is less than 10mm Hg at 20°C.

(B) 70 percent VOC carryover (capture) factor for alcohol substitutes in fountain solution.

(4) Capture efficiency for volatile organic compounds (petroleum ink oils) from oil-based paste inks and oil-based paste varnishes (coatings) in heatset web offset lithographic presses and heatset web letterpress presses shall be demonstrated by showing that the dryer is operating at negative pressure relative to the surrounding pressroom. As long as the dryer is operated at negative pressure, the capture efficiency for VOC from the heatset lithographic inks and varnishes (coatings) formulated with low volatility ink oils is 100 percent of the VOC (ink oils) volatilized in the dryer. Capture efficiency test is not required in this situation.

(k) Except as specified in this Paragraph, all cleaning materials used for cleaning a press, press parts, or to remove dried ink from areas around the press shall meet one of the following requirements:

- (1) The volatile organic compounds content shall be less than 70 percent by weight, or;
- (2) Composite partial vapor pressure of volatile organic compounds shall be less than 10 mm Hg at 20 degrees Celsius.

No more than 110 gallons per year of cleaning materials that do not meet the requirements of Subparagraph (1) or (2) of this Paragraph shall be used during any twelve consecutive months.

(l) The owner or operator of any facility subject to this Rule shall maintain the following records for a minimum of five years:

- (1) parametric monitoring for processes and control devices as determined and at the frequency specified in the permit or by Paragraph (f) of this Rule; and
- (2) the total amount of each individual or class of fountain solution and ink used monthly for the printing operations and the percentage of volatile organic compounds, alcohol, and alcohol substitute as applied in it; and
- (3) the total amount of each individual or class of cleaning solutions used monthly with vapor pressure and the percentage of volatile organic compounds as applied in it; and
- (4) the total amount of cleaning solutions used monthly with vapor pressure and the percentage of volatile organic compounds as applied which does not meet the vapor pressure or percentage of volatile organic compounds requirements of Paragraph (k) of this Rule; and
- (5) temperature of fountain solutions for lithographic printing presses using alcohol at the frequency specified in the permit; and

- (6) any other parameters required by the permit in accordance with the Rules .0903 and .0605 of this Subchapter.

(m) The owner or operator of any source subject to this Rule shall comply with Rules .0903, and .0958 of this Section.

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

## **15A NCAC 02D .0962 INDUSTRIAL CLEANING SOLVENTS**

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Organic solvent" means a liquid hydrocarbon, such as methyl ethyl ketone or toluene, used to dissolve paints, varnishes, grease, oil, or other hydrocarbons.
- (2) "Solvent cleaning" means the process of removing the excess penetrant from the surface or a part by wiping, flushing, or spraying with a solvent for the penetrant.
- (3) "Wipe cleaning" The method of cleaning which utilizes a material such as a rag wetted with a solvent, prior to a physical rubbing process to remove contaminants from surfaces.

(b) ~~This Rule applies~~ applies, with exemptions defined in Paragraphs (c) and (d) of this Rule, to sources whose volatile organic compound emissions exceed the threshold established in Paragraph (b) of Rule .0902 of this Section from the following cleaning operations:

- (1) spray gun cleaning;
- (2) spray booth cleaning;
- (3) large manufactured components cleaning;
- (4) parts cleaning;
- (5) equipment cleaning;
- (6) line cleaning;
- (7) floor cleaning;
- (8) tank cleaning; and
- (9) small manufactured components cleaning.

(c) Paragraph (e) of this Rule does not apply to any cleaning material used for: cleaning operations covered by Rules .0918, .0919, .0921, .0923, .0924, .0930, .0934, .0935, .0936, .0961, .0963, .0964, .0965, .0966, .0967, and .0968 of this Section.

(d) Cleaning operations of portable or stationary mixing vats, high dispersion mills, grinding mills, tote tanks and roller mills for manufacturing of coating, ink, or adhesive shall apply one or more of the following methods:

- (1) use industrial cleaning solvents that either contains less than 1.67 pounds VOC per gallon or has an initial boiling point greater than 120 degrees Celsius, and where the initial boiling point exceeds the maximum operating temperature by at least 100 degrees Celsius. The industrial cleaning solvents shall be collected and stored in closed containers; or
- (2) implement the following work practices:
  - (A) maintain the equipment being cleaned as leak free; and
  - (B) drain volatile organic compounds containing cleaning materials from

the cleaned equipment upon completion of cleaning; and

- (C) store or dispose of volatile organic compounds containing cleaning materials, including waste solvent, in a manner that will prevent evaporation into atmosphere; and

- (D) store all volatile organic containing cleaning materials in closed containers; or

- (3) collect and vent the emissions from equipment cleaning to an add-on control system defined in Paragraph (g) of this Rule; or

- (4) use organic solvents other than those defined in Paragraph (d)(1) of this Rule if no more than 60 gallons of fresh solvent shall be used per month (organic solvent that is reused or recycled either onsite or offsite for further use in equipment cleaning or the manufacture of coating, ink, or adhesive shall not be included in this limit).

(e) Cleaning operations covered by Rules .0918, .0919, .0921, .0923, .0924, .0930, .0934, .0935, .0936, .0961, .0963, .0964, .0965, .0966, .0967, and .0968 of this Section are exempted from the requirements of this Rule.

~~(d)(e)~~ Any cleaning material of the nine cleaning operations listed in Paragraph (b) of this Rule shall have:

- (1) volatile organic compounds content that does not exceed 0.42 pounds per gallon; or
- (2) composite vapor limit of eight millimeters of mercury (mmHg) at 20 degrees Celsius.

~~(e)(f)~~ EPA Method 24 (40CFR Part 60, Appendix A-7) shall be used to determine the volatile organic compounds content of coating materials used in industrial cleaning solvents operations unless the facility maintains records to document the volatile organic compounds content of coating materials from the manufacturer.

~~(f)(g)~~ Facilities which have chosen to use add-on control rather than to comply with the emission limits established in Paragraph (e) of this Rule shall install control equipment with 85 percent overall efficiency.

~~(g)(h)~~ The owner or operator of any facility subject to this Rule shall comply with the Rules .0903 and .0958 of this Section.

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

## **SUBCHAPTER 02Q - AIR QUALITY PERMITS PROCEDURES**

### **SECTION .0100 - GENERAL PROVISIONS**

#### **15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS**

(a) This Rule does not apply to facilities required to have a permit under Section .0500 of this Subchapter. This Rule applies only to permits issued under Section .0300 of this Subchapter.

(b) If a source is subject to any of the following rules, then the source is not exempted from permit requirements, and the exemptions in Paragraph (c) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 02D .0524 or 40 CFR Part 60, except when the following activities are eligible for exemption under Paragraph (c) of this Rule:
  - (A) 40 CFR Part 60, Subpart Dc, industrial, commercial, and institutional steam generating units;
  - (B) 40 CFR Part 60, Subparts K, Ka, or Kb, volatile organic liquid storage vessels;
  - (C) 40 CFR Part 60, Subpart AAA, new residential wood heaters;
  - (D) 40 CFR Part 60, Subpart JJJ, petroleum dry cleaners;
  - (E) 40 CFR Part 60, Subpart WWW, municipal solid waste landfills;
  - (F) 40 CFR Part 60, Subpart IIII, stationary compression ignition internal combustion engines; or
  - (G) 40 CFR Part 60, Subpart JJJJ, stationary spark ignition internal combustion engines;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 02D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities, which are eligible for exemption under Paragraph (c) of this Rule;
- (3) prevention of significant deterioration under 15A NCAC 02D .0530;
- (4) new source review under 15A NCAC 02D .0531 or .0532;
- (5) sources of volatile organic compounds subject to the requirements of ~~15A NCAC 02D .0900~~ Section .0900, Volatile Organic Compounds, that are located in Mecklenburg County according to ~~15A NCAC 02D .0902 (d)~~; 15A NCAC 02D .0902(f).
- (6) sources required to apply maximum achievable control technology (MACT) for hazardous air pollutants under 15A NCAC 02D .1109, .1111, .1112, or 40 CFR Part 63 that are required to have a permit under Section .0500 of this Subchapter;
- (7) sources at facilities subject to 15A NCAC 02D .1100. (If a source does not emit a toxic air pollutant for which the facility at which it is located has been modeled, it shall be exempted from needing a permit if it qualifies for one of the exemptions in Paragraph (c) of this Rule).

(c) The following activities do not need a permit or permit modification under Section .0300 of this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 02D .0200:

- (1) activities exempted because of category:
  - (A) maintenance, upkeep, and replacement:

- (i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of regulated air pollutants;
- (ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or insulation removal;
- (iii) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
- (iv) use of fire fighting equipment;
- (v) paving parking lots; or
- (vi) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;
- (B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
- (C) laboratory activities:
  - (i) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production

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|       | environmental compliance assessments;   |       | processes or municipal wastewater treatment processes for which there are no applicable requirements;  |
| (ii)  | bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;                                   | (G)   | gasoline distribution: gasoline service stations or gasoline dispensing facilities;  |
| (iii) | bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or | (H)   | dispensing equipment: equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;   |
| (iv)  | research and development laboratory activities provided the activity produces no commercial product or feedstock material;  | (I)   | solvent recycling: portable solvent distillation systems used for on-site solvent recycling if:  |
| (D)   | storage tanks:  | (i)   | The portable solvent distillation system is not:   |
| (i)   | storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas or liquefied petroleum gas;                        | (I)   | owned by the facility, and   |
| (ii)  | storage tanks used to store gasoline or ethanol-based fuels for which there are no applicable requirements except Stage I controls under 15A NCAC 02D .0928;                        | (II)  | operated at the facility for more than seven consecutive days; and   |
| (iii) | storage tanks used solely to store inorganic liquids; or  | (ii)  | The material recycled is recycled at the site of origin;   |
| (iv)  | storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;                   | (J)   | processes:   |
| (E)   | combustion and heat transfer equipment:   | (i)   | electric motor burn-out ovens with secondary combustion chambers or afterburners;  |
| (i)   | space heaters burning distillate oil, kerosene, natural gas, or liquefied petroleum gas operating by direct heat transfer and used solely for comfort heat;                         | (ii)  | electric motor bake-on ovens;  |
| (ii)  | residential wood stoves, heaters, or fireplaces;  | (iii) | burn-off ovens for paint-line hangers with afterburners;   |
| (iii) | hot water heaters which are used for domestic purposes only and are not used to heat process water;   | (iv)  | hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;   |
| (F)   | wastewater treatment processes: industrial wastewater treatment   | (v)   | blade wood planers planing only green wood;  |
|       |   | (K)   | solid waste landfills: municipal solid waste landfills (This Part does not apply to flares and other sources of combustion at solid waste landfills; these flares and other combustion sources are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph.); |
|       |   | (L)   | miscellaneous:   |
|       |   | (i)   | motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;   |
|       |   | (ii)  | non-self-propelled non-road engines, except generators, regulated by rules adopted   |

- under Title II of the Federal Clean Air Act (Generators are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph.);
    - (iii) portable generators regulated by rules adopted under Title II of the Federal Clean Air Act;
    - (iv) equipment used for the preparation of food for direct on-site human consumption;
    - (v) a source whose emissions are regulated only under Section 112(r) or Title VI of the Federal Clean Air Act;
    - (vi) exit gases from in-line process analyzers;
    - (vii) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
    - (viii) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the Federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment (A unit used as or in conjunction with air pollution control equipment is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
    - (ix) equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds (Equipment that emits volatile organic compounds is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
    - (x) equipment that does not emit any regulated air pollutants;
  - (xi) facilities subject only to a requirement under 40 CFR Part 63 (This Subpart does not apply when a control device is used to meet a MACT or GACT emission standard; a control device used to meet a MACT or GACT emission standard is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
  - (xii) sources for which there are no applicable requirements;
  - (xiii) animal operations not required to have control technology under 15A NCAC 02D .1800 (If an animal operation is required to have control technology, it shall be required to have a permit under this Subchapter).
- (2) activities exempted because of size or production rate:
- (A) storage tanks:
    - (i) above-ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70o F; or
    - (ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids with a true vapor pressure of no more than 10.8 psi absolute at 70o F;
  - (B) combustion and heat transfer equipment:
    - (i) fuel combustion equipment, except for internal combustion engines, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels or one or more of these fuels mixed with natural gas or liquefied petroleum gas with a heat input of less than:
      - (I) 10 million Btu per hour for which

- construction, modification, or reconstruction commenced after June 9, 1989; or
- (II) 30 million Btu per hour for which construction, modification, or reconstruction commenced before June 10, 1989;
- (Internal combustion engines are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);
- (ii) fuel combustion equipment, except for internal combustion engines, firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels with a heat input rating less than 65 million Btu per hour (Internal combustion engines are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);
- (iii) space heaters burning waste oil if:
- (I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;
- (II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and
- (III) The combustion gases from the heater are vented to the ambient air;
- (iv) fuel combustion equipment with a heat input rating less than 10 million Btu per hour that is used solely for space heating except:
- (I) space heaters burning waste oil, or
- (II) internal combustion engines;
- (v) emergency use generators and other internal combustion engines not regulated by rules adopted under Title II of the Federal Clean Air Act, except self-propelled vehicles, that have a rated capacity of no more than:
- (I) 680 kilowatts (electric) or 1000 horsepower for natural gas-fired engines;
- (II) 1800 kilowatts (electric) or 2510 horsepower for liquefied petroleum gas-fired engines;
- (III) 590 kilowatts (electric) or 900 horsepower for diesel-fired or kerosene-fired engines; or
- (IV) 21 kilowatts (electric) or 31 horsepower for gasoline-fired engines; (Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph.)
- (vi) portable generators and other portable equipment with internal combustion engines not regulated by rules adopted under Title II of the Federal Clean Air Act, except self-propelled vehicles, that operate at the facility no more than a combined 350 hours for any 365-day period provided the generators or engines have a rated capacity of no more than 750 kilowatt (electric) or 1100 horsepower each and provided records are maintained to verify the hours of operation (Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph.);
- (vii) peak shaving generators that produce no more than

- 325,000 kilowatt-hours of electrical energy for any 12-month period provided records are maintained to verify the energy production on a monthly basis and on a 12-month basis;
- (C) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons;
- (D) processes:
- (i) graphic arts operations, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices), and solvent cleaning operations located at a facility whose facility-wide actual emissions of volatile organic compounds are less than five tons per year (Graphic arts operations, coating operations, and solvent cleaning operations are defined in 15A NCAC 02Q .0803);
  - (ii) sawmills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;
  - (iii) perchloroethylene dry cleaners that emit less than 13,000 pounds of perchloroethylene per year;
  - (iv) electrostatic dry powder coating operations with filters or powder recovery systems including electrostatic dry powder coating operations equipped with curing ovens with a heat input of less than 10,000,000 Btu per hour;
- (E) miscellaneous:
- (i) any source whose emissions would not violate any applicable emissions standard and whose potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each no more than five tons per year and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff except:
    - (I) storage tanks,
    - (II) fuel combustion equipment,
    - (III) space heaters burning waste oil,
    - (IV) generators, excluding emergency generators, or other non-self-propelled internal combustion engines,
    - (V) bulk gasoline plants,
    - (VI) printing, paint spray booths, or other painting or coating operations,
    - (VII) sawmills,
    - (VIII) perchloroethylene dry cleaners, or
    - (IX) electrostatic dry powder coating operations, provided that the total potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide from the facility are each less than 40 tons per year and the total potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rates or provided that the facility has an air quality permit. (A source identified in Sub-subpart (I) through (IX) of this Part is required to be permitted under

- 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
- (ii) any facility whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., uncontrolled emissions, are each less than five tons per year, whose potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rate, and none of whose sources would violate an applicable emissions standard;
  - (iii) any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff emission rates; or
  - (iv) any incinerator covered under Subparagraph (c)(4) of 15A NCAC 02D .1201;
- (F) case-by-case exemption: activities that the applicant demonstrates to the satisfaction of the Director:
- (i) to be negligible in their air quality impacts;
  - (ii) not to have any air pollution control device; and
  - (iii) not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater.
- (d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.
- (e) Emissions from stationary source activities identified in Paragraph (c) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 02D .1100 or 02Q .0700 according to 15A NCAC 02Q .0702 (exemptions from air toxic permitting).

(f) The owner or operator of a facility or source claiming an exemption under Paragraph (c) of this Rule shall provide the Director documentation upon request that the facility or source is qualified for that exemption.

(g) If the Director finds that an activity exempted under Paragraph (c) of this Rule is in violation of or has violated a rule in 15A NCAC 02D, he shall revoke the permit exemption for that activity and require that activity to be permitted under this Subchapter if necessary to obtain or maintain compliance.

*Authority* G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108.

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*Notice* is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02Q .0102.

**Agency obtained G.S. 150B-19.1 certification:**

- ☒ **OSBM certified on:** March 22, 2012
- ☐ **RRC certified on:**
- ☐ **Not Required**

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.ncair.org/rules/hearing/>

**Proposed Effective Date:** May 1, 2013

**Public Hearing:**

**Date:** January 15, 2013

**Time:** 6:00 p.m.

**Location:** Kannapolis Train Station, 201 South Main Street, Kannapolis, NC 28081

**Reason for Proposed Action:** To amend 15A NCAC 02Q .0102, Exemptions, to clarify the interaction between Rules 02Q .0102, Exemptions and 02Q .0702, Exemptions. The amendment is necessary to clarify the interaction between the air toxics rule for specific exemptions and the more broadly applicable rules regarding sources that are exempt from general permit requirements. If the rule clarification is not made, the language could be interpreted such that small sources not required to be included in an air toxics demonstration or permit would have to obtain an air quality permit even though they are already exempt from and air toxics demonstration. Subparagraph (b)(7) of this rule is proposed for amendment to clarify this interaction.

**Procedure by which a person can object to the agency on a proposed rule:** If you have any objections to the proposed rule, please mail a letter including your specific reasons to: Ms. Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641.

**Comments may be submitted to:** Joelle Burleson, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919)707-8720, fax (919)707-8720, email [joelle.burleson@ncdenr.gov](mailto:joelle.burleson@ncdenr.gov)



**Comment period ends:** *February 1, 2013*

**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
- ☒ No fiscal note required by G.S. 150B-21.4

**SUBCHAPTER 02Q - AIR QUALITY PERMITS  
PROCEDURES**

**SECTION .0100 - GENERAL PROVISIONS**

**15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS**

(a) This Rule does not apply to facilities required to have a permit under Section .0500 of this Subchapter. This Rule applies only to permits issued under Section .0300 of this Subchapter.

(b) If a source is subject to any of the following rules, then the source is not exempted from permit requirements, and the exemptions in Paragraph (c) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 02D .0524 or 40 CFR Part 60, except when the following activities are eligible for exemption under Paragraph (c) of this Rule:
  - (A) 40 CFR Part 60, Subpart Dc, industrial, commercial, and institutional steam generating units;
  - (B) 40 CFR Part 60, Subparts K, Ka, or Kb, volatile organic liquid storage vessels;
  - (C) 40 CFR Part 60, Subpart AAA, new residential wood heaters;
  - (D) 40 CFR Part 60, Subpart JJJ, petroleum dry cleaners;
  - (E) 40 CFR Part 60, Subpart WWW, municipal solid waste landfills;

- (F) 40 CFR Part 60, Subpart IIII, stationary compression ignition internal combustion engines; or
  - (G) 40 CFR Part 60, Subpart JJJJ, stationary spark ignition internal combustion engines;
  - (2) national emission standards for hazardous air pollutants under 15A NCAC 02D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities, which are eligible for exemption under Paragraph (c) of this Rule;
  - (3) prevention of significant deterioration under 15A NCAC 02D .0530;
  - (4) new source review under 15A NCAC 02D .0531 or .0532;
  - (5) sources of volatile organic compounds subject to the requirements of 15A NCAC 02D .0900 that are located in Mecklenburg County according to 15A NCAC 02D .0902 (d);
  - (6) sources required to apply maximum achievable control technology (MACT) for hazardous air pollutants under 15A NCAC 02D .1109, .1111, .1112, or 40 CFR Part 63 that are required to have a permit under Section .0500 of this Subchapter;
  - (7) sources at facilities subject to 15A NCAC 02D .1100. (If a source qualifies for an exemption in Subparagraphs (a)(1) through (a)(24) of Rule 15A NCAC 02Q .0702, or does not emit a toxic air pollutant for which the facility at which it is located has been modeled, it shall be exempted from needing a permit if it qualifies for one of the exemptions in Paragraph (c) of this Rule).
- (c) The following activities do not need a permit or permit modification under Section .0300 of this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 02D .0200:
- (1) activities exempted because of category:
    - (A) maintenance, upkeep, and replacement:
      - (i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of regulated air pollutants;
      - (ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of

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|     | <ul style="list-style-type: none"> <li>(iii) janitorial products, or insulation removal;</li> <li>(iv) use of office supplies, supplies to maintain copying equipment, or blueprint machines;</li> <li>(v) use of fire fighting equipment;</li> <li>(vi) paving parking lots; or</li> <li>(vi) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;</li> </ul> |     | <ul style="list-style-type: none"> <li>produces no commercial product or feedstock material;</li> </ul>  |
| (B) | air conditioning or ventilation: comfort air conditioning or comfort ventilating systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;  | (D) | storage tanks: <ul style="list-style-type: none"> <li>(i) storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas or liquefied petroleum gas;</li> <li>(ii) storage tanks used to store gasoline or ethanol-based fuels for which there are no applicable requirements except Stage I controls under 15A NCAC 02D .0928;</li> <li>(iii) storage tanks used solely to store inorganic liquids; or</li> <li>(iv) storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;</li> </ul> |
| (C) | laboratory activities: <ul style="list-style-type: none"> <li>(i) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;</li> <li>(ii) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;</li> <li>(iii) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or</li> <li>(iv) research and development laboratory activities provided the activity</li> </ul>                               | (E) | combustion and heat transfer equipment: <ul style="list-style-type: none"> <li>(i) space heaters burning distillate oil, kerosene, natural gas, or liquefied petroleum gas operating by direct heat transfer and used solely for comfort heat;</li> <li>(ii) residential wood stoves, heaters, or fireplaces;</li> <li>(iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;</li> </ul>  |
|     |   | (F) | wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no applicable requirements;  |
|     |   | (G) | gasoline distribution: gasoline service stations or gasoline dispensing facilities;  |
|     |   | (H) | dispensing equipment: equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;   |
|     |   | (I) | solvent recycling: portable solvent distillation systems used for on-site solvent recycling if: <ul style="list-style-type: none"> <li>(i) The portable solvent distillation system is not:                 <ul style="list-style-type: none"> <li>(I) owned by the facility, and</li> <li>(II) operated at the facility for more</li> </ul> </li> </ul>   |

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|     | than seven consecutive days; and   | (vi)   | exit gases from in-line process analyzers;  |
|     |  | (vii)  | stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;  |
| (J) | processes:   | (viii) | refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the Federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment (A unit used as or in conjunction with air pollution control equipment is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph); |
|     | (i) electric motor burn-out ovens with secondary combustion chambers or afterburners;  |        |   |
|     | (ii) electric motor bake-on ovens;   |        |   |
|     | (iii) burn-off ovens for paint-line hangers with afterburners;   |        |   |
|     | (iv) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;  |        |   |
|     | (v) blade wood planers planing only green wood;  | (ix)   | equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds (Equipment that emits volatile organic compounds is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);   |
| (K) | solid waste landfills: municipal solid waste landfills (This Part does not apply to flares and other sources of combustion at solid waste landfills; these flares and other combustion sources are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph.); |        |   |
| (L) | miscellaneous:   | (x)    | equipment that does not emit any regulated air pollutants;  |
|     | (i) motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;   | (xi)   | facilities subject only to a requirement under 40 CFR Part 63 (This Subpart does not apply when a control device is used to meet a MACT or GACT emission standard; a control device used to meet a MACT or GACT emission standard is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);   |
|     | (ii) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the Federal Clean Air Act (Generators are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph.);  |        |   |
|     | (iii) portable generators regulated by rules adopted under Title II of the Federal Clean Air Act;  | (xii)  | sources for which there are no applicable requirements;   |
|     | (iv) equipment used for the preparation of food for direct on-site human consumption;  | (xiii) | animal operations not required to have control technology under 15A   |
|     | (v) a source whose emissions are regulated only under Section 112(r) or Title VI of the Federal Clean Air Act;   |        |   |

- NCAC 02D .1800 (If an animal operation is required to have control technology, it shall be required to have a permit under this Subchapter).
- (2) activities exempted because of size or production rate:
- (A) storage tanks:
- (i) above-ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70o F; or
- (ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids with a true vapor pressure of no more than 10.8 psi absolute at 70o F;
- (B) combustion and heat transfer equipment:
- (i) fuel combustion equipment, except for internal combustion engines, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels or one or more of these fuels mixed with natural gas or liquefied petroleum gas with a heat input of less than:
- (I) 10 million Btu per hour for which construction, modification, or reconstruction commenced after June 9, 1989; or
- (II) 30 million Btu per hour for which construction, modification, or reconstruction commenced before June 10, 1989;
- (Internal combustion engines are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);
- (ii) fuel combustion equipment, except for internal combustion engines, firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels with a heat input rating less than 65 million Btu per hour (Internal combustion engines are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);
- (iii) space heaters burning waste oil if:
- (I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;
- (II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and
- (III) The combustion gases from the heater are vented to the ambient air;
- (iv) fuel combustion equipment with a heat input rating less than 10 million Btu per hour that is used solely for space heating except:
- (I) space heaters burning waste oil, or
- (II) internal combustion engines;
- (v) emergency use generators and other internal combustion engines not regulated by rules adopted under Title II of the Federal Clean Air Act, except self-propelled vehicles, that have a rated capacity of no more than:
- (I) 680 kilowatts (electric) or 1000 horsepower for natural gas-fired engines;
- (II) 1800 kilowatts (electric) or 2510

- horsepower for liquefied petroleum gas-fired engines;
  - (III) 590 kilowatts (electric) or 900 horsepower for diesel-fired or kerosene-fired engines; or
  - (IV) 21 kilowatts (electric) or 31 horsepower for gasoline-fired engines;
- (Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph.)
- (vi) portable generators and other portable equipment with internal combustion engines not regulated by rules adopted under Title II of the Federal Clean Air Act, except self-propelled vehicles, that operate at the facility no more than a combined 350 hours for any 365-day period provided the generators or engines have a rated capacity of no more than 750 kilowatt (electric) or 1100 horsepower each and provided records are maintained to verify the hours of operation (Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph.);
- (vii) peak shaving generators that produce no more than 325,000 kilowatt-hours of electrical energy for any 12-month period provided records are maintained to verify the energy production on a monthly basis and on a 12-month basis;
- (C) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons;
- (D) processes:
  - (i) graphic arts operations, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices), and solvent cleaning operations located at a facility whose facility-wide actual emissions of volatile organic compounds are less than five tons per year (Graphic arts operations, coating operations, and solvent cleaning operations are defined in 15A NCAC 02Q .0803);
  - (ii) sawmills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;
  - (iii) perchloroethylene dry cleaners that emit less than 13,000 pounds of perchloroethylene per year;
  - (iv) electrostatic dry powder coating operations with filters or powder recovery systems including electrostatic dry powder coating operations equipped with curing ovens with a heat input of less than 10,000,000 Btu per hour;
- (E) miscellaneous:
  - (i) any source whose emissions would not violate any applicable emissions standard and whose potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each no more than five tons per year and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff except:
    - (I) storage tanks,
    - (II) fuel combustion equipment,
    - (III) space heaters burning waste oil,
    - (IV) generators, excluding

- emergency generators, or other non-self-propelled internal combustion engines,
- (V) bulk gasoline plants,
- (VI) printing, paint spray booths, or other painting or coating operations,
- (VII) sawmills,
- (VIII) perchloroethylene dry cleaners, or
- (IX) electrostatic dry powder coating operations, provided that the total potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide from the facility are each less than 40 tons per year and the total potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rates or provided that the facility has an air quality permit. (A source identified in Sub-subpart (I) through (IX) of this Part is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
- (ii) any facility whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., uncontrolled emissions, are each less than five tons per year, whose potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rate, and none of whose sources would violate an applicable emissions standard;
- (iii) any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff emission rates; or
- (iv) any incinerator covered under Subparagraph (c)(4) of 15A NCAC 02D .1201;
- (F) case-by-case exemption: activities that the applicant demonstrates to the satisfaction of the Director:
- (i) to be negligible in their air quality impacts;
- (ii) not to have any air pollution control device; and
- (iii) not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater.
- (d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.
- (e) Emissions from stationary source activities identified in Paragraph (c) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 02D .1100 or 02Q .0700 according to 15A NCAC 02Q .0702 (exemptions from air toxic permitting).
- (f) The owner or operator of a facility or source claiming an exemption under Paragraph (c) of this Rule shall provide the Director documentation upon request that the facility or source is qualified for that exemption.
- (g) If the Director finds that an activity exempted under Paragraph (c) of this Rule is in violation of or has violated a rule in 15A NCAC 02D, he shall revoke the permit exemption for that activity and require that activity to be permitted under this Subchapter if necessary to obtain or maintain compliance.
- Authority* G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108.
- \*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rule cited as 15A NCAC 18A .2544 and amend the rule cited as 15A NCAC 18A .2508.*

**Agency obtained G.S. 150B-19.1 certification:**

- ☒ **OSBM certified on:** *September 27, 2012*  
☐ **RRC certified on:**  
☐ **Not Required**

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://cph.publichealth.nc.gov/>

**Proposed Effective Date:** *April 1, 2012*

**Public Hearing:**

**Date:** *January 9, 2013*

**Time:** *10:00 a.m.*

**Location:** *Cardinal Room, located at 5605 Six Forks Road, Raleigh, NC*

**Reason for Proposed Action:**

*15A NCAC 18A .2508 – the amendment adds the definition special purpose therapy pools to accompany the proposed adoption of Rule 15A NCAC 18A .2544 Special Purpose Therapy Pools.*

*15A NCAC 18A .2544 – the proposed rule will enable the application of certain therapeutic uses of captive water to public places outside the medical field for physical fitness, athletic training and mental relaxation and will facilitate the marketing of therapy pools and athletic training tools, which is currently prohibited or restricted to medical uses through public venues.*

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

**Comments may be submitted to:** *Chris G. Hoke, JD, 1931 Mail Service Center, Raleigh, NC 27699-1931, phone (919)707-5006, email [chris.hoke@dhhs.nc.gov](mailto:chris.hoke@dhhs.nc.gov).*

**Comment period ends:** *February 1, 2013*

**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**  
☒ **No fiscal note required by G.S. 150B-21.4**

**CHAPTER 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18A - SANITATION**

**SECTION .2500 - PUBLIC SWIMMING POOLS**

**15A NCAC 18A .2508 DEFINITIONS**

The following definitions apply throughout this Section:

- (1) Equipment replacement means replacement of individual components of the hydraulic and disinfection systems such as pumps, filters, and automatic chemical feeders.
- (2) Public swimming pool means public swimming pool as defined in G.S. 130A-280. Public swimming pools are divided into ~~four~~ five types:
  - (a) Swimming pools are public swimming pools used primarily for swimming.
  - (b) Spas are public swimming pools designed for recreational and therapeutic use that are not drained, cleaned, or refilled after each individual use. Spas may include units designed for hydrojet circulation, hot water, cold water mineral bath, air induction bubbles, or any combination thereof. Common terminology for spas includes "therapeutic pool", "hydrotherapy pool", "whirlpool", "hot spa", and "hot tub".
  - (c) Wading pools are public swimming pools designed for use by children, including wading pools for toddlers and children's activity pools designed for casual water play ranging from splashing activity to the use of interactive water features placed in the pool.
  - (d) Specialized water recreation attractions are pools designed for special purposes that differentiate them from swimming pools, wading pools and spas. They include:

- (i) water slide plunge pools and run out lanes;
  - (ii) wave pools;
  - (iii) rapid rides;
  - (iv) lazy rivers;
  - (v) interactive play attractions that incorporate devices using sprayed, jetted, or other water sources contacting the users and that do not incorporate standing or captured water as part of the user activity area; and
  - (vi) training pools deeper than a 24 inch deep wading pool and shallower than a 36 inch deep swimming pool.
- (e) Special purpose therapy pools are pools designed and used for therapeutic treatments or physical training and fitness outside of a licensed medical facility or practice of a licensed physical therapist. They include:
- (i) float tanks used for float therapy in a salt brine solution;
  - (ii) swim spa training pools which use jetted water for stationary swimming against a water current;
  - (iii) exercise therapy and treadmill pools equipped for water resistance exercise therapy; and
  - (iv) scuba pools designed and used for training swimmers to use self-contained underwater breathing apparatus.
- (3) Registered Design Professional means an individual who is registered or licensed to practice engineering as defined by G.S. 89C or architecture as defined by G.S. 83A.
- (4) Remodeled means renovations requiring disruption of the majority of the pool shell or deck, changes in the pool profile, or redesign of the pool hydraulic system.
- (5) Repair means returning existing equipment to working order, replastering or repainting of the pool interior, replacement of tiles or coping and similar maintenance activities. This term includes replacement of pool decks where the Department has determined that no changes are needed to underlying pipes or other pool structures.
- (6) Safety vacuum release system means a system or device capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to suction outlet flow blockage.
- (7) Splash zone means the area of an interactive play attraction that sheds water to a surge tank or container to be recirculated.
- (8) Unblockable drain means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

*Authority G.S. 130A-282.*

**15A NCAC 18A .2544 SPECIAL PURPOSE THERAPY POOLS**

(a) Special purpose pools shall comply with the requirements for public swimming pools and spas except as specified in this rule.

(b) Float tanks

- (1) The requirement in Rule .2522 of this Section for a deck or walkway continuous with the top of the pool wall does not apply to isolation float tanks where a clear floor space of at least eight feet by four feet is provided adjacent to the entrance to the tank.
- (2) The requirement in Rule .2532 of this Section for the minimum ceiling height of 7 ½ feet above the rim of the pool does not preclude use of a canopy of a lower height to enclose an isolation float tank provided the canopy can be opened to allow users a standing entry and exit from the float tank.
- (3) The minimum lighting requirement in Rule .2524 of this Section does not apply to float tanks provided lighting is available for cleaning and is sufficient to provide visibility for entry and exit from the float tank.
- (4) The requirements in Rule .2518 of this Section that recirculation pumps operate 24 hours per day do not preclude turning off the pump during float sessions where a sanitizing cycle is provided that filters and disinfects the entire capacity of the float tank system at least twice before every user enters the pool. When the float tank is not being used the pump shall either operate continuously or intermittently to filter and disinfect the capacity of the pool twice every hour.
- (5) The requirement in Rule .2518 of this Section that pool pumps three horsepower or smaller meet NSF/ANSI Standard 50 is not applicable where the mineral content of the brine in a float tank is incompatible with standard pool pumps. Pumps that do not meet NSF/ANSI standard 50 shall be approved on where the viscosity of the mineral solution in the float tank requires a pump impeller or magnetic coupling designed to pump viscous liquids. Electrical safety of such pumps shall be verified by an independent third-party testing



lab to meet applicable Underwriters Laboratories (UL) Standards.

- (6) The requirement in Rule .2532 of this Section for a caution sign at spas with a water temperature above 90 degrees Fahrenheit is not applicable to float tanks that do not exceed an operating temperature of 95 degrees Fahrenheit. Float tanks that exceed an operation temperature of 95 degrees Fahrenheit shall have a posted sign with the same warnings required for hot spas except references to spas may be reworded to reference float tanks or float spas.

**(c) Swim Spas**

- (1) Irrespective of Rule .2522(k) of this section swim spa training pools that use jetted water for training swimmer athletes under constant supervision of a swim coach may be located above deck level. Swim spa training pools located above deck level shall be in an enclosure secured against unauthorized access or use when a swim coach is not present.
- (2) The maximum operational water depth of 4 feet required for spas in Rule .2532 of this Section does not apply to swim spas.
- (3) Ladders, steps or stairs required by Rule .2521 of this Section are not required for an above-ground swim spa where a handhold or handrail

is provided to facilitate transfer over the pool wall.

**(d) Exercise Therapy and Treadmill Pools**

- (1) The maximum operational water depth of 4 feet required for spas in Rule .2532 of this Section does not apply to exercise therapy and treadmill pools.
- (2) The 30 minute turnover rate required for spa recirculation systems in Rule .2532 of this Section does not apply to exercise therapy or treadmill pools with a water capacity exceeding 1,000 gallons provided that the turnover time does not exceed two hours.

**(e) Scuba Training Pools**

- (1) The prohibition of underwater ledges in Rule .2516(b) of this Section does not preclude drop-off ledges to the deep-diving portion of pools designed and used for training swimmers to use self-contained underwater breathing apparatus.
- (2) Scuba pools shall comply the requirements for swimming pools and are not required to meet the requirements for spas in Rule .2532 of this Section.

*Authority G.S. 130A-282.*

*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 October 18, 2012.

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

<u>Guest Room Cabinets; Inventory and Records</u>	04	NCAC	02S	.0525*	27:02	NCR
<u>Types of Permits Required</u>	04	NCAC	02S	.0708	27:02	NCR
<u>Tastings Held by Retailers for Consumers</u>	04	NCAC	02S	.0901	27:02	NCR
<u>Advertising of Spirituous Liquors</u>	04	NCAC	02S	.1011	27:02	NCR
<u>Wine Product Brand</u>	04	NCAC	02T	.0104*	27:02	NCR
<u>Transactions with Government and Special One-Time...</u>	04	NCAC	02T	.0714	27:02	NCR
<u>Tournaments</u>	04	NCAC	02T	.0715	27:02	NCR

**INDUSTRIAL COMMISSION**

Note from Codifier:

04 NCAC 10 – Due to the number of Industrial Commission rules submitted and reviewed by RRC, approved by RRC, approved by RRC, but pending legislative review, and objections by RRC. The Rules Division will publish a listing and text in a later issue. For questions, please contact the Rules Division, (919)431-3000 or email oah.rules@oah.nc.gov.

**CHILD CARE COMMISSION**

<u>Scope</u>	10A	NCAC	09	.3001*	26:23	NCR
<u>Facility Requirements</u>	10A	NCAC	09	.3002*	26:23	NCR
<u>Program Attendance Policy</u>	10A	NCAC	09	.3003*	26:23	NCR
<u>Child Health Assessments</u>	10A	NCAC	09	.3005*	26:23	NCR
<u>Developmental Screening</u>	10A	NCAC	09	.3006*	26:23	NCR
<u>Staff-to-Child Ratio and Class Size</u>	10A	NCAC	09	.3009*	26:23	NCR
<u>Family Engagement</u>	10A	NCAC	09	.3010*	26:23	NCR
<u>NC Pre-K Site-Level</u>	10A	NCAC	09	.3011*	26:23	NCR
<u>NC Pre-K Teacher Education, Licensure and Credentials</u>	10A	NCAC	09	.3012*	26:23	NCR
<u>NC Pre-K Teacher Assistant Education and Credentials</u>	10A	NCAC	09	.3013*	26:23	NCR
<u>NC Pre-K Substitute Staff</u>	10A	NCAC	09	.3014	26:23	NCR
<u>Instructional Staff Standards</u>	10A	NCAC	09	.3015*	26:23	NCR
<u>Professional Development Requirements</u>	10A	NCAC	09	.3016*	26:23	NCR

**MENTAL HEALTH, COMMISSION FOR**

<u>Waiver of Licensure Rules</u>	10A	NCAC	27G	.0813*	26:23	NCR
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**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Roanoke River Basin</u>	15A	NCAC	02B	.0313*	26:21	NCR
<u>Form and Contents of Petition</u>	15A	NCAC	02I	.0501*	26:21	NCR

**WILDLIFE RESOURCES COMMISSION**

<u>Open Seasons</u>	15A NCAC 10B .0303	26:24 NCR
<u>Bag Limits</u>	15A NCAC 10B .0304	26:24 NCR

**TRANSPORTATION, DEPARTMENT OF**

<u>Revocation of Outdoor Advertising Permit</u>	19A NCAC 02E .0210*	27:02 NCR
<u>Denial of Permit</u>	19A NCAC 02E .0211	27:02 NCR
<u>Permit to Remove Vegetation</u>	19A NCAC 02E .0601	27:02 NCR
<u>Requests for Permits for a Facility</u>	19A NCAC 02E .0602	27:02 NCR
<u>Issuance or Denial of Permit for a Facility</u>	19A NCAC 02E .0603*	27:02 NCR
<u>Conditions of Selective Vegetation Removal Permit for Fac...</u>	19A NCAC 02E .0604*	27:02 NCR
<u>Requests for Selective Vegetation Removal Permits for Out...</u>	19A NCAC 02E .0608*	27:02 NCR
<u>Requirements for Beautification and Replanting Conditions...</u>	19A NCAC 02E .0611*	27:02 NCR

**GENERAL CONTRACTORS, LICENSING BOARD FOR**

<u>Eligibility</u>	21 NCAC 12 .0204*	26:20 NCR
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**ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD**

<u>Definitions</u>	21 NCAC 39 .0101*	26:24 NCR
<u>Business Succession</u>	21 NCAC 39 .0202*	26:24 NCR
<u>Requirements</u>	21 NCAC 39 .0601*	26:24 NCR
<u>On-Site Wastewater System Components</u>	21 NCAC 39 .1005*	26:24 NCR

**PHARMACY, BOARD OF**

<u>Pharmacy Permits</u>	21 NCAC 46 .1601*	27:02 NCR
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**APPRAISAL BOARD**

<u>Qualifications for Trainee Registration and Appraiser Cer...</u>	21 NCAC 57A .0201*	26:20 NCR
<u>Fitness for Registration or Certification</u>	21 NCAC 57A .0202*	26:20 NCR
<u>Registration, License and Certificate Renewal</u>	21 NCAC 57A .0203	26:20 NCR
<u>Continuing Education</u>	21 NCAC 57A .0204*	26:20 NCR
<u>Applicants Certified in Another State</u>	21 NCAC 57A .0211*	26:20 NCR
<u>Time and Place</u>	21 NCAC 57A .0301	26:20 NCR
<u>Subject Matter and Passing Scores</u>	21 NCAC 57A .0302	26:20 NCR
<u>Re-examination</u>	21 NCAC 57A .0303	26:20 NCR
<u>Cleaning and Related Misconduct</u>	21 NCAC 57A .0304	26:20 NCR
<u>Supervision of Trainees</u>	21 NCAC 57A .0407*	26:20 NCR
<u>Appraisal Standards</u>	21 NCAC 57A .0501	26:20 NCR
<u>Registered Trainee Course Requirements</u>	21 NCAC 57B .0101	26:20 NCR
<u>Certified Residential Real Estate Appraiser Course Requir...</u>	21 NCAC 57B .0102*	26:20 NCR
<u>Certified General Real Estate Appraiser Course Requirements</u>	21 NCAC 57B .0103*	26:20 NCR
<u>Course Records</u>	21 NCAC 57B .0210	26:20 NCR
<u>Continuing Education Credit Hours</u>	21 NCAC 57B .0605*	26:20 NCR

<u>Course Operational Requirements</u>	21	NCAC 57B .0606	26:20 NCR
<u>Certification of Course Completion</u>	21	NCAC 57B .0607	26:20 NCR
<u>Renewal of Approval and Fees</u>	21	NCAC 57B .0611*	26:20 NCR
<u>Filing and Fees</u>	21	NCAC 57D .0102*	26:20 NCR
<u>Removal of an Appraiser from an Appraiser Panel</u>	21	NCAC 57D .0311*	26:20 NCR
<u>Requesting Additional Information from an Appraiser</u>	21	NCAC 57D .0312*	26:20 NCR

#### **NORTH CAROLINA HOUSING FINANCE AGENCY**

<u>Purpose of Assistance</u>	24	NCAC 01F .0101	26:24 NCR
<u>Background of Assistance</u>	24	NCAC 01F .0102	26:24 NCR
<u>Project Planning Loans</u>	24	NCAC 01F .0201	26:24 NCR
<u>Site Development and Off-Site Improvements Grants</u>	24	NCAC 01F .0202	26:24 NCR
<u>Technical Assistance Grants</u>	24	NCAC 01F .0203	26:24 NCR
<u>Eligible Housing Programs</u>	24	NCAC 01F .0301	26:24 NCR
<u>Eligible Counties</u>	24	NCAC 01F .0302	26:24 NCR
<u>State Appalachian Development Plan</u>	24	NCAC 01F .0401	26:24 NCR
<u>Identification in Annual Investment Program</u>	24	NCAC 01F .0402	26:24 NCR
<u>Approval of Individual Projects</u>	24	NCAC 01F .0403	26:24 NCR
<u>Duties and Functions of State Implementing Agency</u>	24	NCAC 01F .0501	26:24 NCR
<u>Requirements for Accounting: Audits: and Reports</u>	24	NCAC 01F .0502	26:24 NCR
<u>Reports on Disposition of Funds</u>	24	NCAC 01F .0503	26:24 NCR
<u>Waiver of Loan Repayment</u>	24	NCAC 01F .0504	26:24 NCR
<u>Agreement Between Agency and Sponsor</u>	24	NCAC 01F .0505	26:24 NCR
<u>Objectives</u>	24	NCAC 01H .0101	26:24 NCR
<u>Persons and Families of Lower Income</u>	24	NCAC 01H .0102	26:24 NCR
<u>Persons and Families of Moderate Income</u>	24	NCAC 01H .0103	26:24 NCR
<u>Method</u>	24	NCAC 01H .0104	26:24 NCR
<u>Notice of Funds Availability</u>	24	NCAC 01H .0105	26:24 NCR
<u>Eligible Projects</u>	24	NCAC 01H .0201	26:24 NCR
<u>Application Procedure</u>	24	NCAC 01H .0202	26:24 NCR
<u>Fair Market Rents</u>	24	NCAC 01H .0203	26:24 NCR
<u>Local Government Request</u>	24	NCAC 01H .0204	26:24 NCR
<u>Public Housing Agency</u>	24	NCAC 01H .0205	26:24 NCR
<u>Mortgage Insurance Commitment</u>	24	NCAC 01H .0206	26:24 NCR
<u>Funds Availability</u>	24	NCAC 01H .0301	26:24 NCR
<u>Project Feasibility</u>	24	NCAC 01H .0302	26:24 NCR
<u>Agency Approval</u>	24	NCAC 01H .0303	26:24 NCR
<u>Federal Approval</u>	24	NCAC 01H .0304	26:24 NCR
<u>Project Evaluation</u>	24	NCAC 01H .0305	26:24 NCR
<u>Interim Financing</u>	24	NCAC 01H .0401	26:24 NCR
<u>Permanent Financing</u>	24	NCAC 01H .0402	26:24 NCR
<u>Mortgage Purchase Procedure</u>	24	NCAC 01H .0403	26:24 NCR
<u>Mortgage Loan Servicing</u>	24	NCAC 01H .0404	26:24 NCR
<u>Creation of Fund</u>	24	NCAC 01H .0501	26:24 NCR
<u>Eligibility</u>	24	NCAC 01H .0502	26:24 NCR
<u>Fund Operation and Administration</u>	24	NCAC 01H .0503	26:24 NCR

<u>Objectives</u>	24	NCAC	01J	.0101	26:24	NCR
<u>Income Eligible Persons and Families</u>	24	NCAC	01J	.0102	26:24	NCR
<u>Eligible Borrower</u>	24	NCAC	01J	.0103	26:24	NCR
<u>Eligible Property</u>	24	NCAC	01J	.0104	26:24	NCR
<u>Eligible Loan</u>	24	NCAC	01J	.0105	26:24	NCR
<u>Compliance with Tax Act</u>	24	NCAC	01J	.0107	26:24	NCR
<u>Eligible Lender Contract Forms</u>	24	NCAC	01J	.0201	26:24	NCR
<u>Servicing Agreement</u>	24	NCAC	01J	.0202	26:24	NCR
<u>Objectives</u>	24	NCAC	01K	.0101	26:24	NCR
<u>Definitions</u>	24	NCAC	01K	.0102	26:24	NCR
<u>Method</u>	24	NCAC	01K	.0103	26:24	NCR
<u>Eligible Projects</u>	24	NCAC	01K	.0201	26:24	NCR
<u>Local Government Request</u>	24	NCAC	01K	.0202	26:24	NCR
<u>Resident Certification</u>	24	NCAC	01K	.0203	26:24	NCR
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<u>Mortgage Purchase Procedure</u>	24	NCAC	01K	.0303	26:24	NCR
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<u>Notification of Proposed Financing</u>	24	NCAC	01K	.0401	26:24	NCR
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<u>Application Procedures</u>	24	NCAC	01O	.0201	26:24	NCR
<u>Selection Procedures</u>	24	NCAC	01O	.0202	26:24	NCR
<u>Purpose</u>	24	NCAC	01P	.0101	26:24	NCR
<u>Eligibility</u>	24	NCAC	01P	.0102	26:24	NCR
<u>Types of Assistance</u>	24	NCAC	01P	.0103	26:24	NCR
<u>Application Procedures</u>	24	NCAC	01P	.0201	26:24	NCR
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<u>Declaratory Rulings: Availability</u>	26	NCAC 01	.0202	27:01 NCR
<u>General</u>	26	NCAC 03	.0101	27:01 NCR
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<u>Duties of the Administrative Law Judge</u>	26	NCAC 03	.0105	27:01 NCR
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<u>Order Designating Complex Contested Cases</u>	26	NCAC 03	.0301	27:01 NCR
<u>Factors to be Considered</u>	26	NCAC 03	.0302	27:01 NCR
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<u>Authority to Administer Oaths or Affirmations</u>	26	NCAC 04	.0109	27:01 NCR

**TITLE 04 – DEPARTMENT OF COMMERCE**

**04 NCAC 02S .0525 GUEST ROOM CABINETS; INVENTORY AND RECORDS**

A guest room cabinet permittee shall maintain on the premises an accurate inventory and sales records of all liquor purchased for resale in cabinets in accordance with the following requirements:

- (1) Sales records of guest room cabinet liquor shall be kept on a monthly basis in accordance with the requirements of Rule .0520 of this Section; and
- (2) Purchase-transportation permits for liquor to be sold from guest room cabinets shall be maintained by the permittee on the premises for a period of three years.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1001(13); Eff. July 1, 1992; Amended Eff. November 1, 2012.*

**04 NCAC 02S .0708 TYPES OF PERMITS REQUIRED**

The owner or operator of any commercial facility or commercial establishment renting or furnishing the premises thereof for a private function where the host of the function will possess more than eight liters of fortified wine or spirituous liquor, or eight liters of the two combined, shall either:

- (1) apply for and obtain a Special Occasion Permit, as required by G.S. 18B-1001(8) and G.S. 18B-902; or
- (2) require the person in charge of the private function to apply for and obtain a Limited Special Occasion Permit under the provisions of G.S. 18B-1001(9) and 18B-902.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-301(b),(c); 18B-1001(8),(9); Eff. July 1, 1992; Amended Eff. November 1, 2012.*

**04 NCAC 02S .0901 TASTINGS HELD BY  
RETAILERS FOR CONSUMERS**

(a) General. A retail wine or malt beverage permittee may conduct tastings of wine or malt beverages for consumers. A tasting held on the retailer's premises requires the appropriate permit. Any retailer conducting a wine or malt beverage tasting shall:

- (1) Provide training to its employees conducting and supervising any tasting, including:
  - (A) identification of potential underage customers;
  - (B) recognition of fictitious identification;
  - (C) identification of potentially intoxicated customers; and
  - (D) service of correct sample sizes; and
- (2) Prominently display in the area where the tasting is being conducted a sign informing customers that they must be 21 years of age to participate in the tasting.

(b) Tastings Assisted by Industry Member. For the purposes of this Rule, "industry member" means any manufacturer, bottler, importer, vendor, representative or wholesaler of alcoholic beverages. An industry member may assist with wine or malt beverage tastings for consumers in conjunction with, or on the licensed premises of, a retailer provided that:

- (1) The wine or malt beverage is taken directly from the retailer's existing inventory;
- (2) The industry member makes no payment to or on behalf of the retailer for promoting or advertising the tasting;
- (3) The retailer provides instruction to any participating industry member outlining how the tasting will be conducted prior to the tasting;
- (4) The retailer designates one of its employees to supervise the tasting. The retail supervisor shall:
  - (A) be physically present, actively supervise and be readily available to any participating industry member at all times during the tasting;
  - (B) wear visible identification;
  - (C) physically check-in with any participating industry member at each tasting station at least once per hour;
  - (D) make a final determination on the eligibility of a consumer to participate in a tasting in the event such a question arises;
  - (E) maintain an accurate accounting of all wine or malt beverages purchased for and consumed at the tasting; and
  - (F) dispose of any opened wine or malt beverage containers remaining after the tasting, unless the remaining wine is retained by a wine shop permittee.

(c) Unlawful Inducements Prohibited. No industry member shall require a retailer, and no retailer shall require an industry member, to conduct a wine or malt beverage tasting.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1001(15); 18B-1001(18);*

*Eff. January 1, 1982;*

*Amended Eff. November 1, 2012; January 1, 2011; May 1, 1984.*

**04 NCAC 02S .1011 ADVERTISING OF SPIRITUOUS LIQUORS**

(a) ABC Stores. An ABC store may have one or more outside signs located on the premises for the purpose of identifying the outlet if the sign is not prohibited by local ordinance and it has been approved by the Commission. During the approval process the Commission shall consider the following factors:

- (1) the proximity of the ABC store to schools and churches;
- (2) the number and size of the signs requested;
- (3) the text and graphics on the sign;
- (4) the materials that make up the sign; and
- (5) the public concern in matters of the public's welfare.

(b) Aerial Displays. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of an aerial display or inflatable the brand name or availability of spirituous liquor.

(c) Billboards; Media. Industry members may advertise spirituous liquor on outdoor billboards, by radio, television, newspaper, magazine or internet, and by other similar means. Outdoor billboards or signs shall not be displayed on the premises of any retail permittee's establishment nor in areas where sale of that product is unlawful.

(d) Point-of-Sale. Point-of-sale and advertising specialties for spirituous liquor may be used in ABC stores. Advertising used in ABC stores shall conform to the provisions of Rule .1005 of this Section, and in addition shall not:

- (1) incorporate the use of any present or former athlete or athletic team; or
- (2) refer to the availability of or offer any alcoholic beverages by mail.

All point-of-sale advertising material, advertising specialties, and recipes, booklets or brochures intended for use and display in ABC stores shall first be submitted to the Commission prior to their display in an ABC store.

(e) Local ABC Boards. Local ABC boards may advertise on their web site or social networking page the following information:

- (1) general information such as the history of the ABC board, locations, hours of operation, contact information, employment opportunities, alcohol enforcement, alcohol education, underage drinking education and other local government information; and
- (2) liquor products and prices, as long as:
  - (A) no logos are shown;
  - (B) when a product is listed, all products that are offered are listed;

- (C) when a product's regular price is listed, all products' regular prices offered by the board are listed; and
- (D) when a special price is listed for a product, all products with special prices offered by the board are listed.

(f) Local boards may join local chambers of commerce or visitor's bureaus and may provide them general board information which includes store locations and hours to be distributed through the chambers of commerce's or visitor's bureaus' media information.

*History Note: Authority G.S. 18B-100; 18B-105; 18B-207; 18B-801;*  
*Eff. January 1, 1982;*  
*Amended Eff. November 1, 2012; November 1, 2011; January 1, 2011; July 1, 1992; May 1, 1984.*

**04 NCAC 02T .0104 WINE PRODUCT BRAND**

(a) Determination of a product's brand shall be made by the Commission at the time the product is approved for sale in North Carolina and shall not be affected by later changes in the manufacturer's advertising strategy or labeling. Differences in packaging, such as different style, type or size of container, do not establish different brands.

(b) For purposes of Bordeaux Chateau wine brought into North Carolina under the French negociant system only, "brand" as defined in 04 NCAC 02T .0101(1) shall be determined based on the nonresident wine vendor or importer's name as reflected on the back of the product label. For purposes of Bordeaux Chateau wines only, wines manufactured and marketed under a common identifying trade name such as "Chateau Domaine," but which may be imported into the United States through multiple channels based on written authorizations from French negociants, would not be considered to be the same brand; e.g., the "Chateau Domaine" brought into the United States by Importer A would be considered to be a different brand than the "Chateau Domaine" brought into the United States by Importer B. Such written authorization(s) must be provided to the Commission upon request prior to product approval or brand registration on a form provided by the Commission.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1203;*  
*Eff. April 1, 2011;*  
*Amended Eff. December 1, 2012.*

**04 NCAC 02T .0714 TRANSACTIONS WITH GOVERNMENT AND SPECIAL ONE-TIME PERMITTEES**

(a) Permitted Activities. Notwithstanding the restrictions contained in 04 NCAC 02T .0711, the following activities by alcoholic beverage (which includes malt beverages, wines and spirituous liquors) industry members are allowed, as described in this Rule, in transactions with cities, counties, the state, or in transactions with nonprofit or political organizations that have obtained a Special One-Time permit under the provisions of G.S. 18B-1002(a)(2) or (5), or nonprofit organizations that do not hold an ABC permit:

- (1) sponsorships of festivals, concerts, fundraisers or special events cosponsored by the local government, the state or nonprofit or political organizations, including payments of advertising fees;
- (2) loaning or renting portable equipment to a local government, the state or a nonprofit or political organization so long as the equipment loaned or rented is for a single event of limited duration;
- (3) contracts to provide payment for permanent advertising on signs or scoreboards when the industry member has submitted a request for and received an exemption pursuant to G.S. 18B-1116(b);
- (4) providing labor or employees to assist in the setting up or changing of draft beer kegs and equipment which has been loaned or rented pursuant to Subparagraph (a)(2) of this Rule;
- (5) loaning or renting previously approved aerial displays or outdoor inflatables for the duration of a special event;
- (6) loaning or allowing the use of refrigerated vehicles;
- (7) providing novelties, prizes or prize money to nonprofit organizations that have obtained a Special One-Time Permit;
- (8) providing cash contributions, product donations and other consumer goods, provided that any donated product remaining after the event is not supplied by the Special One-Time Permittee to a regular retail permittee;
- (9) participation with a local government or the state in the advertising of events cosponsored by the local government or state; and
- (10) accepting the return of alcoholic beverages not sold, for cash or credit, after the event is over.

(b) Sponsorship/Advertising Agreements Restricted. No sponsorship agreement or advertising contract between an industry member and a city, county, the state, or a Special One-Time permittee shall contain any agreement, either express or implied, that the industry member's products will be sold to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

(c) Cosponsorship with Retail Permittee. In any promotion by an industry member with a local government, the state, or a nonprofit organization in which there is cosponsorship by a retailer other than the local government or the state, the industry member shall obtain prior written approval from the Commission as provided in 04 NCAC 02T .0717.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1116(b);*  
*Eff. July 1, 1992;*  
*Amended Eff. November 1, 2012; April 1, 2011.*

**04 NCAC 02T .0715 TOURNAMENTS**

(a) General. Sponsorship by an industry member of a regional, statewide or national sports tournament, when the tournament is



held on the property or premises of a retail permittee, is permissible only if all of the following conditions are met:

- (1) The tournament is promoted or sanctioned by the official governing body of the sport, or is promoted and sponsored by a bona fide nonprofit organization for the purpose of raising funds for a civic, scientific, charitable or educational cause;
- (2) No money, novelty items or other prohibited services or things of value are given, rented or loaned by an industry member to the retailer; and
- (3) All sponsorship money or fees and other things of value from the industry member are given to the official governing body of the sport or the nonprofit organization.

(b) Advertising. An industry member may advertise via mass media or pay for the advertising of a tournament when the primary theme of the advertisement is the tournament and its purpose. The naming of the retailer's premises as the location of a tournament shall not be construed to be cooperative advertising in violation of 04 NCAC 02S .1007 of this Chapter when the retailer's tradename is stated in substantially smaller typeface.

(c) Sponsorship/Advertising Agreements Restricted. No industry member agreeing to sponsor a tournament shall enter into any agreement or contract, either express or implied, that a retailer or special one-time permittee will sell that industry member's products to the exclusion, in whole or in part, of other brands of alcoholic beverages offered by competitors.

(d) Joint Sponsorships. An industry member shall not agree to cosponsor any tournament with any retail permittee unless the proceeds from the tournament are paid to a nonprofit civic, scientific, charitable or educational organization.

(e) Prohibited Sponsorships. An industry member shall not sponsor or aid a retailer in the promotion of any tournament held primarily to benefit the retailer, its employees, members or guests.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1116(b); Eff. July 1, 1992; Amended Eff. November 1, 2012.*

## **TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **10A NCAC 09 .3001 SCOPE**

The rules in this Section apply to all licensed programs that serve children in the North Carolina Pre-Kindergarten (NC Pre-K) program. The NC Pre-K program is intended to provide high-quality educational experiences to enhance school readiness for at-risk-four-year olds. All rules in this Chapter shall apply except as provided in this Section.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a)-(f); Eff. November 1, 2012.*

### **10A NCAC 09 .3002 FACILITY REQUIREMENTS**

(a) Programs serving NC Pre-K children shall maintain a four or five star rated license.

(b) All NC Pre-K licensed programs shall have an assessment completed every three years using the Early Childhood Environment Rating Scale-Revised Edition assessment tool as a part of the rated license reassessment process. Classrooms that score below the "good level," as defined by the tool, shall be reassessed the following year and a minimum "good level" must be achieved in order to continue to be approved as a NC Pre-K site. At least one NC Pre-K classroom will be chosen for an assessment during the reassessment process.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a); Eff. November 1, 2012.*

### **10A NCAC 09 .3003 PROGRAM ATTENDANCE POLICY**

When a child is absent for more than three consecutive days, the site-level administrator shall contact the family and determine the child's participation status. The site-level administrator must document attempts to contact the family and any specified decisions regarding the child's continued participation in the program. The site-level administrator shall contact the local NC Pre-K contractor to share information related to the child's absence and to determine what further actions may be necessary to maintain the child's attendance in the program.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a); Eff. November 1, 2012.*

### **10A NCAC 09 .3005 CHILD HEALTH ASSESSMENTS**

(a) A health assessment is required to be on file at the NC Pre-K site within 30 days after a child enters the NC Pre-K program and the assessment may be no more than 12 months old at the time of program entry. The health assessment must include the following:

- (1) Physical examination;
- (2) Updated immunizations;
- (3) Vision screening;
- (4) Hearing screening; and
- (5) Dental screening.

(b) Site-level administrators shall review all health assessment results and shall share results with families.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a); Eff. November 1, 2012.*

### **10A NCAC 09 .3006 DEVELOPMENTAL SCREENING**

(a) All children enrolled in the NC Pre-K program must receive a developmental screening, unless the child has an existing Individualized Education Program (IEP). The developmental screening shall be conducted by a person trained in administering the screening. Children must be screened within 90 days after the first day of attendance in the program or within

six months prior to the first day of attendance. The screenings shall be used solely for the purpose of identifying children who should be referred for further evaluation and testing based on concerns in one or more developmental domains.

(b) Site-level administrators shall review all developmental screening results and shall share results with families.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);*

*Eff. November 1, 2012.*

**10A NCAC 09 .3009 STAFF-TO-CHILD RATIO AND CLASS SIZE**

The classroom shall not exceed a maximum staff-to-child ratio of one to nine with a maximum class size of 18 children, with at least one teacher and one assistant teacher per classroom.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);*

*Eff. November 1, 2012.*

**10A NCAC 09 .3010 FAMILY ENGAGEMENT**

NC Pre-Kindergarten programs shall develop a comprehensive plan for family engagement consisting of strategies designed to develop partnerships with families and build reciprocal relationships that promote shared decision-making. Examples of meaningful opportunities for families to be engaged in their child's education include, but are not limited to:

- (1) Allowing Pre-K program teachers the opportunity for home visits;
- (2) Formal and informal parent/teacher conferences;
- (3) Classroom visits and options for parents and families to participate in classroom activities;
- (4) Parent education;
- (5) Allowing family members the opportunity for involvement in decision making about their own child and about their child's early childhood program; and
- (6) Opportunities to engage families outside of the regular service day.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);*

*Eff. November 1, 2012.*

**10A NCAC 09 .3011 NC PRE-K SITE-LEVEL ADMINISTRATOR QUALIFICATIONS**

(a) Administrators of NC Pre-K sites must have either:

- (1) A NC Principal License, or
- (2) A North Carolina Early Childhood Administrator Credential (NCECAC) Level III. If the site-level administrator has not yet earned the NCECAC Level III, the following shall apply:
  - (A) Provisional approval shall be given for four years from the time the site began participation with the NC Pre-K program for the administrator with

NCECAC I or II to obtain the NCECAC Level III; and

- (B) Progress toward NCECAC Level III shall be considered a minimum of six documented semester hours per year.

(b) Administrators of NC Pre-K sites shall not serve as the NC Pre-K teacher or teacher assistant.

(c) Long term vacancies shall not exceed 12 weeks.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);*

*Eff. November 1, 2012.*

**10A NCAC 09 .3012 NC PRE-K TEACHER EDUCATION, LICENSURE AND CREDENTIALS**

(a) All teachers shall hold, or be working toward a North Carolina (NC) Birth through Kindergarten (B-K) Standard Professional II or Preschool Add-on licensures. Teachers working toward the required education and license shall hold a minimum of a BA/BS degree and the following requirements:

- (1) NC Initial Provisional Lateral Entry B-K License, or
- (2) A North Carolina K-6 license and a provisional Preschool Add-on license, or
- (3) Another North Carolina or other state's license and an NC Provisional B-K license, or
- (4) A BA/BS degree in early childhood education, child development, or a related field, and be eligible for a NC Initial Provisional Lateral Entry B-K License.

(b) All Pre-K teachers must be enrolled with the Early Educator Support, Licensure & Professional Development Unit of the Division of Child Development and Early Education.

(c) Pre-K teachers with a BA/BS degree shall make progress toward B-K licensure by completing a minimum of six documented semester hours per year, and achieve the B-K license within three years. The site-level administrator shall maintain documentation available for review by the Division, of the progress toward the required standard.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a);*

*Eff. November 1, 2012.*

**10A NCAC 09 .3013 NC PRE-K TEACHER ASSISTANT EDUCATION AND CREDENTIALS**

All teacher assistants shall:

- (1) have a high school diploma or GED and shall hold, or be working toward, a minimum of an Associate Degree in early childhood education or child development (ECE/CD) or a Child Development Associate (CDA) credential. Teacher assistants working toward the Associate Degree or CDA shall make progress by completing a minimum of six documented semester hours per year; or
- (2) meet the employment requirements outlined by the federal "No Child Left Behind" (NCLB) legislation, and have one of the following:

- (a) Six documented semester hours of coursework in early childhood education, or
- (b) Two years of work experience in an early childhood setting.

The site-level administrator shall maintain documentation available for review by the Division of the progress toward the required standard.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a); Eff. November 1, 2012.*

**10A NCAC 09 .3014 NC PRE-K SUBSTITUTE STAFF**

(a) When a member of the NC Pre-K teaching staff is unable to work, a substitute staff person must be provided to maintain the staff-to-child ratio as specified in Rule .3009 of this Section and must be able to implement the program in accordance with this Section. Substitute staff must be at least 18 years of age and meet the following minimum qualifications:

- (1) Requirements for short-term vacancies, when teachers are absent from the Pre-K classroom for 15 or fewer days, include the following:
  - (A) Nonpublic Schools (Private Child Care/Pre-K Settings): Substitutes in private settings must have at least a high school diploma or a GED, and completed at least one course in early childhood education or child development, such as the North Carolina Early Childhood Credential; or
  - (B) Public School Settings: Substitutes must meet the requirements of the substitute policy consistent with the local education agency (LEA).
- (2) Requirements for long-term vacancies, when teachers are absent from the Pre-K classroom for 16 or more attendance days, are for substitute staff to hold at least an Associate's Degree in early childhood education/child development or a four year degree in a related field.

(b) Substitutes for teacher assistants must be at least 18 years of age and have a minimum of a high school diploma or a GED.

(c) Long term vacancies shall not exceed 12 weeks.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a); Eff. November 1, 2012.*

**10A NCAC 09 .3015 INSTRUCTIONAL STAFF STANDARDS**

Instructional staff shall work in direct contact with children in the Pre-K program for at least a 32.5 hour work week. In addition to these direct, day-to-day instructional experiences, the Pre-K program must provide adequate additional time for the instructional staff for related instructional activities, including time for planning, scheduling and conducting home visits,

meeting with children's families, or attending required professional development activities. These related activities shall take place outside of the six and a half hour day of direct teacher-child contact.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a); Eff. November 1, 2012.*

**10A NCAC 09 .3016 PROFESSIONAL DEVELOPMENT REQUIREMENTS**

(a) Licensed Administrators, Teachers, and Teacher Assistants in non-public and public schools shall participate in professional development consistent with the NC State Board of Education policy. The policy can be found on the Department of Public Instruction's website at <http://www.ncpublicschools.org/licensure>.

(b) Administrators, Teachers, and Teacher Assistants in non-public school settings, working toward Pre-K qualifications shall participate in a minimum of six documented semester hours per year.

*History Note: Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a); Eff. November 1, 2012.*

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**10A NCAC 27G .0813 WAIVER OF LICENSURE RULES**

(a) The Secretary may waive any of these Rules related to licensure requirements. The decision to grant or deny the waiver request shall be based on the following:

- (1) the nature and extent of the request;
- (2) the existence of safeguards to ensure that the health, safety, or welfare of the clients residing in the facility will not be threatened;
- (3) the determination that the waiver will not affect the health, safety, or welfare of clients residing in the facility;
- (4) the existence of good cause; and
- (5) documentation of Local Management Entity (LME) or Local Management Entity – Managed Care Organization (LME-MCO) governing body approval when requests are from an LME or LME-MCO or contract agencies of an LME or LME-MCO or documentation of governing body approval of the facility when requests are from private facilities not contracting with an LME or LME-MCO.

(b) Requests for waivers shall be sent to the Director, Division of Health Service Regulation, 2718 Mail Service Center, Raleigh, North Carolina 27699-2718.

(c) The request shall be in writing and shall contain:

- (1) the name, address and telephone number of the requester;
- (2) the name, address and telephone number of the facility for which the waiver is requested;

- (3) the rule number and title of the rule or requirements for which waiver is being sought;
- (4) a statement of facts showing:
  - (A) the reason for, and the nature and extent of, the request; and
  - (B) that the health, safety or welfare of clients will not be threatened;
- (5) documentation of LME or LME-MCO governing body approval when requests are from an LME or LME-MCO or contract agencies of an LME or LME-MCO or documentation of governing body approval of the facility when requests are from private facilities not contracting with an LME or LME-MCO.

(d) Prior to issuing a decision on the waiver request, the Director of DHSR shall consult with the Director of DMH/DD/SAS, and may also request additional information or consult with additional parties as appropriate.

(e) A decision regarding the waiver request shall be issued in writing by the Director of DHSR and shall state the reasons why the request was granted or denied and any special conditions relating to the request. A copy of the decision shall be sent to the Director of DMH/DD/SAS. If the rule in question was adopted by the Commission, the Director of DMH/DD/SAS shall send a copy of the decision to all Commission members.

(f) Waivers related to physical building design and equipment shall remain in effect for 10 years.

(g) Waivers other than those identified in Paragraph (f) of this Rule shall not exceed the expiration date of the current license and shall be subject to renewal consideration upon the request of the licensee.

(h) Renewal requests pursuant to this Rule may be considered prior to the facility's application for licensure renewal being finalized when the requesting party has submitted the required application materials and fee. A waiver granted prior to licensure renewal being finalized shall be contingent upon licensure renewal being granted. A waiver granted prior to the licensure renewal shall become effective upon the date of the license renewal and is not retroactive.

(i) If a facility closes or undergoes a change of ownership, the waiver expires with the effective date of the closure or change of ownership.

(j) The decision of the Secretary regarding a waiver request may be appealed to the Office of Administrative Hearings through the contested case process set out in G.S. 150B, Article 3. The appeal shall be in writing and shall be filed within 60 days of receipt of the decision regarding the waiver request.

*History Note: Authority G.S. 122C-23(f); 122C-26(4); 122C-27(9); 143B-147;  
Eff. May 1, 1996;  
Amended Eff. November 1, 2012; October 1, 2007.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND  
NATURAL RESOURCES**

**15A NCAC 02B .0313 ROANOKE RIVER BASIN**

(a) Effective February 1, 1976, the adopted classifications assigned to the waters within the Roanoke River Basin are set forth in the Roanoke River Basin Schedule of Classifications and Water Quality Standards, which may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
  - (A) Raleigh Regional Office  
3800 Barrett Drive  
Raleigh, North Carolina
  - (B) Washington Regional Office  
943 Washington Square Mall  
Washington, North Carolina
  - (C) Winston-Salem Regional Office  
585 Waughtown Street Winston-Salem, North Carolina
  - (D) Division of Water Quality  
Regional Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Virginia are classified "C", except that all backwaters of John H. Kerr Reservoir and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "B," and all backwaters of Lake Gaston and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "C and B".

(c) The Roanoke River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) May 18, 1977;
- (2) July 9, 1978;
- (3) July 18, 1979;
- (4) July 13, 1980;
- (5) March 1, 1983;
- (6) August 1, 1985;
- (7) February 1, 1986.

(d) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective July 1, 1991 with the reclassification of Hyco Lake (Index No. 22-58) from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(f) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective August 1,

1998 with the reclassification of Cascade Creek (Camp Creek) [Index No. 22-12] and its tributaries from its source to the backwaters at the swimming lake from Class B to Class B ORW, and reclassification of Indian Creek [index No. 22-13] and its tributaries from its source to Window Falls from Class C to Class C ORW.

(g) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective August 1, 1998 with the reclassification of Dan River and Mayo River WS-IV Protected Areas. The Protected Areas were reduced in size.

(h) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective April 1, 1999 as follows:

- (1) Hyco River, including Hyco Lake below elevation 410 [Index No. 22-58-(0.5)] was reclassified from Class B to Class WS-V B.
- (2) Mayo Creek (Maho Creek) (Mayo Reservoir) [Index No. 22-58-15] was reclassified from its source to the dam of Mayo Reservoir from Class C to Class WS-V.

(i) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective April 1, 2001 as follows:

- (1) Fullers Creek from source to a point 0.8 mile upstream of Yanceyville water supply dam [Index No. 22-56-4-(1)] was reclassified from Class WS-II to Class WS-III.
- (2) Fullers Creek from a point 0.8 mile upstream of Yanceyville water supply dam to Yanceyville water supply dam [Index No. 22-56-4-(2)] was reclassified from Class WS-II CA to Class WS-III CA.

(j) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective November 1, 2007 with the reclassification of Hanging Rock Hillside Seepage Bog near Cascade Creek [Index No. 22-12-(2)] to Class WL UWL as defined in 15A NCAC 02B .0101. The Division of Water Quality maintains a Geographic Information Systems data layer of the UWL.

(k) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective July 3, 2012 as follows:

- (1) a portion of the Dan River [Index No. 22-(39)] (including tributaries) from the City of Roxboro's intake, located approximately 0.7 mile upstream of NC Highway 62, to a point approximately 0.5 mile upstream of the City of Roxboro's intake from Class C to Class WS-IV CA.
- (2) a portion of the Dan River [Index No. 22-(39)] (including tributaries) from a point approximately 0.5 mile upstream of the City of Roxboro's intake to the North Carolina-Virginia state line from Class C to Class WS-IV.

(l) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin is amended effective January 1, 2013 as follows:

- (1) a portion of the Roanoke River [Index No. 23-(26)] (including tributaries) from the Martin County Regional Water And Sewer Authority's intake, located approximately 0.3 mile upstream of US 13/US 17, to a point approximately 0.5 mile upstream of the Martin County Regional Water And Sewer Authority's intake from Class C to Class WS-IV CA.
- (2) a portion of the Roanoke River [Index No. 23-(26)] (including tributaries) from a point approximately 0.5 mile upstream of the Martin County Regional Water And Sewer Authority's intake to a point approximately 1 mile downstream of Coniott Creek (Town Swamp) from Class C to Class WS-IV.

*History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. January 1, 2013; July 3, 2012; November 1, 2007; April 1, 2001; April 1, 1999; August 1, 1998; August 3, 1992; July 1, 1991; February 1, 1986; August 1, 1985.*

## **15A NCAC 02I .0501 FORM AND CONTENTS OF PETITION**

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Environmental Management Commission (hereinafter referred to as the Commission) shall make his request in a petition addressed to the Director of the appropriate division of the Department of Environment and Natural Resources, and a copy in electronic or digital form shall also be sent to the Recording Clerk of the Commission:

Director  
Division of Air Quality  
1641 Mail Service Center  
Raleigh, North Carolina 27699-1641

Director  
Division of Water Quality  
1617 Mail Service Center  
Raleigh, North Carolina 27699-1617

Director  
Division of Water Resources  
1611 Mail Service Center  
Raleigh, North Carolina 27699-1611

Recording Clerk of the Commission  
Directors Office  
Division of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
EMCclerk@ncdenr.gov

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s) conforming to the Codifier of Rules' requirements for

- publication of proposed rules in the North Carolina Register;
- (2) the statutory authority for the agency to promulgate the rule(s);
- (3) a statement of the reasons for adoption of the proposed rule(s);
- (4) a statement of the effect on existing rules or orders;
- (5) copies of any documents and data supporting the proposed rule(s);
- (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (7) a statement explaining the computation of the cost factors;
- (8) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (9) the name(s) and address(es) of the petitioner(s).

(c) Petitions failing to contain the required information shall be returned by the Director on behalf of the Chairman.

*History Note:* Authority G.S. 143B-282; 150B-20;  
*Eff.* April 1, 2003;  
*Amended Eff.* November 1, 2012.

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**15A NCAC 10B .0303 OPEN SEASONS**

(a) General. Following are the seasons for taking by trapping fur-bearing animals as defined in G.S. 113-129(7a), coyotes, armadillos, and groundhogs, all dates being inclusive:

- (1) November 1 through the last day of February except for that part of the state described in Subparagraph (2) of this Paragraph.
- (2) December 1 through the last day of February in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover counties.
- (3) Trapping coyotes is allowed during times and with methods described by local laws in counties where local laws have established fox trapping seasons even when those seasons fall outside the regular trapping seasons described above.
- (4) Nutria may be trapped east of I-77 at any time.

(b) Feral Swine. There is no closed season for trapping feral swine subject to the following restrictions:

- (1) In addition to a hunting or trapping license, a permit issued by the Wildlife Resources Commission is required to trap feral swine. Individuals exempted from license requirements under the provisions specified in G.S. 113-276 may trap feral swine without a hunting or trapping license, but must acquire the permit.

- (2) Feral swine may be live-trapped using only corral or box traps. Corral and box traps must be constructed in a manner such that a non-target animal can be easily released or can escape without harm. The permit number must be displayed on all traps.
- (3) Feral swine must be euthanized while in the trap and may not be removed alive from any trap.

Note: See 15A NCAC 10D .0102(f) for other trapping restrictions on game lands.

*History Note:* Authority G.S. 113-134; 113-291.1; 113-291.2;  
*Eff.* February 1, 1976;  
*Amended Eff.* July 1, 1996; July 1, 1984; July 1, 1983; August 1, 1982; August 1, 1981;  
*Temporary Amendment Eff.* July 1, 1999;  
*Amended Eff.* July 1, 2000;  
*Temporary Amendment Eff.* June 1, 2003;  
*Amended Eff.* August 1, 2010; May 1, 2009; November 1, 2008; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005; August 1, 2004;  
*Recodified from Rule 10B .0302 Eff.* January 1, 2011;  
*Temporary Amendment Eff.* December 29, 2011;  
*Amended Eff.* November 1, 2012.

**15A NCAC 10B .0304 BAG LIMITS**

There are no restrictions on bag limits of furbearers, coyotes, groundhogs, and feral swine.

Note: Where local laws govern trapping, or are in conflict with these regulations, the local law shall prevail.

*History Note:* Authority G.S. 113-134; 113-291.2;  
*Eff.* August 1, 1977;  
*Amended Eff.* May 1, 2009; May 1, 2008; June 1, 2005; July 1, 1996; July 1, 1984;  
*Recodified from Rule 10B .0303 Eff.* January 1, 2011;  
*Temporary Amendment Eff.* December 29, 2011;  
*Amended Eff.* November 1, 2012.

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**TITLE 19A – DEPARTMENT OF TRANSPORTATION**

**19A NCAC 02E .0210 REVOCATION OF OUTDOOR ADVERTISING PERMIT**

The appropriate district engineer shall revoke a permit for a lawful outdoor advertising structure based on any of the following:

- (1) mistake of facts by the issuing District Engineer for which had the correct facts been known, he would not have issued the outdoor advertising permit;
- (2) misrepresentations of any facts made by the permit holder or sign owner and on which the District Engineer relied in approving the outdoor advertising permit application;

- (3) misrepresentation of facts to any regulatory authority with jurisdiction over the sign by the permit holder or sign owner, the permit applicant or the owner of property on which the outdoor advertising structure is located;
- (4) failure to pay annual renewal fees or provide the documentation requested under Rule .0207(c) of this Section;
- (5) failure to construct the outdoor advertising structure except all sign faces within 180 days from the date of issuance of the outdoor advertising permit;
- (6) a determination upon inspection of an outdoor advertising structure that it fails to comply with the Outdoor Advertising Control Act or the rules in this Section;
- (7) any alteration of an outdoor advertising structure for which a permit has previously been issued which would cause that outdoor advertising structure to fail to comply with the provisions of the Outdoor Advertising Control Act or the rules adopted pursuant thereto;
- (8) alterations to a nonconforming sign or a sign conforming by virtue of the grandfather clause other than reasonable repair and maintenance as defined in Rule .0225(c). For purposes of this Rule, alterations include:
  - (a) enlarging a dimension of the sign facing or raising the height of the sign;
  - (b) changing the material of the sign structure's support;
  - (c) adding a pole or poles;
  - (d) adding illumination;
- (9) failure to affix the emblem as required by Rule .0208 of this Section or failure to maintain the emblem so that it is visible and readable from the main-traveled way or controlled route;
- (10) failure to affix the name of the person, firm, or corporation owning or maintaining the outdoor advertising sign to the sign structure in sufficient size to be visible as required by Rule .0208 of this Section;
- (11) unlawful destruction or illegal cutting of trees, shrubs or other vegetation within the right-of-way of any State-owned or State-maintained highway as specified in G.S. 136-133.1(i);
- (12) unlawful use of a controlled access facility for purposes of repairing, maintaining or servicing an outdoor advertising sign where an investigation reveals that the unlawful violation was conducted actually or by design by the sign owner or permit holder, the lessee or advertiser employing the sign, the owner of the property upon which the sign is located, or any of their employees, agents, or assigns, including independent contractors hired by any of the above persons; and
  - (a) involved the use of highway right of way for the purpose of repairing, servicing, or maintaining a sign including stopping, parking, or leaving any vehicle whether attended or unattended, on any part or portion of the right of way except as authorized by the Department of Transportation, including activities authorized by the Department for selective vegetation removal pursuant to G.S. 136-131.1, G.S. 136-131.2 and G.S. 136-133.4. Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and in the processing of an application for a selective vegetation removal permit; or
  - (b) involved crossing the control of access fence to reach the sign structure, except as authorized by the Department, including those activities referenced in Sub-Item (a) of this Item;
- (13) maintaining a blank sign for a period of 12 consecutive months;
- (14) maintaining an abandoned, dilapidated, or discontinued sign;
- (15) a sign that has been destroyed or significantly damaged as determined by Rule .0201(8) and (29) of this Section;
- (16) moving or relocating a nonconforming sign or a sign conforming by virtue of the grandfather clause which changes the location of the sign as determined by Rule .0201(27) of this Section;
- (17) failure to erect, maintain, or alter an outdoor advertising sign structure in accordance with the North Carolina Outdoor Advertising Control Act, codified in G.S. 136, Article 11, and the rules adopted pursuant thereto; and
- (18) willful failure to substantially comply with all the requirements specified in a vegetation removal permit if such willful failure meets the standards of G.S. 136-133.1(i) as specified in G.S. 136-133.4(e).

*History Note:* Authority G.S. 136-93; 136-130; 136-133; 136-133.1(i); 136-133.4(e);  
*Eff. July 1, 1978;*  
*Amended Eff. August 1, 2000; May 1, 1997; November 1, 1993;*  
*March 1, 1993; October 1, 1991; December 1, 1990;*  
*Temporary Amendment Eff. March 1, 2012;*  
*Amended Eff. November 1, 2012.*

**19A NCAC 02E .0211 DENIAL OF PERMIT**

*History Note:* Authority G.S. 136-130;

*Eff. July 1, 1978;*

*Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981;*

*Temporary Repeal Eff. March 1, 2012;*

*Repealed Eff. November 1, 2012.*

**19A NCAC 02E .0601 PERMIT TO REMOVE VEGETATION**

(a) In recognition of the State of North Carolina's desire to assure that high quality and aesthetically pleasing views are provided highway users, along with recognizing that, within certain specified limitations, business facilities, hereinafter referred to as facilities, defined as office, institutional, commercial, and industrial buildings, and certain outdoor advertising are legitimate commercial uses of property adjacent to the highways and are an integral part of the State's business and marketing economy, selective vegetation removal permits for opening views to facilities and legally erected forms of outdoor advertising, which border State highways, are provided by this Section.

(b) Selective cutting, thinning, pruning, or removal of vegetation within highway rights of way may be permitted only for opening views to a facility building and legally erected forms of outdoor advertising which are located directly adjacent to State highway rights of way. For purposes of selective vegetation removal permitting, facilities shall include at least one structural building. The building must have all required local and State permits, be related to the facility's function, and be open and operational on a year-round basis. When such cutting, thinning, pruning, or removal of vegetation is allowed, it shall be performed by the permittee or his agent at no cost to the Department of Transportation and shall comply with this Section.

*History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9);*

*Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;*

*Eff. June 1, 1982;*

*Amended Eff. November 1, 2012; June 2, 1982.*

**19A NCAC 02E .0602 REQUESTS FOR PERMITS FOR A FACILITY**

(a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) at a facility shall be made by the owner of the facility to the appropriate Division Engineer of the North Carolina Department of Transportation, Division of Highways. Applications with all required documentation shall be submitted in both printed and electronic form. A non-refundable fee of two hundred dollars (\$200.00) must accompany each application.

(b) Selective vegetation cutting, thinning, pruning, or removal for opening views to facilities shall be permitted only for the permittee's facilities adjacent to highway right of way at locations where such facilities have been constructed. Complete removal of all trees and other vegetation shall not be permitted. Dogwood trees and redbud trees shall be preserved. Other trees, which are not screening the facility from view and are four caliper inches and greater in diameter, measured six inches from

the ground, shall be preserved. Trees, shrubs, and other vegetation less than four caliper inches in diameter may be removed. Trees, shrubs, and other vegetation, which are four caliper inches or greater in diameter as measured six inches from the ground and not to be preserved, may be cut, thinned, pruned, or removed according to approval of Department personnel designated by the Division Engineer. All vegetation cutting, thinning, pruning, or removal shall be in accordance with accepted International Society of Arboriculture (ISA) standards.

(c) The provisions in this Rule shall not be used to provide visibility to undeveloped property or to on-premise signs.

(d) Applications must be accompanied by a sketch showing the requested limits of the selective cutting, thinning, pruning, or removal of vegetation. For commercial, industrial, institutional, and office facilities, the limits of selective cutting, thinning, pruning, or removal shall be restricted to the area of right-of-way immediately adjacent to frontage property of the facility but not to exceed 1,000 contiguous linear feet. The permitted limits of the selective vegetation removal permit shall not be altered for subsequent applications. The applicant shall also include on the sketch the location, species, and caliper inches of all trees with a diameter of four caliper inches and greater, as measured six inches above ground level, at the time of the application and desired to be cut, thinned, pruned, or removed.

(e) The applicant must certify that permission has been obtained from the adjoining landowner(s) to access their private property, if applicable, for the purpose of conducting activities related to the selective vegetation removal permit application.

(f) The selective vegetation removal request may be investigated on site by Department personnel and a representative of the applicant.

(g) If the application for vegetation cutting is for a site located within the corporate limits of a municipality and if the municipality has previously advised the Division Engineer in writing of its desire to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department, so that local officials shall be given the opportunity to review the application.

*History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-130;*

*Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;*

*Eff. June 1, 1982;*

*Amended Eff. November 16, 1991; December 1, 1990; August 1, 1985; June 2, 1982;*

*Temporary Amendment Eff. November 16, 1999;*

*Amended Eff. August 1, 2000;*

*Temporary Amendment Eff. March 1, 2012;*

*Amended Eff. November 1, 2012.*

**19A NCAC 02E .0603 ISSUANCE OR DENIAL OF PERMIT FOR A FACILITY**

(a) The applicant, as part of the application, shall state in writing the date that he has delivered a copy of the application with required attachments to a municipality which has previously advised the Department in writing that it seeks to review such applications. After the 30-day municipal review



period has concluded and all required documentation has been received by the Department, including the fee set out in G.S. 136-18.7, the Division Engineer shall have 30 days to approve or deny the application. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

(b) The application shall be denied by the Division Engineer if:

- (1) The application is for the opening of view to a facility which has been declared illegal or is currently involved in litigation with Local, State, or Federal governments;
- (2) It is determined by Departmental personnel that the facility is not screened from view;
- (3) The application is for the opening of view to undeveloped property or to a facility that, due to obstructions off the right of way, is screened from view from the travel way regardless of the presence or absence of trees and other vegetation on the highway right of way;
- (4) Removal of vegetation will adversely affect the safety of the traveling public;
- (5) The application is solely for providing visibility to on-premise signs;
- (6) The application is for the removal of vegetation planted in accordance with a local, State, or Federal beautification project. However, if a mitigation replanting plan which is related to the site for which the vegetation permit request is made (as set forth in 19A NCAC 02E .0611 except for the provisions in Paragraph (d) and Subparagraph (g)(11)) is approved by the applicant, the Department, and if applicable, the Federal Highway Administration then this subsection does not apply;
- (7) On two previous occasions, the applicant has failed to meet the requirements of a selective vegetation removal permit. This is not cause for denial if the applicant engages a landscape contractor to perform the current work;
- (8) It involves opening of views to junkyards;
- (9) The applicant fails to provide all documentation required by statute and rule;
- (10) If any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements or conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way; or State or Federal rules, statutes, or permits;
- (11) If unlawful destruction or illegal cutting of vegetation has occurred within the highway right-of-way to create, increase, or improve a view to the facility from the travel way

including acceleration and deceleration ramps, the Department shall not issue a selective vegetation removal permit for a period of five years. For the purposes of this Section, unlawful destruction or illegal cutting is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-owned or State-maintained rights-of-way by anyone other than the Department or its authorized agents, or without written permission of the Department.

*History Note: Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-93; 136-130;*  
*Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;*  
*Eff. June 1, 1982;*  
*Amended Eff. August 1, 2000; November 1, 1991; December 1, 1990; August 1, 1985; June 2, 1982;*  
*Temporary Amendment Eff. March 1, 2012;*  
*Amended Eff. November 1, 2012.*

**19A NCAC 02E .0604 CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMIT FOR FACILITIES OR PERMIT REQUIREMENTS**

The following apply to the conditions of selective vegetation removal permit for facilities or permit requirements:

- (1) Selected vegetation, within the approved limits may be cut, thinned, pruned or removed by the permittee in accordance with the standards set out in G.S. 136-133.4;
- (2) The permittee shall indemnify and hold harmless the North Carolina Department of Transportation, and its employees, attorneys, agents, and contractors against any and all claims or causes of action, and all losses therefrom, arising out of or in any way related to the permittee's operation;
- (3) The permittee shall furnish a Performance and Indemnity Bond or certified check or cashier's check made payable to North Carolina Department of Transportation for the minimum sum of two thousand dollars (\$2,000). The bond, certified check or cashier's check shall cover all restoration of the right of way to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent, if damage occurs during the permitted selective vegetation removal. The bond or certified check or cashier's check is required before each permit to cut vegetation is issued. The bond shall run concurrently with the permit. The bond shall be released after a final inspection of the work by NCDOT reveals that all work provided for and specified by the permit is found to be completed and all damages to the right of way, including damage to fencing and other structures within the

- right-of-way, have been repaired or restored to the condition prior to the occurrence of the damage caused by the permittee or the permittee's agent;
- (4) Companies that plan to apply for two or more permits may provide continuing bonds for a minimum of one hundred thousand dollars (\$100,000) and this type of bond shall be kept on file by the Department;
  - (5) If the work is to be performed by any entity other than the sign owner or permittee, either the permittee or the other entity must furnish the required bonding, as described in this Section, for all work provided for and specified by the permit. Required forms for all bonds are available upon request from the Department. Bonds are to be furnished with the Selective Vegetation Removal application form to the appropriate official assigned to receive selective vegetation removal applications at the local NCDOT Division of Highways Office;
  - (6) The permittee shall also provide proof of liability insurance of a minimum coverage of five million dollars (\$5,000,000). Whoever performs the work, the permittee, his contractor or agent, shall maintain all legally required insurance coverage, including worker's compensation and vehicle liability in the amounts required by and according to North Carolina law. The permittee, his contractor and agent, are liable for any losses due to the negligence or willful misconduct of his agents, assigns, and employees. The permittee may, in lieu of providing proof of liability insurance as described in this paragraph, be shown as an additional insured on the general liability policy of the approved contractor or agent to perform the permitted work on condition that the contractor or agent's policy is for a minimum coverage of five million dollars (\$5,000,000) and the permittee provides proof to the Department of the coverage. The permittee or contractor or agent providing the coverage shall also name the Department as an additional insured on its general liability policy and provide the Department with a copy of the certificate showing the Department named as an additional insured. Regardless of which entity provides the proof of general liability insurance, the required limit of insurance may be obtained by a single general liability policy or the combination of a general liability and excess liability or umbrella policy;
  - (7) The permittee shall provide a document verifying the requested selective vegetation removal site location in relationship to corporate limits of a municipality. The document shall be a current geographic information system map of the nearest municipality, with color-coded boundary lines and a corresponding key or legend indicating corporate limit and territorial jurisdiction boundaries and indicating the precise location of the business facility. The permittee shall also provide the property tax identification number for the parcel on which the facility is located. The Department may require additional information if the boundary or facility location remains in question;
  - (8) Access from the highway main travel way shall be allowed only for surveying or delineation work in preparation for and in the processing of an application for a selective vegetation removal permit;
  - (9) The permittee shall perform site marking of the maximum vegetation cut or removal zone. The applicant shall mark the permitted cutting distances according to 19A NCAC 02E .0602(d). The two maximum points along the right-of-way boundary (or fence if there is a control of access fence) shall be marked with visible flagging tape. The two maximum points, corresponding to the actual beginning point and the actual ending point, along the edge of the pavement of the travel way, perpendicular to the maximum points marked along the right-of-way boundary, shall be marked with spray paint. If the facility is located next to an acceleration or deceleration ramp, the two corresponding maximum points shall be marked along the edge of the pavement of the travel way of the ramp instead of the mainline of the roadway;
  - (10) The permittee shall tag, with visible material or flagging, those trees with a diameter of four caliper inches and larger, as measured six inches above ground level, at the time of the application that are requested to be cut, thinned, pruned, or removed within the maximum vegetation cut or removal zone. Trees tagged for cutting, thinning, pruning, or removal shall match with the trees shown on the required sketch of the requested vegetation cut or removal zone;
  - (11) The Department may disapprove the requested cutting, thinning, pruning, or removal of selected trees of four caliper inches or greater in diameter, as measured six inches above ground level, which are not screening the facility from view from the roadway. The Department will make this determination by allowing selective thinning of tree density which opens the view to the facility across the entire length of the maximum cut or removal zone, without complete removal of all trees and other vegetation. The Department shall

- disapprove cutting, thinning, pruning, or removal of dogwood and redbud trees that may have been tagged in error. If trees are disapproved for cutting, thinning, pruning or removal, the Department shall specify those trees to the applicant during the site investigation. The applicant shall remove the tree flagging for the disapproved trees and submit to the Department by electronic means an amended version of the original sketch of the site by indicating the changes on the sketch and initialing and dating the changes thereon. Failure to amend the sketch of the site according to this rule shall be considered failure to provide required documentation;
- (12) If any cutting, thinning, pruning, or removal of vegetation from any portion but less than the entirety of the maximum vegetation cutting or removal zone is prohibited due to conservation easements or conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way or State or Federal rules, statutes, or permits, the permittee shall comply with applicable easements, rules, statutes, or permits for those portions of vegetation. If applicable conservation easements, or conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way, State or Federal rules, statutes, or permits allow certain degrees and methods of cutting, thinning, pruning, or removal for portions of vegetation, the permittee shall comply with applicable easements, State or Federal rules, statutes, or permits including equipment type for those portions of vegetation. Portions of the maximum cutting or removal zone not within a conservation easement nor applicable to conditions affecting the right of way to which the State is subjected or agrees in writing to subject itself and other restrictions agreed upon by the State in writing in the right of way, nor regulated by State or Federal rules, statutes, or permits regulating vegetation removal and other activities shall be governed by standards set out in G.S. 136-93;
- (13) The permittee must adhere to erosion control requirements, according to the North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973;
- (14) A Division of Highways Inspector may be present while work is underway. The presence or absence of a Division of Highways inspector at the work site does not lessen the permittee's responsibility for conformity with the requirements of the permit and all applicable statutes and rules. Should the inspector fail to point out work that does not conform with the requirements, it does not prevent later notification to the permittee that the work is not in compliance with the permit;
- (15) A selective vegetation removal permit must be secured for each applicable facility site prior to performing any vegetation removal work. The Permittee or its contractor or agent must have a copy of the Selective Vegetation Removal Permit on the work site at all times during any phase of selective vegetation cutting, thinning, trimming, pruning, removal, or planting operations;
- (16) Should the Division Engineer ("Engineer") or his representative observe unsafe operations, activities or conditions, he shall suspend work. Work shall not resume until the unsafe conditions or activities have been eliminated or corrected. Failure to comply with any of the requirements for safety and traffic control of this permit shall result in suspension of work;
- (17) The permittee or its contractor or agent shall take appropriate measures to locate and protect utilities within the highway right-of-way within the work area of the selective vegetation removal zone. The permittee shall be responsible for restoration of any losses or damages to utilities caused by any actions of the permittee or its contractors or agents to the satisfaction of the utility owner;
- (18) Permits are valid for a period of one year and the permittee may cut, thin, prune, or remove vegetation more than one time during the permit year. If the applicant applies for and is approved for another permit during an existing permit year, the previous permit shall become null and void at the same time the new permit is issued;
- (19) The permittee shall provide to the appropriate Department official a 48-hour notification before entering the right-of-way for any work covered by the conditions of the permit. The permittee shall schedule all work with the appropriate Department official. The permittee shall notify the Department in advance of work scheduled for nights, weekends, and holidays. The Department reserves the right to modify the permittee's work schedule for nights, weekends, and holidays. When the Department restricts construction in work zones for the safety of the traveling public, the Department shall deny access to the right-of-way for selective vegetation removal;
- (20) If work is planned in an active work zone, the permittee shall receive written permission

- from the contractor or the Department (if the Department's employees are performing the work). The permittee shall provide the Division Engineer with a copy of the written permission;
- (21) Sites with vegetation not presenting a hazard from falling tree parts and follow-up work shall be restricted to individual and manual-operated power equipment and hand-held tools;
  - (22) The Department may allow use of power-driven vegetation removal equipment (such as excavator-based land clearing attachments, skid-steer cutters, and bucket trucks) and access from the private property side to the right-of-way. Tree removal, which presents a hazard from falling tree parts, shall be performed in accordance with International Society of Arboriculture standards. Written authorization must be obtained from the Department for use of power-driven vegetation removal equipment as well as for access to move resources from the private property to the right-of-way. The applicant must provide information on the permit application for which type(s) of equipment and access is requested. The applicant shall also provide contractor qualifications to the Department;
  - (23) The Department shall determine the traffic control signage that is required. The permittee shall furnish, erect, and maintain the required signs as directed by the Department;
  - (24) The height of stumps remaining after tree removal shall not exceed four inches above the surrounding ground level. The work site shall be left in a clean and orderly appearance at the end of each workday;
  - (25) An applicant for a selective vegetation removal permit for a facility issued pursuant to 19A NCAC 02E .0602 may appeal a decision of the Department pertaining to the denial or conditioning of a permit for selective vegetation removal pursuant to the provisions of this section. Such an appeal shall be in accordance with the provisions of G.S. 136-133.3;
  - (26) Upon completion of all work, the Department shall notify the Division Engineer who shall notify the Permittee in writing of acceptance, terminate the permit, and return the Performance and Indemnity Bond or certified or cashier's check to the permittee;
  - (27) Pursuant to 136-133.4(e), willful failure to substantially comply with all the requirements specified in the permit, unless otherwise mutually resolved, shall result in immediate and summary revocation of the selective vegetation removal permit and forfeiture of any or all of the Performance and Indemnity

Bond or check as determined by the Division Engineer based on conditions stated in this Rule.

*History Note:* Authority G.S. 136-18(5); 136-18(7); 136-18(9);  
*Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;*  
*Eff. June 1, 1982;*  
*Amended Eff. November 1, 2012; August 1, 2000; November 1, 1991; August 1, 1985; August 1, 1982; June 2, 1982.*

#### **19A NCAC 02E .0608 REQUESTS FOR SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING**

- (a) Applications for selective vegetation cutting, thinning, pruning, or removal (exclusive of grasses) shall be made by the owner of an outdoor advertising sign permitted under G.S. 136-129(4) or (5) to the appropriate Division Engineer of the North Carolina Department of Transportation, Division of Highways. Applications with all required documentation shall be submitted in both printed and electronic form. For sites within the corporate limits of a municipality which has previously advised the Department in writing that it seeks to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department. A non-refundable fee of two hundred dollars (\$200.00) must accompany each application.
- (b) Applications which include existing trees to be cut, thinned, pruned or removed, must be accompanied by a site plan in accordance with G.S. 136-133.1(c).
- (c) For signs eligible for municipal review the applicant must include on the application and, as a prerequisite to applicable municipal review submittal, the year the outdoor advertising sign was originally erected. Upon request, the Department will furnish the year of sign erection to the applicant. The Department reserves the right to require additional proof if the year of the sign erection remains in question.
- (d) The selective vegetation removal request may be investigated on site by Department personnel and a representative of the applicant.

*History Note:* Authority G.S. 136-18(5); 136-18(7); 136-18(9); 136-18.7; 136-93; 136-129(4); 136-129(5); 136-130; 136-133.1; 136-133.2;  
*Temporary Rule Eff. March 1, 2012;*  
*Eff. November 1, 2012.*

#### **19A NCAC 02E .0611 REQUIREMENTS FOR BEAUTIFICATION AND REPLANTING CONDITIONS OF SELECTIVE VEGETATION REMOVAL PERMITS FOR OUTDOOR ADVERTISING AND BUSINESS FACILITIES**

- (a) Any site qualifies for a beautification and replanting plan.
- (b) For future selective vegetation removal applications at replanted sites, replanted materials may be removed only if partially blocking the view to a sign face. In this case, the Department will require plant substitutions on a one for one basis. All requests for plant substitutions shall be approved by

the Department and installed according to the rules in this Section.

(c) Submittal of a selective vegetation removal application shall be in accordance with G.S. 136.133.1(c).

(d) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in 19A NCAC 02E .0603(b)(6) and .0609(b)(4). The caliper inches of existing trees to be removed, according to the applicant's site plan shall equal the caliper inches to be replanted by the applicant at the outdoor advertising site from which existing trees are requested to be removed. If the caliper inches of existing trees from the site plan exceed the density of the Departments replanting site design, the excess caliper inches of trees shall be delivered by the applicant to the Department according to the schedule described in Subparagraph (g)(6) of this Rule. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches. The excess trees shall be planted and maintained by the Department at sites to be determined by the Department.

(e) For sites that qualify according to the replanting criteria described in this Rule, the Department shall consult with the applicant and any local government that has requested to review and provide comments on selective vegetation removal applications pursuant to G.S. 136-93(d) or has notified the Department of its desire to review and provide comments on beautification and replanting plans. The local government shall be given 15 days to review and provide comments on beautification and replanting plans. If the local government does provide comments on a beautification and replanting plan, the Department shall take the comments into consideration. If the local government does not make appropriate request for a review, the criteria stated in the rules in this section shall be followed for replanting determination.

(f) In consideration of differences in outdoor advertising sign structure heights, the Department shall maintain on file regionalized landscape design plans and plant lists as a guide for applicants. The applicant may submit one of the Department's plans or a proposed beautification and replanting plan prepared and sealed by a North Carolina licensed landscape architect. The Department's written approval, based on the American Standard for Nursery Stock for a minimum of a 1.5 caliper inch replanted tree, of the beautification, replanting, and maintenance plan shall allow the applicant to proceed with requested vegetation cutting, thinning, pruning or removal at the outdoor advertising site. If plant material other than trees is proposed, the Department may consider such substitution for the required caliper inches.

(g) The approved beautification and replanting plan becomes a part of the selective vegetation removal permit pursuant to G.S. 136-93(b) and 136-133.1(e). All applicable requirements of the permit, including the performance bond and insurance, shall continue to apply until all replanting and establishment requirements are satisfied and accepted in writing by the Department. The Department shall approve the replanting portion of the selective vegetation removal permit in writing detailing the requirements of the beautification and replanting plan. The requirements include the following:

- (1) The work for initial plantings and all future replacements must be adhered to by the

permittee or any or their employees, agents, or assigns according to International Society of Arboriculture standards except as stipulated in the rules in this Section. Initial and replacement planting will be considered acceptable when the plants have been placed in the plant hole, backfilled, watered, mulched, staked, and guyed. All plants of one species, which are shown on the plans to be planted within a bed, shall be planted concurrently and the entire group shall be completed before any plant therein is considered acceptable. Replacement planting consists of replacing those plants which are not in a living and healthy condition as defined in these Rules;

- (2) The permittee must adhere to erosion control requirements, according to North Carolina General Statutes, Article 4, Chapter 113A entitled: Sedimentation Pollution Control Act of 1973;
- (3) All plant materials shall be approved in writing by the Department prior to arrival at the outdoor advertising site or prior to excess trees being furnished and delivered to the Department. The approval shall be based on the American Standard for Nursery Stock;
- (4) All work is subject to NCDOT Division of Highways inspection and shall be scheduled with the Department. A minimum 48-hour notification shall be provided to the Department by the permittee before entering the right-of-way for any beautification and replanting plan requirements;
- (5) Grinding of all cut stumps (to a minimum depth of four inches below ground level) must be completed in the area of replanting during the preparation of the site, prior to initial planting;
- (6) All initial and replacement plantings shall be installed during the first planting season (November 1 to March 15) contemporaneous with or following the selective vegetation removal. If replanting cannot be completed by the March 15 deadline, the replanting shall occur during the next planting season. The same dates (November 1 to March 15) apply when the permittee provides the Department with excess plant material at a site where existing caliper inches exceeds the site design capacity;
- (7) The permittee shall contact the Department to schedule a final replanting acceptance inspection upon completion of any plant material installation. For one year from the date of the initial planting acceptance for the entire replanting plan, the permittee must establish all plant materials according to these provisions. Establishment for all initial or replacement plants shall begin immediately

after they are planted. The permittee shall be responsible for the area around plantings for a distance of six feet beyond the outside edges of the mulch. Establishment shall include cutting of grass and weeds; watering; replacement of mulch; repair or replacement of guy stakes, guy wires, and water rings; and other work to encourage the survival and growth of plant material. The permittee shall remove and dispose of dead plants from the replanting plan site during the establishment period. Prior to the end of the one-year establishment period, the permittee is responsible for contacting the Department to schedule a site meeting with Departmental officials to identify plants to be replaced that are not in a living and healthy condition. Plants do not meet the living and healthy condition requirement and need replacement if 25 percent or more of the crown is dead, if the main leader is dead, or if an area of the plant has died leaving the character of its form compromised, lopsided, or disfigured. The permittee shall replace, during the planting period, plant material needed to restore the planting to the original quantity, size, and species of plant material. Any desired changes in plant material proposed by the permittee must be requested in writing to the Department. The Department shall notify the permittee in writing of the replacement plantings;

- (8) At the conclusion of the one-year establishment period, the Department shall issue a written acceptance of the permittee's work and release the applicable bond. Then a one-year observation period shall begin in which the permittee or sign owner shall maintain stability of the original and replacement plantings to promote their continued livability and healthy growth. The sign owner is responsible for replacement of plants not meeting the living and healthy condition requirement during the observation period and in accordance with the dates of planting as stated in the rules in this Section;
- (9) After the one-year observation period concludes, the Department shall notify the sign owner if the permit requirement conditions have been met successfully;
- (10) Replanted materials may be pruned according to the International Society of Arboriculture standards; however, topping of trees or other vegetation is not allowed;
- (11) This Paragraph applies to all replanting plans except mitigating replanting plans as specified in 19A NCAC 02E .0609(b)(4). Excess plants or trees furnished and delivered to the Department, shall receive care and handling in

accordance with the following: In digging, loading, transporting, unloading, planting, or otherwise handling plants, the permittee shall exercise care to prevent windburn; injury to or drying out of the trunk, branches, or roots; and to prevent freezing of the plant roots. The solidity of the plant ball shall be preserved. Delivery of excess plant material shall be scheduled with the Department, allowing a minimum three days notification for each delivery. The permittee's responsibility for the furnished excess plants or trees ends at the time the plant material is delivered to, inspected by, and accepted by the Department;

- (12) For mitigating replanting plans according to 19A NCAC 02E .0609(b)(4), trees and other plant material for a proposed beautification and replanting plan taken from the Department's landscape design plans and plant lists or prepared and sealed by a North Carolina licensed landscape architect, may be of a projected mature height to reduce visibility limitations to outdoor advertising sign faces;
- (13) Should the outdoor advertising structure related to the selective vegetation permit be sold or transferred, the new owner or permit holder is subject to the requirements in the General Statutes and rules in this section, including those regarding planting, establishment, replacement or renovation plantings, minimum living and healthy condition, and observation; and
- (14) Willful failure to substantially comply with the requirements of this Paragraph for the beautification and replanting plan shall subject the permittee to penalties prescribed in G.S. 136-133.4.

*History Note: Authority G.S. 136-93; 136-130; 136-133.4; Temporary Adoption Eff. March 1, 2012; Eff. November 1, 2012.*

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## **TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS**

#### **21 NCAC 12 .0204 ELIGIBILITY**

- (a) Limited License. The applicant for a limited license must:
- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
  - (2) Be financially stable to the extent that the total current assets of the applicant or the firm or

corporation he represents exceed the total current liabilities by at least seventeen thousand dollars (\$17,000) or the total net worth of the applicant or firm is at least eighty thousand dollars (\$80,000);

- (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant; and
- (4) Provide to the Board an audited financial statement with a classified balance sheet as part of the application, if the applicant or any owner, principal, or qualifier is in bankruptcy or has been in bankruptcy within seven years prior to the filing of the application. This requirement does not apply to shareholders of an applicant that is a publicly traded corporation.

(b) Intermediate License. The applicant for an intermediate license must:

- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seventy-five thousand dollars (\$75,000), as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy; and
- (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(c) Unlimited License. The applicant for an unlimited license must:

- (1) Be entitled to be admitted to the examination given by the Board in light of the requirements set out in G.S. 87-10 and Section .0400 of this Chapter;
- (2) Be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least one hundred fifty thousand dollars (\$150,000), as reflected in an audited financial statement prepared by a certified public accountant or an independent accountant who is engaged in the public practice of accountancy;
- (3) Successfully complete 70 percent of the examination given the applicant by the Board dealing with the specified contracting classification chosen by the applicant.

(d) In lieu of demonstrating the required level of working capital or net worth under Subparagraph (a)(2) of this Rule, an applicant may obtain a surety bond from a surety authorized to

transact surety business in North Carolina pursuant to G.S. 58 Articles 7, 16, 21, or 22. The surety shall maintain a rating from A.M. Best, or its successor rating organization, of either Superior (A++ or A+) or Excellent (A or A-). The bond shall be continuous in form and shall be maintained in effect for as long as the applicant maintains a license to practice general contracting in North Carolina or until the applicant demonstrates the required level of working capital. The application form and subsequent annual license renewal forms shall require proof of a surety bond meeting the requirements of this Rule. The applicant shall maintain the bond in the amount of three hundred fifty thousand dollars (\$350,000) for a limited license, one million dollars (\$1,000,000) for an intermediate license, and two million dollars (\$2,000,000) for an unlimited license. The bond shall list State of North Carolina as obligee and be for the benefit of any person who is damaged by an act or omission of the applicant constituting breach of a construction contract or breach of a contract for the furnishing of labor, materials, or professional services to construction undertaken by the applicant, or by an unlawful act or omission of the applicant in the performance of a construction contract. The bond required by this Rule shall be in addition to and not in lieu of any other bond required of the applicant by law, regulation, or any party to a contract with the applicant. Should the surety cancel the bond, the surety and the applicant both shall notify the Board immediately in writing. If the applicant fails to provide written proof of financial responsibility in compliance with this Rule within 30 days of the bond's cancellation, then the applicant's license shall be suspended until written proof of compliance is provided. After a suspension of two years, the applicant shall fulfill all requirements of a new applicant for licensure. The practice of general contracting by an applicant whose license has been suspended pursuant to this Rule shall subject the applicant to additional disciplinary action by the Board.

(e) Reciprocity. If an applicant is licensed as a general contractor in another state, the Board, in its discretion, need not require the applicant to successfully complete the written examination as provided by G.S.87-15.1. However, the applicant must comply with all other requirements of the rules in this Chapter to be eligible to be licensed in North Carolina as a general contractor.

(f) Accounting and reporting standards. Financial statements submitted by applicants to the Board shall conform to United States "generally accepted accounting principles" (GAAP). The Board shall accept non-GAAP financial statements from individual applicants wherein the only exception to GAAP is that assets and liabilities are classified as "current" and "noncurrent." The Board shall accept non-GAAP financial statements from applicants wherein the only exception to GAAP is that the applicant is not combined with a related entity into one financial statement pursuant to FIN 46R. The terminologies, working capital, balance sheet with current and fixed assets, and current and long term liabilities, used herein shall be construed in accordance with those standards referred to as "generally accepted accounting principles" (GAAP) as promulgated by the Financial Accounting Standards Board (FASB). The terminologies, audited financial statements and unqualified opinion, used herein shall be construed in accordance with those

standards referred to as "generally accepted auditing standards" (GAAS).

*History Note: Authority G.S. 87-1; 87-4; 87-10;*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 26, 1977;*  
*Amended Eff. January 1, 1983;*  
*ARRC Objection March 19, 1987;*  
*Amended Eff. May 1, 1989; August 1, 1987;*  
*Temporary Amendment Eff. June 28, 1989 for a Period of 155 Days to Expire on December 1, 1989;*  
*Amended Eff. December 1, 1989;*  
*Temporary Amendment Eff. May 31, 1996;*  
*RRC Removed Objection Eff. October 17, 1996;*  
*Amended Eff. August 1, 1998; April 1, 1997;*  
*Temporary Amendment Eff. August 24, 1998;*  
*Amended Eff. April 1, 2013; August 1, 2008; April 1, 2006;*  
*March 1, 2005; August 1, 2002; April 1, 2001; August 1, 2000.*

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### **CHAPTER 39 - ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD**

#### **21 NCAC 39 .0101 DEFINITIONS**

As used in Article 5 of Chapter 90A of the General Statutes and the rules in this Chapter:

- (1) "Ancillary" means an on-site wastewater system that is included in a primary construction project.
- (2) "College course" means a semester unit or quarter based unit of instruction given at a college or university, that is relevant to on-site wastewater contractor or inspector activities and is pre-approved by the board as set out in these Rules.
- (3) "Course/activity" means any course or activity with a clear purpose and objective that will maintain, improve or expand skills and knowledge relevant to the practice of on-site wastewater contractor or inspector activities and pre-approved by the board.
- (4) "Employee" means a person who receives an Internal Revenue Service W2 form as a record of compensation.
- (5) "Inspection" means an inspection as defined in G.S. 90A-71(4A).
- (6) "Personally supervise" means to direct and control all on-site wastewater contractor or inspector activities during the time those activities are being conducted.
- (7) "Professional development hour" or "PDH" means an hour of instruction or presentation and is the basic unit of credit for all courses or activities related to satisfying continuing education requirements.
- (8) "Repair" means repair construction activity or alteration to an existing on-site wastewater

system that is necessary to comply with a Construction Authorization for a repair permit issued by the Local Health Department.

- (9) "Wastewater Treatment Facility" means a wastewater treatment facility as defined in G.S. 90A-71(8).

*History Note: Authority G.S. 90A-71; 90A-72; 90A-74;*  
*Eff. February 1, 2011;*  
*Amended Eff. January 1, 2013.*

#### **21 NCAC 39 .0202 BUSINESS SUCCESSION**

- (a) A person may be certified pursuant to G.S. 90A-77(c) by:
- (1) Providing the Board documentation of being supervised by and employed full time with a certified contractor or inspector for the past three years;
  - (2) Providing the Board three affidavits from local health department, engineers, or customers that show integral involvement with the installation of on-site wastewater systems;
  - (3) Providing the Board with an application for certification, including appropriate initial fees;
  - (4) Providing the Board with proof of attendance at approved continuing education courses for a minimum of two years; and
  - (5) Passing the applicable test for the level requested.

*History Note: Authority G.S. 90A-74; 90A-77;*  
*Eff. January 1, 2013.*

#### **21 NCAC 39 .0601 REQUIREMENTS**

- (a) Every certified on-site wastewater contractor or inspector shall obtain Professional Development Hours (PDH) units during the renewal period as described in the following Table:

Level	Annual PDH Units Required
I	3
II	(3)
III	(6)
IV	(6)
Inspector	(6)
Inspector/Grade IV Combo	(6)

- (b) The certified on-site wastewater contractor shall select courses and activities that have been approved as set out in 21 NCAC 39 .0602.
- (c) Professional Development Hours (PDH) shall be accepted by the Board for approved courses pursuant to 21 NCAC 39 .0603. Hours for all other courses must be submitted by providers to the Board for approval. If not approved, no PDH shall be granted for the course.
- (d) The class provider or authorized representative of the class provider must certify that each class attendee was present for at



least 85 percent of the class. Any attendee present for less time shall not receive credit for the class.

*History Note:* Authority G.S. 90A-72; 90A-74; 90A-77; 90A-78; 90A-79;  
*Eff. February 1, 2011;*  
*Amended Eff. January 1, 2013.*

**21 NCAC 39 .1005 ON-SITE WASTEWATER  
 SYSTEM COMPONENTS**

(a) When inspecting an on-site wastewater system the inspector shall inspect and describe:

- (1) Any part of the system located more than five feet from the primary structure that is part of the operations permit;
- (2) Septic tanks;
- (3) Pump tanks;
- (4) Distribution devices;
- (5) Dispersal fields;
- (6) Treatment units;
- (7) Control panels;
- (8) Any other components required as part of on-site wastewater system permit, including drainage; and
- (9) Any vegetation and grading with respect only to their effect on the condition of the system or system components.

(b) The inspector shall:

- (1) Uncover tank lids and distribution devices so as to gain access, unless blocked as described in Rule .1004(b)(5) of this Section. The distribution box may remain covered if the inspector has an alternate method of observing its condition;
- (2) Probe system components where deterioration is suspected;
- (3) Report the methods used to inspect the on-site wastewater system;
- (4) Open readily accessible and readily openable components; and
- (5) Report signs of abnormal or harmful water entry into or out of the system or components.

(c) The inspector is not required to:

- (1) Conduct dosing volume calculations;
- (2) Evaluate soil conditions beyond saturation or ponding;
- (3) Evaluate for the presence or condition of buried fuel storage tanks;
- (4) Evaluate the system for proper sizing, design, or use of proper materials; or
- (5) Perform a hydraulic load test on the system.

*History Note:* Authority G.S. 90A-72; 90A-74;  
*Eff. October 1, 2011;*  
*Amended Eff. January 1, 2013.*

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**CHAPTER 46 - BOARD OF PHARMACY**

**21 NCAC 46 .1601 PHARMACY PERMITS**

(a) Applications for pharmacy permits, whether original or renewal, shall be made upon forms provided by the Board. The Board shall not issue any original or annual renewal pharmacy permit until the Board is satisfied that:

- (1) The pharmacist-manager is sure that at all times adequate qualified personnel have been secured by the management of the store to properly render pharmaceutical service in the manner prescribed by law.
- (2) The pharmacy posts in a location conspicuous to the public the specific hours that a pharmacist is on duty in the pharmacy. This requirement does not apply to hospitals, nursing homes, and similar institutions subject to the provisions of Section .1400 of this Chapter.
- (3) The pharmacist-manager shall be responsible for obtaining and maintaining equipment in the pharmacy adequate to meet the pharmaceutical care needs of the pharmacy's patients.
- (4) The pharmacist-manager shall be responsible for obtaining and maintaining a reference library in the pharmacy. The library shall include current references, either hard copy or electronically accessible, covering:
  - (A) State and federal statutes and rules relating to the practice of pharmacy and the legal distribution of drugs;
  - (B) Drug interactions, adverse effects, therapeutic use, dosing and toxicology;
  - (C) Patient-oriented reference materials for counseling in proper drug usage as specified in 21 NCAC 46 .2504;
  - (D) Equivalent drug products as defined in G.S. 90-85.27; and
  - (E) Any reference materials otherwise required by state or federal law, including any otherwise required in these Rules.
- (5) The pharmacy is equipped with sanitary appliances including lavatory facilities with hot and cold running water; is well lighted; and is kept in a clean, orderly, and sanitary condition.
- (6) All prescription medications are labeled in accordance with G.S. 106-134 and 106-134.1.

(b) In addition to the requirements for issuance and renewal of a pharmacy permit imposed by statute and rules of the Board, a permit shall not be issued or renewed to any person to operate a pharmacy wherein the prescriptions of medical practitioners are compounded or dispensed and distributed when such distribution is effected by mail and the practitioner-pharmacist-patient relationship does not exist, until the Board is satisfied that:

- (1) The pharmacy maintains records of prescriptions compounded or dispensed and distributed in manner that is readily retrievable;

- (2) During the pharmacy's regular hours of operation but not less than six days per week, for a minimum of forty hours per week, a toll-free telephone service is provided to facilitate communication between patients and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed drugs;
- (3) The pharmacy complies with all lawful orders, directions, and requests for information from the Boards of pharmacy of all states in which it is licensed and all states into which it distributes prescription drugs;
- (4) The pharmacy complies with all United States Pharmacopeia and Food and Drug Administration requirements regarding the storage, packaging, and shipping of prescription medications. The pharmacist-manager and all other pharmacists employed in the pharmacies permitted pursuant to this Paragraph shall be subject to all Federal and State statutes and regulations concerning the dispensing of prescription medications including 21 NCAC 46 .1801 and .1805 and 21 CFR 1306.01, 1306.05, and 1306.21.

(c) The Board shall not issue an original or renewal permit to any person to operate a drugstore or pharmacy as a department in or a part of any other business serving the general public (except hospitals, nursing homes, and similar institutions subject to the provisions of Section .1400 of this Chapter) unless such pharmacy facility:

- (1) is physically separated from such other business;
- (2) is separately identified to the public both as to name and any advertising;
- (3) completes all transactions relative to such pharmacy within the registered facility; and
- (4) meets the same requirements for registration as all other pharmacies.

(d) In addition to all of the other requirements for issuance and renewal of a pharmacy permit imposed by statute and rules of the Board, the Board shall not issue any original or annual renewal pharmacy permit to any Internet pharmacy until the Board is satisfied that:

- (1) The Internet pharmacy is certified by the National Association of Boards of Pharmacy as a Verified Internet Pharmacy Practice Site (VIPPS);
- (2) The Internet pharmacy has certified the percentage of its annual business conducted via the Internet on a form provided by the Board, when it applies for permit or renewal; and
- (3) The Internet pharmacy has provided the Board with the names, addresses, social security numbers, phone numbers, facsimile numbers, email addresses, and titles of all principal corporate officers of the Internet pharmacy;

the names, addresses, social security numbers, phone numbers, facsimile numbers, email addresses, and titles of all principal officers of any company, partnership, association, or other business entity holding any ownership interest in the Internet pharmacy; the names, addresses, social security numbers, phone numbers, facsimile numbers, email addresses, and titles of any individual holding any ownership interest in the Internet pharmacy.

This Paragraph does not relieve an out-of-state pharmacy from compliance with all provisions of 21 NCAC 46 .1607 governing out-of-state pharmacies.

(e) Permits to operate pharmacies, whether original or renewal, shall be issued to the pharmacist-manager of such pharmacy pursuant to a joint application of the owner and pharmacist-manager for the conduct and management of said pharmacy. The issuance of said permit shall not be complete and the permit shall not be valid until it has been countersigned by the pharmacist-manager as represented in the application. The permit so issued is valid only so long as the pharmacist-manager to whom it was issued assumes the duties and responsibilities of pharmacist-manager. Permits may be reissued at any time to a successor pharmacist-manager pursuant to the proper amendment of the application for the permit.

(f) Upon application, the Board may issue and renew separate permits for pharmacies operating at one location. Records for each permitted pharmacy must be maintained separately. Prior to issuance of an original permit, each pharmacy shall submit a plan to the Board that shall assure accountability for the actions of each pharmacy at the location.

*History Note: Authority G.S. 90-85.6; 90-85.21; 132-1.10; Eff. April 1, 1983; Amended Eff. November 1, 2012; April 1, 2007; April 1, 2003; April 1, 1999; October 29, 1998; July 1, 1996; September 1, 1995; May 1, 1989; August 1, 1988; March 1, 1984.*

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## **CHAPTER 57 –APPRASIAL BOARD**

### **21 NCAC 57A .0201 QUALIFICATIONS FOR TRAINEE REGISTRATION, APPRAISER LICENSURE AND CERTIFICATION**

(a) Applicants for trainee registration and for certification as a certified real estate appraiser must satisfy the qualification requirements stated in G.S. 93E-1-6 and in this Section.

(b) Applicants for trainee registration shall have completed, within the five-year period immediately preceding the date application is made, 90 hours of education as set forth in 21 NCAC 57B .0101 or education found by the Board to be equivalent to such courses. Applicants for trainee registration must possess a high school diploma or its equivalent.

(c) Applicants for certification as a certified residential real estate appraiser shall have completed 200 hours of education as set forth in 21 NCAC 57B .0102 or education found by the Board to be equivalent to such courses. In addition, applicants for certification as a certified residential real estate appraiser

must hold an Associate's degree, or higher, from an accredited college, junior college, community college, or university. In lieu of the Associate's degree requirements, applicants shall have successfully completed 21 semester credit hours in the following collegiate subject matter courses from an accredited college or university: English composition; principles of economics (macro or micro); finance; algebra; geometry or higher mathematics; statistics; introduction of computers, including word processing and spreadsheets; and business or real estate law. Applicants shall have obtained at least 2,500 hours of appraisal experience acquired over a minimum period of two calendar years. Applicants must have been engaged in real estate appraising for at least two calendar years prior to the date application is made. At least 50 percent of this appraisal experience must have been of one to four family residential properties in which the sales comparison approach was utilized in the appraisal process.

(d) Applicants for certification as a certified general real estate appraiser shall have completed 300 hours of education as set forth in 21 NCAC 57B .0103 or education found by the Board to be equivalent to such courses. In addition, applicants for certification as a certified general estate appraiser must hold a Bachelor's degree or higher from an accredited college or university. In lieu of the Bachelor's degree requirements, applicants shall have successfully completed 30 semester credit hours in the following collegiate subject matter courses from an accredited college university: English composition, micro economics, macro economics, finance, algebra, geometry or higher mathematics, statistics, introduction of computers, including word processing and spreadsheets, business or real estate law, and two elective courses in accounting, geography, business management or real estate. Applicants shall have obtained at least 3,000 hours of appraisal experience acquired over a minimum period of two and a half calendar years of which at least 50 percent must have been in appraising non-residential real estate. Applicants must have been engaged in real estate appraising for at least two and one-half calendar years prior to the date application is made. At least 50 percent of the non-residential appraisal experience must have been of special use properties such as schools, churches, or hospitals in which the income approach is not applicable or of improved properties in which the income approach was utilized in the appraisal process.

(e) Applicants for certification who are currently registered trainees must submit a copy of their complete appraisal log. Applicants for certification who are currently licensed or certified appraisers must submit an appraisal log showing that they possess the requisite amount and length of experience as set forth in Paragraphs (c) and (d) of this Rule. All applicants shall provide to the Board copies of appraisal reports and work files in support of experience credit. In order for an appraisal to be given experience credit, it must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and with any applicable state statutes or rules.

(f) When a trainee or a licensed real estate appraiser becomes a certified real estate appraiser, his previous registration or licensure shall be immediately canceled by the Board. When a certified residential real estate appraiser becomes certified as a general real estate appraiser, his previous certification shall be immediately canceled by the Board.

(g) In the event that the Board asks an applicant to submit updated information or provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the Board's request, the Board shall cancel the applicant's application and the application fee shall be retained by the Board. An applicant whose application has been cancelled and who wishes to obtain a registration or certificate must start the licensing process over by filing a complete application with the Board and paying all required fees.

(h) An applicant may request that his or her application be withdrawn at any time before final action is taken by the Appraisal Board on the application.

(i) If an applicant has a current open complaint before the North Carolina Appraisal Board or an appraiser licensing board from any other state, or if the applicant has pending criminal charges in this or any state, the application shall be accepted but no further action shall be taken on the application until the complaint or criminal charges are resolved. For the purposes of this Section, criminal charges do not include speeding tickets or traffic infractions.

*History Note: Authority G.S. 93E-1-6(a); 93E-1-10;*

*Eff. July 1, 1994;*

*Amended Eff. January 1, 2013; July 1, 2010; September 1, 2008; January 1, 2008; March 1, 2007; April 1, 2006, July 1, 2005; August 1, 2002; April 1, 1999.*

## **21 NCAC 57A .0202 FITNESS FOR REGISTRATION OR CERTIFICATION**

(a) The Appraisal Board shall consider the fitness for registration or certification of each applicant. When the fitness of an applicant is in question, action by the Board shall be deferred until the applicant has affirmatively demonstrated that the applicant possesses the requisite competency, truthfulness, honesty and integrity.

(b) When the application is deferred, the Board shall notify the applicant and the applicant shall be entitled to demonstrate his or her competency or fitness for registration or certification at a hearing before the Board.

(c) The inquiry into fitness for registration or certification may include consideration of whether the applicant has:

- (1) had disciplinary action taken against any professional license in North Carolina or any other state;
- (2) committed or done any act which, if committed or done by any real estate trainee or appraiser, would be grounds under the provisions hereinafter set forth for disciplinary action including the suspension or revocation of registration, licensure, or certification; or
- (3) been convicted of or pleaded guilty to any criminal act, or whether any such actions or charges are pending.

(d) All applicants for registration or certification shall obtain a criminal records check from Carolina Investigative Research, Inc., an agency designated by the Appraisal Board to provide criminal record reports. This records check must have been performed within 60 days of the date the completed application

for registration or certification is received by the Board. Applicants shall pay the designated reporting service for the cost of these reports.

(e) Notice to the applicant that his or her competency or fitness for registration or certification is in question shall be sent by the Board in writing, by certified mail, return receipt requested, to the address shown upon the application. The applicant shall have 60 days from the date of receipt of this notice to request a hearing before the Board. Failure to request a hearing within this time constitutes a waiver of the applicant's right to a hearing on his or her application for registration or certification, and the application shall be deemed denied. Nothing in this Rule shall be interpreted to prevent an applicant from reapplying for registration or certification.

*History Note: Authority G.S. 93E-1-10;*

*Eff. July 1, 1994;*

*Amended Eff. January 1, 2013; September 1, 2008; July 1, 2005; August 1, 2002; April 1, 1999.*

## **21 NCAC 57A .0203 REGISTRATION, LICENSE AND CERTIFICATE RENEWAL**

(a) All registrations, licenses and certificates expire on June 30 of each year unless renewed before that time.

(b) A holder of a trainee registration, an appraiser license or certificate desiring the renewal of such registration, license or certificate shall apply for same in writing upon the form provided by the Board and shall forward the renewal fee as prescribed in G.S. 93E-1-7(a). Forms are available upon request to the Board. The renewal fee is not refundable under any circumstances.

(c) All trainees, licensees and certificate holders, either resident or non-resident, who are required by G.S. 93E-1-7 to complete continuing education as a condition of renewal, must satisfy the continuing education requirements set forth in Rule .0204 of this Section.

(d) An applicant for renewal who initially qualified for his license or certificate by licensure or certification with another state may keep that license or certificate even if the applicant has moved to a different state, as long as the North Carolina license or certificate is continuously renewed pursuant to this section. Such an applicant for renewal does not have to maintain licensure with the appraiser regulatory authority of the state upon whose qualification requirements the license or certificate was granted.

(e) Any person who acts or holds himself out as a registered trainee, licensed or certified real estate appraiser while his trainee registration, appraiser license or certificate is expired shall be subject to disciplinary action and penalties as prescribed in G.S. 93E.

*History Note Authority G.S. 93E-1-7(a),(b); 93E-1-10;*

*Eff. July 1, 1994;*

*Amended Eff. January 1, 2013; January 1, 2008; March 1, 2007; March 1, 2006; August 1, 2002; April 1, 1999.*

## **21 NCAC 57A .0204 CONTINUING EDUCATION**

(a) All registered trainees, real estate appraiser licensees and certificate holders shall, upon the renewal of their registration,

license or certificate in every odd-numbered year, present evidence satisfactory to the Board of having obtained continuing education as required by this Section. Trainees and appraisers who initially registered with the Board after January 1 of an odd numbered year are not required to show continuing education credit for renewal of their registration in that odd numbered year.

(b) Each trainee, licensee and certificate holder who must complete continuing education pursuant to Paragraph (a) of this Rule must complete 28 hours of continuing education before June 1 of every odd numbered year. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes, at schools approved by the Board to offer such courses. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose registered, licensed or certified status has been upgraded to the level of licensed residential, certified residential or certified general appraiser since the issuance or most recent renewal of their registration, license or certificate, and courses taken to satisfy the requirements of a higher level of certification shall not be applied toward the continuing education requirement. Trainees, licensees and certificate holders shall not take the same continuing education course more than once during the two year continuing education cycle.

(c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; or similar topics. The trainee, license or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(d) Each trainee, licensee and certificate holder who is required to complete continuing education pursuant to Paragraph (a) of this Rule must, as part of the 28 hours of continuing education required in Paragraph (b) of this Rule, complete the seven hour National USPAP update course between October 1 of an odd-numbered year and June 1 of an even numbered year, as required by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent. USPAP is updated every even numbered year, and each trainee, licensee and certificate holder shall take the most recent USPAP update course prior to June 1 of every even numbered year.

(e) A licensee who elects to take approved continuing education courses in excess of the requirement shall not carry over into the subsequent years any continuing education credit.

(f) Course sponsors must provide a certificate of course completion to each trainee, licensee and certificate holder successfully completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than

June 15 of each year. In order to renew a registration, license or certificate in a timely manner, the Board must receive proper proof of satisfaction of the continuing education requirement prior to processing a registration, license or certificate renewal application. If proper proof of having satisfied the continuing education requirement is not provided, the registration, license or certificate shall expire and the trainee, licensee or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, licensee or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$50.00) as set out in G.S. 93E-1-8(d) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, licensee or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. Up to 14 hours of continuing education credit may be granted in each continuing education cycle for participation in appraisal education activities. Trainees or licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit are deemed to have taken an equivalent course and are not subject to the fee prescribed in G.S. 93E-1-8 (d), provided they submit verification satisfactory to the Board of having taught the course(s). A trainee, licensee or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every two years, regardless of how often he teaches the course. Requests for equivalent approval for continuing education credit must be received before June 15 of an odd-numbered year to be credited towards the continuing education requirement for that odd-numbered year. Equivalent approval shall be granted only for courses that are 7 hours or longer, and shall only be granted for a minimum of 7 hours.

(h) A trainee, licensee or certificate holder may receive continuing education credit by taking any of the Board-approved precertification courses, other than Basic Appraisal Principles and Basic Appraisal Procedures, or their approved equivalents. Trainee, licensees and certificate holders who wish to use a precertification course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A certificate holder who resides in another state, is currently credentialed in another state and is active on the National Registry in another state may satisfy the requirements of this section by providing a current letter of good standing from another state showing that the licensee has met all continuing education requirements in the other state, including the most recent edition of USPAP. A licensee or certificate holder who became licensed in North Carolina by licensure or certification

with another state and now resides in North Carolina may renew by letter of good standing for his or her first renewal as a resident of North Carolina only if the appraiser moved to North Carolina on or after January 1 of an odd numbered year. If an appraiser was a resident of this state before January 1 of an odd-numbered year, the appraiser must comply with the requirements of this section regardless of how the license or certificate was obtained.

(j) A trainee, licensee or certificate holder who returns from active military duty on or after February 1 of an odd-numbered year is allowed to renew his or her registration, license or certificate in that odd-numbered year even if the required continuing education is not completed before June 1 of that year. All required continuing education must be completed within 180 days of when the trainee, licensee or certificate holder returns from active duty. Failure to complete the required continuing education within 180 days is grounds for revocation. This Rule applies to an individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return.

*History Note: Authority G.S. 93B-15; 93E-1-7(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. January 1, 2013; July 1, 2011; July 1, 2010; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; July 1, 2003; August 1, 2002; April 1, 1999*

## **21 NCAC 57A .0211 APPLICANTS CERTIFIED IN ANOTHER STATE**

(a) Applicants for certification who are not residents of North Carolina must file an application as stated in Rule .0101 of this Subchapter. In addition, nonresident applicants must also consent to service of process in this state and file an affidavit of residency with the application. If the applicant is licensed by the appraiser licensing board of the applicant's resident state, the applicant must also file with the application a letter of good standing from the appraiser licensing board of the resident, which was issued under seal by that licensing board no later than 30 days prior to the date application is made in this state.

(b) Applicants for certification who are residents of North Carolina and who are certified in another state may file an application as stated in Rule .0101 of this Subchapter. The applicant must file a letter of good standing from the other state, which was issued under seal by that licensing board no later than 30 days prior to the date application is made in this state.

(c) Applicants for registration or certification shall obtain a criminal records check from Carolina Investigative Research, Inc., an agency designated by the Appraisal Board to provide criminal record reports. This records check must have been performed within 60 days of the date the completed application for registration or certification is received by the Board. Applicants shall pay the designated reporting service for the cost of these reports.

(d) An appraiser whose certification is suspended in North Carolina may not apply for certification in this state under this Rule while the certification is suspended. An appraiser whose certification was revoked in North Carolina may not apply for certification in this state under this Rule for five years after the date of revocation.

*History Note:* Authority G.S. 93E-1-9(a) and (b); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a); Eff. March 1, 2007; Amended Eff. January 1, 2013; September 1, 2008; January 1, 2008.

**21 NCAC 57A .0301 TIME AND PLACE**

(a) Applicants who have completed the education and experience requirements for certification as set forth in 21 NCAC 57A .0201 shall be issued an examination approval form. The examination approval form is valid for three attempts at the examination or for one year from date of issuance, whichever comes first.

(b) Examinations for appraiser certificates shall be scheduled at such times and places as determined by the Executive Director and the Board-approved private testing service. Applicants for the examination shall be scheduled for examination based on their successful completion of appraiser educational qualification requirements stated in G.S. 93E-1-6 and filing an application with the Board. Violation of examination procedures and instructions is grounds for denial, suspension or revocation of a certificate.

(c) Examination results are valid for 24 months from the date the examination is successfully completed.

*History Note:* Authority G.S. 93E-1-6(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. January 1, 2013; September 1, 2008; January 1, 2008; April 1, 2006; July 1, 2005; August 1, 2002; April 1, 1999.

**21 NCAC 57A .0302 SUBJECT MATTER AND PASSING SCORES**

(a) The examination for certification as a certified residential real estate appraiser shall test applicants on the following subject areas:

- (1) Influences on Real Estate Value;
- (2) Legal Considerations in Appraisal;
- (3) Types of Value;
- (4) Economic Principles;
- (5) Real Estate Markets and Analysis;
- (6) Valuation Process;
- (7) Property Description;
- (8) Highest and Best Use Analysis;
- (9) Appraisal Statistical Concepts;
- (10) Sales Comparison approach;
- (11) Site Value;
- (12) Cost Approach;
- (13) Income Approach (Gross Rent Multipliers, Estimation of Income and Expenses, Operating Expense ratios);
- (14) Valuation of Partial Interests; and
- (15) Appraisal Standards and Ethics.

(b) In addition to the subject areas listed in Paragraph (a) of this Rule, the examination for certification as a certified general real estate appraiser shall test applicants on the following subject areas:

- (1) Direct Capitalization;

- (2) Cash Flow Estimates;
- (3) Measures of Cash Flow; and
- (4) Discounted Cash Flow Analysis.

(c) The testing service shall inform applicants whether they have passed the examination, and shall inform them of their actual score only if they fail the examination.

*History Note:* Authority G.S. 93E-1-6(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. January 1, 2013; September 1, 2008; March 1, 2007; April 1, 1999.

**21 NCAC 57A .0303 RE-EXAMINATION**

(a) Applicants for an appraiser certificate who fail to pass or appear for any examination for which the applicant has been scheduled by the Board-approved private testing service, may schedule a subsequent examination and shall pay the prescribed examination testing fees to the Board-approved private testing service.

(b) Applicants may take the examination no more than three times per application. If an applicant fails the examination, the applicant must wait a minimum of 30 days before retaking the examination. If the applicant does not pass the examination by the third attempt at the examination or within one year of the date of issuance of the examination approval form, the application is cancelled.

*History Note:* Authority G.S. 93E-1-6; 93E-1-10; Eff. July 1, 1994; Amended Eff. January 1, 2013; September 1, 2008; July 1, 2005; August 1, 2002; April 1, 1999.

**21 NCAC 57A .0304 CHEATING AND RELATED MISCONDUCT**

Applicants shall not cheat or attempt to cheat on an examination by any means, including both giving and receiving assistance, and shall not communicate in any manner for any purpose with any person other than an examination supervisor during an examination. Violation of this Rule shall be grounds for dismissal from an examination, invalidation of examination scores, and denial of an appraiser certificate, as well as for disciplinary action if the applicant holds a trainee registration, an appraiser license or certificate.

*History Note:* Authority G.S. 93E-1-6(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. January 1, 2013; August 1, 2002; April 1, 1999.

**21 NCAC 57A .0407 SUPERVISION OF TRAINEES**

(a) A certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the appraiser:

- (1) has been certified for at least three years;
- (2) has no more than three trainees working under him at any one time. A certified residential appraiser may have two trainees working under his or her supervision at any one time. Once at least one of those trainees has completed 50 percent of the required appraisal

experience to upgrade, a certified residential appraiser may add another trainee. A certified general appraiser may have three trainees working under his or her supervision. Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor must inform the Board of the name of the trainee. The supervisor must also inform the Board when a trainee is no longer working under his or her supervision;

- (3) actively and personally supervises the trainee on all appraisal reports and appraisal related activities until the trainee is no longer under his or her supervision;
- (4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized, and assures that research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that the analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading;
- (5) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
- (6) reviews and signs the trainee's log of appraisals, which must be updated at least every 30 days. In addition, the supervisor must make available to the trainee a copy of every appraisal report where the trainee performs more than 75 percent of the work on the appraisal; and
- (7) has not received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous three years. For the purposes of this Section, disciplinary action means an active suspension, a downgrade of a credential, a revocation or any other action that affects a supervisor's ability to engage in appraisal practice.

(b) Active and personal supervision includes direction, guidance, and support from the supervisor. The supervising appraiser shall have input into and full knowledge of the appraisal report prior to its completion, and shall make any necessary and appropriate changes to the report before it is transmitted to the client. In addition, the supervisor must accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments or the first 1500 hours of experience, whichever comes first, for which the trainee will perform more than 75 percent of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the trainee is competent to perform those inspections, and provided that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor must accompany the trainee on all inspections of

subject properties that are located more than 50 miles from the supervisor's primary business location.

(c) The trainee must maintain a log on a form that includes each appraisal performed by the trainee, the type of property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the experience hours claimed, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject. The log must show all appraisals performed by the trainee and must be updated at least every 30 days.

(d) An appraiser who wishes to supervise a trainee must attend an education program offered by the Appraisal Board regarding the role of a supervisor either before such supervision begins, or within 90 days after such supervision begins. If the supervisor does not take the class within 90 days after the supervision begins, a trainee may no longer work under the supervision of that supervisor until the class is taken.

(e) Trainees must assure that the supervisor has completed and sent the Supervisor Declaration Form to the Appraisal Board on or before the day the trainee begins assisting the supervising appraiser. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Paragraph.

(f) Supervising appraisers shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

(g) If a trainee signs an appraisal report or provides significant professional assistance in the appraisal process and thus is noted in the report as having provided such assistance, the appraiser signing the report must have notified the Appraisal Board before the appraisal is signed that he or she is the supervisor for the trainee. If more than one appraiser signs the report, the appraiser with the highest level of credential must be the declared supervisor for the trainee. If all appraisers signing the report have the same level of credential, at least one of them must be declared as the trainee's supervisor before the report is signed.

*History Note: Authority G.S. 93E-1.6.1; 93E-1-10;*

*Eff. July 1, 1994;*

*Amended Eff. January 1, 2013; July 1, 2010; September 1, 2008; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; August 1, 2002; April 1, 1999.*

## **21 NCAC 57A .0501 APPRAISAL STANDARDS**

Every registered trainee, and licensed and certified real estate appraiser shall, in performing the acts and services of a registered trainee, or licensed or certified real estate appraiser, comply with the following provisions of the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Standards Board of the Appraisal Foundation: Definitions, Preamble, Ethics Rule, Record Keeping Rule, Competency Rule, Scope of Work Rule, Jurisdictional Exception Rule, Statements on Appraisal Standards, and Standards Rules 1, 2 and 3, all of which are hereby incorporated by reference. This incorporation by reference includes subsequent amendments and editions of those provisions.

*History Note: Authority G.S. 93E-1-10;*

*Eff. July 1, 1994;*

*Amended Eff. January 1, 2013; January 1, 2008; July 1, 2005; August 1, 2002; April 1, 1999.*

**21 NCAC 57B .0101 REGISTERED TRAINEE**

**COURSE REQUIREMENTS**

(a) Each applicant for registration as a trainee shall complete a minimum of 90 hours of precertification education, consisting of the following;

- (1) A minimum of 30 hours in Basic Appraisal Principles;
- (2) A minimum of 30 hours in Basic Appraisal Procedures;
- (3) A minimum of 15 hours in Residential Market Analysis and Highest and Best Use or 30 hours in General Appraiser Market Analysis and Highest and Best Use; and
- (4) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP).

(b) Credit for these courses must be earned from a Board-approved course sponsor or school and all course content shall be approved by the Appraisal Board in accordance with the rules in this Subchapter. These courses must be completed within the five-year period immediately preceding the date when application for registration is made to the Board.

(c) Basic Appraisal Principles shall be a prerequisite to taking Basic Appraisal Procedures, and Basic Appraisal Procedures shall be a prerequisite to taking either Residential or General Market Analysis and Highest and Best Use. The 15 hour USPAP course may be taken any time after the successful completion of Basic Appraisal Procedures.

(d) These four courses must have been obtained in a classroom setting. No credit will be given for these courses taken by any other method, such as correspondence school courses or on-line courses.

*History Note: Authority G.S. 93E-1-6(a); 93E-1-8(a); 93E-1-10;*

*Eff. July 1, 1994;*

*Amended Eff. January 1, 2013; July 1, 2010; September 1, 2008; January 1, 2008; July 1, 2005; July 1, 2003; August 1, 2002.*

**21 NCAC 57B .0102 CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS**

(a) Each applicant for certification as a certified residential real estate appraiser shall complete a minimum of 200 hours of precertification education, consisting of the following:

- (1) A minimum of 30 hours in Basic Appraisal Principles;
- (2) A minimum of 30 hours in Basic Appraisal Procedures;
- (3) A minimum of 15 hours in Residential Market Analysis and Highest and Best Use;
- (4) A minimum of 15 hours in Residential Appraiser Site Valuation and Cost Approach;
- (5) A minimum of 30 hours in Residential Sales Comparison and Income Approaches;

- (6) A minimum of 15 hours in Residential Report Writing and Case Studies;
- (7) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP);
- (8) A minimum of 15 hours in Statistics, Modeling and Finance;
- (9) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and
- (10) A minimum of 20 hours of appraisal subject matter electives.

Credit for these courses must be earned from a Board-approved course sponsor or school.

(b) An applicant who is currently registered with the Board as a trainee shall satisfy the educational requirements to become a certified residential real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in Residential Appraiser Site Valuation and Cost Approach;
- (2) A minimum of 30 hours in Residential Sales Comparison and Income Approaches;
- (3) A minimum of 15 hours in Residential Report Writing and Case Studies;
- (4) A minimum of 15 hours in Statistics, Modeling and Finance;
- (5) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and
- (6) A minimum of 20 hours of appraisal subject matter electives.

(c) An applicant who is currently a licensed residential appraiser shall satisfy the educational requirements to become a certified residential real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in Statistics, Modeling and Finance;
- (2) A minimum of 15 hours in Advanced Residential Applications and Case Studies; and
- (3) A minimum of 20 hours of appraisal subject matter electives.

(d) An applicant who is not currently registered by the Board as a trainee or who is not currently licensed by the Board as a licensed residential real estate appraiser must have completed all required courses no earlier than January 1, 2008.

(e) An applicant who is currently registered by the Board as a trainee or who is currently licensed by the Board as a licensed residential real estate appraiser must have completed all courses required beyond those required for his current registration, licensure or certification no earlier than January 1, 2008.

(f) The Basic Appraisal Principles, Basic Appraisal Procedures, Residential Market Analysis, USPAP and Residential Sales Comparison and Income Approach classes must have been obtained in a classroom setting. All other courses in this section may be taken on-line via the Internet.

*History Note: Authority G.S. 93E-1-6(b); 93E-1-8(a); 93E-1-10;*



*Eff. July 1, 1994;*

*Amended Eff. January 1, 2013; July 1, 2010; September 1, 2008;  
January 1, 2008; March 1, 2007; July 1, 2003; August 1, 2002.*

**21 NCAC 57B .0103 CERTIFIED GENERAL REAL ESTATE APPRAISER COURSE REQUIREMENTS**

(a) An applicant for certification as a certified general real estate appraiser shall complete the following precertification courses;

- (1) A minimum of 30 hours in Basic Appraisal Principles;
- (2) A minimum of 30 hours in Basic Appraisal Procedures;
- (3) A minimum of 30 hours in General Appraiser Market Analysis and Highest and Best Use;
- (4) A minimum of 15 hours in Statistics, Modeling and Finance;
- (5) A minimum of 30 hours in General Appraiser Sales Comparison Approach;
- (6) A minimum of 30 hours in General Appraiser Site Valuation and Cost Approach;
- (7) A minimum of 60 hours in General Appraiser Income Approach;
- (8) A minimum of 30 hours in General Appraiser Report Writing and Case Studies;
- (9) A minimum of 30 hours of appraisal subject matter electives; and
- (10) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP).

Credit for all courses must be earned from a Board-approved course sponsor or school, and all courses shall comply with the course content standards prescribed in Rule .0302 of this Subchapter.

(b) An applicant who is currently registered with the Board as a trainee shall satisfy the educational requirements to become a general real estate appraiser by completing the following education:

- (1) A minimum of 30 hours in General Appraiser Market Analysis and Highest and Best Use;
- (2) A minimum of 15 hours in Statistics, Modeling and Finance;
- (3) A minimum of 30 hours in General Appraiser Sales Comparison Approach;
- (4) A minimum of 30 hours in General Appraiser Site Valuation and Cost Approach;
- (5) A minimum of 60 hours in General Appraiser Income Approach; and
- (6) A minimum of 30 hours in General Appraiser Report Writing and Case Studies; and
- (7) A minimum of 30 hours of appraisal subject matter electives.

(c) An applicant who is currently licensed with the Board as a licensed residential real estate appraiser shall satisfy the educational requirements to become a general real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in General Appraiser Market Analysis and Highest and Best Use;
- (2) A minimum of 15 hours in Statistics, Modeling and Finance;

- (3) A minimum of 15 hours in General Appraiser Sales Comparison Approach;
- (4) A minimum of 15 hours in General Appraiser Site Valuation and Cost Approach;
- (5) A minimum of 45 hours in General Appraiser Income Approach;
- (6) A minimum of 15 hours in General Appraiser Report Writing and Case Studies; and
- (7) A minimum of 30 hours of appraisal subject matter electives.

(d) An applicant who is currently certified with the Board as a certified residential real estate appraiser shall satisfy the educational requirements to become a general real estate appraiser by completing the following education:

- (1) A minimum of 15 hours in General Appraiser Market Analysis and Highest and Best Use;
- (2) A minimum of 15 hours in General Appraiser Sales Comparison Approach;
- (3) A minimum of 15 hours in General Appraiser Site Valuation and Cost Approach;
- (4) A minimum of 45 hours in General Appraiser Income Approach; and
- (5) A minimum of 10 hours in General Appraiser Report Writing and Case Studies.

(e) An applicant who is not currently registered by the Board as a trainee or who is not currently licensed or certified by the Board as a licensed residential or certified residential real estate appraiser must have completed all the required courses no earlier than January 1, 2008.

(f) An applicant who is currently registered by the Board as a trainee or who is not currently licensed or certified by the Board as a licensed residential or certified residential real estate appraiser must have completed all courses required beyond those required for his current registration, licensure or certification no earlier than January 1, 2008.

(g) The Basic Appraisal Principles, Basic Appraisal Procedures, USPAP, and General Appraiser Income Approach classes must have been obtained in a classroom setting. All other courses in this section may be taken on-line via the Internet.

*History Note: Authority G.S. 93E-1-6(c); 93E-1-8(a); 93E-1-10;*

*Eff. July 1, 1994;*

*Amended Eff. January 1, 2013; July 1, 2010; September 1, 2008;  
January 1, 2008; March 1, 2007; July 1, 2003; August 1, 2002.*

**21 NCAC 57B .0210 COURSE RECORDS**

Schools and course sponsors must:

- (1) retain on file for five years copies of all grade and attendance records for each approved course and must make such records available to the Board upon request;
- (2) retain on file for two years a master copy of each final course examination, and such file copy shall indicate the answer key, course title, course dates and name of instructor. Examination file copies shall be made available to the Board upon request;

- (3) within 15 days of course completion, but not later than June 15 of each year, submit to the Board a roster of all students who satisfactorily completed the course; and
- (4) provide each student with contact information for the Appraisal Board so that students may contact the Board with questions or concerns regarding the course.

*History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. January 1, 2013; January 1, 2008; March 1, 2007; July 1, 2005; July 1, 2003; August 1, 2002.*

**21 NCAC 57B .0605 CONTINUING EDUCATION CREDIT HOURS**

The course approval issued to a course sponsor shall include the number of hours of continuing education credit that will be awarded for the course. The minimum number of continuing education credit hours awarded for a course shall be three and one-half hours, and the maximum number of continuing education credit hours awarded for a course, regardless of its length, shall be thirty hours. Continuing education credit hours shall not be carried forward into subsequent licensing periods. No continuing education credit shall be given for courses taken before the most recent registration, license or certification the applicant has attained.

*History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. January 1, 2013; August 1, 2002.*

**21 NCAC 57B .0606 COURSE OPERATIONAL REQUIREMENTS**

Course sponsors must at all times assure compliance with the criteria for course approval stated in Rule .0603 of this Section and must also comply with the following requirements relating to scheduling, advertising and conducting approved appraisal continuing education courses:

- (1) Courses must be scheduled and conducted in a manner that limits class sessions to a maximum of eight classroom hours in any given day and that includes appropriate breaks for each class session. A classroom hour consists of 50 minutes of classroom instruction and ten minutes of break time. For any class meeting that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour must be scheduled and taken at reasonable times.
- (2) Course sponsors must not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Board for a course is less than the number of scheduled classroom hours for the course, any course advertisement or promotional materials which indicate that the course is approved for appraiser continuing education credit in North Carolina must specify the number of continuing education

credit hours awarded by the Board for the course.

- (3) Course sponsors must, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.
- (4) Courses must be conducted in a facility that provides an appropriate learning environment. At a minimum, the classroom must be of sufficient size to accommodate comfortably all enrolled students, must contain a student desk or sufficient worktable space for each student, must have adequate light, heat, cooling and ventilation, and must be free of distractions that would disrupt class sessions. Sponsors are required to comply with all applicable local, state and federal laws and regulations regarding safety, health and sanitation. Sponsors shall furnish the Board with inspection reports from appropriate local building, health and fire inspectors upon the request of the Board. Sponsors must supply separate restroom facilities for males and females. Classes may not be held in a personal residence under any circumstances.
- (5) The course sponsor must require students to attend at least 90 percent of the scheduled classroom hours in order to satisfactorily complete the course, even if the number of continuing education credit hours awarded by the Board for the course is less than the number of scheduled classroom hours. Attendance must be monitored during all class sessions to assure compliance with the attendance requirement. Instruction must be given for the number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (6) Instructors must require reasonable student attentiveness during class sessions. Students must not be permitted to engage in activities that are not related to the instruction being provided.
- (7) Course sponsors for which an application fee is required by Rules .0602(b) and .0611(b) of this Section must fairly administer course cancellation and fee refund policies. In the event a scheduled course is canceled, reasonable efforts must be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students must be refunded within 30 days of the date of cancellation or, with the student's permission, applied toward the fees for another course.
- (8) Upon request of the Board, the course sponsor must submit to the Board a videotape in a manner and format which depicts the

instructor teaching portions of any continuing education course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0306(c) of this Section.

- (9) Course sponsors shall provide the Board with the dates and locations of all classes the sponsor is or will be offering in the State of North Carolina at least 30 calendar days before such class is offered, unless circumstances beyond the control of the course sponsor require that the course be rescheduled. If the dates or location of the classes change after such information is provided to the Board, the course sponsor must notify the Board of such changes.
- (10) Course sponsors shall provide each student with contact information for the Appraisal Board so that students may contact the Board with questions or concerns regarding the course.
- (11) If an instructor has any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or if the instructor has been convicted of or pleaded guilty to any criminal act, the school or course sponsor must report that fact to the Board within 15 business days.
- (12) All courses, except those taught on-line via the Internet, must have a minimum number of five students enrolled in the course.

*History Note:* Authority G.S. 93E-1-8(c); 93E-1-10;  
*Eff.* July 1, 1994;  
*Amended Eff.* January 1, 2013; July 1, 2010; January 1, 2008;  
 March 1, 2007; July 1, 2005; August 1, 2002.

**21 NCAC 57B .0607 CERTIFICATION OF COURSE COMPLETION**

Course sponsors must issue a certificate of course completion within 15 days of completion of the course to all students who satisfactorily complete an approved course. If the course sponsor is located in North Carolina, the certificate, which the student must retain for a period of two years, must bear the signature or signature stamp of a person designated by the course sponsor to sign such certificate. North Carolina-based course sponsors must notify the Board in advance of the person(s) designated to sign certificates of course completion for courses conducted in North Carolina. If the course sponsor is not located in North Carolina, the certificate of course completion must show the name of the course sponsor, the name of the course, the number of classroom hours, the course dates, the state or city where the course was conducted, and the full name of the student.

*History Note:* Authority G.S. 93E-1-8(c); 93E-1-10;  
*Eff.* July 1, 1994;  
*Amended Eff.* January 1, 2013; January 1, 2008; July 1, 2003;  
 August 1, 2002.

**21 NCAC 57B .0611 RENEWAL OF APPROVAL AND FEES**

(a) Board approval of appraisal continuing education courses (except the seven hour National USPAP update course) expires on the next December 31 following the date of issuance. In order to assure continuous approval, applications for renewal of Board approval, accompanied by the prescribed renewal fee, must be filed with the Board annually on or before December 1. All applications for renewal of course approval received on or before December 1, which are incomplete as of that date, as well as all applications for renewal of course approval submitted after December 1, shall be treated as original applications for approval of continuing education courses. Schools and course sponsors must send a copy of all course materials every third renewal of a continuing education course.

(b) The annual fee for renewal of Board approval shall be that specified in G.S. 93E-1-8(d) for each course for which renewal of approval is requested, provided that no fee is required for course sponsors that are exempted from original application fees by Rule .0602(b) of this Section. The fee is non-refundable.

(c) Application for approval of the even-numbered year edition of the seven hour National USPAP update course shall be made when the instructor for the course has been certified by the Appraiser Qualifications Board of the Appraisal Foundation to teach that edition of USPAP. Such approval shall expire on December 31 of the following even numbered year. This course approval may be renewed in the fall of the even-numbered year, and shall expire on September 30 of the following odd-numbered year.

*History Note:* Authority G.S. 93E-1-8(c),(d); 93E-1-10;  
*Eff.* July 1, 1994;  
*Amended Eff.* January 1, 2013; July 1, 2010; January 1, 2008;  
 March 1, 2007; August 1, 2002.

**21 NCAC 57D .0102 FILING AND FEES**

(a) Each application for registration shall be accompanied by the required application fee. The Board shall reject and return to the applicant any application which is incomplete or not accompanied by the required fee or fees. Application fees accompanying complete applications are not refundable.

(b) The application fee shall be thirty-five hundred dollars (\$3,500).

(c) Payment of application fees shall be made by certified check, bank check or money order payable to the North Carolina Appraisal Board.

(d) In the event that the Board asks an applicant to submit updated information or provide further information necessary to complete the application and the applicant fails to submit such information within 90 days following the Board's request, the Board shall cancel the applicant's application and the application fee shall be retained by the Board. An applicant whose application has been cancelled and who wishes to obtain a registration must start the process over by filing a complete application with the Board and paying all required fees.

(e) An applicant may request that its application be withdrawn at any time before final action is taken by the Appraisal Board on the application. The application fee shall not be refunded.

*History Note:* Authority G.S. 93E-2-3; 93E-2-4; 93E-2-6;  
*Eff. January 1, 2011;*  
*Amended Eff. January 1, 2013.*

**21 NCAC 57D .0311 REMOVAL OF AN APPRAISER FROM AN APPRAISAL PANEL**

- (a) If an appraisal management company decides to remove an independent appraiser from its list of qualified appraisers, the appraisal management company shall notify the appraiser in writing of the reason for removal.
- (b) Such notice shall be sent to the appraiser by any established method that provides proof of delivery, including but not limited to registered mail, return receipt requested.
- (c) If applicable, the notice shall include a description of the appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior, or of any violation of the Uniform Standards of Professional Appraisal Practice or state licensing standards.
- (d) The appraisal management company shall also notify the appraiser of any dispute resolution process that it may have in place through which the appraiser may dispute the removal.

*History Note:* Authority G.S. 93E-2-3; 93E-2-7(a);  
*Eff. January 1, 2011;*  
*Amended Eff. January 1, 2013.*

**21 NCAC 57D .0312 REQUESTING ADDITIONAL INFORMATION FROM AN APPRAISER**

An appraisal management company may request that a real estate appraiser who performs an appraisal for the appraisal management company provide additional information as follows:

- (1) An appraisal management company may request that the appraiser consider additional appropriate property information including relevant sales data and property characteristics. Such request shall be made within 30 days of the date the appraisal is first transmitted by the appraiser to the appraisal management company.
- (2) An appraisal management company may request that the appraiser provide further detail, substantiation, or explanation for the appraiser's value conclusion, or to correct errors in an appraisal report. There is no time limit on such requests.
- (3) Any request under this Rule shall be sent to the appraiser in writing or by electronic means.

*History Note:* Authority G.S. 93E-2-3; 93E-2-7;  
*Eff. January 1, 2011;*  
*Amended Eff. January 1, 2013.*

**24 NCAC 01F .0101 PURPOSE OF ASSISTANCE  
 24 NCAC 01F .0102 BACKGROUND OF ASSISTANCE**

*History Note:* Authority G.S. 122A-5;

*Eff. May 28, 1976;*  
*Amended Eff. June 16, 1978;*  
*Transferred from T15: 14 Eff. December 1, 1981;*  
*Amended Eff. March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01F .0201 PROJECT PLANNING LOANS  
 24 NCAC 01F .0202 SITE DEVELOPMENT AND  
 OFF-SITE IMPROVEMENTS GRANTS  
 24 NCAC 01F .0203 TECHNICAL ASSISTANCE  
 GRANTS**

*History Note:* Authority G.S. 122A-5;  
*Eff. June 16, 1978;*  
*Transferred from T15: 14 Eff. December 1, 1981;*  
*Amended Eff. March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01F .0301 ELIGIBLE HOUSING  
 PROGRAMS  
 24 NCAC 01F .0302 ELIGIBLE COUNTIES**

*History Note:* Authority G.S. 122A-5;  
*Eff. June 16, 1978;*  
*Transferred from T15: 14 Eff. December 1, 1981;*  
*Amended Eff. March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01F .0401 STATE APPALACHIAN  
 DEVELOPMENT PLAN  
 24 NCAC 01F .0402 IDENTIFICATION IN ANNUAL  
 INVESTMENT PROGRAM  
 24 NCAC 01F .0403 APPROVAL OF INDIVIDUAL  
 PROJECTS**

*History Note:* Authority G.S. 122A-5;  
*Eff. June 16, 1978;*  
*Transferred from T15: 14 Eff. December 1, 1981;*  
*Amended Eff. March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01F .0501 DUTIES AND FUNCTIONS OF  
 STATE IMPLEMENTING  
 AGENCY  
 24 NCAC 01F .0502 REQUIREMENTS FOR  
 ACCOUNTING: AUDITS: AND  
 REPORTS  
 24 NCAC 01F .0503 REPORTS ON DISPOSITION OF  
 FUNDS  
 24 NCAC 01F .0504 WAIVER OF LOAN  
 REPAYMENT  
 24 NCAC 01F .0505 AGREEMENT BETWEEN  
 AGENCY AND SPONSOR**

*History Note:* Authority G.S. 122A-5;  
*Eff. June 16, 1978;*  
*Transferred from T15: 14 Eff. December 1, 1981;*  
*Amended Eff. March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01H .0101 OBJECTIVES**  
**24 NCAC 01H .0102 PERSONS AND FAMILIES OF**  
**LOWER INCOME**

*History Note:* Authority G.S. 122A-2; 122A-5;  
*Eff. September 26, 1980;*  
*Transferred from T15: 14 Eff. December 1, 1981;*  
*Amended Eff. March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01H .0103 PERSONS AND FAMILIES OF**  
**MODERATE INCOME**

*History Note:* Authority G.S. 122A-3; 122A-5; 122A-5.4;  
*Eff. March 1, 1984;*  
*Amended Eff. August 1, 2000; June 1, 1987;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01H .0104 METHOD**  
**24 NCAC 01H .0105 NOTICE OF FUNDS**  
**AVAILABILITY**

*History Note:* Authority G.S. 122A-2; 122A-3; 122A-5;  
122A-5.1; 122A-5.4;  
*Eff. September 26, 1980;*  
*Transferred from T15: 14 Eff. December 1, 1981;*  
*Recodified from .0103; Recodified from .0104;*  
*Amended Eff. May 1, 1984; March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01H .0201 ELIGIBLE PROJECTS**  
**24 NCAC 01H .0202 APPLICATION PROCEDURE**  
**24 NCAC 01H .0203 FAIR MARKET RENTS**  
**24 NCAC 01H .0204 LOCAL GOVERNMENT**  
**REQUEST**  
**24 NCAC 01H .0205 PUBLIC HOUSING AGENCY**  
**24 NCAC 01H .0206 MORTGAGE INSURANCE**  
**COMMITMENT**

*History Note:* Authority G.S. 122A-5; 122A-5.1;  
*Eff. September 26, 1980;*  
*Transferred from T15: 14 Eff. December 1, 1981;*  
*Amended Eff. May 1, 1984; March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01H .0301 FUNDS AVAILABILITY**  
**24 NCAC 01H .0302 PROJECT FEASIBILITY**  
**24 NCAC 01H .0303 AGENCY APPROVAL**  
**24 NCAC 01H .0304 FEDERAL APPROVAL**  
**24 NCAC 01H .0305 PROJECT EVALUATION**

*History Note:* Authority G.S. 122A-5; 122A-5.1;  
*Eff. September 26, 1980;*  
*Transferred from T15: 14 Eff. December 1, 1981;*  
*Amended Eff. March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01H .0401 INTERIM FINANCING**  
**24 NCAC 01H .0403 MORTGAGE PURCHASE**  
**PROCEDURE**  
**24 NCAC 01H .0403 MORTGAGE PURCHASE**  
**PROCEDURE**  
**24 NCAC 01H .0404 MORTGAGE LOAN SERVICING**

*History Note:* Authority G.S. 122A-5.1;  
*Eff. September 26, 1980;*  
*Transferred from T15: 14 Eff. December 1, 1981;*  
*Amended Eff. May 1, 1984; March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01H .0501 CREATION OF FUND**  
**24 NCAC 01H .0502 ELIGIBILITY**  
**24 NCAC 01H .0503 FUND OPERATION AND**  
**ADMINISTRATION**

*History Note:* Authority G.S. 122A-5(2); 122A-5(3); 122A-5.1; S.L. 1983, c.971, s.133; S.L. 1984, c.971, s.133;  
*Eff. August 1, 1985;*  
*Amended Eff. December 1, 1989;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01J .0101 OBJECTIVES**  
**24 NCAC 01J .0102 INCOME ELIGIBLE PERSONS**  
**AND FAMILIE**  
**24 NCAC 01J .0103 ELIGIBLE BORROWER**  
**24 NCAC 01J .0104 ELIGIBLE PROPERTY**  
**24 NCAC 01J .0105 ELIGIBLE LOAN**

*History Note:* Authority G.S. 122A-2; 122A-3; 122A-5;  
122A-5.1; 122A-5.2; 122A-5.5; 122A-8;  
*Temporary Rule Eff. March 29, 1982, for a Period of 120 Days*  
*to Expire on July 27, 1982;*  
*Eff. July 1, 1982;*  
*Temporary Amendment Eff. January 17, 1983, for a Period of 76*  
*Days to Expire on April 2, 1983;*  
*Amended Eff. July 1, 1987; June 1, 1987; March 1, 1984; May*  
*1, 1983;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01J .0107 COMPLIANCE WITH TAX ACT**  
*History Note:* Authority G.S. 122A-5.5;  
*Eff. June 1, 1987;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01J .0201 ELIGIBLE LENDER CONTRACT**  
**FORMS**  
**24 NCAC 01J .0202 SERVICING AGREEMENT**

*History Note:* Authority G.S. 122A-5; 122A-5.1; 122A-5.5;  
*Temporary Rule Eff. March 29, 1982, for a Period of 120 Days*  
*to Expire on July 27, 1982;*  
*Eff. July 1, 1982;*  
*Amended Eff. June 1, 1987;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01K .0101 OBJECTIVES**  
**24 NCAC 01K .0102 DEFINITIONS**  
**24 NCAC 01K .0103 METHOD**

*History Note:* Authority G.S. 122A; 122A-2; 122A-5; 122A-5(12); 122A-5.1;  
*Eff. January 1, 1983;*  
*Recodified from .0103; Recodified from .0102;*  
*Amended Eff. May 1, 1984; March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01K .0201 ELIGIBLE PROJECTS**  
**24 NCAC 01K .0202 LOCAL GOVERNMENT REQUEST**  
**24 NCAC 01K .0203 RESIDENT CERTIFICATION**  
**24 NCAC 01K .0204 RENT REQUIREMENTS**

*History Note:* Authority G.S. 122A-5; 122A-5.1;  
*Eff. January 1, 1983;*  
*Amended Eff. May 1, 1984; March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01K .0301 INTERIM FINANCING**  
**24 NCAC 01K .0302 FINANCING**  
**24 NCAC 01K .0303 MORTGAGE PURCHASE PROCEDURE**  
**24 NCAC 01K .0304 MORTGAGE LOAN SERVICING**

*History Note:* Authority G.S. 122A-5; 122A-5.1;  
*Eff. January 1, 1983;*  
*Amended Eff. May 1, 1984; March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01K .0401 NOTIFICATION OF PROPOSED FINANCING**  
**24 NCAC 01K .0402 APPLICATION PROCEDURE**  
**24 NCAC 01K .0403 PROJECT FEASIBILITY**  
**24 NCAC 01K .0404 PROJECT EVALUATION**  
**24 NCAC 01K .0405 AGENCY APPROVAL**

*History Note:* Authority G.S. 122A-4; 122A-5; 122A-5.1;  
*Eff. January 1, 1983;*  
*Amended Eff. March 1, 1984;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01K .0501 PURPOSE**  
**24 NCAC 01K .0502 DISTRESSED RENTAL HOUSING PROJECT DEFINED**  
**24 NCAC 01K .0503 DETERMINATION BY BOARD OF DIRECTORS**  
**24 NCAC 01K .0504 PROCEDURE**

*History Note:* Authority G.S. 122A-5; 122A-5.1; 122A-5.4;  
*Temporary Rule Eff. September 9, 1987 for a Period of 120 Days to Expire on January 7, 1988;*  
*Eff. January 1, 1988;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01K .0601 GENERAL INFORMATION**  
**24 NCAC 01K .0602 OBJECTIVES**  
**24 NCAC 01K .0603 TYPES OF ASSISTANCE**  
**24 NCAC 01K .0604 REQUIREMENTS**  
**24 NCAC 01K .0605 PROCEDURES**

*History Note:* Authority G.S. 122A-5; 122A-5.1; 122A-5.4;  
*Temporary Rule Eff. April 22, 1988 for a Period of 180 Days to Expire on October 19, 1988;*  
*Eff. September 1, 1988;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01L .0101 OBJECTIVES**  
**24 NCAC 01L .0102 ADMINISTRATION BY THE AGENCY**

*History Note:* Authority G.S. 122A-5(1);  
*Temporary Rule Eff. March 18, 1985 for a Period of 120 Days to Expire on July 18, 1985;*  
*Eff. July 1, 1985;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01L .0201 ADOPTION OF HUD PROGRAM BY REFERENCE**  
**24 NCAC 01L .0202 MEMORANDUM OF UNDERSTANDING**

*History Note:* Authority G.S. 122A-5(1); 150B-14(c);  
*Temporary Rule Eff. March 18, 1985 for a Period of 120 Days to Expire on July 18, 1985;*  
*Eff. July 1, 1985;*  
*Amended Eff. February 1, 1989;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01O .0101 PURPOSE**  
**24 NCAC 01O .0102 ELIGIBILITY**

*History Note:* Authority G.S. 122A-5; 122A-5.1; S.L. 1991, c. 582, s. 1;  
*Eff. November 30, 1992;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01O .0201 APPLICATION PROCEDURES**  
**24 NCAC 01O .0202 SELECTION PROCEDURES**

*History Note:* Authority G.S. 122A-5; 122A-5.1; S.L. 1991, c. 582, s. 1;  
*Eff. November 30, 1992;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01P .0101 PURPOSE**  
**24 NCAC 01P .0102 ELIGIBILITY**  
**24 NCAC 01P .0103 TYPES OF ASSISTANCE**

*History Note:* Authority G.S. 122A-5; 122A-5.1; 122A-5.13;  
*Temporary Adoption Eff. October 1, 1996;*  
*Eff. August 1, 1998;*  
*Repealed Eff. November 1, 2012.*

**24 NCAC 01P .0201      APPLICATION PROCEDURES**  
**24 NCAC 01P .0202      SELECTION PROCEDURE**  
**24 NCAC 01P .0203      DISBURSEMENT OF FUNDS**

*History Note:*    Authority G.S. 122A-5; 122A-5.1; 122A-5.13;  
*Temporary Adoption Eff. October 1, 1996;*  
*Eff. August 1, 1998;*  
*Repealed Eff. November 1, 2012.*

**TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS**

**26 NCAC 01 .0104      EMPLOYEE INSURANCE**  
**COMMITTEE**

*History Note:*    Authority G.S. 7A-751(a); 58-31-60;  
*Eff. February 1, 1987;*  
*Recodified from 26 NCAC 1 .0003 Eff. January 1, 1991;*  
*Amended Eff. December 1, 1999; April 1, 1991; January 1, 1991;*  
*Repealed Eff. November 1, 2012.*

**26 NCAC 01 .0202      DECLARATORY RULINGS:**  
**AVAILABILITY**

(a) The Director or his designee may issue declaratory rulings. All requests for declaratory rulings shall be in writing and submitted to:

Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh, North Carolina 27609

(b) Every request for a declaratory ruling must include the following information:

- (1) the name and address of the petitioner,
- (2) the reference to the statute or rule in question,
- (3) a statement as to why the petitioner is a person aggrieved, and
- (4) the consequences of a failure to issue a declaratory ruling.

(c) A declaratory ruling shall not be issued on a matter requiring an evidentiary proceeding.

*History Note:*    Authority G.S. 150B-4;  
*Eff. January 1, 1987;*  
*Recodified from 26 NCAC 1 .0002 Eff. January 1, 1991;*  
*Amended Eff. November 1, 2012; August 2, 1993.*

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**26 NCAC 03 .0101      GENERAL**

(a) The rules in this Chapter in effect on January 1, 2012 shall apply to contested cases commenced on or after January 1, 2012. The rules in this Chapter in effect on December 31, 2011 shall apply to contested cases commenced on or before December 31, 2011.

(b) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules

Volume of the North Carolina General Statutes shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.

(c) The Office of Administrative Hearings shall supply forms for use in contested cases. These forms shall conform to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.

(d) The Office of Administrative Hearings shall permit the filing of contested case documents and other pleadings by facsimile (fax) or electronic mail by an attached file either in PDF format or a document compatible with Microsoft Word 2007. Electronic mail with attachment shall be sent by electronic transmission to: oah.clerks@oah.nc.gov. The faxed or electronic documents shall be deemed a "filing" within the meaning of 26 NCAC 03 .0102(a)(2) provided the original signed document, one copy and the appropriate filing fee (if a fee is required by G.S. 150B-23.2) is received by OAH within seven business days following the faxed or electronic transmission. Other electronic transmissions, for example, electronic mail without attached file as specified in this Paragraph, shall not constitute a valid filing with the Office of Administrative Hearings.

(e) Every pleading and other documents filed with OAH shall be signed by the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, address, telephone number, and North Carolina State Bar number. An original and one copy of each document shall be filed.

(f) Except as otherwise provided by statutes or by rules adopted under G.S. 150B-38(h), the rules contained in this Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case.

*History Note:*    Authority G.S. 7A-750; 7A-751(a); 150B-23.2;  
150B-40(c);  
*Eff. August 1, 1986;*  
*Amended Eff. May 1, 2009; January 1, 2006; April 1, 2004;*  
*April 1, 2001; August 1, 2000; February 1, 1994; July 1, 1992;*  
*May 1, 1989; January 1, 1989;*  
*Emergency Amendment Eff. October 1, 2009;*  
*Temporary Amendment Eff. December 1, 2009;*  
*Amended Eff. October 1, 2010;*  
*Temporary Amendment Eff. January 1, 2012;*  
*Amended Eff. November 1, 2012.*

**26 NCAC 03 .0102      DEFINITIONS AND**  
**CONSTRUCTION**

(a) The definitions contained in G.S. 150B-2 are incorporated herein by reference. In addition, the following definitions apply:

- (1) "Chief Administrative Law Judge" means the person appointed according to G.S. 7A-752.
- (2) "File or Filing" means to place the paper or item to be filed into the care and custody of the chief hearings clerk of the Office of Administrative Hearings, and acceptance thereof by him, except that the administrative law judge may permit the papers to be filed with him in which event the administrative law judge shall note thereon the filing date. All

- documents filed with the Office of Administrative Hearings, except exhibits, shall be in duplicate in letter size 8 1/2" by 11".
- (3) "Service or Serve" means:
- (A) delivery by electronic mail with an attached file in a format that is readily accessible to the recipient;
  - (B) facsimile (fax);
  - (C) personal delivery;
  - (D) delivery by first class United States Postal Service mail; or
  - (E) delivery by overnight express mail service.

(b) A Certificate of Service by the person making the service shall be appended to every document requiring service under these Rules.

(c) Service by mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service.

(d) Service by overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in the custody of an overnight express mail service.

(e) Service by electronic mail or fax is deemed to occur one hour after it is sent, provided that:

- (1) documents sent after 5 pm are deemed sent at 8 am the following day; and
- (2) documents sent by electronic mail that are not in a format in which the content is readily accessible to the recipient are not deemed served until actually received in a form in which the content is readily accessible to the receiving party. Within five days of receipt, the receiving party shall notify the sending party that the document sent by electronic mail is not in a format readily accessible to the recipient.

Service by electronic mail or fax is treated the same as service by mail for the purpose of adding three days to the prescribed period to respond under N.C.R. Civ.P.6(e).

(f) The rules of statutory construction contained in Chapter 12 of the General Statutes shall be applied in the construction of these Rules.

*History Note: Authority G.S. 7A-752; 150B-23; Eff. August 1, 1986; Amended Eff. October 1, 1991; January 1, 1989; November 1, 1987; September 1, 1986; Temporary Amendment Eff. January 1, 2012; Amended Eff. November 1, 2012.*

## **26 NCAC 03 .0105 DUTIES OF THE ADMINISTRATIVE LAW JUDGE**

In conjunction with the powers of administrative law judges prescribed by G.S. 150B-33 and G.S. 150B-34, the administrative law judge shall perform the following duties, consistent with law:

- (1) Hear and rule on motions;

- (2) Grant or deny continuances;
- (3) Issue orders regarding prehearing matters, including directing the appearance of the parties at a prehearing conference;
- (4) Examine witnesses when deemed necessary to make a complete record and to aid in the full development of material facts in the case;
- (5) Make preliminary, interlocutory, or other orders as deemed appropriate;
- (6) Grant dismissal when the case or any part thereof has become moot or for other reasons;
- (7) Order the State of North Carolina, when it is the losing party as determined by the presiding Administrative Law Judge, to reimburse the filing fee to the petitioner; and
- (8) Apply sanctions in accordance with Rule .0114 of this Section.

*History Note: Authority G.S. 7A-751(a); 8C-1, Rule 614; 150B-23.2; 150B-33; 150B-34; Eff. August 1, 1986; Amended Eff. April 1, 2001; February 1, 1994; November 1, 1987; Emergency Amendment Eff. October 1, 2009; Temporary Amendment Eff. December 1, 2009; Amended Eff. October 1, 2010; Temporary Amendment Eff. January 1, 2012; Amended Eff. November 1, 2012.*

## **26 NCAC 03 .0127 ADMINISTRATIVE LAW JUDGE'S DECISION**

(a) An administrative law judge shall issue a final decision or order in a contested case within 45 days after the later of the date the administrative law judge receives any proposed findings of fact and written arguments submitted by the parties and the date the contested case hearing ends.

(b) An administrative law judge's final decision shall be based exclusively on:

- (1) competent evidence and arguments presented during the hearing and made a part of the official record;
- (2) stipulations of fact;
- (3) matters officially noticed;
- (4) any proposed findings of fact and written arguments submitted by the parties under Paragraph (g) of Rule .0119 of this Section; and
- (5) other items in the official record that are not excluded by G.S. 150B-29(b).

(c) An administrative law judge's final decision shall fully dispose of all issues required to resolve the case and shall contain:

- (1) a caption;
- (2) the appearances of the parties;
- (3) a statement of the issues;
- (4) references to specific statutes or rules at issue;
- (5) findings of fact;



- (6) conclusions of law based on the findings of fact and applicable constitutional principles, statutes, rules, or federal regulations;
- (7) in the discretion of the administrative law judge, a memorandum giving reasons for his findings of fact and conclusions of law; and
- (8) a statement that each party has the right to file an appeal of the administrative law judge's final decision by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides, or, where applicable pursuant to G.S. 7A-29(a), a Notice of Appeal to the Court of Appeals.

(d) The chief administrative law judge may extend the 45-day time limit for issuing a decision. An administrative law judge who needs an extension must submit a request for extension to the chief administrative law judge before the 45-day period has expired.

*History Note:* Authority G.S. 7A-751(a); 150B-34; 150B-47; Eff. August 1, 1986;

*Temporary Amendment Eff. August 26, 1987 For a Period of 120 Days to Expire on December 24, 1987;*

*Temporary Amendment Eff. December 24, 1987 For a Period of 8 Days to Expire on January 1, 1988;*

*Amended Eff. February 1, 1994; October 1, 1991; April 1, 1990; January 1, 1989;*

*Recodified from Rule .0126 Eff. August 1, 2000;*

*Amended Eff. April 1, 2001;*

*Temporary Amendment Eff. January 1, 2012;*

*Amended Eff. November 1, 2012.*

#### **26 NCAC 03 .0131 FINAL DECISIONS IN CONTESTED CASES**

A copy of a final decision issued by an administrative law judge shall be served on each party in accordance with Rule .0102(a)(3) and (b) through (f) of this Section.

*History Note:* Authority G.S. 150B-45; ARRC Objection Lodged November 17, 1988; Eff. April 1, 1989;

*ARRC Objection Removed Eff. April 1, 1990;*

*Amended Eff. October 1, 1991; April 1, 1990;*

*Recodified from Rule .0130 Eff. August 1, 2000;*

*Temporary Amendment Eff. January 1, 2012;*

*Amended Eff. November 1, 2012.*

#### **26 NCAC 03 .0301 ORDER DESIGNATING COMPLEX CONTESTED CASES**

##### **26 NCAC 03 .0302 FACTORS TO BE CONSIDERED**

##### **26 NCAC 03 .0303 VENUE**

##### **26 NCAC 03 .0304 EXPEDITED HEARING**

##### **PROCEDURES FOR COMPLEX CONTESTED CASES**

##### **26 NCAC 03 .0305 RULES AND PROCEDURES**

*History Note:* Authority G.S. 150B-31(b); Eff. April 1, 1997; Repealed Eff. November 1, 2012.

#### **26 NCAC 03 .0401 MEDICAID HEARING PROCEDURES RULES**

(a) The rules in 26 NCAC 03 .0100 apply to contested Medicaid cases commenced by Medicaid applicants or recipients under S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13 except:

- (1) 26 NCAC 03 .0101(a);
- (2) 26 NCAC 03 .0102(a)(3), (b) – (e);
- (3) 26 NCAC 03 .0103(a);
- (4) 26 NCAC 03 .0104;
- (5) 26 NCAC 03 .0107;
- (6) 26 NCAC 03 .0108;
- (7) 26 NCAC 03 .0109;
- (8) 26 NCAC 03 .0112(b), (c), (e), (f), (g);
- (9) 26 NCAC 03 .0115;
- (10) 26 NCAC 03 .0117;
- (11) 26 NCAC 03 .0118;
- (12) 26 NCAC 03 .0120(e);
- (13) 26 NCAC 03 .0123;
- (14) 26 NCAC 03 .0124;
- (15) 26 NCAC 03 .0125; and
- (16) 26 NCAC 03 .0127(a).

(b) Nothing in this Section affects discretionary powers granted to an administrative law judge as set out in G.S. 150B-33(b).

*History Note:* Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13;

*Temporary Adoption Eff. December 2, 2008;*

*Eff. August 1, 2009;*

*Amended Eff. November 1, 2012.*

#### **26 NCAC 03 .0403 EXPEDITED HEARINGS PROCEDURES FOR COMPLEX CONTESTED CASES**

*History Note:* Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13;

*Temporary Adoption Eff. December 2, 2008;*

*Eff. August 1, 2009;*

*Repealed Eff. November 1, 2012.*

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#### **26 NCAC 04 .0101 INTRODUCTION**

The Civil Rights Division shall investigate all charges filed under G.S. 7A-759 and deferred charges from the Equal Employment Opportunity Commission in accordance with the Federal regulations implementing Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act which are published in 29 C.F.R., Parts 1600 through 1699, and are hereby incorporated by reference to include subsequent amendments. Copies of 29 C.F.R., Parts 1600 through 1699 are available at no cost from the Government Printing Office website at [www.gpoaccess.gov](http://www.gpoaccess.gov).

*History Note:* Authority G.S. 7A-751; 7A-759;

*Filed as a Temporary Rule Eff. October 15, 1986 for a period of 120 days to expire on February 11, 1987;*

*Eff. February 1, 1987;*

*Amended Eff. July 1, 1989;*

*Temporary Amendment Eff. January 1, 1998;  
Amended Eff. November 1, 2012; August 1, 1998.*

**26 NCAC 04 .0102      CONTENT AND PROCEDURE**

(a) Any person wishing to file a complaint of alleged employment discrimination under G.S. 7A-759 with the Civil Rights Division shall complete the preliminary intake form found at [www.ncoah.com](http://www.ncoah.com); or submit the complaint in writing or by telephone to:

Director of Civil Rights Division  
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
(919) 431-3036

(b) The complaint shall include the following information:

- (1) The full name, address, telephone number (work and home), and email address of person making the complaint;
- (2) The full name and address of the person or agency against whom the complaint is made (the respondent);
- (3) A statement of the alleged employment discrimination including pertinent dates;
- (4) A statement of the specific employment issues (e.g. discharge, discipline, promotion) including the name and job title of the decision maker;
- (5) A statement of the act, policy or practice which is alleged to be unlawful;
- (6) For each act, policy or practice alleged, a statement of the facts which lead the person to believe the act, policy or practice is discriminatory; and
- (7) The approximate number of employees of the respondent employer.

(c) A complaint is considered a charge when the Equal Employment Opportunity Commission's Charge of Discrimination form is signed and dated and received by the Civil Rights Division.

(d) The Civil Rights Division shall assess the charge to determine if it is within the jurisdiction of the Office of Administrative Hearings and if so, it shall be assigned a charge number. If the charge is not within the jurisdiction of the Office of Administrative Hearings, it shall be transferred to the Equal Employment Opportunity Commission.

*History Note: Authority G.S. 7A-759;  
Temporary Rule Eff. October 15, 1986 for a Period of 120 Days to Expire on February 11, 1987;  
Eff. February 1, 1987;  
Amended Eff. November 1, 2012; December 1, 1999; April 1, 1991; April 1, 1989.*

**26 NCAC 04 .0103      NOTIFICATION OF INVESTIGATION**

(a) When a charge of employment discrimination is filed, the Civil Rights Division shall notify the charging party and respondent that an investigation will commence. Notice shall be served by registered U.S. mail.

(b) Any correspondence related to a charge must include the name of the charging party and the respondent and the Civil Rights Division's charge number and be submitted to:

Director of Civil Rights Division  
Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714

*History Note: Authority G.S. 7A-759;  
Temporary Rule Eff. October 15, 1986 for a Period of 120 Days to Expire on February 11, 1987;  
Eff. February 1, 1987;  
Amended Eff. November 1, 2012; December 1, 1999; April 1, 1991; April 1, 1989.*

**26 NCAC 04 .0104      ADDITIONAL INFORMATION  
26 NCAC 04 .0105      INVESTIGATION**

*History Note: Authority G.S. 7A-759; 150B-11;  
Temporary Rule Eff. October 15, 1986 For a Period of 120 Days to Expire on February 11, 1987;  
Eff. February 1, 1987;  
Amended Eff. December 1, 1999; April 1, 1991; April 1, 1989;  
Repealed Eff. November 1, 2012.*

**26 NCAC 04 .0106      INVESTIGATION REPORT**

(a) The Civil Rights Division shall investigate all charges filed pursuant to this Section.

(b) A civil rights investigator shall prepare an investigative memorandum setting out the findings and the conclusions of the Civil Rights Division's investigation based on the allegations and appropriate statutes.

(c) The Civil Rights Division shall determine whether there is probable cause to believe the alleged discrimination has occurred.

(d) A civil rights investigator shall conduct a pre-decision interview with the charging party prior to the issuance of the Civil Rights Division's decision.

(e) Upon completion of the investigation the civil rights director shall issue a decision that shall be served on the charging party and respondent by US mail.

(f) If the investigation results in a determination that there is no probable cause to believe the alleged discrimination has occurred, the Civil Rights Division's director shall inform the charging party of the rights of appeal to the Equal Employment Opportunity Commission.

(g) If the investigation results in a determination that there is probable cause to believe the alleged discrimination has occurred, the civil rights director shall invite the parties to participate in pre-settlement discussions and attempt conciliation.

*History Note: Authority G.S. 7A-759;  
Temporary Rule Eff. October 15, 1986 for a Period of 120 Days to Expire on February 11, 1987;  
Eff. February 1, 1987;  
Amended Eff. November 1, 2012; April 1, 1989.*

**26 NCAC 04 .0107 CONCILIATION AND SETTLEMENT**

- (a) A civil rights investigator shall contact the charging party and the respondent to schedule a settlement conference with the Civil Rights Division director and compliance manager within 10 days of the service of the decision that there is probable cause to believe discrimination has occurred upon the parties.
- (b) Where a settlement is reached among the charging party, the respondent and the Civil Rights Division, an agreement shall be prepared by the investigator and executed by the parties.
- (c) Upon notification to the Civil Rights Division by the respondent that all provisions of the settlement agreement have been met, the compliance manager shall close the charge.
- (d) The compliance manager shall forward the settlement documents to the Equal Employment Opportunity Commission and the Civil Rights Division director shall notify the parties that the charge is closed.
- (e) If conciliation is unsuccessful the charging party must make a declaration of intent within seven days of how to proceed with the charge. The charging party may:
  - (1) File a petition for a contested case hearing with the Hearings Division of the Office of Administrative Hearings;
  - (2) Request that the case be forwarded to the Equal Employment Opportunity Commission for further conciliation;
  - (3) Request a notice of right-to-sue from the Equal Employment Opportunity Commission for the purpose of filing in Federal District Court; or
  - (4) Choose not to pursue the matter any further.
- (f) Upon receipt of the signed and dated declaration of intent, the Civil Rights Division shall close the charge and forward the case file to the Equal Employment Opportunity Commission.
- (g) If no declaration of intent is received after seven days, the Civil Rights Division shall close the charge and forward the case file to the Equal Employment Opportunity Commission.

*History Note:* Authority G.S. 7A-759;

*Temporary Rule Eff. October 15, 1986 for a Period of 120 Days to Expire on February 11, 1987;*  
*Eff. February 1, 1987;*  
*Amended Eff. November 1, 2012; April 1, 1989.*

**26 NCAC 04 .0108 CONTESTED CASE HEARING**

- (a) Any determination of probable cause that has not resulted in conciliation may be heard by an Administrative Law Judge. The charging party shall commence the proceedings by filing a petition for a contested case hearing.
- (b) The Administrative Law Judge shall enter a stay in contested cases where there is a companion employment discrimination charge under investigation by the Civil Rights Division. The Civil Rights Division director shall notify the judge's assistant when the companion case is closed.
- (c) The Civil Rights Division's investigative file, shall be made available to all parties, upon request, as provided in Section 83 of the EEOC Compliance Manual, Volume 1 (October, 1987) incorporated herein by reference as well as subsequent amendments thereto. Copies of Section 83 are available upon request from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714 at no charge.

*History Note:* Authority G.S. 7A-759; 150B-21.6; 150B-26; 150B-33;  
*Temporary Rule Eff. October 15, 1986 for a Period of 120 Days to Expire on February 11, 1987;*  
*Eff. February 1, 1987;*  
*Amended Eff. November 1, 2012; December 1, 1999; August 2, 1993; July 1, 1989.*

**26 NCAC 04 .0109 AUTHORITY TO ADMINISTER OATHS OR AFFIRMATIONS**

*History Note:* Authority G.S. 7A-759; 150B-11;  
*Eff. April 1, 1989;*  
*Repealed Eff. November 1, 2012.*

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## **RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission on Thursday October 18 and November 15, 2012 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 2<sup>nd</sup> 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  
Anna Baird Choi  
Jeanette Doran  
Garth K. Dunklin  
Stephanie Simpson

#### **COMMISSION COUNSEL**

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

### **RULES REVIEW COMMISSION MEETING DATES**

December 20, 2012      January 17, 2013  
February 17, 2013      March 21, 2013

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### **AGENDA**

#### **RULES REVIEW COMMISSION**

**Thursday, December 20, 2012 10:00 A.M.**

**1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-Up Matters:
  - A. Department of Administration – 01 NCAC 09 .0401, .0402, .0403, .0404, .0405, .0406 (Bryan)
  - B. Department of Administration – 01 NCAC 11 .2102, .2103, .2104, .2105, .2111, .2116, .2201, .2202, .2203, .2204 (Bryan)
  - C. Department of Administration – 01 NCAC 19A .0103 (Bryan)
  - D. Department of Administration – 01 NCAC 22 .0101, .0102, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0301, .0302, .0303, .0401, .0402, .0403, .0501, .0502, .0503, .0504, .0505, .0506, .0601, .0602, .0603, .0604, .0605, .0606, .0701, .0702, .0703, .0704, .0801, .0802, .0901, .0902, .0903, .0904, .0905, .0906, .1001, .1002, .1101, .1102, .1103 (Bryan)
  - E. Industrial Commission – 04 NCAC 10J .0101 (Bryan)
  - F. Department of Cultural Resources – 07 NCAC 04N .0202 (Bryan)
  - G. Child Care Commission – 10A NCAC 09 .3004, .3007, .3008 (DeLuca)
  - H. Sheriffs' Education and Training Standards Commission – 12 NCAC 10B .2004, .2102 (Bryan)
  - I. Department of Transportation – 19A NCAC 01C .0201 (DeLuca)
  - J. Department of Transportation – 19A NCAC 02D .0414, .0704 (DeLuca)
  - K. Department of Transportation – 19A NCAC 02E .0609, .0610 (DeLuca)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between October 23, 2012 and November 20, 2012
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting

- VI. G.S. 150B-19.1 Certification
- VII. Commission Business
- Next meeting: January 17, 2012
- 

**Commission Review**  
*Log of Permanent Rule Filings*  
*October 23, 2012 through November 20, 2012*

**BANKS, OFFICE OF THE COMMISSIONER OF**

The rules in Subchapter 3C concern banks including organization and chartering (.0100); branches and limited service facilities (.0200); change of location (.0300); consolidation of banks (.0400); work week (.0500); examination of banks (.0600); reports required by commissioners of banks (.0700); miscellaneous reports and approvals (.0800); operations (.0900); loan administration and leasing (.1000); capital (.1100); deposits (.1200); bank personnel (.1300); legal reserve (.1400); automation and data processing (.1500); fees (.1600); nonresident banks (.1700); and courier service (.1800).

<u>Application</u>	04	NCAC	03C	.0101
Amend/*				
<u>Report to Banking Commission</u>	04	NCAC	03C	.0103
Amend/*				
<u>Review by Banking Commission</u>	04	NCAC	03C	.0104
Repeal/*				
<u>Bank Certificate</u>	04	NCAC	03C	.0107
Amend/*				
<u>Organizational Expenses</u>	04	NCAC	03C	.0110
Repeal/*				
<u>National Bank Conversion</u>	04	NCAC	03C	.0111
Amend/*				
<u>Elimination of Director Liability</u>	04	NCAC	03C	.0112
Amend/*				
<u>Establishment of Branches and Limited Service Facilities</u>	04	NCAC	03C	.0201
Amend/*				
<u>Discontinuance</u>	04	NCAC	03C	.0202
Repeal/*				
<u>Discontinuance of a Limited Service Facility</u>	04	NCAC	03C	.0203
Repeal/*				
<u>Conversion of Branch to Limited Service Facility</u>	04	NCAC	03C	.0204
Repeal/*				
<u>Change of Location of Main Office or Branch</u>	04	NCAC	03C	.0301
Amend/*				
<u>Application</u>	04	NCAC	03C	.0401
Amend/*				
<u>Investigation</u>	04	NCAC	03C	.0403
Amend/*				
<u>Report</u>	04	NCAC	03C	.0404
Amend/*				
<u>Review by the Banking Commission</u>	04	NCAC	03C	.0405
Amend/*				
<u>Filing with Secretary of State</u>	04	NCAC	03C	.0406
Amend/*				
<u>Waiver by Commissioner</u>	04	NCAC	03C	.0407

Amend/*				
<u>Days and Hours of Regular Operation</u>	04	NCAC	03C	.0503
Repeal/*				
<u>Oath of Directors</u>	04	NCAC	03C	.0801
Repeal/*				
<u>Depository Banks</u>	04	NCAC	03C	.0802
Repeal/*				
<u>Other Real Estate</u>	04	NCAC	03C	.0803
Repeal/*				
<u>Suspension of Investment and Loan Limitation</u>	04	NCAC	03C	.0804
Repeal/*				
<u>Subsidiary Investment Approval</u>	04	NCAC	03C	.0807
Repeal/*				
<u>Retention: Reproduction and Disposition of Bank Records</u>	04	NCAC	03C	.0903
Amend/*				
<u>Leasing of Personal Property</u>	04	NCAC	03C	.1002
Amend/*				
<u>Capital Stock</u>	04	NCAC	03C	.1103
Repeal/*				
<u>Maintenance of Capital Surplus</u>	04	NCAC	03C	.1104
Repeal/*				
<u>Notice of Impairment</u>	04	NCAC	03C	.1105
Repeal/*				
<u>School of Thrift or Savings Plan</u>	04	NCAC	03C	.1201
Repeal/*				
<u>Resume of the Plan</u>	04	NCAC	03C	.1202
Repeal/*				
<u>Share Purchase and Option Plans</u>	04	NCAC	03C	.1302
Repeal/*				
<u>Reserve Fund Defined</u>	04	NCAC	03C	.1403
Repeal/*				
<u>Definitions</u>	04	NCAC	03C	.1701
Repeal/*				
<u>Establishment of Lockbox Services</u>	04	NCAC	03C	.1703
Repeal/*				
<u>Establishment of a Trust Representative Office (TRO)</u>	04	NCAC	03C	.1704
Repeal/*				

The rules in Subchapter 3L concern check-cashing businesses including administrative (.0100); application (.0200); licensing (.0300); operations (.0400); books and records examinations (.0500); and reporting and notification requirements (.0600).

<u>Cash-Out Transactions</u>	04	NCAC	03L	.0404
Repeal/*				
<u>Limitation on Delayed Deposit Check Cashing</u>	04	NCAC	03L	.0405
Repeal/*				

## **MEDICAL CARE COMMISSION**

The rules in Chapter 13 are from the NC Medical Care Commission.

The rules in Subchapter 13D are rules from the licensing of nursing homes including general information (.2000);

licensure (.2100); general standards of administration (.2200); patient and resident care and services (.2300); medical records (.2400); physician's services (.2500); pharmaceutical services (.2600); dietary services (.2700); activities, recreation and social services (.2800); special requirements (.2900); specially designated units (.3000); design and construction (.3100); functional requirements (.3200); fire and safety requirements (.3300); and mechanical electrical plumbing (.3400).

<u>Temporary Change in Bed Capacity</u> Amend/*	10A	NCAC	13D	.2105
<u>Denial, Amendment, or Revocation of License</u> Amend/*	10A	NCAC	13D	.2106
<u>Suspension of Admissions</u> Amend/*	10A	NCAC	13D	.2107
<u>General Standards of Administration</u> Amend/*	10A	NCAC	13D	.2202
<u>Patients Not to be Admitted</u> Amend/*	10A	NCAC	13D	.2203
<u>Reporting and Investigating Abuse, Neglect or Misappropri...</u> Amend/*	10A	NCAC	13D	.2210
<u>Patient Assessment and Plan of Care</u> Amend/*	10A	NCAC	13D	.2301
<u>Nursing Staffing Requirements</u> Amend/*	10A	NCAC	13D	.2303
<u>Medication Administration</u> Amend/*	10A	NCAC	13D	.2306
<u>Drug Procurement</u> Amend/*	10A	NCAC	13D	.2604
<u>Specialized Rehabilitative and Habilitative Services</u> Repeal/*	10A	NCAC	13D	.3001
<u>Quality of Specialized Rehabilitation Services</u> Repeal/*	10A	NCAC	13D	.3002
<u>HIV Designated Unit Policies and Procedures</u> Repeal/*	10A	NCAC	13D	.3011
<u>Physician in an HIV Designated Unit</u> Repeal/*	10A	NCAC	13D	.3012
<u>Special Nursing Requirements for an HIV Designated Unit</u> Repeal/*	10A	NCAC	13D	.3013
<u>Specialized Staff Education for HIV Designated Units</u> Repeal/*	10A	NCAC	13D	.3014
<u>Use of Investigational Drugs for HIV Designated Units</u> Repeal/*	10A	NCAC	13D	.3015
<u>Additional Social Work Requirements for HIV Designated Units</u> Repeal/*	10A	NCAC	13D	.3016
<u>Physician Requirements for Inpatient Rehabilitation Facil...</u> Repeal/*	10A	NCAC	13D	.3021
<u>Admission Criteria for Inpatient Rehabilitation Facilitie...</u> Repeal/*	10A	NCAC	13D	.3022
<u>Comprehensive Inpatient Rehabilitation Evaluation</u> Repeal/*	10A	NCAC	13D	.3023
<u>Comprehensive Inpatient Rehabilitation Interdisciplinary ...</u> Repeal/*	10A	NCAC	13D	.3024
<u>Discharge Criteria for Inpatient Rehabilitation Facilitie...</u> Repeal/*	10A	NCAC	13D	.3025

<u>Comprehensive Rehabilitation Personnel Administration</u> Repeal/*	10A	NCAC	13D	.3026
<u>Comprehensive Inpatient Rehabilitation Program Staffing R...</u> Repeal/*	10A	NCAC	13D	.3027
<u>Staff Training for Inpatient Rehabilitation Facilities or...</u> Repeal/*	10A	NCAC	13D	.3028
<u>Equipment Reqs/Comprehensive Inpatient Rehabilitation Pro...</u> Repeal/*	10A	NCAC	13D	.3029
<u>Physical Facility Reqs/Inpatient Rehabilitation Facilitie...</u> Repeal/*	10A	NCAC	13D	.3030
<u>Deemed Status for Inpatient Rehabilitation Facilities or ...</u> Repeal/*	10A	NCAC	13D	.3033

The rules in Subchapter 13P concern emergency medical services and trauma including definitions (.0100); ems systems (.0200); specialty care transport programs (.0300); medical oversight (.0400); ems personnel (.0500); ems educational institutions (.0600); enforcement (.0700); trauma system definitions (.0800); trauma center standards and approval (.0900); trauma center designation enforcement (.1000); trauma system design (.1100); and recovery and rehabilitation of chemically dependent ems personnel (.1400).

<u>Criminal Histories</u> Amend/*	10A	NCAC	13P	.0511
<u>Denial, Suspension, Amendment or Revocation</u> Repeal/*	10A	NCAC	13P	.0701
<u>Procedures for Denial, Suspension, Amendment, or Revocation</u> Repeal/*	10A	NCAC	13P	.0702
<u>Denial, Suspension, Amendment, or Revocation</u> Adopt/*	10A	NCAC	13P	.1501
<u>Licensed EMS Providers</u> Adopt/*	10A	NCAC	13P	.1502
<u>Specialty Care Transport Programs</u> Adopt/*	10A	NCAC	13P	.1503
<u>Trauma Centers</u> Adopt/*	10A	NCAC	13P	.1504
<u>EMS Educational Institutions</u> Adopt/*	10A	NCAC	13P	.1505
<u>EMS Vehicle Permits</u> Adopt/*	10A	NCAC	13P	.1506
<u>Personnel Credentials</u> Adopt/*	10A	NCAC	13P	.1507
<u>Summary Suspension</u> Adopt/*	10A	NCAC	13P	.1508
<u>Procedures for Denial, Suspension, Amendment, or Revocation</u> Adopt/*	10A	NCAC	13P	.1509

## **HHS - HEALTH SERVICE REGULATION, DIVISION OF**

The rules in Chapter 14 concern services provided by the Division of Health Service Regulation.

The rules in Subchapter 14C are Certificate of Need regulations including general provisions (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100); intensive care services (.1200); pediatric intensive care services (.1300); neonatal services (.1400); hospices, hospice inpatient facilities, and hospice residential care facilities (.1500); cardiac catheterization equipment and cardiac angioplasty equipment (.1600); open heart surgery



services and heart-lung bypass machines (.1700); diagnostic centers (.1800); radiation therapy equipment (.1900); home health services (.2000); surgical services and operating rooms (.2100); end stage renal disease services (.2200); computed tomography equipment (.2300); immediate care facility/mentally retarded (ICF/MR) (.2400); substance abuse/chemical dependency treatment beds (.2500); psychiatric beds (.2600); magnetic resonance imaging scanner (.2700); rehabilitation services (.2800); bone marrow transplantation services (.2900); solid organ transplantation services (.3000); major medical equipment (.3100); lithotripter equipment (.3200); air ambulance (.3300); burn intensive care services (.3400); oncology treatment centers (.3500); gamma knife (.3600); positron emission tomography scanner (.3700); acute care beds (.3800); gastrointestinal endoscopy procedure rooms in licensed health service facilities (.3900); and hospice inpatient facilities and hospice residential care facilities (.4000).

<u>Location of the Agency</u>	10A	NCAC	14C	.0102
Amend/*				
<u>Health Maintenance Organizations</u>	10A	NCAC	14C	.0302
Repeal/*				
<u>Definitions</u>	10A	NCAC	14C	.1701
Amend/*				
<u>Information Required of Applicant</u>	10A	NCAC	14C	.1702
Amend/*				
<u>Performance Standards</u>	10A	NCAC	14C	.1703
Amend/*				
<u>Support Services</u>	10A	NCAC	14C	.1704
Amend/*				
<u>Staffing and Staff Training</u>	10A	NCAC	14C	.1705
Amend/*				
<u>Definitions</u>	10A	NCAC	14C	.3301
Repeal/*				
<u>Information Required of Applicant</u>	10A	NCAC	14C	.3302
Repeal/*				
<u>Performance Standards</u>	10A	NCAC	14C	.3303
Repeal/*				
<u>Staffing and Staff Training</u>	10A	NCAC	14C	.3305
Repeal/*				

## **PRIVATE PROTECTIVE SERVICES BOARD**

The rules in Subchapter 7D cover organization and general provisions (.0100); licenses and trainee permits (.0200); security guard patrol and guard dog service (.0300); private investigator and counterintelligence (.0400); polygraph (.0500); psychological stress evaluator (PSE) (.0600); unarmed security guard registration (.0700); armed security guard firearm registration permit (.0800); trainer certificate (.0900); recovery fund (.1000); training and supervision for private investigator associates (.1100); courier (.1200); continuing education (.1300); unarmed armored car service guard registration requirements (.1400); and armed armored car service guard registration permit requirements (.1500).

<u>Uniform and Equipment</u>	12	NCAC	07D	.0105
Amend/*				
<u>Suspension of Authority to Expend Funds</u>	12	NCAC	07D	.0114
Adopt/*				
<u>Application for Firearms Trainer Certificate</u>	12	NCAC	07D	.0902
Amend/*				
<u>Renewal of Firearms Trainer Certificate</u>	12	NCAC	07D	.0904
Amend/*				
<u>Unarmed Trainer Certificate</u>	12	NCAC	07D	.0909
Amend/*				
<u>Application for an Unarmed Trainer Certificate</u>	12	NCAC	07D	.0910
Amend/*				

<u>Renewal of an Unarmed Trainer Certificate</u> Amend/*	12	NCAC	07D	.0911
<u>Rosters of Unarmed Trainer Classes</u> Adopt/*	12	NCAC	07D	.0912
<u>Time Limits of Experience</u> Amend/*	12	NCAC	07D	.1106
<u>Grandfather Clause</u> Repeal/*	12	NCAC	07D	.1108
<u>Application for Unarmed Armored Car Service Guard Registr...</u> Adopt/*	12	NCAC	07D	.1401
<u>Fees for Unarmed Armored Car Service Guard Registration</u> Adopt/*	12	NCAC	07D	.1402
<u>Minimum Standards for Unarmed Armored Car Service Guard R...</u> Adopt/*	12	NCAC	07D	.1403
<u>Investigation for Unarmed Armored Car Service Guard Regis...</u> Adopt/*	12	NCAC	07D	.1404
<u>Unarmed Armored Car Service Guard Registration Identifica...</u> Adopt/*	12	NCAC	07D	.1405
<u>Renewal or Reissue of Unarmed Armored Car Service Guard R...</u> Adopt/*	12	NCAC	07D	.1406
<u>Training Requirements for Unarmed Armored Car Service Guards</u> Adopt/*	12	NCAC	07D	.1407
<u>Application/Armed Car Service Guard Firearms Registration...</u> Adopt/*	12	NCAC	07D	.1501
<u>Fees for Armed Armored Car Service Guard Firearm Registra...</u> Adopt/*	12	NCAC	07D	.1502
<u>Minimum Standards for Armed Armored Car Service Guard Fir...</u> Adopt/*	12	NCAC	07D	.1503
<u>Investigation for Armed Armored Car Service Guard Firearm...</u> Adopt/*	12	NCAC	07D	.1504
<u>Armed Armored Car Service Guard Registration Identificati...</u> Adopt/*	12	NCAC	07D	.1505
<u>Renewal of Armed Armored Car Service Guard Firearm Regist...</u> Adopt/*	12	NCAC	07D	.1506
<u>Training Requirement for Armed Armored are Service Guards</u> Adopt/*	12	NCAC	07D	.1507

## **WILDLIFE RESOURCES COMMISSION**

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

<u>Wildlife Taken for Depredations</u> Amend/*	15A	NCAC	10B	.0106
<u>Dog Training and Field Trials</u> Amend/*	15A	NCAC	10B	.0114
<u>Wildlife Collectors</u> Amend/*	15A	NCAC	10B	.0119
<u>Possession of Wildlife Killed Accidentally or Found Dead</u> Adopt/*	15A	NCAC	10B	.0127

<u>Deer (White Tailed)</u>	15A	NCAC	10B	.0203
Amend/*				
<u>Squirrels</u>	15A	NCAC	10B	.0206
Amend/*				
<u>Wild Turkey</u>	15A	NCAC	10B	.0209
Amend/*				

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100); general rules (.0200); game fish (.0300); non-game fish (.0400); primary nursery areas (.0500); and anadromous fish spawning areas (.0600).

<u>Public Mountain Trout Waters</u>	15A	NCAC	10C	.0205
Amend/*				
<u>Trotlines and Set-Hooks</u>	15A	NCAC	10C	.0206
Amend/*				
<u>Possession of Certain Fishes</u>	15A	NCAC	10C	.0211
Amend/*				
<u>Open Seasons: Creel and Size Limits</u>	15A	NCAC	10C	.0305
Amend/*				
<u>Manner of Taking Non-game Fishes: Purchase and Sale</u>	15A	NCAC	10C	.0401
Amend/*				
<u>Taking Non-game Fishes for Bait or Personal Consumption</u>	15A	NCAC	10C	.0402
Amend/*				

The rules in Subchapter 10D are game lands rules.

<u>General Regulations Regarding Use</u>	15A	NCAC	10D	.0102
Amend/*				
<u>Hunting On Game Lands</u>	15A	NCAC	10D	.0103
Amend/*				

The rules in Subchapter 10I concern endangered and threatened species.

<u>Protection of Endangered/Threatened/Special Concern</u>	15A	NCAC	10I	.0102
Amend/*				

The rules in Subchapter 10J cover wildlife conservation areas.

<u>General Regulations Regarding Use of Conservation Areas</u>	15A	NCAC	10J	.0102
Amend/*				

## **LOCKSMITH LICENSING BOARD**

The rules in Chapter 29 include general rules (.0100); rules about examinations (.0200); licensing requirements (.0400); code of ethics (.0500); administrative law procedures (.0600); license renewal requirements (.0700); and continuing education (.0800).

<u>Due Date</u>	21	NCAC	29	.0702
Amend/*				

## **RESPIRATORY CARE BOARD**

The rules in Chapter 61 are from the Respiratory Care Board and concern organization and definitions (.0100);

application for license (.0200); licensing (.0300); continuing education requirements for license holders (.0400); miscellaneous provisions (.0500); rules (.0600); and administrative hearing procedures (.0700).

Exemptions

21 NCAC 61 .0202

Amend/\*

**SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR**

The rules in Chapter 64 are from the Board of Examiners for Speech and Language Pathologists and Audiologists and include general provisions (.0100); interpretative rules (.0200); code of ethics (.0300); rulemaking petitions (.0400); notice of rulemaking (.0500); conduct of rulemaking hearings (.0600); declaratory rulings (.0700); contested case hearings (.0800); other matters relating to administrative hearings (.0900); and use of speech/language pathology assistants (.1000).

Standards for Audiologists Who Dispense Hearing Aids

21 NCAC 64 .0220

Adopt/\*

Subpoenas

21 NCAC 64 .0903

Amend/\*

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**CONTESTED CASE DECISIONS**

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
**JULIAN MANN, III**

**Senior Administrative Law Judge**  
**FRED G. MORRISON JR.**

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray  
Selina Brooks  
Melissa Owens Lassiter  
Don Overby

Randall May  
A. B. Elkins II  
Joe Webster

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
James Ivery Smith, Ivy Lee Armstrong v. ABC Commission	11 ABC 08266	04/12/12	
Trawick Enterprises LLC v. ABC Commission	11 ABC 08901	05/11/12	27:01 NCR 39
Dawson Street Mini Mart Lovell Glover v. ABC Commission	11 ABC 12597	05/23/12	
ABC Commission v. Christian Broome Hunt T/A Ricky's Sports Bar and Grill	11 ABC 13161	05/03/12	
Alabarati Brothers, LLC T/A Day N Nite Food Mart, v. ABC Commission	11 ABC 13545	05/01/12	
Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	11 ABC 14036	07/05/12	
ABC Commission v. D's Drive Thru Inc. T/A D's Drive Thru	12 ABC 00060	05/29/12	
ABC Commission v. Choudhary, LLC T/A Speedway	12 ABC 00721	05/01/12	
ABC Commission v. Dos Perros Restaurant LLC T/A Dos Perros Restaurant	12 ABC 05312	09/25/12	
ABC Commission v. Tecleab Maasho	12 ABC 01294	07/05/12	27:09 NCR 902
<b><u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u></b>			
Alexander R. Hayes v. Division of Crime Victim Compensation Services	12 CPS 00195	06/25/12	27:09 NCR 908
Teresa Herbin v. Department of Public Safety Victim Services	12 CPS 03680	08/10/12	
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>			
Bright Haven Residential and Community Care d/b/a New Directions Group Home v. Division of Medical Assistance, DHHS	10 DHR 00232	04/27/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home, v. DHHS/Division of Health Service Regulation, Adult Care Licensure Section	10 DHR 01666	05/18/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home v. DHHS, Division of Health Service Regulation, Adult Care Licensure and Certification Section	10 DHR 05801	05/18/12	
Gold Care Inc. Licensee Hill Forest Rest Home Warren W. Gold v. DHHS, Adult Care Licensure Section	10 DHR 05861	05/18/12	
Mary Ann Barnes v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 6488	07/16/12	
Powell's Medical Facility and Eddie N. Powell, M.D., v. DHHS, Division of Medical Assistance	11 DHR 01451	03/05/12	27:01 NCR 75
Julie Sadowski v. DHHS, Division of Health Service Regulation	11 DHR 01955	04/03/12	
Cherry's Group Home, Alphonso Cherry v. DHSR Michelle Elliot	11 DHR 09590	07/12/12	
Teresa Diane Marsh v. DHHS, Division of Health Service Regulation	11 DHR 11456	04/27/12	
Betty Parks v. Division of Child Development, DHHS	11 DHR 11738	06/20/12	

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**CONTESTED CASE DECISIONS**

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Lorrie Ann Varner v. DHHS, Regulation Health Care Personnel Registry Section	11 DHR 11867	08/02/12	
Timothy John Murray v. DHHS, Division of Health Service Regulation	11 DHR 12594	06/15/12	
Holly Springs Hospital II, LLC v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Harnett Health System, Inc. and WakeMed	11 DHR 12727	04/12/12	27:04 NCR 486
Rex Hospital, Inc., v. DHHS, Division of Health Service Regulation, CON Section and WakeMed, Holly Springs Hospital II, LLC, and Harnett Health System, Inc.	11 DHR 12794	04/12/12	27:04 NCR 486
Harnett Health System, Inc., v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Holly Springs Hospital II, LLC, and WakeMed	11 DHR 12795	04/12/12	27:04 NCR 486
WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Holly Springs Hospital II, LLC, Rex Hospital, Inc., and Harnett Health System, Inc	11 DHR 12796	04/12/12	27:04 NCR 486
Sandra Ellis v. DHHS	11 DHR 12959	07/11/12	
Vendell Haughton v. DHHS, Division of Medical Assistance	11 DHR 13616	07/05/12	
Tarsand Denise Morrison v. DHHS, Division of Health Service Regulation	11 DHR 13906	07/11/12	
Care Well of Charlotte Inc. Joy Steele v. DHHS	11 DHR 13909	08/02/12	
Michael Timothy Smith, Jr. v. DHHS, Division of Health Service Regulation	11 DHR 14184	08/01/12	
Cynthia Tuck Champion v. DHHS, Division of Health Service Regulation	11 DHR 14283	06/15/12	
Lauren Stewart v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 14570	06/08/12	
Alice M. Oakley v. Division of Child Development, DHHS	11 DHR 14571	05/15/12	27:04 NCR 508
Althea L. Flythe v. Durham County Health Department	12 DHR 00242	05/17/12	
Jerri Long v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	12 DHR 00361	07/06/12	
Jessica Lynn Ward v. DHHS	12 DHR 00643	05/17/12	
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