

NORTH CAROLINA REGISTER

VOLUME 27 • ISSUE 14 • Pages 1290 - 1380

January 15, 2013

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Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

molly.masich@oah.nc.gov

(919) 431-3071

Dana Vojtko, Publications Coordinator

dana.vojtko@oah.nc.gov

(919) 431-3075

Julie Edwards, Editorial Assistant

julie.edwards@oah.nc.gov

(919) 431-3073

Tammara Chalmers, Editorial Assistant

tammara.chalmers@oah.nc.gov

(919) 431-3083

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

(919) 431-3000

Raleigh, North Carolina 27609

(919) 431-3104 FAX

contact: Joe DeLuca Jr., Commission Counsel

joe.deluca@oah.nc.gov

(919) 431-3081

Bobby Bryan, Commission Counsel

bobby.bryan@oah.nc.gov

(919) 431-3079

Fiscal Notes & Economic Analysis and Governor's Review

Office of State Budget and Management

116 West Jones Street

(919) 807-4700

Raleigh, North Carolina 27603-8005

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

NC Association of County Commissioners

215 North Dawson Street

(919) 715-2893

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Erin L. Wynia

ewynia@nclm.org

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee

545 Legislative Office Building

300 North Salisbury Street

(919) 733-2578

Raleigh, North Carolina 27611

(919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney

Karen.cochrane-brown@ncleg.net

Jeff Hudson, Staff Attorney

Jeffrey.hudson@ncleg.net

NORTH CAROLINA REGISTER
Publication Schedule for January 2013 – December 2013

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
27:13	01/02/13	12/06/12	01/17/13	03/04/13	03/20/13	05/01/13	05/2014	09/29/13
27:14	01/15/13	12/19/12	01/30/13	03/18/13	03/20/13	05/01/13	05/2014	10/12/13
27:15	02/01/13	01/10/13	02/16/13	04/02/13	04/22/13	06/01/13	05/2014	10/29/13
27:16	02/15/13	01/25/13	03/02/13	04/16/13	04/22/13	06/01/13	05/2014	11/12/13
27:17	03/01/13	02/08/13	03/16/13	04/30/13	05/20/13	07/01/13	05/2014	11/26/13
27:18	03/15/13	02/22/13	03/30/13	05/14/13	05/20/13	07/01/13	05/2014	12/10/13
27:19	04/01/13	03/08/13	04/16/13	05/31/13	06/20/13	08/01/13	05/2014	12/27/13
27:20	04/15/13	03/22/13	04/30/13	06/14/13	06/20/13	08/01/13	05/2014	01/10/14
27:21	05/01/13	04/10/13	05/16/13	07/01/13	07/22/13	09/01/13	05/2014	01/26/14
27:22	05/15/13	04/24/13	05/30/13	07/15/13	07/22/13	09/01/13	05/2014	02/09/14
27:23	06/03/13	05/10/13	06/18/13	08/02/13	08/20/13	10/01/13	05/2014	02/28/14
27:24	06/17/13	05/24/13	07/02/13	08/16/13	08/20/13	10/01/13	05/2014	03/14/14
28:01	07/01/13	06/10/13	07/16/13	08/30/13	09/20/13	11/01/13	05/2014	03/28/14
28:02	07/15/13	06/21/13	07/30/13	09/13/13	09/20/13	11/01/13	05/2014	04/11/14
28:03	08/01/13	07/11/13	08/16/13	09/30/13	10/21/13	12/01/13	05/2014	04/28/14
28:04	08/15/13	07/25/13	08/30/13	10/14/13	10/21/13	12/01/13	05/2014	05/12/14
28:05	09/03/13	08/12/13	09/18/13	11/04/13	11/20/13	01/01/14	05/2014	05/31/14
28:06	09/16/13	08/23/13	10/01/13	11/15/13	11/20/13	01/01/14	05/2014	06/13/14
28:07	10/01/13	09/10/13	10/16/13	12/02/13	12/20/13	02/01/14	05/2014	06/28/14
28:08	10/15/13	09/24/13	10/30/13	12/16/13	12/20/13	02/01/14	05/2014	07/12/14
28:09	11/01/13	10/11/13	11/16/13	12/31/13	01/21/14	03/01/14	05/2014	07/29/14
28:10	11/15/13	10/24/13	11/30/13	01/14/14	01/21/14	03/01/14	05/2014	08/12/14
28:11	12/02/13	11/06/13	12/17/13	01/31/14	02/20/14	04/01/14	05/2014	08/29/14
28:12	12/16/13	11/21/13	12/31/13	02/14/14	02/20/14	04/01/14	05/2014	09/12/14

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.

Please note the following corrected information to the Notice of Text published by the Public Health Commission that includes 15A NCAC 13B .0206, .0504 in the NC Register, January 2, 2013, starting on page 1272:

Fiscal impact (check all that apply).

- X** **State funds affected**
 - Environmental permitting of DOT affected**
 - Analysis submitted to Board of Transportation**
- X** **Local funds affected**
 - Date submitted to OSBM: *October 7, 2012***
- X** **Substantial economic impact (≥\$500,000)**
- X** **Approved by OSBM**
 - No fiscal note required**

The fiscal note for these four rules was approved by OSBM, and is available on the OSBM website at:
http://www.osbm.state.nc.us/files/pdf_files/DENR11262012.pdf.



U.S. Department of Justice
Civil Rights Division

rec'd 12/14

TCH.RSB:JR:NG:tst
DJ 166-012-3
2012-5384
2012-5648

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

November 29, 2012

David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Holec:

This refers to three annexations (Ordinance Nos. 12-038, 12-039 and 12-043 (2012)) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submissions on October 11 and November 13, 2012.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41 and 51.43.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Christian Herren, Jr.", written over the typed name.

T. Christian Herren, Jr.
Chief, Voting Section

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 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02B .0295 and repeal the rules cited as 15A NCAC 02B .0242, .0244, .0252, .0260, .0268 and .0609.

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

- ☒ **OSBM certified on:** October 12, 2012
- ☐ **RRC certified on:**
- ☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://portal.ncdenr.org/web/wq/rules>

Proposed Effective Date: January 1, 2014

Public Hearing:

Date: February 6, 2013

Time: 7:00 p.m.

Location: Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC 27604

Date: February 12, 2013

Time: 7:00 p.m.

Location: Pitt Community College Goess Student Center, Goess Multi-Purpose Room, Room #137-139, 169 Bulldog Run, Winterville, NC 28590

There will be two public hearings. They will be posted on the DWQ website located at: <http://portal.ncdenr.org/web/wq/event-calendar>, on the DWQ listserv and in the applicable local newspapers.

Reason for Proposed Action:

15A NCAC 02B .0295 - This proposed rule is required per General Statute 143-214.20. Per this statute, the Environmental Management Commission was to adopt rules concerning construction of alternative measures of buffer mitigation that reduces nutrient loading as well as or better than the riparian buffer that is lost.

This proposed rule will provide mitigation options not currently available to DOT, developers, industry and private individuals. In addition to providing greater regulatory flexibility, the proposed changes incorporate contemporary technical and operational techniques into the rules. This proposed rule adheres to the Principles of Executive Order 70 Rules and were developed through a public stakeholder process. The new rule

advances the public interest and are designed to achieve their objectives in a cost-effective and timely manner.

15A NCAC 02B .0242, .0244, .0252, .0260, .0268, .0609 - The rules being repealed will be replaced with this new rule (15A NCAC .02B .0295).

Procedure by which a person can object to the agency on a proposed rule: Written comments or by email to Eric Kulz, NCDENR Division of Water Quality, 1650 Mail Service Center, Raleigh, NC 27699-1650; fax (919) 807-6494; email eric.kulz@ncdenr.gov.

Comments may be submitted to: Eric Kulz, NCDENR Division of Water Quality, 1650 Mail Service Center, Raleigh, NC 27699-1650; fax (919) 807-6494; email eric.kulz@ncdenr.gov

Comment period ends: March 18, 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 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - SECTION .0200 - CLASSIFICATIONS
AND WATER QUALITY STANDARDS APPLICABLE TO
SURFACE WATERS AND WETLANDS OF NORTH
CAROLINA

15A NCAC 02B .0242 NEUSE RIVER BASIN:
NUTRIENT SENSITIVE WATERS MANAGEMENT
STRATEGY: MITIGATION PROGRAM FOR
PROTECTION AND MAINTENANCE OF EXISTING
RIPARIAN BUFFERS

The following are the requirements for the Riparian Buffer
Mitigation Program for the Neuse Basin.

- (1) ~~PURPOSE.~~ The purpose of this Rule is to set forth the mitigation requirements that apply to the Neuse Basin existing riparian buffer protection program, as described in Rule 15A NCAC 2B .0233.
- (2) ~~APPLICABILITY.~~ This Rule applies to persons who wish to impact a riparian buffer in the Neuse Basin when one of the following applies:
 - (a) A person has received an Authorization Certificate pursuant to 15A NCAC 2B .0233 for a proposed use that is designated as "allowable with mitigation."
 - (b) A person has received a variance pursuant to 15A NCAC 2B .0233 and is required to perform mitigation as a condition of a variance approval.
- (3) ~~THE AREA OF MITIGATION.~~ The required area of mitigation shall be determined by either the Division or the delegated local authority according to the following:
 - (a) The impacts in square feet to each zone of the riparian buffer shall be determined by the Division or the delegated local authority by adding the following:
 - (i) The area of the footprint of the use causing the impact to the riparian buffer.
 - (ii) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use.
 - (iii) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.
 - (b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub item (3)(a) of this Rule to each zone of the riparian buffer:

- (i) Impacts to Zone 1 of the riparian buffer shall be multiplied by 3.
- (ii) Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5.
- (iii) Impacts to wetlands within Zones 1 and 2 of the riparian buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.

- (4) ~~THE LOCATION OF MITIGATION.~~ The mitigation effort shall be the same distance from the Neuse River estuary as the proposed impact, or closer to the estuary than the impact, and as close to the location of the impact as feasible.
- (5) ~~ISSUANCE OF THE MITIGATION DETERMINATION.~~ The Division or the delegated local authority shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.
- (6) ~~OPTIONS FOR MEETING THE MITIGATION DETERMINATION.~~ The mitigation determination made pursuant to Item (5) of this Rule may be met through one of the following options:
 - (a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule.
 - (b) Donation of real property or of an interest in real property pursuant to Item (8) of this Rule.
 - (c) Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Rule.
- (7) ~~PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND.~~ Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:
 - (a) ~~SCHEDULE OF FEES:~~ The amount of payment into the Fund shall be determined by multiplying the acres or square feet of mitigation determination made pursuant to Item (5) of this Rule by ninety six cents per square foot or forty one thousand, six hundred and twenty five dollars per acre.

- ~~(b) The required fee shall be submitted to the Division of Water Quality, Wetlands Restoration Program, MAIL SERVICE CENTER 1619, RALEIGH, NC 27699 1619 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made.~~
- ~~(c) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Item (8) of this Rule.~~
- ~~(d) The Division shall review the fee outlined in Sub item (7)(a) of this Rule every two years and compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division shall recommend revisions to Sub item (7)(a) of this Rule when adjustments to this Schedule of Fees are deemed necessary.~~
- ~~(8) DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:~~
 - ~~(a) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Sub item (8)(d)(iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Sub item (7)(a) of this Rule, the applicant shall pay the remaining balance due.~~
 - ~~(b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.~~
 - ~~(c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:~~
 - ~~(i) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Riparian Restoration Plan.~~
 - ~~(ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration.~~
 - ~~(iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.~~
 - ~~(iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule.~~
 - ~~(v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use;~~
 - ~~(vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;~~
 - ~~(vii) The estimated cost of restoring and maintaining the property shall not exceed~~

- the value of the property minus site identification and land acquisition costs.
- (ix) ~~The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.~~
- (x) ~~The property shall not contain any hazardous substance or solid waste.~~
- (xi) ~~The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.~~
- (xii) ~~The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort.~~
- (xiii) ~~The property shall not have any encumbrances or conditions on the transfer of the property interests.~~
- (d) ~~At the expense of the applicant or donor, the following information shall be submitted to the Division with any proposal for donations or dedications of interest in real property:~~
 - (i) ~~Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Rule.~~
 - (ii) ~~US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.~~
- (iii) ~~A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.~~
- (iv) ~~A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.~~
- (v) ~~A title certificate.~~
- (9) ~~RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:~~
 - (a) ~~The applicant may restore or enhance a non forested riparian buffer if either of the following applies:~~
 - (i) ~~The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (3) of this Rule.~~
 - (ii) ~~The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (3) of this Rule.~~
 - (b) ~~The location of the riparian buffer restoration or enhancement shall~~

comply with the requirements in Item (4) of this Rule.

- (c) ~~The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.~~
- (d) ~~The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 2B .0233. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the Division. The restoration or enhancement plan shall contain the following.~~
 - (i) ~~A map of the proposed restoration or enhancement site.~~
 - (ii) ~~A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity.~~
 - (iii) ~~A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer.~~
 - (iv) ~~A fertilization plan.~~
 - (v) ~~A schedule for implementation.~~
- (e) ~~Within one year after the Division has approved the restoration or enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of the State's or the delegated local authority's riparian buffer protection program.~~
- (f) ~~The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.~~
- (g) ~~The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five year period.~~

Authority 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1998, c. 221.

15A NCAC 02B .0244 CATAWBA RIVER BASIN: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS IN THE CATAWBA RIVER BASIN

The following are the requirements for the Riparian Buffer Mitigation Program for the Catawba River Basin.

- (1) ~~PURPOSE.~~ The purpose of this Rule is to set forth the mitigation requirements that apply to maintain and protect existing riparian buffers on the Catawba River mainstem below Lake James and mainstem lakes from and including Lake James to the North Carolina/South Carolina border in the Catawba River Basin, as described in Rule 15A NCAC 02B .0243.
- (2) ~~APPLICABILITY.~~ This Rule applies to persons who wish to impact a riparian buffer in the Catawba Basin when one of the following applies:
 - (a) ~~A person has received an Authorization Certificate pursuant to 15A NCAC 02B .0243 for a proposed use that is designated as "allowable with mitigation."~~
 - (b) ~~A person has received a variance pursuant to 15A NCAC 02B .0243 and is required to perform mitigation as a condition of a variance approval.~~
- (3) ~~THE AREA OF MITIGATION.~~ The required area of mitigation shall be determined by either the Division or a local government with an approved riparian buffer ordinance according to the following:
 - (a) ~~The impacts in square feet to each zone of the riparian buffer shall be determined by adding the following:~~
 - (i) ~~The area of the footprint of the use causing the impact to the riparian buffer.~~
 - (ii) ~~The area of any clearing and grading activities within the riparian buffer necessary to accommodate the use.~~
 - (iii) ~~The area of any ongoing maintenance corridors within the riparian buffer associated with the use.~~
 - (b) ~~The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub item (3)(a) of this Rule:~~
 - (i) ~~Impacts to Zone 1 of the riparian buffer shall be multiplied by 2.~~

- (ii) ~~Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5.~~
- (4) ~~THE LOCATION OF MITIGATION.~~ The mitigation effort shall be the same distance from the Catawba River as the proposed impact and as close to the location of the impact as feasible.
- (5) ~~ISSUANCE OF THE MITIGATION DETERMINATION.~~ The Division or a local government with an approved buffer program shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.
- (6) ~~OPTIONS FOR MEETING THE MITIGATION DETERMINATION.~~ The mitigation determination made pursuant to Item (5) of this Rule may be met through one of the following options:
 - (a) ~~Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule.~~
 - (b) ~~Donation of real property or of an interest in real property pursuant to Item (8) of this Rule.~~
 - (c) ~~Restoration or enhancement of a non-forested riparian buffer as defined in the Rule 15A NCAC 02B .0243. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Rule.~~
- (7) ~~PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND.~~ Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:
 - (a) ~~SCHEDULE OF FEES:~~ The amount of payment into the Fund shall be determined by square feet of mitigation determination made pursuant to Item (5) of this Rule by ninety six cents per square foot.
 - (b) ~~The required fee shall be submitted to the Division of Water Quality, Wetlands Restoration Program, Mail Service Center 1619, Raleigh, NC 27699 1619 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made.~~
 - (c) ~~The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real~~ property interests pursuant to Item (8) of this Rule.
- (d) ~~The Division shall review the fee outlined in Sub item (7)(a) of this Rule every two years and compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division shall recommend revisions to Sub item (7)(a) of this Rule when adjustments to this Schedule of Fees are deemed necessary.~~
- (8) ~~DONATION OF PROPERTY.~~ Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:
 - (a) ~~The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Sub item (8)(d)(iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Sub item (7)(a) of this Rule, the applicant shall pay the remaining balance due.~~
 - (b) ~~The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.~~
 - (c) ~~Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:~~
 - (i) ~~The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan for the Catawba River Basin developed by the~~

- Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in Basinwide Wetlands and Riparian Restoration Plan for the Catawba River Basin.
- (ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration.
 - (iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet. For the Catawba River mainstem below Lake James, the width of the riparian buffer shall begin at the most landward limit of the top of the bank and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. For the mainstem lakes located on the Catawba River mainstem, the width of the riparian buffer shall begin at the most landward limit of the full pond level and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the full pond level.
 - (iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule.
 - (v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of offsetting the adverse impacts of the requested use.
 - (vi) The property shall be suitable to be restored, based on existing hydrology, soils, and vegetation.
 - (vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs.
 - (ix) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.
 - (x) The property shall not contain any hazardous substance or solid waste.
 - (xi) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.
 - (xii) The property and adjacent properties shall not have prior, current, or known future land use that would inhibit the function of the restoration effort.
 - (xiii) The property shall not have any encumbrances or conditions on the transfer of the property interests.
 - (d) At the expense of the applicant or donor, the following information shall be submitted to the Division with any proposal for donations or dedications of interest in real property:
 - (i) Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Rule.
 - (ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax

- ~~map, — USDA — Natural Resource — Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.~~
- (iii) ~~A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.~~
- (iv) ~~A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.~~
- (v) ~~A title certificate.~~
- (9) ~~RIPARIAN BUFFER RESTORATION OR RIPARIAN BUFFER ENHANCEMENT. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:~~
- (a) ~~The applicant may restore or enhance a non forested riparian buffer if either of the following applies:~~
- (i) ~~The area of riparian buffer restoration is equal to the~~
- ~~required area of mitigation determined pursuant to Sub-Item (3)(b) of this Rule.~~
- (ii) ~~The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Sub-Item (3)(b) of this Rule.~~
- (b) ~~The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Rule.~~
- (c) ~~The riparian buffer restoration or riparian buffer enhancement site shall have a minimum width of 50 feet. For the Catawba River mainstem below Lake James, the width of the riparian buffer shall begin at the most landward limit of the top of the bank and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. For the mainstem lakes located on the Catawba River mainstem, the width of the riparian buffer shall begin at the most landward limit of the full pond level and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the full pond level.~~
- (d) ~~The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 02B .0243. After receiving this determination, the applicant shall submit a riparian buffer restoration or riparian buffer enhancement plan for approval by the Division. The riparian buffer restoration or riparian buffer enhancement plan shall contain the following:~~
- (i) ~~A map of the proposed riparian buffer restoration or riparian buffer enhancement site.~~
- (ii) ~~A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity.~~
- (iii) ~~A grading plan. The site shall be graded in a manner~~

- to ensure diffuse flow through the riparian buffer.
- (iv) A fertilization plan.
- (v) A schedule for implementation.
- (e) Within one year after the Division has approved the riparian buffer restoration or riparian buffer enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of both the State and a local riparian buffer ordinance.
- (f) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.
- (g) The applicant shall submit annual reports for a period of five years after the riparian buffer restoration or riparian buffer enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five year period.

Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1999, c. 329, s. 7.1; S.B. 824-2003.

15A NCAC 02B .0252 RANDLEMAN LAKE WATER SUPPLY WATERSHED: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following are the requirements for the Riparian Buffer Mitigation Program for the Randleman Lake Water Supply Watershed.

- (1) PURPOSE. The purpose of this Rule is to set forth the mitigation requirements that apply to the Randleman Lake Water Supply Watershed existing riparian buffer protection program, as described in Rule 15A NCAC 02B .0250.
- (2) APPLICABILITY. This Rule applies to persons who wish to impact a riparian buffer in the Randleman Lake water supply watershed when one of the following applies:
 - (a) A person has received an Authorization Certificate pursuant to 15A NCAC 02B .0250 for a proposed use that is designated as potentially allowable with mitigation; and
 - (b) A person has received a variance pursuant to 15A NCAC 02B .0250

- and is required to perform mitigation as a condition of a variance approval.
- (3) THE AREA OF MITIGATION. The required area of mitigation shall be determined by either the Division or the delegated local authority according to the following:
 - (a) The impacts in square feet to each zone of the riparian buffer shall be determined by the Division or the delegated local authority by adding the following:
 - (i) The area of the footprint of the use causing the impact to the riparian buffer;
 - (ii) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use; and
 - (iii) The area of any ongoing maintenance corridors within the riparian buffer associated with the use; and
 - (b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub item (3)(a) of this Rule to each zone of the riparian buffer:
 - (i) Impacts to Zone 1 of the riparian buffer shall be multiplied by 3;
 - (ii) Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5; and
 - (iii) Impacts to wetlands within Zones 1 and 2 of the riparian buffer that are subject to mitigation under 15A NCAC 02H .0506 shall comply with the mitigation ratios in 15A NCAC 02H .0506.
- (4) THE LOCATION OF MITIGATION. The mitigation effort shall be the same distance from the Cape Fear River or its tributaries and within the watershed of Lake Randleman as the proposed impact, or closer to the Cape Fear River and within the watershed of Lake Randleman than the impact, and as close to the location of the impact as feasible.
- (5) ISSUANCE OF THE MITIGATION DETERMINATION. The Division or the delegated local authority shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.
- (6) OPTIONS FOR MEETING THE MITIGATION DETERMINATION. The mitigation determination made pursuant to

Item (5) of this Rule may be met through one of the following options:

- (a) ~~Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule;~~
- (b) ~~Donation of real property or of an interest in real property pursuant to Item (8) of this Rule; and~~
- (c) ~~Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Rule.~~

(7) ~~PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND. Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall do so in accordance with 15A NCAC 02B .0269.~~

(8) ~~DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:~~

- (a) ~~The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Sub Item (8)(d) (iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Item (7) of this Rule, the applicant shall pay the remaining balance due;~~
- (b) ~~The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity;~~
- (c) ~~Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:~~
 - (i) ~~The property shall be located within an area that is identified as a priority for restoration in the Basinwide~~

~~Wetlands and Riparian Restoration Plan developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Riparian Restoration Plan;~~

- (ii) ~~The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration;~~
- (iii) ~~The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;~~
- (iv) ~~The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule;~~
- (v) ~~The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use;~~
- (vi) ~~The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;~~
- (vii) ~~The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition cost;~~
- (viii) ~~The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant~~

- ~~to Public Law 89-665, 16 U.S.C. 470 as amended;~~
- ~~(ix) The property shall not contain any hazardous substance or solid waste;~~
 - ~~(x) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations;~~
 - ~~(xi) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort; and~~
 - ~~(xii) The property shall not have any encumbrances or conditions on the transfer of the property interests; and~~
 - ~~(xiii) The location of the donation of real property shall comply with the requirements in Item (4) of this Rule.~~
 - ~~(d) At the expense of the applicant or donor, the following information shall be submitted to the local governments, except state and federal entities shall submit to the Division, with any proposal for donations or dedications of interest in real property:

 - ~~(i) Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Rule;~~
 - ~~(ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements;~~
 - ~~(iii) A current property survey performed in accordance with the procedures of the~~
 - ~~North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609;~~
 - ~~(iv) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734; and~~
 - ~~(v) A title certificate.~~~~
- ~~(9) RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:~~
- ~~(a) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:

 - ~~(i) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (3) of this Rule; and~~
 - ~~(ii) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (3) of this Rule;~~~~
 - ~~(b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Rule;~~

- ~~(c) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;~~
- ~~(d) Enhancement and restoration shall both have the objective of establishing a forested riparian buffer according to the requirements of this Item. Enhancement, shall be distinguished from the restoration based on existing buffer conditions. Where existing woody vegetation is sparse, that is greater than or equal to 100 trees per acre, but less than 200 trees per acre, a buffer may be enhanced. Where existing woody vegetation is absent, that is less than 100 trees per acre, a buffer may be restored;~~
- ~~(e) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 02B .0250. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the local government, except for state and federal entities that shall submit a restoration or enhancement plan for approval to the Division. The restoration or enhancement plan shall contain the following:~~
 - ~~(i) A map of the proposed restoration or enhancement site;~~
 - ~~(ii) A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity;~~
 - ~~(iii) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;~~
 - ~~(iv) A fertilization plan; and~~
 - ~~(v) A schedule for implementation;~~
- ~~(f) Within one year after the Division has approved the restoration or enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of the State's or~~

the delegated local authority's riparian buffer protection program;

- ~~(g) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's sediment removal functions; and~~
- ~~(h) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five year period.~~

Authority 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1998, c. 221.

15A NCAC 02B .0260 TAR-PAMLICO RIVER BASIN – NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF RIPARIAN BUFFERS

The following are requirements for the Riparian Buffer Mitigation Program for the Tar Pamlico Basin:

- ~~(1) PURPOSE. The purpose of this Rule is to set forth the mitigation requirements that apply to the riparian buffer protection program in the Tar Pamlico Basin, as described in Rule 15A NCAC 2B .0259, and whose surface waters are described in the Schedule of Classifications, 15A NCAC 2B .0316.~~
- ~~(2) APPLICABILITY. This Rule applies to persons who wish to impact a riparian buffer in the Tar Pamlico Basin when one of the following applies:~~
 - ~~(a) A person has received an Authorization Certificate pursuant to 15A NCAC 2B .0259 for a proposed use that is designated as "allowable with mitigation."~~
 - ~~(b) A person has received a variance pursuant to 15A NCAC 2B .0259 and is required to perform mitigation as a condition of a variance approval.~~
- ~~(3) THE AREA OF MITIGATION. The required area of mitigation shall be determined by either the Division or the delegated local authority according to the following:~~
 - ~~(a) The impacts in square feet to each zone of the riparian buffer shall be determined by the Division or the delegated local authority by adding the following:~~

- (i) ~~The area of the footprint of the use causing the impact to the riparian buffer.~~
- (ii) ~~The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use.~~
- (iii) ~~The area of any ongoing maintenance corridors within the riparian buffer associated with the use.~~
- (b) ~~The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub item (3)(a) of this Paragraph to each zone of the riparian buffer:~~
 - (i) ~~Impacts to Zone 1 of the riparian buffer shall be multiplied by 3.~~
 - (ii) ~~Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5.~~
 - (iii) ~~Impacts to wetlands within Zones 1 and 2 of the riparian buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.~~
- (4) ~~THE LOCATION OF MITIGATION. The mitigation effort shall be located the same distance from the Pamlico River estuary as the proposed impact, or closer to the estuary than the impact, and as close to the location of the impact as feasible.~~
- (5) ~~ISSUANCE OF THE MITIGATION DETERMINATION. The Division or the delegated local authority shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.~~
- (6) ~~OPTIONS FOR MEETING THE MITIGATION DETERMINATION. The mitigation determination made pursuant to Item (5) of this Rule may be met through one of the following options:~~
 - (a) ~~Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule.~~
 - (b) ~~Donation of real property or of an interest in real property pursuant to Item (8) of this Rule.~~
 - (c) ~~Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a~~
 - ~~restoration plan pursuant to Item (9) of this Rule.~~
- (7) ~~PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND. Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:~~
 - (a) ~~SCHEDULE OF FEES: The amount of payment into the Fund shall be determined by multiplying the acres or square feet of mitigation determination made pursuant to Item (5) of this Rule by ninety-six cents per square foot or forty one thousand, six hundred and twenty five dollars per acre.~~
 - (b) ~~The required fee shall be submitted to the Division of Water Quality, Wetlands Restoration Program, 1619 Mail Service Center, Raleigh, NC 27699 1619 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made.~~
 - (c) ~~The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Item (8) of this Rule.~~
 - (d) ~~The Division of Water Quality shall review the fee outlined in Sub item (7)(a) of this Rule every two years and shall compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division of Water Quality shall recommend revisions to Sub item (7)(a) of this Rule when adjustments to this Schedule of Fees are deemed necessary.~~
- (8) ~~DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:~~
 - (a) ~~The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed~~

- ~~in accordance with Sub item (8)(d)(iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Sub item (7)(a) of this Rule, the applicant shall pay the remaining balance due.~~
- ~~(b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.~~
 - ~~(c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:

 - ~~(i) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Riparian Restoration Plan.~~
 - ~~(ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration.~~
 - ~~(iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.~~
 - ~~(iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule.~~~~
 - ~~(v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use.~~
 - ~~(vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;~~
 - ~~(vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs.~~
 - ~~(ix) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.~~
 - ~~(x) The property shall not contain any hazardous substance or solid waste.~~
 - ~~(xi) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.~~
 - ~~(xii) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort.~~
 - ~~(xiii) The property shall not have any encumbrances or conditions on the transfer of the property interests.~~
 - ~~(d) At the expense of the applicant or donor, the following information shall be submitted to the Division with any proposal for donations or dedications of interest in real property:~~

- (i) ~~Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Rule.~~
 - (ii) ~~US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.~~
 - (iii) ~~A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.~~
 - (iv) ~~A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.~~
 - (v) ~~A title certificate.~~
- (9) ~~RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet their mitigation requirement through~~
- ~~riparian buffer restoration or enhancement shall meet the following requirements:~~
- (a) ~~The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:~~
 - (i) ~~The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (3) of this Rule.~~
 - (ii) ~~The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (3) of this Rule.~~
 - (b) ~~The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Rule.~~
 - (c) ~~The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.~~
 - (d) ~~The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 2B .0259. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the Division. The restoration or enhancement plan shall contain the following:~~
 - (i) ~~A map of the proposed restoration or enhancement site.~~
 - (ii) ~~A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity.~~
 - (iii) ~~A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer.~~
 - (iv) ~~A fertilization plan.~~
 - (v) ~~A schedule for implementation.~~
 - (e) ~~Within one year after the Division has approved the restoration or enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person~~

shall be in violation of the State's or the delegated local authority's riparian buffer protection program.

- (f) ~~The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.~~
- (g) ~~The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five year period.~~

Authority 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999, c. 329, s. 7.1.

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

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

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

- (a) ~~A person has received an Authorization Certificate pursuant to 15A NCAC 02B .0267 for a proposed use that is designated as "allowable with mitigation;" or~~

- (b) ~~A person has received a variance pursuant to 15A NCAC 02B .0267 and is required to perform mitigation as a condition of a variance approval.~~

- (3) ~~ISSUANCE OF THE MITIGATION APPROVAL.~~ The local government shall issue a mitigation approval upon determining that a proposal meets the requirements set out in this Rule. The approval shall identify at a minimum the option chosen, the required and proposed areas, and either the mitigation location or the offset payment amount as applicable.

- (4) ~~OPTIONS FOR MEETING THE MITIGATION REQUIREMENT.~~ The mitigation requirement may be met through one of the following options:

- (a) ~~Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0269 contingent upon acceptance of payments by the NC Ecosystem Enhancement Program, or to a private mitigation bank that complies with banking requirements of the US Army Corps of Engineers, currently set out at <http://www.saw.usace.army.mil/WETLANDS/Mitigation/mitbanks.html> or from the US Army Corps of Engineers, P.O. Box 1890, Wilmington, NC, 28402 1890, and the applicable trading criteria in 15A NCAC 02B .0273;~~

- (b) ~~Donation of real property or of an interest in real property pursuant to Item (7) of this Rule; or~~

- (c) ~~Restoration or enhancement of a non-forested riparian buffer pursuant to the requirements of Item (8) of this Rule.~~

- (5) ~~THE AREA OF MITIGATION.~~ The local government shall determine the required area of mitigation, which shall apply to all mitigation options identified in Item (4) of this Rule and as further specified in the requirements for each option set out in this Rule, according to the following:

- (a) ~~The impacts in square feet to each zone of the riparian buffer shall be determined by the local government by adding the following:~~

- (i) ~~The area of the footprint of the use causing the impact to the riparian buffer;~~
 - (ii) ~~The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use; and~~
 - (iii) ~~The area of any ongoing maintenance corridors within the riparian buffer associated with the use.~~
 - (b) ~~The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub item (5)(a) of this Rule to each zone of the riparian buffer:~~
 - (i) ~~Impacts to Zone One of the riparian buffer shall be multiplied by three;~~
 - (ii) ~~Impacts to Zone Two of the riparian buffer shall be multiplied by one and one-half; and~~
 - (iii) ~~Impacts to wetlands within Zones One and Two of the riparian buffer that are subject to mitigation under 15A NCAC 02H .0506 shall comply with the mitigation ratios in 15A NCAC 02H .0506.~~
- (6) ~~THE LOCATION OF MITIGATION. For any option chosen, the mitigation effort shall be located within the same subwatershed of the Jordan watershed, as defined in Rule .0262 of this Section, and the same distance from the Jordan Reservoir as the proposed impact, or closer to the Reservoir than the impact, and as close to the location of the impact as feasible. Alternatively, the applicant may propose mitigation anywhere within the same subwatershed of the Jordan watershed, as defined in Rule .0262 of this Section, provided that the mitigation proposal accounts for differences in delivery of nutrients to the affected arm of Jordan Reservoir resulting from differences between the locations of the buffer impact and mitigation. Additional location requirements for the property donation option are enumerated in Sub Item (7)(c)(i) of this Rule.~~
- (7) ~~DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:~~
- (a) ~~The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0269. The value of the property interest shall be determined by an appraisal performed in accordance with Sub item (7)(d)(iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to 15A NCAC 02B .0269, the applicant shall pay the remaining balance due;~~
 - (b) ~~Accepted only if the conservation easement is granted in perpetuity;~~
 - (c) ~~Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:~~
 - (i) ~~In addition to the location requirements of Item (6), the property shall be located within an area that is identified as a priority for restoration in, or is otherwise consistent with the goals of, the *Basinwide Wetlands and Riparian Restoration Plan for the Cape Fear River Basin* developed by the Department pursuant to G.S. 143-214.10;~~
 - (ii) ~~The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration as defined in Sub Item (8)(d) of this Rule;~~
 - (iii) ~~The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;~~
 - (iv) ~~The size of the restorable riparian buffer on the property to be donated shall equal or exceed the area of~~

- ~~mitigation—responsibility determined pursuant to Item (5) of this Rule;~~
- ~~(v) Restoration shall not require removal of man made structures or infrastructure;~~
 - ~~(vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;~~
 - ~~(vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and transaction costs;~~
 - ~~(viii) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89 665, 16 U.S.C. 470 as amended;~~
 - ~~(ix) The property shall not contain any hazardous substance or solid waste;~~
 - ~~(x) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations;~~
 - ~~(xi) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort; and~~
 - ~~(xii) The property shall not have any encumbrances or conditions on the transfer of the property interests;~~
- ~~(d) At the expense of the applicant or donor, the following information shall be submitted to the local government with any proposal for donations or dedications of interest in real property:

 - ~~(i) Documentation that the property meets the~~~~
- ~~requirements laid out in Sub-Item (7)(c) of this Rule;~~
- ~~(ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements;~~
 - ~~(iii) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609;~~
 - ~~(iv) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734; and~~
 - ~~(v) A title certificate.~~
- ~~(8) RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:~~

- (a) ~~The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:~~
 - (i) ~~The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (5) of this Rule; or~~
 - (ii) ~~The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (5) of this Rule;~~
- (b) ~~The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (6) of this Rule;~~
- (c) ~~The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;~~
- (d) ~~Enhancement and restoration shall both have the objective of establishing a forested riparian buffer according to the requirements of this Item. Enhancement shall be distinguished from restoration based on existing buffer conditions. Where existing trees are sparse, that is greater than or equal to 100 trees per acre but less than 200 trees per acre, a buffer may be enhanced. Where existing woody vegetation is absent, that is less than 100 trees per acre, a buffer may be restored;~~
- (e) ~~The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 02B .0267. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the local government. The restoration or enhancement plan shall contain the following:~~
 - (i) ~~A map of the proposed restoration or enhancement site;~~
 - (ii) ~~A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity;~~
 - (iii) ~~A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;~~
 - (iv) ~~A fertilization plan; and~~
 - (v) ~~A schedule for implementation;~~
 - (f) ~~Within one year after the local government has approved the restoration or enhancement plan, the applicant shall present proof to the local government that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of both the State's and the local government's riparian buffer protection program;~~
 - (g) ~~The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions; and~~
 - (h) ~~The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five year period.~~

Authority 143-214.1; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 1999-329, s. 7.1.; S.L. 2005-190; S.L. 2006-259.

15A NCAC 02B .0295 MITIGATION PROGRAM REQUIREMENTS FOR PROTECTION AND MAINTENANCE OF RIPARIAN BUFFERS

(a) PURPOSE. The purpose of this Rule is to set forth the mitigation requirements that apply to applicants who wish to impact a riparian buffer when one of the following applies:

- (1) The applicant has received an authorization certificate, for impacts that cannot be avoided or practicably minimized, pursuant to 15A NCAC 02B .0233, .0243, .0250, .0259, .0267 and .0607 protection and maintenance of existing riparian buffers: purpose, applicability, jurisdiction and exemptions.
- (2) The applicant has received a variance pursuant to 15A NCAC 02B .0233, .0243, .0250, .0259, .0267 and .0607 and is required to perform mitigation as a condition of a variance approval.

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

- (1) "Authority" means either the Division or a local government that has been delegated or designated to implement the riparian buffer program.
- (2) "Division" means the Division of Water Quality of the North Carolina Department of Environment and Natural Resources.
- (3) "Enhancement Site" means riparian zone sites that shall be distinguished from restoration or preservation sites by being characterized by conditions between restoration and preservation.
- (4) "Government Entity" means the State and its agencies and subdivisions, the federal government, and units of local government.
- (5) "Hydrologic Area" means the Watershed Boundary Dataset (WBD), located at <http://datagateway.nrcs.usda.gov> using the eight-digit Hydrologic Unit Code (HUC) prepared by the United States Geological Survey.
- (6) "Monitoring period" means the length of time specified in the approved mitigation plan during which monitoring of vegetation success, stream stability, and other anticipated benefits to the adjacent water as listed in the Authorization Certification is done.
- (7) "Non-wasting endowment" means a fund that generates enough interest each year to cover the cost of the long term monitoring and maintenance.
- (8) "Off-site" means off the property on which the buffer impacts occur but within the most recent version of the Watershed Boundary Dataset (WBD), located at <http://datagateway.nrcs.usda.gov> using the 12 digit HUC prepared by the United States Geological Survey
- (9) "On-site" means on the property on which the impact occurred and which is owned by the applicant or to which the applicant holds an easement adequate to allow the proposed mitigation.
- (10) "Outer Coastal Plain" means the portion of the state shown as the Middle Atlantic Coastal Plain (63) on Griffith, et al (2002) "Ecoregions of North and South Carolina". Reston, VA, United States Geological Survey.
- (11) "Physiographic province" means one of the four Level III ecoregion shown on Griffith, et al (2002) "Ecoregions of North and South Carolina". Reston, VA, United States Geological Survey.
- (12) "Preservation Site" means riparian zone sites that are characterized by a closed canopy of tree species of greater than or equal to five inches diameter at breast height (dbh) or characterized by a dense growth of smaller woody stems.

- (13) "Restoration Site" means riparian zone sites that are characterized by an absence of trees greater than or equal to five inches diameter at breast height (dbh), by a lack of dense growth of smaller woody stems, or by open tree canopies such that the planting of woody stems will maximize nutrient removal and other buffer functions. With open tree canopies, the extent of the canopy shall be measured from the outer edge of the drip zone of the tree.
- (14) "Riparian wetland" means a wetland that is found in one or more of the following landscape positions: in a geomorphic floodplain; in a natural topographic crenulation; contiguous with an open water greater than or equal to 20 acres in size; or subject to tidal flow regimes excluding salt/brackish marsh wetlands.
- (15) "Urban" means a percent impervious cover of at least 24 percent in the watershed upstream of the upper end of the mitigation reach and areas where post-construction stormwater requirements apply according to Session Law 2006-246.

(c) APPLICATION REQUIREMENTS AND MITIGATION OPTIONS. Any applicant who seeks approval to impact riparian buffers covered under this Rule and who has met the requirements of Paragraph (a) shall submit to the Division a written mitigation proposal that calculates the required area of mitigation and describes the area and location of each type of proposed mitigation. The applicant may not impact buffers until the Division has approved the mitigation plan by issuance of written authorization. For all options except payment of a fee under Paragraph (h) or (i), the proposal shall include conservation easements or similar legal mechanisms to ensure perpetual maintenance and protection of the mitigation site's nutrient removal and other water quality functions, a non-wasting endowment, and a completion bond that is payable to the Division sufficient to ensure that land purchase, construction, monitoring and maintenance are completed. An exception would be where the applicant is a local government and has entered a binding intergovernmental agreement with the Division to complete the project and manage and protect the property consistent with the requirements of this Rule, such local government shall not be required to provide a non-wasting endowment or a performance bond. For each mitigation site, the Division shall identify appropriate functional criteria to measure the anticipated benefits of the mitigation to the adjacent water. The Division shall issue a mitigation determination that specifies the area, type and location of mitigation and the water quality benefits to be provided by the mitigation site. The mitigation determination issued according to this rule shall be included as an attachment to the Authorization Certification. The applicant may propose any of the following types of mitigation and shall provide a written demonstration of practicality that takes into account the relative cost and availability of potential options, as well as information addressing all requirements associated with the option proposed:

- (1) Applicant provided on-site or off-site riparian buffer restoration, enhancement or preservation pursuant to Paragraph (g) of this Rule;
- (2) Payment of a compensatory mitigation fee to a mitigation bank if buffer credits are available pursuant to Paragraph (h) of this Rule or payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Paragraph (i) of this Rule. Payment to the Riparian Buffer Restoration Fund shall be an option for applicants other than Government Entities only when credits are not available from a mitigation bank located within the same 8-digit cataloguing unit as the buffer impact pursuant to Paragraph (h) of this Rule is not available;
- (3) Donation of real property or of an interest in real property pursuant to Paragraph (j) of this Rule; and
- (4) Alternative buffer mitigation options pursuant to Paragraph (k) of this Rule;

(d) AREA OF IMPACT. The Authority shall determine the area of impact in square feet to each zone of the proposed riparian buffer impact by adding the following:

- (1) The area of the footprint of the use causing the impact to the riparian buffer;
- (2) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use;
- (3) The area of any ongoing maintenance corridors within the riparian buffer associated with the use, and
- (4) The Authority shall deduct from this total the area of any wetlands that are subject to and compliant with riparian wetland mitigation requirements under 15A NCAC 02H .0506 and are located within the proposed riparian buffer impact area.

(e) AREA OF MITIGATION BASED ON ZONAL AND LOCATIONAL MULTIPLIERS. The Authority shall determine the required area of mitigation for each zone by applying each of the following multipliers to the area of impact calculated under Paragraph (d) of this Rule with a 3:1 multiplier for Zone 1 and 1.5:1 multiplier for Zone 2, except that the required area of mitigation for impacts proposed within the Goose Creek watershed as 3:1 for the entire buffer and the Catawba River watershed as 2:1 for Zone 1 and 1.5:1 for Zone 2, and,

- (1) In addition to the multipliers listed above in Paragraph (e), the applicant must:
Option A: use the following locational multipliers as applicable based on location of the proposed mitigation site relative to that of the proposed impact site. Once the multipliers are determined, an option is to pay for the required mitigation. Payment of a compensatory mitigation fee to a mitigation bank if mitigation credits are available pursuant to Paragraph (h) of this Rule or

payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Paragraph (i) of this Rule. Payment to the Riparian Buffer Restoration Fund for applicants other than Government Entities shall be available only when payment to a mitigation bank pursuant to Paragraph (h) of this Rule is not available. Alternative mitigation options shown in Paragraph (k) of this Rule shall be subject to these locational multipliers. Mitigation may be conducted within an adjacent eight digit HUC at a 2:1 ratio if written documentation of the impracticality of conducting mitigation within the appropriate eight digit HUC is reviewed and approved by the Division.

Option B: use the following locational multipliers as applicable based on location of the proposed mitigation site relative to that of the proposed impact site. Once the multipliers are determined, an option is to pay for the required mitigation. Payment of a compensatory mitigation fee to a mitigation bank if mitigation credits are available pursuant to Paragraph (h) of this rule or payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Paragraph (i) of this Rule. Payment to the Riparian Buffer Restoration Fund for applicants other than Government Entities shall be available only when payment to a mitigation bank pursuant to Paragraph (h) of this Rule is not available. Alternative mitigation options shown in Paragraph (k) of this Rule shall be subject to the following locational multipliers. Mitigation may be conducted within an adjacent eight digit HUC at a 2:1 ratio if written documentation of the impracticality of conducting mitigation within the appropriate eight digit HUC is reviewed and approved by the Division.

<u>Adjacent 8 digit HUC</u>	<u>Within 8 digit HUC</u>	<u>Within 12 digit HUC</u>	<u>Mitigation option</u>
<u>n/a</u>	<u>n/a</u>	<u>0.75</u>	<u>1) On site mitigation</u>
<u>2.0</u>	<u>1.5</u>	<u>1</u>	<u>2) All other types of mitigation</u>

Option C: use the following locational multipliers as applicable based on location of the proposed mitigation site relative to that of the proposed impact site. Mitigation options shall be available to applicants. A written demonstration of practicality shall be

submitted to the Division for review and approval and shall take into account the cost and availability of these options with the following conditions:

<u>Adjacent 8 digit HUC</u>	<u>Within 8 digit HUC</u>	<u>Within 12 digit HUC</u>	<u>Mitigation option</u>
<u>n/a</u>	<u>n/a</u>	<u>0.75</u>	<u>1) On site mitigation</u>
<u>2.0</u>	<u>1.0</u>	<u>0.75</u>	<u>2) All other types of mitigation</u>

- (2) Donation of property shall satisfy all the conditions of Paragraph (j) of this Rule.

(f) GEOGRAPHIC RESTRICTIONS ON LOCATION OF MITIGATION. Mitigation shall be performed in the same river basin in which the impact is located with the following additional specifications:

- (1) In the following cases, mitigation shall be performed in the same watershed in which the impact is located:
(A) Falls Lake Watershed;
(B) Goose Creek Watershed;
(C) Randleman Lake Water Supply Watershed; and
(D) Each subwatershed of the Jordan Lake watershed, as defined in Rule 15A NCAC 02B .0262.
(E) Other watershed restrictions as specified in riparian buffer protection rules adopted by the Commission.
- (2) Buffer mitigation for impacts within watersheds with riparian buffer rules that also have federally listed threatened or endangered aquatic species may be done within other watersheds with the same species as long as the impacts are in the same river basin and same physiographic province as the mitigation site.

(g) RIPARIAN BUFFER RESTORATION, OR ENHANCEMENT. Enhancement, and restoration shall have the objective of establishing a forested riparian buffer according to the requirements of this Paragraph. Division staff shall make an on-site determination as to whether a potential mitigation site qualifies as a restoration or enhancement site based on the applicable definition in Paragraph (b) of this Rule. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement, shall also meet the following requirements:

- (1) The restoration area is equal to the required area of mitigation determined pursuant to Paragraph (e) of this Rule; and
 (2) The enhancement area is three times larger than the required area of mitigation determined pursuant to Paragraph (e) of this Rule.

- (3) The location of the restoration or enhancement shall comply with the requirements of Paragraph (f) of this Rule.

- (4) The location of restoration or enhancement shall comply with any geographic multiplier as specified under Paragraph (e) of this Rule

(A) For the Catawba River mainstem below Lake James, the width of the riparian buffer shall begin at the most landward limit of the top of the bank and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. For the mainstem lakes located on the Catawba River mainstem, the width of the riparian buffer shall begin at the most landward limit of the full pond level and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the full pond level. Buffer mitigation in the Catawba watershed may be done along the lake shoreline as well as along intermittent and perennial stream channels throughout the watershed.

(B) For the Goose Creek Watershed the riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water and may include restoration or enhancement of existing riparian areas, restoration or enhancement of streamside areas along first order ephemeral streams that discharge/outlet into intermittent or perennial streams, and preservation of the streamside area along first order ephemeral streams that discharge or outlet into intermittent or perennial stream at a 5:1 ratio as long as there is also an amount of restoration or enhancement equivalent to the amount of permitted impact.

- (5) The mitigation site shall provide diffuse flow across the entire buffer width. Any existing impervious cover or stormwater conveyances such as ditches or pipes shall be eliminated and the flow converted to diffuse flow.

- (6) The applicant or mitigation provider shall submit a restoration or enhancement plan for written approval by the Division. The restoration or enhancement plan shall demonstrate compliance with the requirements

- of Subparagraphs (1) through (4) of this Paragraph and shall contain the following in addition to elements required in Paragraph (c):
- (A) A map of the proposed restoration or enhancement site;
 - (B) A vegetation plan which shall include a minimum of five native hardwood tree species, where no one species is greater than 25 percent of planted stems, planted at a density sufficient to provide 320 trees per acre at maturity. The Division may approve alternative planting plans upon consideration of factors including site wetness and plant availability;
 - (C) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the entire riparian buffer; and
 - (D) A schedule for implementation including a fertilization and herbicide plan that will include protective measures to ensure that fertilizer and herbicide is not deposited downstream from the site and will be applied per manufacturers guidelines. Pesticides used must be certified by EPA for use in or near aquatics sites. Pesticides must be applied in accordance with the manufacturers' instructions; and
 - (E) A monitoring plan including monitoring of vegetative success, stream stability, and other anticipated benefits to the adjacent water as listed in the Authorization Certification.
- (7) Within one year after the Division has approved the restoration or enhancement plan, the applicant or mitigation provider shall present documentation to the Division that the riparian buffer has been restored or enhanced unless the Division agrees in writing to a longer time period due to the necessity for a longer construction period. If documentation is not presented within this timeframe, then the person shall be in violation of the Authority's riparian buffer protection program;
- (8) The mitigation area shall be placed under a perpetual conservation easement or similar legal mechanism to provide for protection of the property's nutrient and sediment removal functions;
- (9) Option 1: If the proposed mitigation site contains a sewer easement, the portion of the easement located within Zone 1 or Zone 2 is not suitable for buffer mitigation. However, the applicant may get narrower buffer credit in accordance with (k)(2)(D) of this Rule;
- Option 2: If the proposed mitigation site contains a sewer easement, the portion of the easement located within Zone 1 is not suitable for buffer mitigation except that buffer credit for a dedicated sewer easement shall be given to satisfy the Zone 2 buffer requirement if the sewer easement is at least 30 feet wide and it is required to be maintained in a condition which meets the vegetative requirements of the collection system permit, and if the applicant will restore or enhance the forested buffer in Zone 1 adjacent to the sewer easement;
- (10) The applicant or mitigation provider shall submit written annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period; and
- (11) A completion bond shall be provided for the mitigation site to account for all land purchase, construction, monitoring and maintenance costs. A non-wasting endowment must be provided for the site to ensure perpetual, long term monitoring and maintenance.
- (h) PURCHASE OF BUFFER MITIGATION CREDITS FROM A PRIVATE OR PUBLIC MITIGATION BANK. Applicants who choose to satisfy some or all of their mitigation determination by purchasing mitigation credits from a private or public mitigation bank shall meet the following requirements:
- (1) The mitigation bank from which credits are purchased is listed on the Division's webpage (<http://portal.ncdenr.org/web/wq/swp/ws/401/certsandpermits/mitigation>) and shall have available riparian buffer credits;
 - (2) The mitigation bank from which credits are purchased shall be appropriately located as described in Paragraphs (e) and (f) of this Rule; and
 - (3) After receiving a mitigation acceptance letter from the mitigation provider, proof of payment for the credits shall be provided to the Department prior to any activity that results in the removal or degradation of the protected riparian buffer.
- (i) PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND. Applicants who choose to satisfy some or all of their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the requirements of 15A NCAC 02B .0269 (Riparian Buffer Mitigation Fees to the NC Ecosystem Enhancement Program).
- (j) DONATION OF PROPERTY. Applicants who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:

- (1) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Paragraph (h) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Part (i)(4)(D) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to 15A NCAC 02B .0269, the applicant shall pay the remaining balance due.
- (2) The donation of conservation easements or similar legal mechanism that includes a non-wasting endowment to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement or similar legal mechanism that includes a non-wasting endowment is granted in perpetuity.
- (3) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:
 - (A) The property shall contain riparian areas not currently protected by the State's riparian buffer protection program that are in need of restoration or enhancement rather than preservation;
 - (B) For the Neuse, Tar-Pamlico, Randleman basins and the Jordan Reservoir Watershed, the restorable riparian buffer on the property shall have a collective minimum length of 1,000 linear feet per 2,500 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water. For the Catawba River mainstem below Lake James, the width of the riparian buffer shall begin at the most landward limit of the top of the bank and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. For the mainstem lakes located on the Catawba River mainstem, the width of the riparian buffer shall begin at the most landward limit of the full pond level and extend landward a distance of 50 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the full pond level;
 - (C) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Paragraph (e) of this Rule;
 - (D) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use;
 - (E) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;
 - (F) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs unless the applicant supplies financial assurance acceptable to the Division for restoration and maintenance of the buffer;
 - (G) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended;
 - (H) The property shall not contain any hazardous substance or solid waste such that water quality could be adversely impacted, unless the hazardous substance or solid waste can be properly remediated before the interest is transferred;
 - (I) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations before the interest is transferred;
 - (J) The property and adjacent properties shall not have prior, current, or known future land use that would inhibit the function of the restoration effort;
 - (K) The property shall not have any encumbrances or conditions that are

- inconsistent with the requirements of this Rule or purposes of the buffer rules.
- (L) Fee simple title to the property or a conservation easement in the property shall be donated to the NC Ecosystem Enhancement Program or a similar organization approved by the Division to conduct the restoration or enhancement; and
- (M) Upon completion of the buffer restoration or enhancement , the property or the easement shall be donated to a local land trust or to a local government or other state organization that is willing to accept the property or easement. The donation shall be accompanied by a non-wasting endowment sufficient to ensure perpetual long-term monitoring and maintenance , except that where a local government has donated a conservation easement and has entered into a binding intergovernmental agreement with the Division to manage and protect the property consistent with the terms of the conservation easement , such local government shall not be required to provide a non-wasting endowment.
- (4) At the expense of the applicant or donor, the following information shall be submitted to the Division with any proposal for donations or dedications of interest in real property:
- (A) Documentation that the property meets the requirements laid out in Subparagraph (j)(3) of this Rule;
- (B) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements;
- (C) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration
- for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609;
- (D) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734; and
- (E) A title certificate.
- (k) Alternative Buffer Mitigation OPTIONS. Some or all of a buffer mitigation requirement may be met through any of the alternative mitigation options described in this Paragraph. Any proposal for alternative mitigation shall meet, in addition to the requirements of Paragraphs (c), (e) and (f), the requirements set out in the sub-paragraph addressing that option as well as the following requirements:
- (1) Any proposal for alternative mitigation shall be provided in writing to the Division and shall meet the following content and procedural requirements for approval by the Division:
- (A) Demonstration of no practical alternative. The application shall describe why traditional buffer mitigation options are not practical for the project;
- (B) The application shall demonstrate that the proposed alternative removes an equal or greater annual mass load of nutrients to surface waters as the buffer that is approved by the Division for impact following the calculation of impact and mitigation areas pursuant to Paragraphs (d) and (e) of this Rule. To estimate the rate of nutrient removal of the impacted buffer, the applicant shall either propose a method acceptable to the Division or use a method previously approved by the Division. Prior to approval, both methods shall be subject to public notice through the 401 Certification Mailing List and public comment in accordance with 15A NCAC 02H .0503;
- (C) Public Notice and Comment. All proposals shall be reviewed by the Division for completeness and then be subject to public comment through 60-day notice on the 401 Certification

Mailing List in accordance with 15A NCAC 02H .0503;

- (D) Option 1: Projects that have been constructed and are within the required monitoring period as of the effective date of this Rule are eligible for use as alternative buffer mitigation. Projects that have completed monitoring and have been released by the Division as of the effective date of this Rule are not eligible for use as alternative buffer mitigation.
Option 2: Projects that have been constructed and are within the required monitoring period on the effective date of this Rule are eligible for use as alternative buffer mitigation. Projects that have completed monitoring and have been released by the Division on or before the effective date of this Rule are eligible for use as alternative buffer mitigation for a period of ten years from the effective date of this Rule.
- (E) Buffer mitigation ratios shall be applied to these alternative buffer mitigation options, and
- (F) The mitigation area shall be placed under a perpetual conservation easement or similar legal mechanism to provide for protection of the property's buffer functions.
- (G) A completion bond shall be provided for the mitigation site to account for all land purchase, construction, monitoring and maintenance costs. A non-wasting endowment must be provided for the site to ensure perpetual, long term monitoring and maintenance.
- (2) ALTERNATIVE Buffer Mitigation - NON-STRUCTURAL, VEGETATIVE options.
 - (A) Coastal Headwater Stream Mitigation. Wooded buffers planted along Outer Coastal Plain headwater stream mitigation sites can be approved as riparian buffer mitigation as long as the site meets all applicable requirements of Paragraph (g) of this Rule. In addition, all success criteria including tree species, tree density, diffuse flow and stream success criteria specified by the Division in any required written approval of the site must be met. The area of the buffer shall be measured perpendicular to the length of the valley being restored. The area

within the proposed buffer mitigation shall not also be used as wetland mitigation. Monitoring of the site must be for at least five years from the date of planting by providing annual reports for written DWQ approval.

- (B) Unmapped Stream Buffer Mitigation. Restoration or enhancement of buffers may be conducted on intermittent or perennial streams that are exempt from riparian buffer rules by virtue of not being shown on maps as further specified in individual rules referenced in Paragraph (f). These streams shall be confirmed as intermittent or perennial streams by Division staff or staff from a local delegated program using the 2010 or later version of the Division's stream identification manual. Preservation of these stream buffers that meet the definition of a preservation site may also be proposed in order to permanently protect the buffer from cutting, clearing, filling and grading and similar activities that would affect the functioning of the buffer, provided that the preservation site area is five times larger than the mitigation area required under Paragraph (e) of this Rule, and restoration or enhancement is proposed with an area equal to the mitigation area required under Paragraph (e) of this Rule. The preservation site shall protect at least a 50 foot wide wooded riparian buffer. The proposal shall meet all applicable requirements of Paragraph (g) of this Rule. Applicant shall provide a written description for the Division's approval of the demonstrable threat to the buffer mitigation site and its functioning to provide nutrient removal and other water quality benefits. No existing or new stormwater discharges are allowed thru the buffer.
- (C) Option 1: Preservation of mapped stream buffers. Buffer preservation may be proposed in order to permanently protect the buffer from cutting, clearing, filling and grading and similar activities that would affect the functioning of the buffer above and beyond the protection afforded by the existing buffer rules on sites that meet the definition of a

preservation site along streams, estuaries or ponds that are subject to buffer rules as long as the proposed preservation site area is ten times larger than the mitigation area required under Paragraph (e) of this Rule, and buffer restoration or enhancement is also proposed with an area equal to the mitigation area required under Paragraph (e) of this Rule. Applicant shall provide a written description for the Division's approval of the demonstrable threat to the buffer mitigation site and its functioning to provide nutrient removal and other water quality benefits. No existing or new stormwater discharges are allowed thru the buffer.

Option 2: Preservation of mapped stream buffers. Buffer preservation may be proposed in order to permanently protect the buffer from cutting, clearing, filling and grading and similar activities that would affect the functioning of the buffer above and beyond the protection afforded by the existing buffer rules on sites that meet the definition of a preservation site along streams, estuaries or ponds that are subject to buffer rules as long as the proposed preservation site area is ten times larger than the mitigation area required under Paragraph (e) of this Rule in non-urban areas and three times larger than the mitigation area required under Paragraph (e) of this Rule in urban areas. In addition, buffer restoration or enhancement is also proposed with an area equal to the mitigation area required under Paragraph (e) of this Rule. Reduced buffer mitigation credit can be given per Part (k)(2)(D) of this Rule in urban areas. Applicant shall provide a written description for the Division's approval of the demonstrable threat to the buffer mitigation site and its functioning to provide nutrient removal and other water quality benefits. No existing or new stormwater discharges are allowed thru the buffer.

- (D) Narrower buffers on urban streams. Buffer mitigation with widths less than 50 feet may be proposed along urban streams. If buffers greater than or equal to 31 feet in width are

proposed and on-site stormwater management is provided to control local sources of nutrients and other pollutants, then full buffer credit shall be awarded for the mitigation area required under Paragraph (e) of this Rule. A total of 75 percent of full credit shall be awarded for buffers between 20 and 30 feet wide if on-site stormwater management is provided to control local sources of nutrients and other pollutants. If on-site stormwater management is not provided, then 50 percent of full credit shall be provided for buffers between 31 and 50 feet wide and 25 percent of full credit for buffers between 20 and 30 feet wide. Buffers less than 20 feet wide shall receive no buffer credit regardless of whether on-site stormwater management is provided. Any remaining mitigation requirements must be provided at additional mitigation sites.

- (E) Enhancement of grazing areas adjacent to streams. Buffer credit at a 2:1 ratio shall be available for an applicant who proposes permanent exclusion of grazing livestock that otherwise degrade the stream and riparian zone through trampling, grazing or waste deposition by fencing the livestock out of the stream and its adjacent buffer. The riparian buffer area contained by fencing shall be two times greater than the mitigation area required under Paragraph (e) of this Rule. The applicant shall document the condition and aerial coverage of canopy and woody understory, and shall propose planting of understory trees and shrubs as well as young canopy tree species as necessary to achieve buffer restoration to the standards identified in Paragraph (g). The applicant shall demonstrate that grazing was the predominant land use for at least the past 20 years and that woody understory is absent as a result of grazing history. Conservation easements or other similar legal mechanism shall ensure perpetual maintenance of permanent fencing.

- (3) ALTERNATIVE Buffer Mitigation Structural STORMWATER TREATMENT options.

- (A) For all structural options: Riparian buffer restoration or enhancement is required with an area at least equal to

- the footprint of the buffer impact, and the remaining mitigation resulting from the multipliers can be met through structural options;
- (B) Structural measures already required by other local, state or federal rule cannot be used as alternative buffer mitigation, except to the extent such measure(s) exceed the requirements of such rule. Stormwater Best Management Practices (BMPs) - bioretention facilities, constructed wetlands, infiltration devices and sand filter are all potentially approvable Best Management Practices for alternative buffer mitigation. Other Best Management Practices may be approved only if they meet the nutrient removal levels outlined in Part (C) of this Subparagraph. Existing or planned BMPs for a local, state or federal permit may be retrofitted or expanded to improve their nutrient removal if this level of treatment would not be required by other local, state or federal rules. In this case, the predicted increase in nutrient removal may be counted toward alternative buffer mitigation;
- (C) Minimum treatment levels: Any structural BMP shall provide at least 30 percent total nitrogen and 35 percent total phosphorus removal as demonstrated by a scientific and engineering literature review as approved by the Division. The total load reduction from structural BMPs shall be at least equivalent to the original load reduction provided by the existing square feet of buffer being impacted;
- (D) All proposed structural Best Management Practices shall follow the Division's current or a later version of the 2009 Stormwater Best Management Practice Design Manual. If a proposed structural Best Management Practice is not addressed in this Manual, then a scientific and engineering literature review shall be submitted with the designs for written approval by the Division. The design shall be as effective as the practices described in the Division's stormwater manual;
- (E) An operation and maintenance plan is required to be approved by the Division for all structural options;
- (F) Continuous and perpetual maintenance is required for all structural options and shall follow the Division's current or more recent version of the 2009 Stormwater Best Management Practice Design Manual;
- (G) Annual reports shall be sent in writing to the Division of Water Quality concerning operation and maintenance of all structural options approved under this Rule.
- (H) Removal and replacement of structural options: If a structural option is proposed to be removed and cannot be replaced on site, then a structural measure of equal or better nutrient removal capacity shall be constructed as a replacement with the location as specified by Paragraph (e) of this Rule;
- (I) Renovation or repair of structural options: If a structural option must be renovated or repaired, it shall be renovated to provide similar or better nutrient removal capacity as originally designed;
- (J) Structural options as well as their operation and maintenance are the responsibility of the landowner or easement holder unless the Division agrees in writing to operation and maintenance by another responsible party. Structural options shall be shown on the property deed or another document constituting an encumbrance on the property, with a note that operation and maintenance is the responsibility of the landowner, easement holder or other responsible party; and
- (K) Bonding and endowment. Provisions for bonding for construction, monitoring and maintenance as well as provision for a long term, non-wasting endowment for monitoring and maintenance shall be provided in the submittal to the Division.
- (4) OTHER ALTERNATIVE BUFFER MITIGATION OPTIONS. Other riparian buffer mitigation options may be considered by the Division on a case-by-case basis after public notice through the Division's 401 Certification Mailing List and opportunity for comment as long as the options otherwise meet the requirements of this Rule. Division staff shall present recommendations to the Environmental Management Commission for a final decision with respect to any proposal for

~~alternative buffer mitigation options not specified in this Rule.~~

~~(l) ACCOUNTING FOR BUFFER CREDIT, NUTRIENT OFFSET CREDIT AND STREAM MITIGATION CREDIT. Buffer mitigation credit, nutrient offset credit, wetland mitigation credit and stream mitigation credit shall be accounted for in accordance with the following:~~

- ~~(1) Riparian buffers required for Water Supply Watershed rules shall not generate credit for buffer mitigation, nutrient offset mitigation or stream mitigation projects.~~
- ~~(2) Nutrient offset credits can be generated outside of the stream buffer width required for stream mitigation.~~
- ~~(3) Buffer and nutrient offset credits cannot be counted in the same square footage for mitigation credit.~~
- ~~(4) Buffer mitigation or nutrient offset credit cannot be provided within wetlands which provide wetland mitigation credit required by 15A NCAC 02H .0506, as long as riparian wetland mitigation is implemented and~~
- ~~(5) Option 1: Buffer mitigation or nutrient offset credit can be generated on stream mitigation sites as long as the restored or enhanced riparian buffer is at least 50 feet. Option 2: Buffer mitigation or nutrient offset credit can be generated and approved on stream mitigation sites for impacts to streams and buffers as long as the restored or enhanced riparian buffer is at least 50 feet wide and is not providing wetland mitigation credit required by 15A NCAC 02H .0506. If impacts are to buffers only, then mitigation can be done on a buffer-only mitigation site. In this case, stream credits will be no longer be available from that stream mitigation site once the buffer credits are subtracted. Option 3: Buffer mitigation or nutrient offset credit cannot be generated on stream mitigation sites.~~

Authority 143-214.1; 143-214.5; 143-214.7; 143-214.20; 143-215.3(a)(1); S.L. 1998, c. 221; 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8A; 143-215.8B; 143-282(c); 143B-282(d); S.L. 1999, c. 329, s. 7.1; S.B. 824-2003; S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486.

SECTION .0600 - WATER QUALITY MANAGEMENT PLANS

15A NCAC 02B .0609 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MANAGE ACTIVITIES WITHIN RIPARIAN BUFFERS: MITIGATION REQUIREMENTS FOR BUFFER IMPACTS

~~(a) PURPOSE. The purpose of this Rule is to set forth the mitigation requirements that apply to the Goose Creek~~

~~Watershed existing riparian buffer protection program, as described in 15A NCAC 02B .0605, .0606, and .0607.~~

~~(b) APPLICABILITY. This Rule applies to persons who wish to impact a riparian buffer in the Goose Creek Watershed when one of the following applies:~~

- ~~(1) A person has received an Authorization Certificate pursuant to 15A NCAC 02B .0607 for a proposed use that is designated as potentially allowable requiring both DWQ approval and mitigation.~~
- ~~(2) A person has received a variance pursuant to 15A NCAC 02B .0606 and is required to perform mitigation as a condition of a variance approval.~~

~~(c) THE AREA OF MITIGATION. The required area of mitigation shall be determined by either the Division of Water Quality or the delegated local authority according to the following:~~

- ~~(1) The impacts in square feet to the riparian buffer shall be determined by the Division of Water Quality or the delegated local authority by adding the following:~~
 - ~~(A) The area of the footprint of the use causing the impact to the riparian buffer.~~
 - ~~(B) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use.~~
 - ~~(C) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.~~
- ~~(2) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Subparagraph (c)(1) of this Rule to each zone of the riparian buffer:~~
 - ~~(A) Impacts to the riparian buffer shall be multiplied by three.~~
 - ~~(B) Impacts to wetlands within the riparian buffer that are subject to mitigation under 15A NCAC 02H .0506 shall comply with the mitigation ratios in 15A NCAC 02H .0506.~~

~~(d) THE LOCATION OF MITIGATION. The mitigation effort shall be within the Goose Creek Watershed, as close to the location of the impact as feasible.~~

~~(e) ISSUANCE OF THE MITIGATION DETERMINATION. The Division of Water Quality or the delegated local authority shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Paragraph (c) of this Rule.~~

~~(f) OPTIONS FOR MEETING THE MITIGATION DETERMINATION. The mitigation determination made pursuant to Paragraph (e) of this Rule may be met through one of the following options:~~

- (1) ~~Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Paragraph (g) of this Rule.~~
- (2) ~~Donation of real property or of an interest in real property pursuant to Paragraph (h) of this Rule.~~
- (3) ~~Restoration or enhancement of a non forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Paragraph (i) of this Rule.~~

~~(g) PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND. Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:~~

- (1) ~~SCHEDULE OF FEES: The amount of payment into the Fund shall be determined by multiplying the acres or square feet of mitigation determination made pursuant to Paragraph (e) of this Rule by ninety six cents (\$.96) per square foot or forty one thousand, six hundred and twenty five dollars (\$41,625) per acre.~~
- (2) ~~The required fee shall be submitted to the Division of Water Quality, Wetlands Restoration Program, MAIL SERVICE CENTER 1619, RALEIGH, NC 27699 1619 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made.~~
- (3) ~~The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Paragraph (h) of this Rule.~~
- (4) ~~The Division of Water Quality shall review the fee outlined in Subparagraph (g)(1) of this Rule every two years and compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division of Water Quality shall recommend revisions to Subparagraph (g)(1) of this Rule when adjustments to this Schedule of Fees are deemed necessary.~~

~~(h) DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:~~

- (1) ~~The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Paragraph (g) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Part~~

~~(h)(4)(D) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Subparagraph (g)(1) of this Rule, the applicant shall pay the remaining balance due.~~

- (2) ~~The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.~~

- (3) ~~Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:~~

- (A) ~~The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Riparian Restoration Plan;~~
- (B) ~~The property shall contain riparian areas for restoration, defined in 15A NCAC .02B .0243, not currently protected by the State's riparian buffer protection program that merit restoration;~~
- (C) ~~The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Paragraph (c) of this Rule;~~
- (D) ~~The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use;~~
- (E) ~~The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;~~
- (F) ~~The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs;~~
- (G) ~~The property shall not contain any building, structure, object, site, or district that is listed in the National~~

- ~~Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended;~~
- ~~(H) The property shall not contain any hazardous substance or solid waste;~~
 - ~~(I) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations;~~
 - ~~(J) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort;~~
 - ~~(K) The property shall not have any encumbrances or conditions on the transfer of the property interests.~~
 - ~~(4) At the expense of the applicant or donor, the following information shall be submitted to the Division of Water Quality with any proposal for donations or dedications of interest in real property:~~
 - ~~(A) Documentation that the property meets the requirements laid out in Subparagraph (h)(3) of this Rule.~~
 - ~~(B) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.~~
 - ~~(C) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.~~
 - ~~(D) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of~~
- ~~Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.~~
- ~~(E) A title certificate.~~
 - ~~(i) RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:~~
 - ~~(1) The applicant may restore or enhance riparian buffer defined in 15A NCAC 02B .0243 if either of the following applies:~~
 - ~~(A) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Paragraph (c) of this Rule; or~~
 - ~~(B) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Paragraph (c) of this Rule.~~
 - ~~(2) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Paragraph (d) of this Rule.~~
 - ~~(3) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water and may include the following:~~
 - ~~(A) Restoration/enhancement of existing riparian areas.~~
 - ~~(B) Restoration/enhancement and respective preservation of streamside areas when the stream is not depicted on USGS map or Soil Survey.~~
 - ~~(C) Preservation of streamside areas when the stream is not depicted on USGS map or Soil Survey.~~
 - ~~(D) Restoration/enhancement and respective preservation of streamside areas along first order ephemeral streams that discharge/outlet into intermittent or perennial streams.~~
 - ~~(E) Preservation of the streamside area along first order ephemeral streams that discharge/outlet intermittent or perennial stream.~~
 - ~~(4) Other individual/innovative mitigation projects may be approved by the Division of Water Quality that meet the purpose of this Rule.~~
 - ~~(5) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 02B .0607. After receiving this determination,~~

~~the applicant shall submit a restoration or enhancement plan for approval by the Division of Water Quality. The Division of Water Quality shall approve plans that meet the requirements of this Rule. The restoration or enhancement plan shall contain the following:~~

- ~~(A) A map of the proposed restoration or enhancement site.~~
- ~~(B) A vegetation plan. The vegetation plan shall include a minimum of two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity.~~
- ~~(C) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer.~~
- ~~(D) A fertilization plan.~~
- ~~(E) A schedule for implementation.~~
- ~~(6) Within one year after the Division of Water Quality has approved the restoration or enhancement plan, the applicant shall present proof to the Division of Water Quality that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of the State's or the delegated local authority's riparian buffer protection program.~~
- ~~(7) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.~~
- ~~(8) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five year period.~~

Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07I .0401 and .0406.

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

- ☒ OSBM certified on: November 26, 2012
- ☐ RRC certified on:
- ☐ Not Required

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://portal.ncdenr.org/web/cm/proposed-rules>

Proposed Effective Date: July 1, 2013

Public Hearing:

Date: February 6, 2013

Time: 5:00 p.m.

Location: UNCW, Education Building, Room #162, 601 S. College Road, Wilmington, NC 28403

Reason for Proposed Action: 15A NCAC 07I .0400 defines the reimbursement to be paid by the Division of Coastal Management to local governments for costs associated with administering Implementation and Enforcement programs associated with Coastal Area Management Act Minor Development permits.

15A NCAC 07I .0401 - Amendments to 07I .0401(c) increase the reimbursement to local governments from one hundred fifty dollars (\$150.00) to two hundred dollars (\$200.00) for attendance of up to three Local Permitting Officers at training sessions.

15A NCAC 07I .0406 - Amendments to 07I .0406 corrects the citation for CAMA Minor Permit application fees. Comments will be accepted on both the rule language as well as the Fiscal Analysis which can be reviewed at <http://portal.ncdenr.org/web/cm/proposed-rules>.

Procedure by which a person can object to the agency on a proposed rule: Objections may be filed in writing and addressed to the Director, NC Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

Comments may be submitted to: Mike Lopazanski, Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557; phone (252) 808-2808 ext. 223; fax (252) 247-3330; email Mike.Lopazanski@ncdenr.gov

Comment period ends: March 18, 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: November 6, 2012
- ☐ Substantial economic impact (\geq \$500,000)

☒ **Approved by OSBM**
☐ **No fiscal note required by G.S. 150B-21.4**
CHAPTER 07 - COASTAL MANAGEMENT

**SUBCHAPTER 07I - SECRETARY'S GRANT CRITERIA
 AND PROCEDURES FOR LOCAL IMPLEMENTATION
 AND ENFORCEMENT PROGRAMS UNDER THE
 COASTAL AREA MANAGEMENT ACT**

**SECTION .0400 - GENERALLY APPLICABLE
 STANDARDS**

15A NCAC 07I .0401 PROGRAM COSTS

(a) Costs associated with the management of a local Implementation and Enforcement Program will be recovered on a per permit basis established by the Secretary unless specified elsewhere in this Rule.

(b) The per permit reimbursement rate has been set in consideration of local costs, such as salaries, office supplies, copying, mailing and telephone use, and funds made available to the Division of Coastal Management. These rates are set as follows:

- (1) All county permit-letting authorities are eligible to receive seventy-five dollars (\$75.00) for each processed permit.
- (2) All municipal permit-letting authorities are eligible to receive fifty-five dollars (\$55.00) for each processed permit.
- (3) For multi-unit programs involving a county and a municipality, the higher county rate applies, however, programs involving two or more municipalities will use the municipal rate.
- (4) Mandatory follow-up inspections are required when the permitted activity is completed, and such inspections will be documented on a form specified by the Secretary; the follow-up inspection fee received by all local governments is set at forty dollars (\$40.00).

~~(c) Funds for field and office equipment have been made available for the first four years of the permit program. Due to funding limitation, no further funds will be allocated for the purpose.~~

~~(d)(c)~~ Training costs for Local Permit Officers (LPOs) at the Department of ~~Environment, Health, Environment~~ and Natural Resources annual training session are limited to a maximum of ~~one hundred fifty dollars (\$150.00)/LPO~~ two hundred dollars (\$200.00/LPO) for up to three LPOs per local government upon submittal of proper receipts. No funds will be provided for attendance at ~~CRC Coastal Resources Commission~~ meetings.

Authority G.S. 113A-112; 113A-124.

15A NCAC 07I .0406 APPLICATION FEES

The application fees collected by the locality shall be used only to defray the administrative costs associated with processing of a CAMA minor permit development application. Deficits resulting from administrative costs exceeding amounts received from application fees shall be recovered from ~~per~~ permit

reimbursements. The ~~current~~ application fee is ~~now twenty-five dollars (\$25.00).~~ shall be consistent with 15A NCAC 07J .0204(b)(6)(B).

Authority G.S. 113A-112; 113A-119; 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 15A NCAC 18C .0203.

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

- ☒ **OSBM certified on:** *October 2, 2012*
☐ **RRC certified on:**
☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncwater.org/pws/wellsvar.html>

Proposed Effective Date: *January 1, 2014*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): The Commission for Public Health will schedule a public hearing on the proposed rule amendment if a written request for such hearing is received within 15 days after the notice of text of the proposed rule amendment is published in the North Carolina Register. Written request for a public hearing should be submitted to Gale Johnson, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 or by email at Gale.Johnson@ncdenr.gov.*

Reason for Proposed Action: *These rule changes are necessary to comply with a mandate from the NC General Assembly to amend 15A NCAC 18C .0203 to establish a variance process for certain water supply well setback requirements. The proposed rules must be substantively identical to the provisions of Session Law 2011-394 which expires when the permanent rules have become effective. The proposed rule changes establish a process to allow the Department of Environment and Natural Resources to grant a variance from the minimum horizontal separation distances between a certain type of public water supply well and known potential sources of pollution, provided: (1) the well supplies a non-community water system; (2) it is impracticable, taking into consideration feasibility and cost, for the public water system to comply with the minimum horizontal separation distance set out in the existing rule; (3) there is no reasonable alternative source of water available to the public water system; and (4) the granting of the variance will not result in an unreasonable risk to public health.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to the proposed rule should be submitted to Gale Johnson, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 or by email at Gale.Johnson@ncdenr.gov.*

Comments may be submitted to: *Gale Johnson, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634; phone (919) 707-9083; fax (919) 715-4374; email Gale.Johnson@ncdenr.gov*

Comment period ends: *March 18, 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 18C - WATER SUPPLIES

SECTION .0200 - LOCATION OF SOURCES OF PUBLIC WATER SUPPLIES

15A NCAC 18C .0203 PUBLIC WELL WATER SUPPLIES

(a) Any site or sites for any water supply well to be used as a community or non-transient, non-community water system shall be investigated by an authorized representative of the Division of ~~Environmental Health~~ Water Resources. Approval by the Division is required in addition to any approval or permit issued by any other state agency. The site shall meet the following requirements at the time of approval:

- (1) The well shall be located on a lot so that the area within 100 feet of the well shall be owned or controlled by the person supplying the water. The supplier of water shall be able to protect the well lot from potential sources of pollution and to construct landscape features for drainage and diversion of pollution.

- (2) The minimum horizontal separation between the well and known potential sources of pollution shall be as follows:
 - ~~(a)~~(A) 100 feet from any sanitary sewage disposal system, sewer, or a sewer pipe unless the sewer is constructed of water main materials and joints, in which case the sewer pipe shall be at least 50 feet from the well;
 - ~~(b)~~(B) 200 feet from a subsurface sanitary sewage treatment and disposal system designed for 3000 or more gallons of wastewater a day flows, unless it is determined that the well water source utilizes a confined aquifer;
 - ~~(c)~~(C) 500 feet from a septage disposal site;
 - ~~(d)~~(D) 100 feet from buildings, mobile homes, permanent structures, animal houses or lots, or cultivated areas to which chemicals are applied;
 - ~~(e)~~(E) 100 feet from surface water;
 - ~~(f)~~(F) 100 feet from a chemical or petroleum fuel underground storage tank with secondary containment;
 - ~~(g)~~(G) 500 feet from a chemical or petroleum fuel underground storage tank without secondary containment;
 - ~~(h)~~(H) 500 feet from the boundary of a ground water contamination area;
 - ~~(i)~~(I) 500 feet from a sanitary landfill or non-permitted non-hazardous solid waste disposal site;
 - ~~(j)~~(J) 1000 feet from a hazardous waste disposal site or in any location which conflicts with the North Carolina Hazardous Waste Management Rules cited as 15A NCAC 13A;
 - ~~(k)~~(K) 300 feet from a cemetery or burial ground; and
 - ~~(l)~~(L) 100 feet from any other potential source of pollution.
- (3) The Department may require greater separation distances or impose other protective measures when necessary to protect the well from pollution; the Department shall consider as follows:
 - ~~(a)~~(A) The hazard or health risk associated with the source of pollution;
 - ~~(b)~~(B) The proximity of the potential source to the well;
 - ~~(c)~~(C) The type of material, facility or circumstance that poses the source or potential source of pollution;
 - ~~(d)~~(D) The volume or size of the source or potential source of pollution;
 - ~~(e)~~(E) Hydrogeological features of the site which could affect the movement of contaminants to the source water;

~~(F)~~ The effect which well operation might have on the movement of contamination; and

~~(G)~~ The feasibility of providing additional separation distances or protective measures.

(4) The lot shall be graded or sloped so that surface water is diverted away from the wellhead. The lot shall not be subject to flooding.

(5) When the supplier of water is unable to locate water from any other approved source and when an existing well can no longer provide water that meets the requirements of this Subchapter, a representative of the Division may approve a smaller well lot and reduced separation distances for temporary use.

(b) The Division of Water Resources may grant a variance from the minimum horizontal separation distances for public water supply wells set out in Part (a)(2)(D) and Part (a)(2)(E) of this Rule.

(1) Such variance shall require the following findings:

(A) The well supplies water to a non-community water system as defined in G.S. 130A-313(10)(b) or supplies water to a business or institution, such as a school, that has become a non-community water system through an increase in the number of people served by the well.

(B) It is impracticable, taking into consideration feasibility and cost, for the public water system to comply with the minimum horizontal separation distance set out in the

applicable sub-subpart of Subparagraph (a)(2) of this Rule.

(C) There is no reasonable alternative source of drinking water available to the public water supply system.

(D) The granting of the variance will not result in an unreasonable risk to public health.

(2) Such variance shall require that the non-community public water supply well meet the following requirements:

(A) The well shall comply with the minimum horizontal separation distances set out in Part (a)(2)(D) and Part (a)(2)(E) of this Rule to the maximum extent practicable.

(B) The well shall meet a minimum horizontal separation distance of 25 feet from a building, mobile home, or other permanent structure that is not used primarily to house animals.

(C) The well shall meet a minimum horizontal separation distance of 100 feet from any animal house or feedlot and from cultivated areas to which chemicals are applied.

(D) The well shall meet a minimum horizontal separation distance of 50 feet from surface water.

(E) The well shall comply with all other requirements for public well water supplies set out in Paragraph (a) of this Rule.

Authority G.S. 130A-315; 130A-318; P.L. 93-523; S.L. 2011-394.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on November 15, 2012.

**REGISTER CITATION TO THE
NOTICE OF TEXT****ADMINISTRATION, DEPARTMENT OF**

<u>Interviewing</u>	01	NCAC 01A .0303	27:04 NCR
<u>Vacancy Lists</u>	01	NCAC 01A .0304	27:04 NCR
<u>Organization</u>	01	NCAC 13 .0101	27:04 NCR
<u>Commission of Citizen Participation</u>	01	NCAC 13 .0102	27:04 NCR
<u>Purpose</u>	01	NCAC 13 .0103	27:04 NCR
<u>Instructional Material</u>	01	NCAC 13 .0201	27:04 NCR
<u>Newsletter</u>	01	NCAC 13 .0202	27:04 NCR
<u>Resource Library</u>	01	NCAC 13 .0203	27:04 NCR
<u>Rights of Volunteers</u>	01	NCAC 13 .0301	27:04 NCR
<u>Training</u>	01	NCAC 13 .0302	27:04 NCR
<u>Program Evaluation</u>	01	NCAC 13 .0303	27:04 NCR
<u>Methods of Evaluation</u>	01	NCAC 13 .0304	27:04 NCR
<u>Field Work</u>	01	NCAC 13 .0305	27:04 NCR
<u>Authority and Purpose</u>	01	NCAC 19B .0101	27:04 NCR
<u>Requests for Information by the Public</u>	01	NCAC 19B .0102	27:04 NCR
<u>Confidentiality of Client Information</u>	01	NCAC 19B .0103	27:04 NCR
<u>Selection Criteria</u>	01	NCAC 19B .0201	27:04 NCR
<u>Schedule</u>	01	NCAC 19B .0301	27:04 NCR
<u>Response</u>	01	NCAC 19B .0302	27:04 NCR
<u>Audit</u>	01	NCAC 19B .0303	27:04 NCR
<u>Purpose</u>	01	NCAC 21F .0101	27:04 NCR
<u>Definitions</u>	01	NCAC 21F .0102	27:04 NCR
<u>Full Time Employees</u>	01	NCAC 21F .0201	27:04 NCR
<u>Part-time and Temporary Employees</u>	01	NCAC 21F .0202	27:04 NCR
<u>Suggestion Eligibility</u>	01	NCAC 21F .0203	27:04 NCR
<u>Suggester Eligibility</u>	01	NCAC 21F .0204	27:04 NCR
<u>Responsibility of Executive Secretary</u>	01	NCAC 21F .0205	27:04 NCR
<u>General Provisions</u>	01	NCAC 21F .0301	27:04 NCR
<u>Monetary Awards</u>	01	NCAC 21F .0302	27:04 NCR
<u>Non-Monetary Awards</u>	01	NCAC 21F .0303	27:04 NCR
<u>Special Awards</u>	01	NCAC 21F .0304	27:04 NCR
<u>Employment Status</u>	01	NCAC 21F .0401	27:04 NCR
<u>Administrative Review</u>	01	NCAC 21F .0402	27:04 NCR
<u>Discrimination</u>	01	NCAC 21F .0403	27:04 NCR
<u>Taxes</u>	01	NCAC 21F .0404	27:04 NCR
<u>File Review and Copy</u>	01	NCAC 21F .0405	27:04 NCR
<u>Policy Changes</u>	01	NCAC 21F .0501	27:04 NCR

APPROVED RULES

<u>Claims Against the State</u>	01	NCAC 21F .0502	27:04 NCR
<u>Termination Rights</u>	01	NCAC 21F .0503	27:04 NCR
<u>Use of Ideas</u>	01	NCAC 21F .0504	27:04 NCR
<u>Definitions</u>	01	NCAC 23 .0101	27:04 NCR
<u>Submission of Application Forum</u>	01	NCAC 23 .0102	27:04 NCR
<u>Processing Application Forms</u>	01	NCAC 23 .0103	27:04 NCR
<u>Execution of Planning Advances</u>	01	NCAC 23 .0104	27:04 NCR
<u>Submission of the Engineering Report</u>	01	NCAC 23 .0105	27:04 NCR
<u>Administration of Outstanding Planning and Advance Accounts</u>	01	NCAC 23 .0106	27:04 NCR
<u>Responsibilities of State Agencies</u>	01	NCAC 23 .0107	27:04 NCR
<u>Severability</u>	01	NCAC 23 .0108	27:04 NCR
<u>Definitions</u>	01	NCAC 24 .0101	27:04 NCR
<u>Submission and Processing of Application: Eligibility</u>	01	NCAC 24 .0102	27:04 NCR
<u>Execution of Planning Advances</u>	01	NCAC 24 .0103	27:04 NCR
<u>Submission of Regional Sewage Disposal Plan</u>	01	NCAC 24 .0104	27:04 NCR
<u>Administration of Outstanding Planning Advance Accounts</u>	01	NCAC 24 .0105	27:04 NCR
<u>Responsibilities of State Agencies</u>	01	NCAC 24 .0106	27:04 NCR
<u>Severability</u>	01	NCAC 24 .0107	27:04 NCR
<u>Requests for Information by the Public</u>	01	NCAC 30C .0104	27:04 NCR
<u>Function</u>	01	NCAC 30C .0105	27:04 NCR
<u>Rule-Making and Administrative Hearing Procedures</u>	01	NCAC 30C .0201	27:04 NCR
<u>Definitions</u>	01	NCAC 33 .0101	27:04 NCR
<u>Applicability</u>	01	NCAC 33 .0102	27:04 NCR
<u>Grant Work Plans</u>	01	NCAC 33 .0201	27:04 NCR
<u>Grant Work Plans for Private Contractors</u>	01	NCAC 33 .0202	27:04 NCR
<u>Review by Governing Boards or Commissions</u>	01	NCAC 33 .0203	27:04 NCR
<u>Budget Standards</u>	01	NCAC 33 .0204	27:04 NCR
<u>State Agency Approval</u>	01	NCAC 33 .0205	27:04 NCR
<u>Finance Officer</u>	01	NCAC 33 .0206	27:04 NCR
<u>Grant-Subgrantee and Contractor-Subcontractor Relationship</u>	01	NCAC 33 .0207	27:04 NCR
<u>Application: General</u>	01	NCAC 33 .0301	27:04 NCR
<u>Grantee Criteria</u>	01	NCAC 33 .0302	27:04 NCR
<u>Application Form</u>	01	NCAC 33 .0305	27:04 NCR
<u>Effect of Acceptance of Grant Funds</u>	01	NCAC 33 .0306	27:04 NCR
<u>Governmental Grantee Compliance</u>	01	NCAC 33 .0401	27:04 NCR
<u>Contractors Compliance</u>	01	NCAC 33 .0402	27:04 NCR
<u>Additional Rules and Regulations</u>	01	NCAC 33 .0403	27:04 NCR
<u>Annual Financial and Compliance Audit Required</u>	01	NCAC 33 .0501	27:04 NCR
<u>Single Audit Concept</u>	01	NCAC 33 .0502	27:04 NCR
<u>Cost Reporting for Reimbursement</u>	01	NCAC 33 .0601	27:04 NCR
<u>Allowable Costs</u>	01	NCAC 33 .0602	27:04 NCR
<u>Procedures for Advance Funding and Reimbursement</u>	01	NCAC 33 .0603	27:04 NCR

APPROVED RULES

<u>Indirect Cost Reimbursement</u>	01	NCAC 33	.0604	27:04 NCR
<u>Administrative Cost</u>	01	NCAC 33	.0605	27:04 NCR
<u>General Procurement Standards</u>	01	NCAC 33	.0701	27:04 NCR
<u>Prohibit/Procurements: Non-Government Grantees/Contractors</u>	01	NCAC 33	.0702	27:04 NCR
<u>Procurement Procedure: Non-Government Grantees/Contractors</u>	01	NCAC 33	.0703	27:04 NCR
<u>Applicable Property Standards for Governmental Grantees</u>	01	NCAC 33	.0801	27:04 NCR
<u>Applicable Property Standards for Private Contractors</u>	01	NCAC 33	.0802	27:04 NCR
<u>Property Inventory Systems</u>	01	NCAC 33	.0803	27:04 NCR
<u>Applicability of Federal Statutes</u>	01	NCAC 33	.0804	27:04 NCR
<u>Scope</u>	01	NCAC 33	.0901	27:04 NCR
<u>Requirement of a Contract</u>	01	NCAC 33	.0902	27:04 NCR
<u>Reporting</u>	01	NCAC 33	.1001	27:04 NCR
<u>Automated Data Systems</u>	01	NCAC 33	.1002	27:04 NCR
<u>Evaluation</u>	01	NCAC 33	.1003	27:04 NCR
<u>Assurance of Confidentiality for Evaluation and Reporting</u>	01	NCAC 33	.1004	27:04 NCR
<u>General Personnel Standards</u>	01	NCAC 33	.1101	27:04 NCR
<u>Federal Personnel Standards</u>	01	NCAC 33	.1102	27:04 NCR
<u>State Standards</u>	01	NCAC 33	.1103	27:04 NCR
<u>Personnel Standards for Public School Employees</u>	01	NCAC 33	.1104	27:04 NCR
<u>State Agency Personnel Standards</u>	01	NCAC 33	.1105	27:04 NCR
<u>Certain Political Activities Prohibited</u>	01	NCAC 33	.1106	27:04 NCR
<u>Non-Discrimination: Equal Employment/Affirmative Action</u>	01	NCAC 33	.1107	27:04 NCR
<u>State Policy on Civil Rights</u>	01	NCAC 33	.1201	27:04 NCR
<u>Federal Nondiscrimination Requirements</u>	01	NCAC 33	.1202	27:04 NCR
<u>Compliance Assurances</u>	01	NCAC 33	.1203	27:04 NCR
<u>Requirements for Efficient Administration</u>	01	NCAC 33	.1301	27:04 NCR
<u>Confidentiality of Client Information</u>	01	NCAC 33	.1302	27:04 NCR
<u>Recipient Compliance Required</u>	01	NCAC 33	.1401	27:04 NCR
<u>Joint Compliance Reviews</u>	01	NCAC 33	.1402	27:04 NCR
<u>Standards Intended to be Uniform</u>	01	NCAC 33	.1403	27:04 NCR
<u>Funds Withheld</u>	01	NCAC 33	.1404	27:04 NCR
<u>Additional Procedures</u>	01	NCAC 33	.1501	27:04 NCR
<u>Schedule for Grant Application</u>	01	NCAC 33	.1502	27:04 NCR
<u>Public Radio: General Support System</u>	01	NCAC 36	.0101	27:04 NCR
<u>Purpose</u>	01	NCAC 37	.0101	27:04 NCR
<u>Definitions</u>	01	NCAC 37	.0102	27:04 NCR
<u>Mailing List</u>	01	NCAC 37	.0103	27:04 NCR
<u>Introduction</u>	01	NCAC 37	.0201	27:04 NCR
<u>Hydrological and Geological Factors</u>	01	NCAC 37	.0202	27:04 NCR
<u>Environmental and Public Health Factors</u>	01	NCAC 37	.0203	27:04 NCR
<u>Natural and Cultural Resources</u>	01	NCAC 37	.0204	27:04 NCR
<u>Local Land Uses</u>	01	NCAC 37	.0205	27:04 NCR

APPROVED RULES

<u>Transportation</u>	01	NCAC 37	.0206	27:04 NCR
<u>Aesthetic Factors</u>	01	NCAC 37	.0207	27:04 NCR
<u>Additional Criteria Applicable Only to Selection of Prefe...</u>	01	NCAC 37	.0208	27:04 NCR
<u>General</u>	01	NCAC 37	.0301	27:04 NCR
<u>Identification of Potentially Suitable Areas</u>	01	NCAC 37	.0302	27:04 NCR
<u>Public Meetings in Potentially Suitable Areas</u>	01	NCAC 37	.0303	27:04 NCR
<u>Selection of Potentially Suitable Sites</u>	01	NCAC 37	.0304	27:04 NCR
<u>Site Designation Review Committee</u>	01	NCAC 37	.0305	27:04 NCR
<u>Preferred Site</u>	01	NCAC 37	.0306	27:04 NCR
<u>Preferred Site Local Advisory Committee</u>	01	NCAC 37	.0307	27:04 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 anticipates publishing a listing and text in NCR Volume 27 Issue 15. For questions, please contact the Rules Division, (919)431-3000 or email oah.rules@oah.nc.gov.

ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Location and Address</u>	04	NCAC 02R	.0102*	n/a G.S. 150B-21.5
<u>Keg Purchase-Transportation Permit</u>	04	NCAC 02S	.0237*	n/a G.S. 150B-21.5

CHILD CARE COMMISSION

<u>General Nutrition Requirements</u>	10A	NCAC 09	.0901*	26:15 NCR
<u>General Nutrition Requirements for Infants</u>	10A	NCAC 09	.0902*	26:15 NCR
<u>Application for a License for a Family Child Care Home</u>	10A	NCAC 09	.1702*	26:15 NCR
<u>Nutrition Standards</u>	10A	NCAC 09	.1706*	26:15 NCR
<u>Requirements for Daily Operations</u>	10A	NCAC 09	.1718	26:15 NCR

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Location</u>	12	NCAC 10B	.0101*	27:02 NCR
<u>Period of Suspension: Revocation: or Denial</u>	12	NCAC 10B	.0205	27:02 NCR
<u>Summary Suspensions: or Denials</u>	12	NCAC 10B	.0206*	27:02 NCR
<u>Agency Reporting of Drug Screening Results</u>	12	NCAC 10B	.0410*	27:02 NCR
<u>Admission of Trainees</u>	12	NCAC 10B	.0713*	27:02 NCR
<u>Cert/Instructors/Basic Law Enforcement Training Course</u>	12	NCAC 10B	.0901*	27:02 NCR
<u>General Provisions</u>	12	NCAC 10B	.1002*	27:02 NCR
<u>Intermediate Law Enforcement Certificate</u>	12	NCAC 10B	.1004	27:02 NCR
<u>Advanced Law Enforcement Certificate</u>	12	NCAC 10B	.1005	27:02 NCR
<u>General Provisions</u>	12	NCAC 10B	.1202*	27:02 NCR
<u>Intermediate Detention Officer Professional Certificate</u>	12	NCAC 10B	.1204	27:02 NCR
<u>Advanced Detention Officer Professional Certificate</u>	12	NCAC 10B	.1205	27:02 NCR
<u>General Provisions</u>	12	NCAC 10B	.1602*	27:02 NCR
<u>Intermediate Telecommunicator Certificate</u>	12	NCAC 10B	.1604	27:02 NCR

APPROVED RULES

<u>Advanced Telecommunicator Certificate</u>	12	NCAC 10B .1605	27:02 NCR
<u>In-Service Training Coordinator</u>	12	NCAC 10B .2003*	27:02 NCR
<u>Minimum Training Requirements</u>	12	NCAC 10B .2005*	27:02 NCR
<u>In-Service Training Program Specifications</u>	12	NCAC 10B .2006	27:02 NCR
<u>Sheriff/Agency Head Responsibilities</u>	12	NCAC 10B .2007*	27:02 NCR
<u>Training Delivery</u>	12	NCAC 10B .2009*	27:02 NCR
<u>Minimum Training Requirements</u>	12	NCAC 10B .2103*	27:02 NCR

ALARM SYSTEMS LICENSING BOARD

<u>Location</u>	12	NCAC 11 .0102*	27:01 NCR
<u>Application for License</u>	12	NCAC 11 .0201	27:01 NCR
<u>Application for Registration</u>	12	NCAC 11 .0301	27:01 NCR
<u>Suspension of Authority to Expend Funds</u>	12	NCAC 11 .0307	27:01 NCR

TRANSPORTATION, DEPARTMENT OF

<u>Duties of Chief Engineer</u>	19A	NCAC 02A .0102*	n/a G.S. 150B-21.5(a)(2)
<u>Construction of Railroad Tracks Across Right of Way</u>	19A	NCAC 02B .0150*	n/a G.S. 150B-21.5(a)(2)
<u>Use of Right of Way Consultants</u>	19A	NCAC 02B .0164*	n/a G.S. 150B-21.5(a)(2)
<u>Asbestos Contracts With Private Firms</u>	19A	NCAC 02B .0165*	n/a G.S. 150B-21.5(a)(2)
<u>Placement of Historical Markers in Row</u>	19A	NCAC 02B .0241*	n/a G.S. 150B-21.5(a)(2)
<u>Implementation of Roadway Corridor Official Maps</u>	19A	NCAC 02B .0317*	n/a G.S. 150B-21.5(a)(2)
<u>Permits-Authority, Application and Enforcement</u>	19A	NCAC 02D .0601*	n/a G.S. 150B-21.5(a)(2)
<u>Denial: Revocation: Refusal to Review: Appeal: Invalidation</u>	19A	NCAC 02D .0633*	n/a G.S. 150B-21.5(a)(2)
<u>Application Procedures</u>	19A	NCAC 02D .0704*	n/a G.S. 150B-21.5(a)(2)
<u>Review Procedures</u>	19A	NCAC 02D .0705*	n/a G.S. 150B-21.5(a)(2)
<u>Permit Form</u>	19A	NCAC 02D .0707*	n/a G.S. 150B-21.5(a)(2)
<u>Appeal Procedures</u>	19A	NCAC 02D .0709*	n/a G.S. 150B-21.5(a)(2)
<u>Agreement</u>	19A	NCAC 02E .0202*	n/a G.S. 150B-21.5(a)(2)
<u>Local Zoning Authorities</u>	19A	NCAC 02E .0204*	n/a G.S. 150B-21.5(a)(2)
<u>Moving Vehicles Which Damage Surface or Shoulder</u>	19A	NCAC 02E .0405*	n/a G.S. 150B-21.5(a)(2)
<u>Aircraft Landing and Taking Off On Highways</u>	19A	NCAC 02E .0412*	n/a G.S. 150B-21.5(a)(2)
<u>Fencing Within the Right of Way</u>	19A	NCAC 02E .0418*	n/a G.S. 150B-21.5(a)(2)
<u>Cultivating Crops and Maintaining Pastures Within Row</u>	19A	NCAC 02E .0419*	n/a G.S. 150B-21.5(a)(2)
<u>Construction Within the Right of Way</u>	19A	NCAC 02E .0420*	n/a G.S. 150B-21.5(a)(2)
<u>Solicitation and Award of Contract</u>	19A	NCAC 02E .0702*	n/a G.S. 150B-21.5(a)(2)
<u>Permits Required</u>	19A	NCAC 02E .0802*	n/a G.S. 150B-21.5(a)(2)
<u>Solicitation Restriction and Requirements</u>	19A	NCAC 02E .0803*	n/a G.S. 150B-21.5(a)(2)
<u>Bridge Weight Limitation</u>	19A	NCAC 04A .0105*	n/a G.S. 150B-21.5(a)(2)

MEDICAL BOARD

<u>Prescribing Authority</u>	21	NCAC 32M .0109*	27:03 NCR
<u>Limited Volunteer License</u>	21	NCAC 32S .0208	27:03 NCR
<u>Limited Volunteer License</u>	21	NCAC 32S .0221*	27:03 NCR

APPROVED RULES

Retired Limited Volunteer License	21	NCAC 32S .0222	27:03 NCR
Scope	21	NCAC 32S .0223*	27:03 NCR

NURSING, BOARD OF

Prescribing Authority	21	NCAC 36 .0809*	27:02 NCR
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PODIATRY EXAMINERS, BOARD OF

Practice Orientation	21	NCAC 52 .0205	26:23 NCR
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TITLE 01 – DEPARTMENT OF ADMINISTRATION**01 NCAC 01A .0303 INTERVIEWING**
01 NCAC 01A .0304 VACANCY LISTS

History Note: Authority G.S. 143B-10;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987;
Repealed Eff. December 1, 2012.

01 NCAC 13 .0101 ORGANIZATION
01 NCAC 13 .0102 COMMISSION ON CITIZEN
PARTICIPATION
01 NCAC 13 .0103 PURPOSE

History Note: Authority G.S. 143B-12 to 143B-14;
Eff. February 1, 1976;
Repealed Eff. December 1, 2012.

01 NCAC 13 .0201 INSTRUCTIONAL MATERIAL
01 NCAC 13 .0202 NEWSLETTER
01 NCAC 13 .0203 RESOURCE LIBRARY

History Note: Authority G.S. 143B-12 to 143B-14;
Eff. February 1, 1976;
Repealed Eff. December 1, 2012.

01 NCAC 13 .0301 RIGHTS OF VOLUNTEERS
01 NCAC 13 .0302 TRAINING
01 NCAC 13 .0303 PROGRAM EVALUATION
01 NCAC 13 .0304 METHODS OF EVALUATION
01 NCAC 13 .0305 FIELD WORK

History Note: Authority G.S. 143B-12 to 143B-14;
Eff. February 1, 1976;
Repealed Eff. December 1, 2012.

01 NCAC 19B .0101 AUTHORITY AND PURPOSE
01 NCAC 19B .0102 REQUESTS FOR
INFORMATION BY THE PUBLIC**01 NCAC 19B .0103**
CONFIDENTIALITY OF CLIENT
INFORMATION

History Note: G.S. 143B-10; Exec. Order No. 27;
Temporary Rule Eff. May 2, 1988 For a Period of 180 Days to
Expire on October 29, 1988;
Eff. October 1, 1988;
Repealed Eff. December 1, 2012.

01 NCAC 19B .0201 SELECTION CRITERIA

History Note: G.S. 143B-10; Exec. Order No. 27;
Temporary Rule Eff. May 2, 1988 For a Period of 180 Days to
Expire on October 29, 1988;
Eff. October 1, 1988;
Repealed Eff. December 1, 2012.

01 NCAC 19B .0301 SCHEDULE
01 NCAC 19B .0302 RESPONSE
01 NCAC 19B .0303 AUDIT

History Note: G.S. 143B-10; Exec. Order No. 27;
Temporary Rule Eff. May 2, 1988 For a Period of 180 Days to
Expire on October 29, 1988;
Eff. October 1, 1988;
Repealed Eff. December 1, 2012.

01 NCAC 21F .0101 PURPOSE
01 NCAC 21F .0102 DEFINITIONS

History Note: Authority G.S. 143-340(1);
Eff. December 1, 1988;
Repealed Eff. December 1, 2012.

01 NCAC 21F .0201 FULL TIME EMPLOYEES
01 NCAC 21F .0202 PART-TIME AND TEMPORARY
EMPLOYEES
01 NCAC 21F .0203 SUGGESTION ELIGIBILITY
01 NCAC 21F .0204 SUGGESTER ELIGIBILITY
01 NCAC 21F .0205 RESPONSIBILITY OF
EXECUTIVE SECRETARY

History Note: Authority G.S. 143-340(1);
Eff. December 1, 1988;

Repealed Eff. December 1, 2012.

01 NCAC 21F .0301 GENERAL PROVISIONS
01 NCAC 21F .0302 MONETARY AWARDS
01 NCAC 21F .0303 NON-MONETARY AWARDS
01 NCAC 21F .0304 SPECIAL AWARDS

*History Note: Authority G.S. 143-340(1);
 Eff. December 1, 1988;
 Repealed Eff. December 1, 2012.*

01 NCAC 21F .0401 EMPLOYMENT STATUS
01 NCAC 21F .0402 ADMINISTRATIVE REVIEW
01 NCAC 21F .0403 DISCRIMINATION
01 NCAC 21F .0404 TAXES
01 NCAC 21F .0405 FILE REVIEW AND COPY

*History Note: Authority G.S. 143-340(1);
 Eff. December 1, 1988;
 Repealed Eff. December 1, 2012.*

01 NCAC 21F .0501 POLICY CHANGES
01 NCAC 21F .0502 CLAIMS AGAINST THE STATE
01 NCAC 21F .0503 TERMINATION RIGHTS
01 NCAC 21F .0504 USE OF IDEAS

*History Note: Authority G.S. 143-340(1);
 Eff. December 1, 1988;
 Repealed Eff. December 1, 2012.*

01 NCAC 23 .0101 DEFINITIONS
01 NCAC 23 .0102 SUBMISSION OF APPLICATION
FORMS
01 NCAC 23 .0103 PROCESSING APPLICATIONS
01 NCAC 23 .0104 EXECUTION OF PLANNING
ADVANCES
01 NCAC 23 .0105 SUBMISSION OF THE
ENGINEERING REPORT
01 NCAC 23 .0106 ADMINISTRATION OF
OUTSTANDING PLANNING ADVANCE ACCOUNTS
01 NCAC 23 .0107 RESPONSIBILITIES OF STATE
AGENCIES
01 NCAC 23 .0108 SEVERABILITY

*History Note: Authority G.S. 162A-24; 162A-20 to 162A-25;
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. August 1, 1988;
 Repealed Eff. December 1, 2012.*

01 NCAC 24 .0101 DEFINITIONS
01 NCAC 24 .0102 SUBMISSION AND
PROCESSING OF APPLICATION: ELIGIBILITY
01 NCAC 24 .0103 EXECUTION OF PLANNING
ADVANCES

01 NCAC 24 .0104 SUBMISSION OF REGIONAL
SEWAGE DISPOSAL PLAN
01 NCAC 24 .0105 ADMINISTRATION OF
OUTSTANDING PLANNING ADVANCE ACCOUNTS
01 NCAC 24 .0106 RESPONSIBILITIES OF STATE
AGENCIES
01 NCAC 24 .0107 SEVERABILITY

*History Note: Authority G.S. 162A-26 to 162A-30;
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. August 1, 1988;
 Repealed Eff. December 1, 2012.*

01 NCAC 30C .0104 REQUESTS FOR
INFORMATION BY THE PUBLIC
01 NCAC 30C .0105 FUNCTION

*History Note: Authority G.S. 159F-4(c); 159F-5(a)(1)
 through (a)(16); 159F-6; 159F-7(c); 159F-8;
 Eff. August 1, 1984;
 Repealed Eff. December 1, 2012.*

01 NCAC 30C .0201 RULE-MAKING AND
ADMINISTRATIVE HEARING PROCEDURES

*History Note: Authority G.S. 150B-11; 150B-14; 159F;
 Eff. August 1, 1984;
 Repealed Eff. December 1, 2012.*

01 NCAC 33 .0101 DEFINITIONS
01 NCAC 33 .0102 APPLICABILITY OF RULES

*History Note: Authority G.S. 143-16; 143-16.1; 143-341;
 Eff. October 1, 1982;
 Amended Eff. July 1, 1988;
 Repealed Eff. December 1, 2012.*

01 NCAC 33 .0201 GRANT WORK PLANS
01 NCAC 33 .0202 GRANT WORK PLANS FOR
PRIVATE CONTRACTORS
01 NCAC 33 .0203 REVIEW BY GOVERNING
BOARDS OR COMMISSIONS
01 NCAC 33 .0204 BUDGET STANDARDS
01 NCAC 33 .0205 STATE AGENCY APPROVAL
01 NCAC 33 .0206 FINANCE OFFICER
01 NCAC 33 .0207 GRANT-SUBGRANTEE AND
CONTRACTOR-SUBCONTRACTOR RELATIONSHIP

*History Note: Authority G.S. 143-16; 143-16.1; 143-341;
 Eff. July 1, 1983;
 Amended Eff. August 1, 1988;
 Repealed Eff. December 1, 2012.*

01 NCAC 33 .0301 APPLICATION: GENERAL
01 NCAC 33 .0302 GRANTEE CRITERIA

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Repealed Eff. December 1, 2012.

01 NCAC 33 .0305 APPLICATION FORM
01 NCAC 33 .0306 EFFECT OF ACCEPTANCE OF GRANT FUNDS

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Repealed Eff. December 1, 2012.

01 NCAC 33 .0401 GOVERNMENTAL GRANTEE COMPLIANCE
01 NCAC 33 .0402 CONTRACTORS COMPLIANCE
01 NCAC 33 .0403 ADDITIONAL RULES AND REGULATIONS

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Repealed Eff. December 1, 2012.

01 NCAC 33 .0501 ANNUAL FINANCIAL AND COMPLIANCE AUDIT REQUIRED
01 NCAC 33 .0502 SINGLE AUDIT CONCEPT

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. July 1, 1983;
Repealed Eff. December 1, 2012.

01 NCAC 33 .0601 COST REPORTING FOR REIMBURSEMENT
01 NCAC 33 .0602 ALLOWABLE COSTS
01 NCAC 33 .0603 PROCEDURES FOR ADVANCE FUNDING AND REIMBURSEMENT
01 NCAC 33 .0604 INDIRECT COST REIMBURSEMENT
01 NCAC 33 .0605 ADMINISTRATIVE COST

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Repealed Eff. December 1, 2012.

01 NCAC 33 .0701 GENERAL PROCUREMENT STANDARDS
01 NCAC 33 .0702 PROHIBIT/PROCUREMENTS: NON-GOVERNMENT GRANTEES/CONTRACTORS
01 NCAC 33 .0703 PROCUREMENT PROCEDURE: NON-GOVERNMENT GRANTEES/CONTRACTORS

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Repealed Eff. December 1, 2012.

01 NCAC 33 .0801 APPLICABLE PROPERTY STANDARDS FOR GOVERNMENTAL GRANTEES

01 NCAC 33 .0802 APPLICABLE PROPERTY STANDARDS FOR PRIVATE CONTRACTORS
01 NCAC 33 .0803 PROPERTY INVENTORY SYSTEMS
01 NCAC 33 .0804 APPLICABILITY OF FEDERAL STATUTES

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Repealed Eff. December 1, 2012.

01 NCAC 33 .0901 SCOPE
01 NCAC 33 .0902 REQUIREMENTS OF A CONTRACT

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Repealed Eff. December 1, 2012.

01 NCAC 33 .1001 REPORTING
01 NCAC 33 .1002 AUTOMATED DATA SYSTEMS
01 NCAC 33 .1003 EVALUATION
01 NCAC 33 .1004 ASSURANCE OF CONFIDENTIALITY FOR EVALUATION AND REPORTING

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Repealed Eff. December 1, 2012.

01 NCAC 33 .1101 GENERAL PERSONNEL STANDARDS
01 NCAC 33 .1102 FEDERAL PERSONNEL STANDARDS
01 NCAC 33 .1103 STATE STANDARDS
01 NCAC 33 .1104 PERSONNEL STANDARDS FOR PUBLIC SCHOOL EMPLOYEES
01 NCAC 33 .1105 STATE AGENCY PERSONNEL STANDARDS
01 NCAC 33 .1106 CERTAIN POLITICAL ACTIVITIES PROHIBITED
01 NCAC 33 .1107 NON-DISCRIMINATION: EQUAL EMPLOYMENT/AFFIRMATIVE ACTION

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Repealed Eff. December 1, 2012.

01 NCAC 33 .1201 STATE POLICY ON CIVIL RIGHTS
01 NCAC 33 .1202 FEDERAL NONDISCRIMINATION REQUIREMENTS
01 NCAC 33 .1203 COMPLIANCE ASSURANCES

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Repealed Eff. December 1, 2012.

**01 NCAC 33 .1301 REQUIREMENTS FOR
EFFICIENT ADMINISTRATION****01 NCAC 33 .1302 CONFIDENTIALITY OF CLIENT
INFORMATION**

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Repealed Eff. December 1, 2012.

**01 NCAC 33 .1401 RECIPIENT COMPLIANCE
REQUIRED****01 NCAC 33 .1402 JOINT COMPLIANCE REVIEWS****01 NCAC 33 .1403 STANDARDS INTENDED TO BE
UNIFORM****01 NCAC 33 .1404 FUNDS WITHHELD**

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. July 1, 1983;
Repealed Eff. December 1, 2012.

01 NCAC 33 .1501 ADDITIONAL PROCEDURES
**01 NCAC 33 .1502 SCHEDULE FOR GRANT
APPLICATIONS**

History Note: Authority G.S. 143-16; 143-16.1; 143-341;
Eff. October 1, 1982;
Amended Eff. July 1, 1988;
Repealed Eff. December 1, 2012.

**01 NCAC 36 .0101 PUBLIC RADIO: GENERAL
SUPPORT STANDARDS**

History Note: Authority G.S. 143B-426.12;
Eff. July 1, 1987;
Repealed Eff. December 1, 2012.

01 NCAC 37 .0101 PURPOSE
01 NCAC 37 .0102 DEFINITIONS
01 NCAC 37 .0103 MAILING LIST

History Note: Authority G.S. 104G-6; 104G-6(a)(2); 104G-6(a)(20); 104G-9; 104G-23(a); 150B-11; 150B-21.2;
Eff. August 1, 1988;
Amended Eff. August 2, 1993.
Repealed Eff. December 1, 2012.

01 NCAC 37 .0201 INTRODUCTION
**01 NCAC 37 .0202 HYDROLOGICAL AND
GEOLOGICAL FACTORS**
**01 NCAC 37 .0203 ENVIRONMENTAL AND
PUBLIC HEALTH FACTORS**
**01 NCAC 37 .0204 NATURAL AND CULTURAL
RESOURCES**
01 NCAC 37 .0205 LOCAL LAND USES
01 NCAC 37 .0206 TRANSPORTATION**01 NCAC 37 .0207 AESTHETIC FACTORS**

History Note: Authority G.S. 104G-6; 104G-6(a); 104G-6(a)(2); 104G-7; 104G-9; 104G-23(a); 150B-11; 150B-21.6;
Eff. August 1, 1988;
Amended Eff. August 2, 1993;
Repealed Eff. December 1, 2012.

**01 NCAC 37 .0208 ADDITIONAL CRITERIA
APPLICABLE ONLY TO SELECTION OF A
PREFERRED SITE**

History Note: Authority G.S. 104G-6; 104G-9; 104G-23(a);
Eff. August 2, 1993;
Repealed Eff. December 1, 2012.

01 NCAC 37 .0301 GENERAL
**01 NCAC 37 .0302 IDENTIFICATION OF
POTENTIALLY SUITABLE AREAS**
**01 NCAC 37 .0303 PUBLIC MEETINGS IN
POTENTIALLY SUITABLE AREAS**
**01 NCAC 37 .0304 SELECTION OF POTENTIALLY
SUITABLE SITES**
**01 NCAC 37 .0305 SITE DESIGNATION REVIEW
COMMITTEE**
01 NCAC 37 .0306 PREFERRED SITE
**01 NCAC 37 .0307 PREFERRED SITE LOCAL
ADVISORY COMMITTEE**

History Note: Authority G.S. 104G-4; 104G-6; 104G-6(a)(2); 104G-9; 104G-11(b); 104G-19; 104G-23(a); 143-318.11; 143-318.12; 150B-11;
Eff. August 1, 1988;
Amended Eff. August 30, 1993;
Repealed Eff. December 1, 2012.

TITLE 04 – DEPARTMENT OF COMMERCE**04 NCAC 02R .0102 LOCATION AND ADDRESS**

The principal office of the North Carolina Alcoholic Beverage Control Commission is located at 400 East Tryon Road, Raleigh, North Carolina 27610. The mailing address is 4307 Mail Service Center, Raleigh, North Carolina 27699-4307. The telephone number is (919) 779-0700. The Commission's email address is contactus@abc.nc.gov. The Commission's web site address is www.abc.nc.gov. This office is open to the public during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday.

History Note: Authority G.S. 18B-207;
Eff. January 1, 1982;
Amended Eff. December 1, 2012; January 1, 2011; August 1, 2010; May 1, 1984.

**04 NCAC 02S .0237 KEG PURCHASE-
TRANSPORTATION PERMIT**

(a) Retail Permittee to Issue. Whenever a person chooses to purchase and transport a keg designed to hold and dispense 7.75 gallons or more of malt beverages, the person shall apply to the retail permittee from whom the purchase will be made for a Keg Purchase-Transportation Permit. The retail permittee from whom the keg is purchased shall issue the purchaser the permit following G.S. 18B-403.1.

(b) The Keg Purchase-Transportation Permit shall specify the following information on the face of the permit:

- (1) The date of issue;
- (2) The name and address of the retail business from which the purchase is made;
- (3) The purchaser's name and address;
- (4) The purchaser's driver's license, North Carolina ID, Military ID or passport number;
- (5) The address of destination of keg(s);
- (6) The total number of kegs purchased;
- (7) An underage responsibility warning; and
- (8) Signatures of the purchaser and an authorized retail employee.

(c) The retailer shall retain a copy of the permit at the retail location where the purchase was made for 90 days unless requested by any individual in writing to the retailer to retain the copy for a specified period longer than 90 days but not longer than 180 days. The permit shall accompany the keg during its transport and usage and shall be exhibited to any law enforcement officer upon request.

(d) The Commission shall provide Keg Purchase-Transportation Permits to any retailer who requests the permits. Permittees may also download a copy of the Keg Purchase-Transportation Permit from the Commission's website (www.abc.nc.gov).

*History Note: Authority G.S. 18B-207; 18B-403.1;
Temporary Adoption Eff. December 1, 2006;
Eff. November 1, 2007;
Amended Eff. December 1, 2012.*

**TITLE 10A – DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES**

**10A NCAC 09 .0901 GENERAL NUTRITION
REQUIREMENTS**

(a) Meals and snacks served to children in a child care center shall comply with the Meal Patterns for Children in Child Care Programs from the United States Department of Agriculture (USDA) which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food, number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care Programs are incorporated by reference and include subsequent amendments. A copy of the Meal Patterns for Children in Child Care Programs is available free of charge from the Division at the address in Rule .0102(1) of this Chapter.

(b) Menus for nutritious meals and snacks shall be planned at least one week in advance. At least one dated copy of the current week's menu shall be posted where it can be seen easily by parents and food preparation staff when food is prepared or provided by the center, except in centers with a licensed capacity of 3 to 12 children located in a residence. A variety of food shall be included in meals and snacks. Any substitution shall be of comparable food value and shall be recorded on the menu.

(c) When children bring their own food for meals or snacks to the center, if the food does not meet the nutritional requirements specified in Paragraph (a) of this Rule, the center must provide additional food necessary to meet those requirements unless the child's parent or guardian opts out of the supplemental food provided by the center as set forth in G.S.110-91(2)h.1. A statement acknowledging the parental decision to opt out of the supplemental food provided by the center signed by the child's parent or guardian shall be kept on file at the center. Opting out means that the center will not provide any food or drink so long as the child's parent or guardian provides all meals, snacks, and drinks scheduled to be served at the center's designated times. If the child's parent or guardian has opted out but does not provide all food and drink for the child, the center shall provide supplemental food and drink as if the child's parent or guardian had not opted out of the supplemental food program.

(d) Drinking water must be freely available to children of all ages. Drinking fountains or individual drinking utensils shall be provided. When a private water supply is used, it must be tested by and meet the requirements of the Commission for Public Health.

(e) The child care provider will provide only the following beverages:

- (1) breast milk;
- (2) formula;
- (3) water;
- (4) unflavored whole milk, for children ages 12-24 months;
- (5) unflavored skim or lowfat milk for children two years old and older; or
- (6) 100 percent fruit juice, limited to six ounces per day.

(f) Children's special diets or food allergies shall be posted in the food preparation area and in the child's eating area.

(g) The food required by special diets for medical, religious or cultural reasons, may be provided by the center or may be brought to the center by the parents. If the diet is prescribed by a health care professional, a statement signed by the health care professional shall be on file at the center and written instructions shall be provided by the child's parent, health care professional, or a licensed dietitian/nutritionist. If the diet is not prescribed by a health care professional, written instructions shall be provided by the child's parent and shall be on file at the center.

(h) Food that does not meet the nutritional requirements specified in Paragraph (a) of this Rule, such as cookies, chips, donuts, etc., shall be available only for special occasions such as holidays, birthdays, and other celebrations.

(i) Staff shall role model appropriate eating behaviors by consuming only food or beverages that meet the nutritional requirements specified in Paragraph (a) of this Rule in the presence of children in care.

(j) Parents shall be allowed to provide breast milk for their children. Accommodations for breastfeeding mothers shall be provided that include seating and an electrical outlet in a place other than a bathroom that is shielded from view by staff and the public which may be used by mothers while they are breastfeeding or expressing milk.

History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3;

Eff. January 1, 1986;

Amended Eff. December 1, 2012; July 1, 2010; July 1, 1998; October 1, 1991; November 1, 1989.

10A NCAC 09 .0902 GENERAL NUTRITION REQUIREMENTS FOR INFANTS

(a) The parent or health care provider of each child under 15 months of age shall provide the center an individual written feeding schedule for the child. This schedule must be followed at the center. This schedule must include the child's name, be signed by the parent or health care provider, and be dated when received by the center. Each infant's schedule shall be modified in consultation with the child's parent or health care provider to reflect changes in the child's needs as he or she develops. The feeding instructions for each infant shall be posted for quick reference by the caregivers, except in centers licensed for three to 12 children located in a residence.

(b) Each infant will be held for bottle feeding until able to hold his or her own bottle. Bottles will not be propped. Each child will be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed.

(c) Infants shall not be served juice in a bottle without a prescription or written statement on file from a health care professional or licensed dietitian/nutritionist.

History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3;

Eff. January 1, 1986;

Amended Eff. December 1, 2012; July 1, 1998; October 1, 1991; November 1, 1989.

10A NCAC 09 .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME

(a) Any person who plans to operate a family child care home shall apply for a license using a form provided by the Division. The applicant shall submit the completed application, which complies with the following, to the Division:

- (1) Only one licensed family child care home shall operate at the location address of any home.
- (2) The applicant shall list each location address where a licensed family child care home will operate.

(b) When a family child care home will operate at more than one location address by cooperative arrangement among two or more families, the following procedures apply:

- (1) One parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the applicant.

(2) The coordinating parent shall know the current location address at all times and shall provide the information to the Division upon request.

(c) The applicant shall assure that the structure in which the family child care home is located complies with the following requirements:

(1) The structure complies with the North Carolina Building Code for family child care homes or has written approval for use as a family child care home by the local building inspector.

(2) The structure meets North Carolina Residential Building Code or is a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with North Carolina Manufactured/Mobile Home Regulations adopted by the NC Department of Insurance.

Exception: Single wide manufactured homes are limited to a maximum of three preschool-age children (not more than two may be two years of age or less) and two school-age children.

(3) All children are kept on the ground level with an exit at grade.

(4) All homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other.

(5) All homes are provided with at least one five pound 2-A: 10-B: C type extinguisher for every 2,500 square feet of floor area.

(6) Heating appliances shall be installed and maintained according to NC Building Code Chapter 603.5.3.

(7) All indoor areas used by children are heated when the temperature is below 65 degrees and ventilated when the temperature is above 85 degrees.

(8) Hot pipes or radiators which are hot enough to be capable of burning children and are accessible to the children are covered or insulated.

(d) The applicant shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include:

(1) a copy of the certified criminal history check from the Clerk of Superior Court's office in the county or counties where the applicant and any household member(s) over age 15, have resided during the previous 12 months;

(2) a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR) course;

- (3) proof of negative results of the applicant's tuberculosis test completed within the past 12 months;
- (4) a completed health questionnaire;
- (5) a copy of current pet vaccinations for any pet in the home;
- (6) a negative well water bacteriological analysis if the home has a private well;
- (7) copies of any inspections required by local ordinances; and
- (8) any other documentation required by the Division according to the rules in this Section to support the issuance of a license.

(e) Upon receipt of a complete application and supporting documentation, a Division representative shall make an announced visit to each home unless the applicant meets the criteria in Paragraph (g) of this Rule to determine compliance with the requirements, to offer technical assistance when needed, and to provide information about local resources. The issuance of a license applies as follows:

- (1) If all applicable requirements of G.S. 110 and this Section are met, a license shall be issued;
- (2) If the applicable requirements are not met but the applicant has the potential to comply, the Division representative shall establish with the applicant a time period for the home to achieve compliance. If the Division representative determines that all applicable requirements are met within the established time period, a license shall be issued; or
- (3) If all applicable requirements are not met or cannot be met within the established time, the Division shall deny the application.

(f) The Division shall allow the applicant to temporarily operate prior to the Division representative's visit described in Paragraph (e) of this Rule when the applicant is currently licensed as a family child care home operator, needs to relocate and notifies the Division of the relocation, and the Division representative is unable to visit before the relocation occurs. A person shall not operate until he or she has received from the Division either temporary permission to operate or a license.

(g) When a person applies for a family child care home license, the Secretary may deny the application for the license under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
- (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under

an administrative action described in Subparagraph (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:

- (A) would participate in the administration or operation of the facility;
- (B) has a financial interest in the operation of the facility;
- (C) provides care to the children at the facility;
- (D) resides in the facility; or
- (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;

- (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this Chapter; or
- (6) if abuse or neglect has been substantiated against the person, or if abuse or neglect was substantiated against a household member.

(h) In determining whether denial of the application for a license is warranted pursuant to Paragraph (g) of this Rule, the Division shall consider:

- (1) any documentation provided by the applicant which describes the steps the applicant will take to prevent reoccurrence of noncompliance issues which led to any prior administrative action taken against a license previously held by the applicant;
- (2) training certificates or original transcripts from a nationally recognized regionally accredited institution of higher learning related to providing quality child care for any coursework, and which were taken subsequent to any prior administrative action taken against a license previously held by the applicant. Nationally recognized means that every state in this nation acknowledges the validity of the coursework taken at higher education institutions that meet the requirements of one of the six regional accrediting bodies;
- (3) proof of employment in a licensed child care facility and references from the administrator or licensee of the child care facility regarding work performance;
- (4) documentation of collaboration or mentorship with a licensed child care provider to obtain additional knowledge and experience related to operation of a child care facility; and
- (5) documentation explaining relationships with persons meeting the criteria listed in Subparagraph (g)(4) of this Rule.

- (i) The license shall not be bought, sold, or transferred from one individual to another.
- (j) The license is valid only for the location address listed on it.
- (k) The license must be returned to the Division in the event of termination, revocation, suspension, or summary suspension.
- (l) The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each child's parent when the child is enrolled.
- (m) A licensee shall notify the Division whenever a change occurs which affects the information shown on the license.

History Note: Authority G.S. 110-85; 110-88(5); 110-91; 110-93; 110-99; 143B-168.3;

Eff. January 1, 1986;

Amended Eff. December 1, 2012; August 1, 2011; July 1, 2010; April 1, 2003; April 1, 2001; July 1, 1998; January 1, 1991; November 1, 1989; January 1, 1987.

10A NCAC 09 .1706 NUTRITION STANDARDS

(a) Meals and snacks served to children in a Family Child Care Home shall comply with the Meal Patterns for Children in Child Care Programs from the United States Department of Agriculture (USDA) which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food, number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care Programs are incorporated by reference and include subsequent amendments. A copy of the Meal Patterns for Children in Child Care Programs is available free of charge from the Division at the address in Rule .0102(1) of this Chapter.

(b) When children bring their own food for meals and snacks to the program, if the food does not meet the nutritional requirements specified in Paragraph (a) of this Rule, the operator must provide the additional food necessary to meet those requirements unless the child's parent or guardian opts out of the supplemental food provided by the operator as set forth in G.S. 110-91(2) h.1. A statement acknowledging the parental decision to opt out of the supplemental food provided by the operator signed by the child's parent or guardian shall be on file at the home. Opting out means that the operator will not provide any food or drink so long as the child's parent or guardian provides all meals, snacks, and drinks scheduled to be served at the program's designated times. If the child's parent or guardian has opted out but does not provide all food and drink for the child, the program shall provide supplemental food and drink as if the child's parent or guardian had not opted out of the supplemental food program.

(c) The food required by special diets for medical, religious or cultural reasons, may be provided by the operator or may be brought to the program by the parents. If the diet is prescribed by a health care professional, a statement signed by the health care professional shall be on file at the program and written instructions must be provided by the child's parent, health care professional or a licensed dietitian/nutritionist. If the diet is not prescribed by a health care professional, written instructions shall be provided by the child's parent and shall be on file at the program.

(d) Food that does not meet the nutritional requirements specified in Paragraph (a) of this Rule, such as cookies, chips, donuts; etc. shall be available only for special occasions such as holidays, birthdays and other celebrations.

(e) For children ages 24 months and older a meal or snack must be provided at least every four hours.

(f) The parent or health care professional of each child under 15 months of age shall provide the operator an individual written feeding schedule for the child. This schedule shall be followed at the home. This schedule shall include the child's name, be signed by the parent or health care professional, and be dated when received by the operator. Each infant's schedule shall be modified in consultation with the child's parent or health care professional to reflect changes in the child's needs as he or she develops.

(g) Parents shall be allowed to provide breast milk for their children. Accommodations for breastfeeding mothers are provided that include seating and an electrical outlet, in a place other than a bathroom, that is shielded from view by staff and the public, which may be used by mothers while they are breastfeeding or expressing milk.

(h) Each infant shall be held for bottle feeding until able to hold his or her own bottle. Bottles shall not be propped. Each child shall be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed.

(i) Any formula which is prepared by the operator shall be prepared according to the instructions on the formula package or label, or according to written instructions from the child's health care professional.

(j) Infants shall not be served juice in a bottle without a prescription or written statement on file from a health care professional or licensed dietitian/nutritionist.

(k) Drinking water must be freely available and offered to children on a frequent basis.

(l) When milk, milk products, or fruit juices are provided by the operator, only pasteurized products or products which have undergone an equivalent process to pasteurization shall be used.

(m) The operator will provide only the following beverages:

- (1) breast milk;
- (2) formula;
- (3) water;
- (4) unflavored whole milk, for children ages 12-24 months;
- (5) unflavored skim or lowfat milk for children two years old and older; or
- (6) 100 percent fruit juice, limited to 6 ounces per day.

History Note: Authority G.S. 110-85; 110-91(2); 143B-168.3;

Eff. December 1, 2012.

10A NCAC 09 .1718 REQUIREMENTS FOR DAILY OPERATIONS

(a) The operator shall provide the following on a daily basis for all children in care:

- (1) Developmentally appropriate equipment and materials for a variety of outdoor activities which allow for vigorous play, large and small

- muscle development, and social, emotional, and intellectual development. Each child shall have the opportunity for outdoor play each day that weather conditions permit. The operator shall provide space and time for vigorous indoor activities when children cannot play outdoors;
- (2) An individual sleeping space such as a bed, crib, play pen, cot, mat, or sleeping bag with individual linens for each pre-school aged child in care for four hours or more, or for all children if overnight care is provided, to rest comfortably. Individual sleep requirements for infants aged 12 months or younger shall be provided for as specified in 10A NCAC 09 .1724(a)(2). Linens shall be changed weekly or whenever they become soiled or wet;
- (3) A quiet, separate area which can be easily supervised for children too sick to remain with other children. Parents shall be notified immediately if their child becomes too sick to remain in care;
- (4) Adequate supervision as described below:
- (A) For children who are awake, staff shall interact with the children while moving about the indoor or outdoor area, and shall be able to hear and see the children at all times, except when emergencies necessitate that direct supervision is impossible for brief periods of time; and
- (B) For children who are sleeping or napping, the staff are not required to visually supervise them, but shall be able to hear and respond quickly to them. Children shall not sleep or nap in a room with a closed door between the children and the supervising staff. The staff shall be on the same level of the home where children are sleeping or napping.
- (5) A safe sleep environment by ensuring that when a child is sleeping or napping, bedding or other objects shall not be placed in a manner that covers the child's face;
- (6) The opportunity each day for each child under the age of 12 months to play while awake while positioned on his or her stomach;
- (7) Developmentally appropriate activities as planned on a written schedule. Materials or equipment shall be available indoors and outdoors to support the activities listed on the written schedule. The written schedule shall:
- (A) Show blocks of time usually assigned to types of activities and include periods of time for both active play and quiet play or rest;
- (B) Be displayed in a place where parents are able to view;
- (C) Reflect daily opportunities for both free choice and guided activities;
- (D) Include a minimum of one hour of outdoor play throughout the day, if weather conditions permit; and
- (E) Include a daily gross motor activity which may occur indoors or outdoors; and
- (8) When screen time, including videos, video games, and computer usage, is provided, it shall be:
- (A) Offered only as a free choice activity,
- (B) Used to meet a developmental goal, and
- (C) Limited to no more than two and a half hours per week for each child two years of age and older.
- Usage time periods may be extended for specific special events, projects, occasions such as a current event, homework, on-site computer classes, holiday; and birthday celebration. Screen time is prohibited for children under the age of two years. The operator shall offer alternate activities for children under the age of two years.

History Note: Authority G.S. 110-85; 110-88; 110-91(2),(12);
Eff. July 1, 1998;
Amended Eff. December 1, 2012; July 1, 2010; March 1, 2006; May 1, 2004.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 10B .0101 LOCATION

The N.C. Sheriffs' Education and Training Standards Commission is established within the Department of Justice and is located at 1700 Tryon Park Drive in Raleigh, North Carolina. The mailing address is:

North Carolina Sheriffs' Education and Training Standards Commission
 Post Office Box 629
 Raleigh, North Carolina 27602
 Telephone (919) 779-8213

History Note: Authority G.S. 17E-6;
Eff. January 1, 1989;
Amended Eff. January 1, 2013; August 1, 1998.

12 NCAC 10B .0205 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL

When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

- (1) permanent where the cause of sanction is:
- (a) commission or conviction of a felony;
- (b) commission or conviction of a crime for which authorized punishment

- included imprisonment for more than two years; or
- (c) the second revocation, suspension, or denial of an officer's certification for any of the causes requiring a five-year period of revocation, suspension, or denial as set out in Item (2) of this Rule.
- (2) not less than five years where the cause of sanction is:
 - (a) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1);
 - (b) material misrepresentation of any information required for certification or accreditation from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission;
 - (c) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission;
 - (d) knowingly and designedly by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, aiding another in obtaining or attempting to obtain credit, training, or certification from the Commission or the North Carolina Criminal Justice Education and Training Standards Commission. This Sub-Item also applies to obtaining or attempting to obtain credit for in-service training as required by 12 NCAC 10B .1700, .1800, .2000, or .2100;
 - (e) failure to make either of the notifications as required by 12 NCAC 10B .0301(a)(7);
 - (f) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
 - (g) a positive result on a drug screen, or a refusal to submit to drug testing as required by the rules in this Chapter or the rules of the Criminal Justice Education and Training Standards Commission or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the employing agency through which the officer is certified.

The Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

- (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:
 - (a) failure to meet or satisfy relevant basic training requirements;
 - (b) failure to meet or maintain the minimum standards of employment or certification;
 - (c) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 10B .2000 or .2100 or 12 NCAC 09E .0100;
 - (d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2), (3), (4) and (5); or
 - (e) denial, suspension, or revocation of certification pursuant to 12 NCAC 10B .0204(c)(5).

The Commission may either reduce or suspend the periods of sanction where revocation, denial or suspension of certification is based upon the Subparagraphs set out in 12 NCAC 10B .0204(d) or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

History Note: Authority G.S. 17E-4; 17E-7;

Eff. January 1, 1991;

Recodified from 12 NCAC 10B .0208 Eff. January 1, 1992;

Amended Eff. January 1, 2013; January 1, 2009; January 1, 2008; January 1, 2007; January 1, 2006; March 1, 2005; January 1, 1995; January 1, 1994; January 1, 1993; January 1, 1992.

12 NCAC 10B .0206 SUMMARY SUSPENSIONS: OR DENIALS

- (a) The Commission may summarily suspend or deny the certification of a justice officer or instructor when, in the opinion of the Commission, the public health, safety, or welfare requires this emergency action of summary suspension or denial. The following conditions specifically affect the public health, safety, or welfare and therefore the Commission, by and through the

Director, shall utilize summary suspension or denial following a full investigation of the matter when:

- (1) the applicant for certification or the certified justice officer has committed or been convicted of a violation of the criminal code that would require a permanent revocation or denial of certification;
- (2) the justice officer has failed to comply with the training requirements of 12 NCAC 10B .0500, .0600, and .1300;
- (3) the certified justice officer or criminal justice officer fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 10B .2000 or .2100 or 12 NCAC 09E .0100;
- (4) the applicant for certification has refused to submit to the drug screen as required in 12 NCAC 10B .0301(6) or .0406(c)(3) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .0103(6); or
- (5) the applicant for certification or the certified officer has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or board's standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 09A .0103(6), unless the positive result is due to a medically indicated cause.

(b) Without limiting the application of G.S. 17E, a person who has had his or her certification summarily suspended or denied may not exercise the authority or perform the duties of a justice officer during the period of suspension or denial.

History Note: Authority G.S. 17E-8; 17E-9; 150B-3(c); Eff. January 1, 1992;
Amended Eff. January 1, 1993;
Temporary Amendment Eff. March 1, 1998;
Amended Eff. January 1, 2013; January 1, 2008; March 1, 2005; April 1, 1999; August 1, 1998.

12 NCAC 10B .0410 AGENCY REPORTING OF DRUG SCREENING RESULTS

- (a) Each agency that is required to report individuals to the Commission for certification, or that voluntarily reports telecommunicators to the Commission for certification, shall report in writing to the Division all refusals and all positive results of drug screening obtained from applicants and lateral transfers pursuant to 12 NCAC 10B .0301(6) unless the positive result has been explained to the satisfaction of the agency's medical review officer who shall be a licensed physician.
- (b) Each agency that is required to report individuals to the Commission for certification, or that voluntarily reports telecommunicators to the Commission for certification, and that conducts a drug screen for in-service officers, shall report

positive results to the Division provided the drug screen conducted conforms to 12 NCAC 10B .0301(6)(a), (b), (c), (d) and (f).

(c) For reporting purposes, a result will be considered "positive" only in the cases where the drug screen reveals the presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs and adopted by reference in 12 NCAC 10B .0301(6).

History Note: Authority G.S. 17E-4; 17E-7;
Eff. July 1, 1990;
Recodified from 12 NCAC 10B .0409 Eff. January 1, 1991;
Amended Eff. January 1, 2013.

12 NCAC 10B .0713 ADMISSION OF TRAINEES

(a) The school director shall not admit any individual as a trainee in any commission-certified basic training course who is not a citizen of the United States.

(b) The school may not admit any individual younger than 21 years of age as a trainee in any commission-certified basic training course without the prior written approval of the Director of the Standards Division. The Director shall approve those individuals who will turn 21 years of age during the course, but prior to the ending date.

(c) The school may not admit any individual who has not provided documentation that he or she meets the educational requirement as set out in 12 NCAC 10B .0302.

(d) The school shall give priority admission in commission-certified basic training courses to individuals holding full-time employment with criminal justice agencies.

(e) The school shall administer the reading component of a standardized test that reports a grade level for each trainee participating in either the Telecommunicator or Detention Officer Certification Course. The specific type of test instrument shall be determined by the school director and shall be administered within the first week of the Course. The grade level results on each trainee shall be submitted to the Commission on each trainee's Report of Student Course Completion.

(f) The school shall not admit any individual as a trainee in a presentation of the Detention Officer Certification Course or the Telecommunicator Certification Course unless as a prerequisite the individual has provided to the certified school director a Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) in compliance with 12 NCAC 10B .0304. The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) required by the North Carolina Criminal Justice Education and Training Standards Commission shall be recognized by the Commission for the purpose of complying with this Rule.

(g) The school shall not admit any individual trainee in commission-certified basic training courses unless as a prerequisite the individual has provided the certified School Director a certified criminal record check for local and state records for the time period where the trainee has resided within the past 10 years and where the trainee attended high school. An Administrative Office of the Courts criminal record check or a comparable out-of-state criminal record check will satisfy this

requirement. If an individual trainee has received a probationary certificate from the Commission at the time of enrollment, this records check requirement is waived.

(h) The school shall not admit any individual as a trainee in commission-certified basic training courses who has been convicted of the following:

- (1) a felony;
- (2) a crime for which the punishment could have been imprisonment for more than two years;
- (3) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of appointment;
- (4) four or more crimes or unlawful acts as defined as "Class B Misdemeanors" regardless of the date of conviction;
- (5) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the trainee may be enrolled if the last conviction occurred more than two years prior to the date of enrollment; or
- (6) a combination of four or more "Class A Misdemeanors" or "Class B Misdemeanors" regardless of the date of conviction.

(i) Individuals charged with crimes as specified in this Paragraph that were dismissed or the person was found not guilty may be admitted into the commission-certified basic training courses but completion will not ensure that certification as a justice officer through the Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course commission-certified basic training courses shall notify the School Director of all criminal offenses which the trainee is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of, and notify the School Director of all Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (50C) which are issued by a judicial official that provide an opportunity for both parties to be present. This shall include all criminal offenses except minor traffic offenses. A minor traffic offense is defined for purposes of this Paragraph as any offense under G.S. 20 or similar laws of other jurisdictions except those Chapter 20 offenses published in the Class B Misdemeanor Manual. Other traffic offenses under laws of other jurisdictions which shall be reported to the School Director include either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, and driving while license permanently revoked or permanently suspended. The notifications required under this Paragraph must be in writing, must specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B) or Civil No Contact Order (G.S. 50C), and the final disposition and the date thereof. The notifications required under this Paragraph must be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications

required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

History Note: Authority G.S. 17C-4; 17E-7;
Eff. April 1, 2001;
Amended Eff. January 1, 2013; January 1, 2007; January 1, 2005.

12 NCAC 10B .0901 CERT/INSTRUCTORS/BASIC LAW ENFORCEMENT TRAINING COURSE

The rules covering the certification of instructors, codified as Title 12, Subchapter 9B, Section .0300 of the North Carolina Administrative Code, and adopted by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced materials, to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission with the exception of instructors for the Detention Officer Certification Course and Telecommunicator Certification Course. Copies of the publication may be obtained from the Office of Administrative Hearings, Rules Division web-site <http://www.ncoah.com/rules>.

History Note: Authority G.S. 17E-4;
Eff. January 1, 1989;
Amended Eff. January 1, 2013; January 1, 1996; January 1, 1994; June 1, 1992; January 1, 1992.

12 NCAC 10B .1002 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the professional awards, a sheriff or deputy sheriff shall first meet the following preliminary qualifications:

- (1) be an elected or appointed sheriff or be a deputy sheriff who holds valid General or Grandfather Certification. A deputy sheriff serving under a probationary certification is not eligible for consideration. Any justice officer subject to suspension or revocation proceedings or under investigation for possible decertification action by the Commission or the North Carolina Criminal Justice Education and Training Standards Commission is not eligible for professional awards for the pendency of the proceeding;
- (2) be familiar with and subscribe to the Law Enforcement Code of Ethics as promulgated by the International Association of Chiefs of Police; and
- (3) if the applicant is a deputy sheriff, be a full-time sworn law enforcement officer of a North Carolina Sheriff's Office, as certified in writing by the sheriff; or be a full-time law enforcement officer of an agency who must be sworn by the sheriff in order to perform his duties as certified in writing by the Sheriff.

(b) Employees of a North Carolina Sheriff's Office who have previously held general or grandfather law enforcement officer certification but are presently, by virtue of promotion or transfer,

serving in non-sworn positions not subject to certification are eligible to participate in the Professional Certificate Program. Eligibility for this exception requires continuous employment with the sheriff's office from the date of promotion or transfer from a sworn, certified position to the date of application for a professional certificate.

(c) Only training or experience gained in an officer's area of expertise is eligible for application to this program.

(d) Certificates shall be awarded based upon a formula that combines formal education, law enforcement training, and actual experience as a law enforcement officer. These professional certificates are appropriate for sworn sheriffs and full-time deputy sheriffs. Points are computed in the following manner:

- (1) each semester hour of college credit shall equal one education point and each quarter hour shall equal two-thirds of an education point. No correspondence or vocational courses shall be credited towards education points unless an accredited institution, as set out in 12 NCAC 10B .1004(b), credits the course(s) towards a degree;
- (2) twenty classroom hours of commission-approved law enforcement training shall equal one training point; and
- (3) experience as a sworn law enforcement officer as defined in Rule .0103(17) of this Subchapter is acceptable for consideration.

History Note: Authority G.S. 17E-4;

Eff. January 1, 1989;

Amended Eff. January 1, 2013; January 1, 2006; August 1, 2000; August 1, 1998; February 1, 1998; January 1, 1992; January 1, 1991; January 1, 1990.

12 NCAC 10B .1004 INTERMEDIATE LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1002, applicants for the Intermediate Law Enforcement Certificate shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational points, law enforcement training and years of law enforcement training experience:

Years of Law Enforcement Experience	8	6	4
Minimum Law Enforcement Training Points	20	35	50
Minimum Total Education and Training Points	39	69	99

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

History Note: Authority G.S. 17E-4;

Eff. January 1, 1989;

Amended Eff. January 1, 2013; August 1, 2002; August 1, 1998; January 1, 1996; January 1, 1992.

12 NCAC 10B .1005 ADVANCED LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1002, applicants for the Advanced Law Enforcement Certificate shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points, law enforcement training points and years of law enforcement experience:

Years of Law Enforcement Experience	12	9
Minimum Law Enforcement Training Points	35	50
Minimum Total Education and Training Points	69	99

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 160 hours of training obtained by completing the commission-mandated basic law enforcement training course shall be credited toward training points.

History Note: Authority G.S. 17E-4;

Eff. January 1, 1989;

Amended Eff. January 1, 2013; August 1, 2002; August 1, 1998; January 1, 1996; January 1, 1994; January 1, 1992.

12 NCAC 10B .1202 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the detention officer professional awards, a detention officer shall first meet the following preliminary qualifications:

- (1) be a full-time detention officer who holds valid general or grandfather certification. A detention officer serving under a probationary certification is not eligible for consideration. Any detention officer subject to suspension or revocation proceedings or under investigation for possible decertification action by the Commission or the North Carolina Criminal Justice Education and Training Standards Commission is not eligible for any detention officer professional awards for the pendency of the proceeding.

- (2) be familiar with and subscribe to the Law Enforcement Code of Ethics as promulgated by the International Association of Chiefs of Police including any subsequent editions or modifications thereto. A copy of the Code of Ethics may be obtained at no cost from the Sheriffs' Standards Division, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629.

(b) Employees of a North Carolina Sheriff's Office who have previously held general or grandfather detention officer certification but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the Professional Certificate Program. Eligibility for this exception requires continuous employment with the sheriff's office from the date of promotion or transfer from a certified position to the date of application for a professional certificate.

(c) Only training and experience gained in an officer's area of expertise shall be eligible for application to this program.

(d) Certificates shall be awarded based upon a formula which combines formal education, training, and actual experience as a detention officer. Points are computed in the following manner:

- (1) each semester hour of college credit shall equal one education point and each quarter hour shall equal two thirds of an education point. No correspondence or vocational courses shall be credited towards education points unless an accredited institution, as set out in 12 NCAC 10B .1204(b), credits the course(s) towards a degree;
- (2) twenty classroom hours of commission-approved training shall equal one training point; and
- (3) experience as a member of a correctional or detention facility in North Carolina as defined in Rule .0103(13) of this Subchapter is acceptable for consideration;

History Note: Authority G.S. 17E-4;

Eff. January 1, 1990;

Amended Eff. January 1, 2013; January 1, 2006; August 1, 1998; February 1, 1998; January 1, 1996; January 1, 1992.

12 NCAC 10B .1204 INTERMEDIATE DETENTION OFFICER PROFESSIONAL CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1202 of this Section, applicants for the Intermediate Detention Officer Professional Certificate shall possess or be eligible to possess the Basic Detention Officer Professional Certificate and shall have acquired the following combination of educational points, detention officer or corrections training points and years of detention officer experience:

Years of Detention Officer Experience	8	6	4
Minimum Detention Officer Training Points	6	12	16
Minimum Total Education	13	23	33

and Training Points

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 80 hours of training obtained by completing the commission-mandated detention certification course shall be credited toward training points.

History Note: Authority G.S. 17E-4;

Eff. January 1, 1990;

Amended Eff. January 1, 2013; August 1, 2002; August 1, 1998; January 1, 1996; January 1, 1992.

12 NCAC 10B .1205 ADVANCED DETENTION OFFICER PROFESSIONAL CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1202 of this Section, applicants for the Advanced Detention Officer Professional Certificate shall possess or be eligible to possess the Intermediate Detention Officer Professional Certificate and shall have acquired the following combination of educational points, detention officer or corrections training points and years of detention officer experience:

Years of Detention Officer Experience	12	9
Minimum Detention Officer Training Points	12	16
Minimum Total Education and Training Points	23	33

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 80 hours of training obtained by completing the commission-mandated detention certification course shall be credited toward training points.

History Note: Authority G.S. 17E-4;

Eff. January 1, 1990;

Amended Eff. January 1, 2013; August 1, 2002; August 1, 1998; January 1, 1996; January 1, 1994; January 1, 1992.

12 NCAC 10B .1602 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the telecommunicator professional awards, a telecommunicator shall first meet the following preliminary qualifications:

- (1) be a full-time telecommunicator who holds valid general or grandfather certification under the North Carolina Sheriffs' Education and Training Standards Commission. A telecommunicator serving under a probationary certification is not eligible for consideration;
- (2) be familiar with and subscribe to the Telecommunicator Code of Ethics as published by the Association of Public-Safety Communications Officials and the National Emergency Number Association including any subsequent editions or modifications thereto. A copy of the Code of Ethics may be obtained at no cost from the Sheriffs' Standards Division, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629.

(b) employees of a North Carolina Sheriff's Office or other agency who have previously held general or grandfather telecommunicator certification under the North Carolina Sheriffs' Education and Training Standards Commission but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the Professional Certificate Program. Eligibility for this exception requires continuous employment with the sheriff's office or agency from the date of promotion or transfer from a certified position to the date of application for a professional certificate.

(c) Only training and experience gained in a telecommunicator's area of expertise will be eligible for application to this program.

(d) Certificates shall be awarded based upon a formula which combines formal education, training, and actual experience as a telecommunicator. Points are computed in the following manner:

- (1) each semester hour of college credit shall equal one point and each quarter hour shall equal two thirds of a point;
- (2) twenty classroom hours of commission-approved training shall equal one point; and
- (3) only experience as a full-time telecommunicator certified through the Commission shall be acceptable for consideration.

*History Note: Authority G.S. 17E-4;
Eff. April 1, 2001;
Amended Eff. January 1, 2013.*

**12 NCAC 10B .1604 INTERMEDIATE
TELECOMMUNICATOR CERTIFICATE**

(a) In addition to the qualifications set forth in Rule .1602 of this Section, applicants for the Intermediate Telecommunicator Certificate shall possess or be eligible to possess the Basic Telecommunicator Certificate and shall have acquired the following combination of educational points, telecommunicator training points and years of telecommunicator training experience:

Years of Telecommunicator Experience	8	6	4
Minimum Telecommunicator Training Points	5	10	14
Minimum Total Education and Training Points	12	20	28

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 40 hours of training obtained by completing the commission-mandated telecommunicator certification course shall be credited toward training points.

*History Note: Authority G.S. 17E-4;
Eff. April 1, 2001;
Amended Eff. January 1, 2013; August 1, 2002.*

**12 NCAC 10B .1605 ADVANCED
TELECOMMUNICATOR CERTIFICATE**

(a) In addition to the qualifications set forth in Rule .1602, applicants for the Advanced Telecommunicator Certificate shall possess or be eligible to possess the Intermediate Telecommunicator Certificate and shall have acquired the following combination of educational points, telecommunicator training points and years of telecommunicator experience:

Years of Telecommunicator Experience	12	9
Minimum Telecommunicator Training Points	10	12
Minimum Total Education and Training Points	20	23

(b) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, a national or regional accrediting body, or the state university of the state in which the institution is located. No credit shall be given for any correspondence or vocational courses unless credited towards a degree by an accredited institution.

(c) No more than 40 hours of training obtained by completing the commission-mandated telecommunicator certification course shall be credited toward training points.

*History Note: Authority G.S. 17E-4;
Eff. April 1, 2001;
Amended Eff. January 1, 2013; August 1, 2002.*

12 NCAC 10B .2003 IN-SERVICE TRAINING COORDINATOR

(a) If a Sheriff or Department Head chooses to conduct its own in-service training, then the Sheriff or Department Head must also appoint an "In-Service Training Coordinator" who meets the following criteria:

- (1) Has four years of experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system;
- (2) Holds General Instructor certification; and
- (3) Has successfully participated in the "Coordinating In-Service Training" course presented by the NC Justice Academy for the purpose of familiarization with trainee and instructor evaluation.

The Sheriff or Department Head shall submit an application for such appointment to the Division for approval of this designation.

(b) An In-Service Training Coordinator shall:

- (1) Administer the delivery of the course curriculum.
- (2) Select and schedule instructors.
- (3) Ensure that each instructor utilizes a lesson plan previously approved by the Sheriff or his or her designee.
- (4) Monitor, or designate a certified instructor to monitor the presentations of instructors during course deliveries and prepare a written evaluation on their performance and suitability for subsequent instructional assignments. The observations shall be of sufficient duration to ensure the instructor is using the Instructional System Development model, as taught in Criminal Justice Instructor Training set out in 12 NCAC 09B .0209, and that the delivery is objective based, documented by and consistent with a Commission-approved lesson plan.
- (5) Maintain records of all in-service training received by the agency's deputies, detention officers, and telecommunicators including:
 - (A) the course title;
 - (B) the delivery hours of course;
 - (C) the course delivery dates;
 - (D) the names and addresses of instructors utilized for each topic; and
 - (E) A roster of enrolled trainees documenting class attendance.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 2007; Amended Eff. January 1, 2013.

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy, or may use a lesson plan for any of the topical areas developed by another entity. The Sheriff or Department Head may also use a lesson

plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training in 12 NCAC 09B .0209. Successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers.

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

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

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

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

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

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

(e) The 2013 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topical areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: Don't Press Send;
- (3) Domestic Violence: The Children are Watching;
- (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (5) Any topic areas of the Sheriff's choosing.

(f) The 2013 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:

- (1) Inmate Sexual Assaults;
- (2) Detention Officer Legal Update;
- (3) Awareness of Issues Surrounding Returning Military Personnel; and

- (4) Any topic areas of the Sheriff's or Department Head's choosing.
- (g) The 2013 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topical areas:
 - (1) Officer Involved Shootings;
 - (2) Radio Demeanor and Broadcast Techniques; and
 - (3) Any topic areas of the Sheriff's or Department Head's choosing.

*History Note: Authority G.S. 17E-4; 17E-7;
 Eff. January 1, 2007;
 Amended Eff. January 1, 2013; February 1, 2012; January 1, 2011; January 1, 2010; January 1, 2009; January 1, 2008.*

12 NCAC 10B .2006 IN-SERVICE TRAINING PROGRAM SPECIFICATIONS

Justice officers who have been active as a deputy sheriff, detention officer, or telecommunicator between January and June of each calendar year must complete the respective In-Service Training Program(s) established by 12 NCAC 10B .2002 by December of each calendar year. For each justice officer holding multiple certifications from the Commission, the Sheriff shall designate the officer's primary duties for the purpose of selecting which one of the in-service training programs the officer must complete for a calendar year. A justice officer who fails to complete in-service training as required, but is either separated or made inactive prior to the end of the calendar year, may be re-activated after completing the in-service training program prescribed for the year immediately preceding the year in which the officer is being activated. Persons applying to receive deputy certification who have prior service as a criminal justice officer as defined in 12 NCAC 09A .0103(6) between January and June of a prior year who failed to complete in-service training for that year, must complete the in-service training program prescribed for the year immediately preceding the year in which the officer is being activated as a deputy.

*History Note: Authority G.S. 17E-4; 17E-7;
 Eff. January 1, 2007;
 Amended Eff. January 1, 2013; January 1, 2010.*

12 NCAC 10B .2007 SHERIFF/AGENCY HEAD RESPONSIBILITIES

Each Sheriff or Department Head shall ensure that the respectively required In-Service Training Program established by this Section is conducted. In addition, the Sheriff or Department Head shall:

- (1) report to the Division those deputy sheriffs, detention officers and telecommunicators who are inactive;
- (2) maintain a roster of each deputy sheriff, detention officer and telecommunicator who successfully completes the respectively required In-Service Training Program;
- (3) report to the Division by January 15th of each year:

- (a) those active telecommunicators who fail to complete the prior year's Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2012;
- (b) those active detention officers who fail to complete the prior year's Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2012; and
- (c) those active deputy sheriffs who fail to complete the prior year's Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form.

*History Note: Authority G.S. 17E-4; 17E-7;
 Eff. January 1, 2007;
 Amended Eff. January 1, 2013; January 1, 2011; January 1, 2010; January 1, 2009; January 1, 2008.*

12 NCAC 10B .2009 TRAINING DELIVERY

The training provider shall ensure that the:

- (1) training is documented by roster that includes:
 - (a) student names;
 - (b) date and time of training;
 - (c) instructional topic;
 - (d) hours taught;
 - (e) instructor's name; and
 - (f) training provider.

The training provider may also issue a certificate to the officer;
- (2) training is taught by a Commission certified instructor;
- (3) instructors use the lesson plans prepared by the NC Justice Academy, another entity or develop their own developed in accordance with the provisions of 12 NCAC 10B .2005(a);
- (4) instructors provide each student with a copy of the student lesson plan during the course delivery; and
- (5) a copy of the lesson plan(s) is maintained indefinitely by the training provider.

*History Note: Authority G.S. 17E-4; 17E-7;
 Eff. January 1, 2013.*

12 NCAC 10B .2103 MINIMUM TRAINING REQUIREMENTS

- (a) In order to be approved by the Commission, an In-Service Firearms Training and Requalification Program shall include the following specified topics:
 - (1) Use of Force: review the authority to use deadly force including relevant case law and materials.
 - (2) Safety:
 - (A) Range rules and regulations;
 - (B) Handling of a firearm; and

- (C) Malfunctions.
- (3) Review of Basic Marksmanship Fundamentals:
 - (A) Grip, stance, breath control and trigger squeeze;
 - (B) Sight and alignment/sight picture; and
 - (C) Nomenclature.
- (4) Operation and Maintenance of all authorized weapons.

(b) The Instructor shall teach the same training objectives for the topical areas listed in this Rule as specified in the Specialized Firearms Instructor Training Manual published by the North Carolina Justice Academy which is hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced materials as the approved source for the above mandated topical areas. Copies of this publication may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385. There is no cost per manual at the time of adoption of this Rule.

History Note: Authority G.S. 17E-4; 17E-7;
Eff. January 1, 1989;
Amended Eff. January 1, 2013; January 1, 1993.

12 NCAC 11 .0102 LOCATION

The administrative offices of the Alarm Systems Licensing Board are located at 4901 Glenwood Avenue, Suite 200, Raleigh, North Carolina 27612, telephone (919) 788-5320.

History Note: Authority G.S. 74D-4; 74D-5;
Temporary Rule Eff. January 9, 1984, for a Period of 120 Days to Expire on May 7, 1984;
Eff. May 1, 1984;
Amended Eff. December 1, 2012.

12 NCAC 11 .0201 APPLICATION FOR LICENSE

(a) Each applicant for a license shall complete an application form provided by the Board. This form and one additional copy shall be submitted to the administrator and shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant card provided by the Board;
- (2) one head and shoulders digital photograph of the applicant in JPG format of acceptable quality for identification and taken within six months prior to submission and submitted by e-mail to PPSB/ASLB-photos@ncdoj.gov or by compact disc;
- (3) for residents of North Carolina statements of the results of a statewide criminal history records search for the past five years conducted by an Administrative Offices of the Courts' approved firm that conducts criminal history searches and bases its search on the criminal history database maintained by the North Carolina Administrative Offices of the Courts;

- (4) for out-of-state residents, statements of the results of a statewide criminal history records search for the past five years conducted by a Board approved company under contract with, or appointed by, the Board to conduct criminal history searches which bases its search on the criminal history database maintained by the state of residence;
- (5) the applicant's application fee; and
- (6) an Equifax credit check run within 30 days of the license application submission date.

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

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

(d) Each applicant for a branch office license shall complete an application form provided by the Board. This form and one additional copy shall be submitted to the administrator and shall be accompanied by the branch office application fee.

History Note: Authority G.S. 74D-2; 74D-3; 74D-5; 74D-7;
Temporary Rule Eff. January 9, 1984, for a period of 120 days to expire on May 7, 1984;
Eff. May 1, 1984;
Amended Eff. December 1, 2012; February 1, 2012; January 1, 2007; September 1, 2006; March 1, 1993; July 1, 1987; January 1, 1986.

12 NCAC 11 .0301 APPLICATION FOR REGISTRATION

(a) Each licensee or qualifying agent shall submit and sign an application form for the registration of his employee on a form provided by the Board. This form, when sent to the board, shall be accompanied by:

- (1) one set of classifiable fingerprints on a standard F.B.I. applicant card,
- (2) one head and shoulders digital photograph of the applicant in JPG format of acceptable quality for identification and taken within six months prior to submission and submitted by e-mail to PPSB/ASLB-photos@ncdoj.gov or by compact disc;
- (3) for residents of North Carolina statements of the results of a statewide criminal history records search for the preceding 48 months conducted by an Administrative Offices of the Courts' approved firm that conducts criminal history searches and bases its search on the criminal history database maintained by the North Carolina Administrative Offices of the Courts;

- (4) for out-of-state residents, statements of the results of a statewide criminal history records search for the past 48 months conducted by a Board approved company under contract with, or appointed by, the Board to conduct criminal history search which bases its searches on the criminal history database maintained by the state of residence; and
- (5) the registration fee required by 12 NCAC 11 .0302.

(b) The employer of an applicant who is currently registered with another alarm business shall complete an application form provided by the Board. This form shall be accompanied by the applicant's multiple registration fee.

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

(d) The employer of each applicant for registration shall complete and submit to the Board a certification of the background and criminal record check of every applicant signed by the licensee or qualifying agent. A copy of this certification shall be retained in the individual applicant's personnel file in the employer's office.

*History Note: Authority G.S. 74D-5; 74D-8;
Temporary Rule Eff. January 9, 1984 for a Period of 120 Days to Expire on May 7, 1984;
Eff. May 1, 1984;
Amended Eff. December 1, 2012; January 1, 2007; July 1, 1993;
March 1, 1993; September 1, 1990; November 1, 1988.*

12 NCAC 11 .0307 SUSPENSION OF AUTHORITY TO EXPEND FUNDS

In the event that Board's authority to expend funds is suspended pursuant to G.S. 93B-2(d), the Board shall continue to issue and renew licenses and all fees tendered shall be placed in an escrow account maintained by the Board for this purpose. Once the Board's authority is restored, the funds shall be moved from the escrow account into the general operating account.

*History Note: Authority G.S. 93B-2(b);
Eff. December 1, 2012.*

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 02A .0102 DUTIES OF CHIEF ENGINEER

The duties and responsibilities of the Chief Engineer conferred by law and delegated or prescribed by the Secretary or Board of Transportation include:

- (1) recommend ordinances based upon engineering studies of the Traffic Engineering Branch;
- (2) enter into agreements and contracts for the board;
- (3) carry out Board programs and functions;

- (4) powers and duties concerning highway right of way acquisitions which may be subdelegated to the right of way branch;
- (5) negotiate and execute contracts with right of way fee appraisers;
- (6) negotiate and enter into agreements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act;
- (7) make spot safety improvement funds for primary, secondary, and urban safety projects available as needed and that said authority may be delegated to the Manager of Traffic Engineering by the Chief Engineer;
- (8) execute lease or rental agreements on behalf of the State;
- (9) inspect the State roadway system annually to determine the need, priorities, and scheduling for major maintenance, retreatment or resurfacing (subject to the Board's approval) in each engineering division;
- (10) determine the need for temporary traffic control devices for special events;
- (11) review and approve median opening requests;
- (12) review and approve civic, non-profit, or charitable organization safety rest stop activities;
- (13) handle and execute bicycle trails joint use rights of way;
- (14) consider and issue or deny permits for intermittent closing of secondary roads within watershed improvement projects;
- (15) issue special overweight and over-dimension permits;
- (16) authorize crop cultivation within rights of way;
- (17) authorize garbage collection container sites on rights of way;
- (18) authorize construction within the right of way;
- (19) permit construction of railroad tracks across any portion of the roadway system;
- (20) review, investigate and allow or deny contractor settlement claims for construction;
- (21) determine existence of emergency situation justifying the waiver of the bidding requirements as described in the general statutes;
- (22) implement, subject to discretionary review by the Secretary of Transportation, those rules and ordinances pertaining to highway matters which are delegated to him by the Secretary of Transportation;
- (23) submit a priority list and consult with Board of Transportation members in each major maintenance, retreatment or resurfacing project as requested by the Board members;
- (24) hold bid withdrawal hearings;
- (25) submit applications to the Federal Emergency Management Agency and to execute the assurances and agreements and other documents on behalf of the Department of

Transportation necessary for Federal Disaster Assistance, including the Designation of Applicants Agents, Assurances and Agreements, Damage Survey Reports and Requests for Payments. The Chief Engineer is further authorized to subdelegate the authority and duty for Federal Disaster Assistance on behalf of the Department of Transportation to the Chief Engineer's designee.

History Note: Authority G.S. 20-119; 133-5 thru 17; 136-18(5); 136-18(11); 136-18.3; 136-19; 136-28.1; 136-29; 136-30; 136-44.1; 136-64.1(d); 136-71.9; 136-89.51; 136-93; 143B-10(j); 143B-350(f); 143B-350(g);

Eff. July 1, 1978;

Amended Eff. December 1, 2012; December 1, 1993; November 1, 1991; October 1, 1991; January 1, 1986.

19A NCAC 02B .0150 CONSTRUCTION OF RAILROAD TRACKS ACROSS RIGHT OF WAY

It shall be unlawful to construct a railroad track across any portion of the State Highway System, without the written permission of the Chief Engineer or his authorized agent.

History Note: Authority G.S. 136-18(5); 136-18(11);

Eff. July 1, 1978;

Amended Eff. December 1, 2012.

19A NCAC 02B .0164 USE OF RIGHT OF WAY CONSULTANTS

(a) Introduction and purpose. The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway system. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

This Rule is established for the preparation, execution and administration of contracts for right of way acquisition services by consultant firms that are over ten thousand dollars (\$10,000.00).

Due to the diversity of contract types, some portions of this Rule may not be fully applicable to all situations. The Right of Way Branch Manager shall determine when waivers from portions of this Rule are justified. Guidelines for determining if a waiver is justified shall include:

- (1) A determination of whether an emergency situation exists that affects the health and safety of the traveling public; and
- (2) A determination of the availability of pre-qualified firms willing to perform specified work according to the Department's schedule.

(b) The following are incorporated by reference including any subsequent amendments or editions:

- (1) General Statute 136-28.1(f) and General Statute 130A-444 thru General Statute 130A-451.

- (2) 23 CFR 710-720, FHWA right of way regulations which contain some contracting requirements.

- (3) 49 CFR 18.36, USDOT contracting regulations.

These documents are available for public inspection in the office of the Right of Way Branch. Copies may be obtained from the Right of Way Consultant Coordinator at a cost of five dollars (\$5.00) for each document.

(c) Definitions. The following definitions are for the purpose of clarifying and describing words and terms used in this Section:

- (1) Right of Way Consultant Coordinator - The individual who is assigned the responsibility of initiating, negotiating, and administering a contract for professional or specialized services.
- (2) Cost per Unit of Work - A method of compensation based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) Cost Plus Fixed Fee - A price based on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) Cost Proposal - A submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) Firm - Any private agency, firm, organization, business or individual offering qualified right of way acquisition services.
- (6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
- (7) Payroll Additive - Employer paid fringe benefits including employer's portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workers' compensation and other such benefits.
- (8) Proposal - An offer by a firm to perform specific work or services for the Department at specified rates of compensation.
- (9) Scope of Work - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.
- (10) Contract Amendment - A written supplement to the contract which modifies the terms of an existing contract.
- (11) Termination Clause - A contract provision which allows the Department to terminate, at its discretion, the performance of work, in

whole or in part, and to make final payment in accordance with the terms of the contract.

- (12) Right of Way Consultant Selection Committee - The Committee shall consist of the Branch Manager, Assistant Way Branch Manager, Unit Heads, and the Right of Way Consultant Coordinator or their designated representatives and shall be chaired by the Branch Right of Way Manager. When Federal funds will be used as compensation for services to be solicited, a representative of the Federal Highway Administration shall sit with the Committee but shall not be a voting member.

(d) Application. This Rule shall apply to all contracts for right of way acquisition services which cost more than ten thousand dollars (\$10,000.00) and are obtained by the Department of Transportation pursuant to G.S. 136-28(f).

(e) Pre-qualification of firms. The Department shall advertise for firms interested in performing right of way acquisition services for the North Carolina Department of Transportation when necessitated by its projected workload. The advertisement shall be published in the North Carolina Purchase Directory, a bi-monthly publication of the N.C. Department of Administration. The advertisement shall indicate that interested firms must respond by letter to the Department indicating their interest within two weeks of the date of the advertisement. The response shall include the Federal Government's Government Accounting Office Forms 254 and 255, and copies of the firms latest brochures. Additional firms may be considered for pre-qualification at any time that the Department recognizes a need based on current projected workload for additional pre-qualified firms. Evaluation of the firms expressing interest shall be based on the following considerations:

- (1) Experience, education, reputation, and required certifications of staff in the fields of expertise required by the contract including negotiations, appraisals, and relocation assistance;
- (2) Number of staff available to perform the services required by the contract including negotiations, appraisals, and relocation assistance;
- (3) Financial ability to undertake the proposed work;
- (4) The firm's accounting system including ability to identify costs chargeable to the project;
- (5) Past performance by the firm on previous Right of Way acquisition contracts including meeting the time schedule for the work;
- (6) Equipment necessary to perform the required services.

A number of firms sufficient to perform the anticipated workload that meet the qualifications in Paragraphs (e)(1) through (e)(6) of this Rule shall be designated as pre-qualified to perform right of way acquisition services for the North Carolina Department of Transportation.

(f) Register of pre-qualified firms. The Right of Way Consultant Coordinator shall maintain a "Register of Pre-Qualified Firms" from whom specific project proposals may be

solicited to perform right of way acquisition services for the North Carolina Department of Transportation - Right of Way Branch.

(g) Request for approval to solicit specific project proposals. The Right of Way Consultant Selection Committee through the Manager of Right of Way shall determine when the need for right of way acquisition services exists. Upon determining that a need exists, the Committee shall request approval from the Branch Way Manager to solicit proposals for the work.

The request shall be in writing and shall include the type of work and specific justification for the work being performed by a consultant firm such as:

- (1) non-availability of manpower,
- (2) lack of expertise, or
- (3) other reasons.

(h) Solicitations of specific project proposals. Specific Project Proposals shall be solicited from all Pre-Qualified Firms. Solicitations shall be by direct mailing of plans and Specific Project Proposal.

The Right of Way Consultant Coordinator, upon the approval of the Manager of Right of Way, shall prepare the requests for proposals. The request shall contain plans and information describing the location of the project, types and scope of work required, and the time schedule for accomplishing the work.

The solicitation for a Specific Project Proposal shall require that all firms attend a Scoping Meeting on a specified date in order to qualify to submit a Specific Project Proposal for consideration. Any firm that does not wish to submit a Specific Project Proposal on a particular project shall advise, in writing, the Manager of Right of Way of their decision not to submit a Specific Project Proposal for that project.

(i) Selection of firm for specific project contract. The Right of Way Consultant Selection Committee shall review all responses received to the request for proposals and shall select three firms from those indicating interest (except when there are fewer than three responses). When several projects are under consideration at the same time, a firm shall be selected for each project and two alternates may be selected from the entire group, at the discretion of the Selection Committee. These firms shall be listed in descending order of preference based on the Selection Committee's review and analysis of all responses. The Committee may elect to interview all or part of the firms responding to the request for proposal prior to establishing the order of preference. The Selection Committee's file shall be documented as to the reasons for the selection of a firm.

In the evaluation of the firms submitting Specific Project Proposals, the following factors shall be considered:

- (1) The monetary amount of the competitive proposal;
- (2) The firm personnel who are currently available to perform right of way acquisition services on the specific project and their qualifications; and
- (3) The ability of the firm to complete the work according to the Department's schedule.

Any firm selected to perform Right of Way Services for the North Carolina Department of Transportation shall be required to establish an office at the location of the project. This office

shall be the location for maintaining all project records open for review by appropriate Department personnel.

After the authorization to proceed to negotiations is given by the Branch Way Manager, the Right of Way Consultant Coordinator shall notify the firm chosen by the Selection Committee.

(j) Negotiation of specific project contract. Prior to receiving a specific project proposal, the Right of Way Consultant Coordinator shall prepare an estimate of the cost of performing the work in-house. This estimate shall be used in evaluating the acceptability of the selected firm's cost proposal.

If considered necessary by the Right of Way Consultant Coordinator a meeting with the selected firm may be scheduled to discuss the scope of the proposed work. The discussions will vary depending upon the firm's familiarity with the Department's methods, policies, standards, etc. For firms unfamiliar with the Department's requirements, the discussions shall include:

- (1) Policies used by the Department for the type and scope of work involved;
- (2) A copy of a contract in draft form;
- (3) Methods of payment;
- (4) Procedures for invoicing;
- (5) Standard forms to be used;
- (6) Fiscal requirements;
- (7) Items and services to be provided by the Department.

A representative of the firm shall keep minutes of the meeting, have them typed and submit a copy to the Right of Way Consultant Coordinator. The minutes shall be reviewed for completeness, accuracy and confirmation of mutual understanding of the scope of work. The minutes shall be approved by the signature of the Right of Way Consultant Coordinator and an approved copy shall be returned to the firm.

The firm's competitive cost proposal shall be supported by a breakdown of the manhours required to perform each of the services contained in the contract and the fixed billable rate for each of the classifications of personnel to be utilized. The fixed fee must be specifically broken out on the firm's specific project cost proposal. The firm's cost proposal must also include a breakdown of all non-salary direct costs and any sub-contract or fee services.

Upon receipt of the selected firm's cost proposal, a review shall be made. The review shall include a comparison with the in-house estimate and is intended to determine both the reasonableness of the proposal and areas of substantial differences which may require further discussion and negotiation. When further negotiations are required, they shall be the responsibility of the Right of Way Consultant Coordinator.

The final negotiations shall satisfactorily conclude all remaining points of difference and shall consider any comments submitted by the External Audit Unit. The Right of Way Consultant Coordinator with the concurrence of the Manager of Right of Way shall approve the final fee.

If an acceptable contract cannot be negotiated, negotiations shall be terminated, the firm shall be notified in writing and the next listed firm shall be contacted to initiate negotiations for the work.

(k) Board of Transportation approval and execution of contract. After final negotiations are completed, the firm shall execute a

minimum of two contract originals and submit them to the Consultant Coordinator.

The Consultant Coordinator shall submit the contract to the Chief Engineer who may consult with the Advisory Budget Commission pursuant to G.S. 136-28.1(f). The Manager of Right of Way shall submit the proposed contract to the Board of Transportation for approval. After the Board of Transportation approves the contract, the Manager of Right of Way shall execute and return the contract to the Right of Way Consultant Coordinator.

The Right of Way Consultant Coordinator shall transmit one original contract to the contracting firm and shall retain one in the project file. The Consultant Coordinator shall provide each of the following with a copy of the contract: the Manager of DOT Program and Policy Branch, DOT Fiscal Section, and Federal Highway Administration when federal-aid funds are involved.

(l) Sub-contracting. A contracting firm may sublet portions of the work proposed in the contract only upon approval of the Right of Way Consultant Coordinator.

The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor shall submit the proper supporting data to the Contract Administrator for all work that is proposed to be sublet.

(m) Methods of compensation:

- (1) Lump Sum - This method of compensation is suitable for contracts where the amount and character of required work or services can be defined and understood by both the Department and the contracting firm.
- (2) Cost Plus Fixed Fee - This method of compensation is suitable for contracts where the general magnitude of work is known but the scope of work or period of performance cannot be defined and the Department needs more flexibility in expediting the work without excessive amendments to the contract.
- (3) Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.
- (4) Cost Plus a Percentage of Cost - This method of compensation shall not be used.

(n) Administration of contract. The administration of the contract shall be the responsibility of the Right of Way Consultant Coordinator. This shall include the review of invoices and recommendation for payment to the Fiscal Section.

(o) Contract Amendments. Each contract shall contain procedures for contract modifications and define what changes can only be made by means of a contract amendment.

Any change in the amount of compensation must be accomplished by contract amendment. For contracts which use federal funds as compensation for services, the contract amendment must be approved by the Federal Highway Administration.

(p) Monitoring of work. The responsibility for monitoring the work, the schedule and performing reviews at intermediate

stages of the work shall rest with the Right of Way Consultant Coordinator.

(q) Final payment. When it is determined that the work is complete, the final invoice shall be approved by the Right of Way Consultant Coordinator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed.

(r) Termination of contracts. All contracts shall include a provision for the termination of the contract by the Department. Such termination by the Department shall be in writing and shall be effective upon receipt by the contracting firm.

History Note: Authority G.S. 136-28.1(f);

Eff. November 1, 1991;

Amended Eff. December 1, 2012; August 1, 1998; October 1, 1993; November 2, 1992.

19A NCAC 02B .0165 ASBESTOS CONTRACTS WITH PRIVATE FIRMS

(a) The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway systems. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

These Rules are established for the preparation, execution and administration of contracts over ten thousand dollars (\$10,000.00) for asbestos inspections, asbestos removals, and structure clearings by consultant firms.

(b) The following are incorporated by reference including any subsequent amendments or editions:

- (1) 23 CFR 710 FHWA right of way regulations which contain some contracting requirements; and
- (2) 49 CFR 18.36, USDOT contracting regulations.

These documents are available for public inspection in the office of the Right of Way Branch. Copies may be obtained from the contract administrator at a cost of five dollars (\$5.00) for each document.

(c) Contracts on Specific Projects.

- (1) The Department may continue to let individual contracts on specific projects for inspections, abatements or structure clearings to a responsible bidder after publicly advertising for bids.
- (2) If the Manager of the Right of Way Branch determines that the project schedule does not allow time for public advertising the Department shall solicit at least three informal bids and may award a contract to the lowest responding qualified bidder.

(d) Retainer Contracts. In order to provide a method of accomplishing the required asbestos inspections, asbestos abatements, and structure clearings when the Right of Way Branch Manager determines that the project schedule does not provide enough time for a specific project contract to be put in place by the procedure in Subparagraphs (c)(1) and (c)(2) of this

Rule, the Department may also contract with private firms as specified in Paragraphs (d) through (u) of this Rule.

(e) Due to the diversity of contract types, some portions of these Rules may not be fully applicable to all situations. The Right of Way Branch Manager shall be responsible for determining when waivers from portions of these Rules are justified. Guidelines for determining if a waiver is justified shall include:

- (1) The amount of time the Department has to secure bids for a specific project under Subparagraphs (c)(1) and (c)(2) of this Rule; and
- (2) The willingness of contractors retained under this Rule to perform work on a specific project. Any waiver from these Rules shall require approval of FHWA if Federal Funds are involved in the project.

(f) DEFINITIONS. The following definitions are for the purpose of clarifying and describing words and terms used herein:

- (1) Contract Administrator - The individual who is assigned the responsibility of initiating, negotiating, and administering the contracts for asbestos inspections, asbestos removals, and structure clearings.
- (2) Cost per Unit of Work - A method of compensation based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) Cost Plus Fixed Fee - A price on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) Cost Proposal - A submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) Firm - Any private agency, firm, organization, business or individual offering qualified asbestos inspections, asbestos removals, and structure clearings.
- (6) Lump Sum - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
- (7) Payroll Burden - Employer paid fringe benefits including employers portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workers compensation and other such benefits.
- (8) Proposal - An offer by a firm to perform specific work or services for the Department at specified rates of compensation.
- (9) Scope of Work - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment,

supplies and materials except as specifically stated.

- (10) Contract Amendment - A written supplement to the contract which modifies the terms of an existing contract.
- (11) Termination Clause - A contract provision which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.

(g) APPLICATION. These Rules shall apply to all retainer contracts for asbestos inspections, asbestos removals, and structure clearings obtained by the Right of Way Branch of the Department of Transportation under the authority of G.S. 136-28.1(f) and in accordance with the provisions of G.S. 130A-444 through 130A-451.

(h) SELECTION COMMITTEE. The Committee shall consist of the Right of Way Branch Manager or his designated representative, the State Right of Way Agent or his designated representative, and at least one employee of the Department's Preconstruction Unit or Construction Unit professional staff designated by the Right of Way Branch Manager, and shall be chaired by the Right of Way Branch Manager or his representative.

(i) SELECTION OF FIRMS. On a yearly basis (or more often if needed), the Department shall advertise for firms interested in performing asbestos inspections, asbestos removals, and structure clearings for the North Carolina Department of Transportation. The advertisement shall be published in the North Carolina Purchase Directory. The response time will normally be two weeks after the advertising date. The response shall include copies of the numbered certifications of employees certified by NC Department of Health and Human Services, Division of Public Health Asbestos Hazard Management Program to perform asbestos inspections, copies of the firm's latest brochures, and such similar information related to the firms qualifications.

Evaluation of the firms expressing interest will be based on the following considerations:

- (1) Experience, education, reputation, and required certifications of staff in the fields of expertise required by the contract including inspection, abatement, and structure clearings;
- (2) Number of staff available to perform the services required by the contract including inspection, abatement, and structure clearings;
- (3) Financial ability to undertake the proposed work;
- (4) The firm's accounting system including ability to identify costs chargeable to the project;
- (5) Past performance by the firm on previous right of way acquisition contracts including meeting the time schedule for the work; and
- (6) Equipment necessary to perform the required services.

The Selection Committee shall, on the basis of the criteria of Subparagraphs (1) - (6) of this Paragraph, select a sufficient number of firms for contract negotiations in order that those negotiations will produce a sufficient number of contracts to

handle the anticipated work over the next year. The number of firms shall be determined prior to advertising.

(j) REQUEST FOR PROPOSALS. Each selected firm shall be requested by the contract administrator to submit a proposal which provides for:

- (1) Unit Cost for inspection and lab analysis, if any;
 - (A) per unit of less than 800 SF (minimum of 4 samples - to include out buildings, signs, barns, etc.);
 - (B) per unit of 800 SF to 2000 SF (maximum of 8 samples);
 - (C) per unit of 2000 SF to 5000 SF (maximum of 10 samples); or
 - (D) per unit of 5000 SF or more (subject to adjustment if approved by the Department); and
- (2) a per unit cost for Final Visual Inspection of abated improvements including air monitoring; and
- (3) a per unit abatement price - to a maximum of 200 SF or LF;
 - (A) Non-Friable Asbestos;
 - (i) per square foot of asbestos materials; or
 - (ii) per linear foot of asbestos materials
 - (B) Friable Asbestos;
 - (i) per square foot of asbestos materials; or
 - (ii) per linear foot of asbestos materials; and
- (4) a per unit cost for general clearings;
 - (A) Residential (up to 1,500 SF);
 - (i) per square foot - frame; or
 - (ii) per square foot - masonry or other;
 - (B) Commercial (up to 3,000 SF);
 - (i) per square foot - frame; or
 - (ii) per square foot - masonry or other.

The Proposal Request shall state that the Department intends to enter into a retainer contract for the term of one year and a maximum amount of one million dollars (\$1,000,000) each with a sufficient number of firms on a statewide basis to perform asbestos inspections, asbestos removals, and structure clearings on an as needed basis.

(k) NEGOTIATION OF CONTRACTS. Upon receipt of the proposals from the selected firm negotiations shall be initiated with the selected firm to produce a retainer contract with a term of one year and maximum amount of one million dollars (\$1,000,000). Should negotiations fail to reach successful execution of a contract with any selected firm, the negotiations shall be terminated and shall be initiated with an. alternate firm. The object of the negotiations shall be to establish an acceptable per unit cost for any asbestos investigations needed by the Department for the term of the contract and to establish an acceptable per square foot cost and per running foot cost for abatement of any asbestos discovered upon completion of the

inspections and a unit cost for clearing of improvements. When agreement is reached on the unit costs, a retainer contract shall be executed with a sufficient number of selected firm to perform the anticipated work for the term of one year and shall provide for the scope of services enumerated in this Rule.

(l) **BOARD OF TRANSPORTATION APPROVAL AND EXECUTION OF CONTRACT.** After final negotiations are completed, the firm shall execute a minimum of two contract originals and submit them to the consultant coordinator. The Manager of Right of Way shall submit the proposed contract to the Board of Transportation for approval. After the Board of Transportation approves the contract, the Manager of Right of Way shall execute and return the contract to the Right of Way consultant coordinator. The Right of Way contract administrator shall transmit one original contract to the contracting firm and shall retain one in the Central Office. The Way contract administrator shall provide a copy of the contract to the DOT Fiscal Section.

(m) **REQUEST FOR SPECIFIC JOB ESTIMATES.** When the Department acquires structures that require inspection for asbestos, two firms who have executed the retainer contract will be contacted by the Right of Way Branch, given the location of the structure(s), and requested to submit a work assignment cost estimate. The first firm's estimate shall cover Inspections, both preliminary and final; and the second firm's estimate shall be for abatements, if any, and clearing, if required, of the structure. The Estimate of Job Costs submitted by the contractor shall be reviewed by Right of Way staff personnel to insure:

- (1) that the per unit cost is in compliance with those specified in the retainer contract, and
- (2) the quantities specified in the Estimate of Job Costs are reasonable. If the estimate is found to be reasonable, the contract administrator shall authorize the work by the firm under the retainer contract by signing the Estimate document. If the estimate is unacceptable and agreement cannot be reached by negotiations with the firm, an estimate will be requested from another firm on retainer contract and evaluated in the same manner until agreement is reached and work can be authorized. In the event that an agreement cannot be reached through negotiations with any firm on retainer contract, then the Department shall terminate negotiations and advertise for specific project bids under the provisions of Subparagraph (b)(2) of this Rule.

(n) **SUB-CONTRACTING.** A contracting firm may sublet portions of the work proposed in the contract only upon approval of the contract administrator as set out in these rules. The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor shall be responsible for submitting the proper supporting data to the contract administrator for all work that is proposed to be sublet.

(o) **METHODS OF COMPENSATION.** Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is

known and a cost of the work per unit can be determined accurately.

(p) **ADMINISTRATION OF CONTRACT.** The administration of the contract shall be the responsibility of the contract administrator. This shall include the review of invoices and recommendation for payment to the Fiscal Section.

(q) **CONTRACT AMENDMENTS.** Each contract shall contain procedures for contract modifications and define what changes can be made only by means of a contract amendment. The Department may, with the concurrence of the Manager of Right of Way, delete any clearing item.

(r) **MONITORING OF WORK.** The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the staff personnel. An inspector may be assigned on each job by the Division Engineer who shall make periodic status reports to the Division Right of Way Office. The firm shall be required to provide a written progress report accompanying each invoice describing the work performed for the project covered by the invoice.

(s) **FINAL PAYMENT.** When it is determined that the work is complete, the final invoice shall be approved by the Way contract administrator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed. Should the firm believe that additional compensation or time should be allowed for services not covered under the contract, the firm must notify the Department in writing within 60 days after receipt of final payment. The Department shall render a decision on the claim which will be final, subject to review in accordance with Chapter 150B of the North Carolina General Statutes. Exhaustion of the administrative procedure described herein shall be a prerequisite to the firm's right of review.

(t) **TERMINATION OF CONTRACTS.** All contracts shall include a provision for the termination of the contract by the Department. Such termination by the Department shall be in writing and shall be effective upon receipt by the contracting firm.

History Note: Authority G.S. 130A-444; 136-28.1(f);

Eff. November 1, 1991;

Temporary Amendment Eff. May 4, 1992 for a Period of 180 Days to Expire on October 31, 1992;

Amended Eff. December 1, 2012; August 1, 2002; November 2, 1992.

19A NCAC 02B .0241 PLACEMENT OF HISTORICAL MARKERS IN ROW

(a) **Requirements.** The Department of Transportation will permit the placement of local historical markers within the right of way of state maintained highways provided:

- (1) No marker shall be placed within the right of way of an interstate or freeway facility.
- (2) The marker design and location is approved and recommended by the North Carolina Historical Commission.

- (3) The requesting organization executes an encroachment agreement with the Department of Transportation's designated representative.
 - (4) The marker location within the right of way is approved by the division engineer having jurisdiction in the county where the markers are proposed.
 - (5) The marker conforms to the general criteria of size, color, placement, and construction as established by the Chief Engineer; and
 - (6) The requesting agency agrees to relocate or remove the marker upon request of the Department of Transportation.
- (b) Size, color, placement and construction of markers. The Chief Engineer has established the following criteria for size, color, placement and construction of historical markers to be erected within the right of way of state routes:
- (1) Size.
 - (A) The size of the marker may be variable but shall not exceed the size of the standard state historical marker which is 48" high and 30" wide; and
 - (B) All markers shall be rectangular in shape.
 - (2) Color. The marker may be black on white or silver background, or white on green background.
 - (3) Placement.
 - (A) The markers shall be placed as close as possible to the actual site.
 - (B) Only one marker shall be permitted for each site within the right of way.
 - (C) The signs shall be placed as far as possible from edge of pavement and shall not be placed where they may be confused with or interfere with other highway signs or where they may clutter an area. Sign offsets and vertical clearances shall conform to the "Manual on Uniform Traffic Control Devices" and to the North Carolina Supplement to the Manual on Uniform Traffic Control Devices; and
 - (D) Signs shall not be erected in conjunction with any commercial advertising nor shall they be erected where fees are charged for profit.
 - (4) Construction. In the interest of highway safety, marker supports shall be designed to breakaway or yield upon impact by a vehicle.
- (c) Application Procedures. Any organization or person interested in erecting a historical marker within the right of way of a state system highway must first contact the Division of Archives and History of the Department of Cultural Resources in Raleigh, North Carolina. The Division of Archives and History will then present the request to the North Carolina Historical Commission for approval of the marker design and site location.
- Note: See also G.S. 100-2 to 100-8 for reference.

History Note: Authority G.S. 136-18(10); 136-42.2; 136-42.3; 136-129;
Eff. July 1, 1978;
Amended Eff. December 1, 2012; April 11, 1980.

19A NCAC 02B .0317 IMPLEMENTATION OF ROADWAY CORRIDOR OFFICIAL MAPS

- (a) A roadway corridor official map, hereinafter referred to as "official map," is defined as a map, drawing or written description of a planned roadway alignment, with approximations of future right of way boundaries, which is adopted by the Board of Transportation for right of way protection purposes.
- (b) The Division of Highways of the North Carolina Department of Transportation is responsible for the implementation of the procedures governing the adoption of official maps.
- (c) The Department of Transportation shall conduct environmental studies or screenings prior to the adoption of an official corridor map as follows:
 - (1) If environmental studies are in the process of being conducted on a project being considered for an official map, then the adoption of the map must await the determination of the recommended alternative. In such cases, the public hearing required for a proposed official map or amendment under G.S. 136-44.50(a)(1) may be combined with the design public hearing.
 - (2) If environmental studies have not been conducted or are not underway for a project for which an official map is to be prepared, a preliminary environmental screening of the proposed alignment must be conducted to determine the environmental feasibility of the project.
- (d) An official map illustrating the proposed project must be prepared prior to the initiation of the map adoption procedure. An official map must be of sufficient detail to identify the proposed project in terms of functional design, location and preliminary right of way boundaries. The approximate property boundaries will be identified on the map and the names of the affected property owners at the time of the recording must be provided.
- (e) The Department of Transportation shall conduct a public hearing on the proposed map or an amendment to the existing adopted map prior to the adoption of an official corridor map or amendment as follows:
 - (1) The Public Hearing Officer of the Division of Highways, after the project has been selected and the official map has been prepared, shall arrange the date and location of the public hearing on the proposed map or amendment as required by G.S. 136-44.50(a)(1). The date of the hearing must be determined in advance so as to allow sufficient time for the period of public notice which is required pursuant to G.S. 136-44.50(a)(1).

- (2) In addition to the public hearing notice requirements established by G.S. 136-44.50(a)(1), the notice shall indicate that copies of the proposed official map are available for review in the office of the District Engineer in whose jurisdiction the area which is the subject of the map is located.

- (3) The Public Hearing Officer shall conduct the public hearing. Public comment at the hearing shall be directed towards the designation of the subject project as an "official map" and any impacts created by such designation. Either a transcript of the public hearing or a summary of the comments made at the hearing shall be prepared.

(f) The Board of Transportation, following a review of the public hearing transcript or the summary of the comments made at the hearing, may adopt an official map at a Board of Transportation meeting.

(g) In addition to the statutory requirements for the distribution and maintenance of official maps established by G.S. 136-44.50(b)(1), a copy of an official map adopted by the Board of Transportation shall be maintained by the Program Development Branch of the Department and a copy shall be provided to the building inspectors and planning officials in the jurisdictions affected by the map.

(h) The procedures for the Department of Transportation's consideration of petitions for variances from requirements imposed by the adoption of an official corridor map are as follows:

- (1) Any property owner affected by an official map adopted by the Board of Transportation may petition for a variance from the requirements imposed by the statute (G.S. 136-44.51). A request for a variance shall be directed to the Program Development Branch for consideration and processing. The property owner may either request that an administrative hearing be held in the county in which the affected property is located or may state the reasons for and supply any evidence supporting the variance request in writing to the Director of the Program Development Branch. In instances where a hearing is scheduled pursuant to a request for a variance, the Program Development Branch shall provide written notice of the hearing to the mayor of any affected city or the chairman of the board of commissioners of any affected county, in accordance with G.S. 136-44.52(b).
- (2) Upon consideration of the facts and circumstances pertaining to the petition for a variance as determined from evidence provided by the property owner, the Program Development Branch may grant a variance, recommend the subject property be considered for advance acquisition, or deny the request. A written record of the decision shall be provided to the petitioning property owner

within 30 days of the date of the hearing or the date of the receipt of the written request for the variance.

- (3) If the petitioning property owner receives an unfavorable ruling from the Program Development Branch concerning the variance request, he or she may request a review of the case by the Chief Engineer. The Chief Engineer shall evaluate the case and provide a final administrative decision in writing within 30 days of the date of the receipt of the review request.

- (4) Any property located within a designated roadway corridor may be considered for advance acquisition prior to the expiration of the three year time period established in G.S. 136-44.51(b). All requests for such advance acquisition shall be in writing, include all supporting documentation, and be submitted to the Right of Way Branch with a copy sent to the Program Development Branch.

History Note: Authority G.S. 136-44.50; 136-44.51; 136-44.52; 143B-350(f);

Eff. October 1, 1991;

Transferred and Recodified from 19A NCAC 2B .0163;

Amended Eff. December 1, 2012; December 29, 1993.

19A NCAC 02D .0601 PERMITS-AUTHORITY, APPLICATION AND ENFORCEMENT

(a) The Chief Engineer or his designee shall issue oversize/overweight permits for qualifying vehicles. Irrespective of the route shown on the permit, a permitted vehicle shall travel an alternate route:

- (1) if directed by a law enforcement officer with jurisdiction;
- (2) if directed by an official traffic control device to follow a route to a weighing device; and
- (3) if the specified route on the permit is detoured by an officially erected highway sign, traffic control devices, or law enforcement officer, the driver of the permitted vehicle shall contact the Central Permit Office or the issuing field office for house move permits as soon as reasonably possible for clearance of route or revision of the permit.

(b) Prior to application for an oversize or overweight permit, the vehicle or vehicle combination and the commodity in transport shall be reduced or loaded to the least practical dimensions and weight. Application for permits with the exception of house move permits shall be made to the Central Permit Office. Applications for permits shall be submitted in writing to the Central Permit Office for consideration of approval for moves exceeding:

- (1) a gross weight of 132,000 pounds with the fee specified in G.S. 20-119(b) at least ten working days prior to the anticipated date of movement;

- (2) a width of 15' with documentation for variances at least ten working days prior to the anticipated date of movement with the exception of a mobile/modular unit with maximum measurements of 16' wide unit and a 3" gutter edge; a width of 16' 11" with the exception of house moves is required to be submitted with the fee specified in G.S. 20-119(b) with documentation for variances at least ten working days prior to the anticipated date of movement; or
- (3) a height of 14 feet at least two working days prior to the anticipated date of movement.
- (c) Upon completion of an engineering study for moves exceeding a gross weight of 132,000 pounds, a surety bond to cover potential damage to highways and bridge structures shall be required for overweight permits if the engineering study shows potential for damage to highways and bridge structures along the particular route of the requested permit.
- (d) The North Carolina licensed mobile or modular home retail dealer shall maintain records of all mobile or modular units moved by authority of an annual permit for a minimum of four years from the date of movement. The records shall be available for inspection and audit by officers of the Division of Motor Vehicles. Monthly reports shall be submitted by the dealer to the Central Permit Office on a form furnished by the Department of Transportation. Failure to comply with any requirement may be grounds for denying, suspending, or revoking Manufacturer's License, Dealer's License, or both issued by the Division of Motor Vehicles as specified in Chapter 20 of the Motor Vehicle Law, Title 19A NCAC 03D .0219, or North Carolina oversize or overweight permit privileges.
- (e) Law enforcement officers may perform on-site inspections of mobile or modular homes ready for shipment at the point of manufacture or at the dealer lot for compliance with Chapter 20 of the General Statutes, dealer and manufacturer regulations, permit regulations, and policy. Notification of violations shall be submitted by enforcement personnel to the Central Permit Office.
- (f) The penalties provided in this Rule are in addition to the penalties provided for in Chapter 20 of the North Carolina General Statutes.
- (g) Permits may be declared void by the Chief Engineer or his designee upon determination that such overdimension/overweight permit was being used in violation of the General Statutes of North Carolina, Permit Rules or restrictions stated on the permit.
- (h) Permits may also be denied, revoked or declared invalid as stated in Rule .0633 of this Section.

History Note: Authority G.S. 20-119; 136-18(5);
Eff. July 1, 1978;

Amended Eff. November 1, 1993; October 1, 1991;
Temporary Amendment Eff. January 10, 2002; October 1, 2000;
Amended Eff. December 1, 2012; April 1, 2009; August 1, 2002.

19A NCAC 02D .0633 DENIAL: REVOCATION: REFUSAL TO RENEW: APPEAL: INVALIDATION

(a) An oversize or overweight permit may be revoked and considered void by the Chief Engineer or his designee upon inspection and written documentation that the permittee violated the terms and conditions of the permit, or state and local laws and ordinances regulating the operation of oversize and overweight vehicles. A permit may also be revoked or considered void if information on the permit application is misrepresented, if the permit is obtained fraudulently, if the permit is altered, or if the permit is used in an unauthorized manner. Permits may be revoked or considered void by the Chief Engineer or his designee if the vehicle or vehicle combination is found by a law enforcement officer to be operating in violation of the authorized route of travel, time of movement, escort requirements, axle weights, number of axles, or any other special conditions of the permit that may damage North Carolina highway infrastructure or create unsafe travel conditions for the motoring public. A permit that is determined by the Chief Engineer or his designee to be revoked or void must be surrendered without consideration for refund of fees to the law enforcement officer for delivery to the Chief Engineer or his designee.

(b) No permit application shall be denied or renewal refused or an issued permit revoked or considered void until a verbal or written notice of the denial of permit request or revocation of the issued permit has been furnished to the permittee. The permittee may appeal in writing to the Chief Engineer or his designee within 10 days of receipt of a verbal or written notice of such denial or revocation. The Chief Engineer or his designee shall send a written notice by certified mail, return receipt requested, not fewer than 10 days prior to the date of the hearing. The Chief Engineer or his designee shall provide a written decision to the permittee within 10 days from the date of the hearing.

(c) A permittee who has had permit privileges suspended or revoked by the Chief Engineer or his designee may, within 15 days following notification of the adverse action, make written appeal to the Secretary of Transportation for review of the suspension or revocation. The Secretary may affirm or set aside the suspension or revocation based on a review of the written appeal, the suspension or revocation decision, as well as any available documents, exhibits or other evidence bearing on the appeal. The individual appealing shall be advised of the final disposition of the action within 21 days following receipt of the appeal.

(d) An oversize or overweight permit application may be denied for a period of up to six months upon written documentation that the applicant operated in violation of any of the rules contained in this Section, or any state and local law or any rule or ordinance regulating the operation of oversize or overweight vehicles. Repeated violations may result in a permanent denial of the right to use the N.C. State Highway System of roads for transportation of oversize or overweight loads or vehicles.

History Note: Authority G.S. 20-119; 20-360; 20-361; 20-367; 20-369; 20-371; 136-18(5); 143B-346; 143B-350(f);
Eff. July 1, 1978;

Amended Eff. November 1, 1993; October 1, 1991; April 1, 1984; April 11, 1980;

*Temporary Rule Eff. October 1, 2000;
Amended Eff. December 1, 2012; April 1, 2009; August 1, 2002.*

19A NCAC 02D .0704 APPLICATION PROCEDURES

Application for intermittent road closing shall be submitted to the Chief Engineer in the form of a resolution from the requesting agency and must include the following information plus any additional supportive data the agency deems pertinent to the request:

- (1) county where the road(s) is(are) located;
- (2) secondary road(s) to be affected by flooding (number and local name);
- (3) a plan and profile sheet of the affected secondary road(s) indicating the 5, 10, 25, 50 year and maximum flood stage elevations. The duration of flooding shall also be indicated showing the total time the roadway surface will be inundated for each storm frequency;
- (4) a statement that the applicant will reimburse the North Carolina Department of Transportation for all damages by reason of the flooding of the highway right of way;
- (5) a statement that the applicant shall be responsible for all damages, by reason of the flooding, to any public utilities upon the highway right of way; and
- (6) a request that a permit be granted to the applicant agency to allow the intermittent closing of the road.

*History Note: Authority G.S. 136-64.1(a); 136-64.1(b);
Eff. July 1, 1978;
Amended Eff. December 1, 2012; October 1, 1993.*

19A NCAC 02D .0705 REVIEW PROCEDURES

(a) Upon receipt of a completed application, the Chief Engineer shall acknowledge the receipt and initiate a preliminary investigation and review.

(b) In reviewing the application, the following factors shall be taken into consideration as a basis for approval or disapproval:

- (1) traffic count;
- (2) availability of an acceptable detour;
- (3) length of an acceptable detour;
- (4) type road surface (paved or unpaved);
- (5) school bus route – number of buses;
- (6) anticipated frequency of flooding;
- (7) anticipated duration of flooding;
- (8) cost estimates to raise the roadway above flood stage;
- (9) probability of future significant changes in traffic characteristics;
- (10) comments from affected utilities; and
- (11) comments from general public.

(c) Under no condition shall a permit be issued to allow flooding which would isolate any home, business, or other commercial establishment.

History Note: Authority G.S. 136-64.1(d);

*Eff. July 1, 1978;
Amended Eff. December 1, 2012.*

19A NCAC 02D .0707 PERMIT FORM

The permit, if issued, shall be sent in the form of a letter to the applicant from the Chief Engineer.

*History Note: Authority G.S. 136-64.1(d);
Eff. July 1, 1978;
Amended Eff. December 1, 2012.*

19A NCAC 02D .0709 APPEAL PROCEDURES

In the event an application is denied by the Chief Engineer, the applicant shall have the right to appeal the decision to the full Board of Transportation pursuant to the procedures below:

Within 30 days after receiving notice from the administrator that the application has been denied, the applicant must submit to the Secretary of Transportation, by registered mail, a written appeal setting forth with particularity the facts upon which the appeal is based. After receiving this appeal, the secretary will notify the applicant of the date when the full Board of Transportation shall consider a review of the application.

*History Note: Authority G.S. 136-64.1(d);
Eff. July 1, 1978;
Amended Eff. December 1, 2012; October 1, 1993.*

19A NCAC 02E .0202 AGREEMENT

(a) The Department of Transportation has entered into an agreement with the United States Department of Transportation relating to the control of outdoor advertising in areas adjacent to the interstate and federal-aid primary highway systems or NHS in accordance with Section 131(b), and Section 104 of Title 23 of the United States Code and Part 750 of Title 23 of the Code of Federal Regulations. To the extent that these federal regulations and subsequent amendments and editions are more restrictive than North Carolina Department of Transportation rules, these federal regulations are expressly incorporated by reference as part of this section. Copies of Title 23 of the United States Code are available from the Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328. The Code of Federal Regulations, Title 23, is available from the same address.

(b) A copy of this agreement is on permanent file in the Office of the Chief Engineer.

*History Note: Authority G.S. 136-138; 143B-350(f); 150B-21.6;
Eff. July 1, 1978;
Amended Eff. December 1, 2012; August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981.*

19A NCAC 02E .0204 LOCAL ZONING AUTHORITIES

Local zoning authorities may certify to the Board of Transportation when they have established effective control within zoned commercial and industrial areas, through regulations or ordinances with respect to size, lighting and spacing of outdoor advertising signs consistent with the intent of the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, and with customary use. Upon

authorization from the Chief Engineer to the local zoning authority, the size, lighting and spacing requirements set forth in G.S. 136 Articles 11 and 11A or 19A NCAC 02E .0200, will not apply to those areas and the local zoning authority shall be authorized to issue permits for the erection and maintenance of outdoor advertising signs.

*History Note: Authority G.S. 136-130;
Eff. July 1, 1978;
Amended Eff. December 1, 2012; November 1, 1993.*

19A NCAC 02E .0405 MOVING VEHICLES WHICH DAMAGE SURFACE OR SHOULDER

It shall be unlawful to move on, over, or across any bridge, road or highway, including shoulders thereof, of the state highway system any object, tractor, engine, farm equipment or vehicle of any kind that has wheels or objects of any kind attached thereto that will cut, mutilate or damage the surface of the bridge, road, highway or shoulders thereof without the written permission of the Chief Engineer or his authorized agent.

*History Note: Authority G.S. 20-115; 20-119; 136-18(5);
Eff. July 1, 1978;
Amended Eff. December 1, 2012.*

19A NCAC 02E .0412 AIRCRAFT LANDING AND TAKING OFF ON HIGHWAYS

It shall be unlawful for aircraft to take off or land on any road or highway of the state highway system. However, nothing herein shall prohibit an aircraft from landing on said roads or highways in an emergency when such landing is necessary to prevent injury or death to the occupants of the aircraft, provided such landing can be made without danger to persons and vehicles on the highway. After such emergency landing, take off by the aircraft may be permitted under the direction of a law enforcement officer when it will not endanger persons or vehicles on the highway and there are no other practical or feasible means of removing the aircraft.

There is excepted from the foregoing prohibition on landing and taking off by aircraft on state highways, the landing and taking off of aircraft pursuant to written authorization granted by the Chief Engineer. The administrator may grant such authorization upon good cause being shown and upon showing that arrangements have been made with law enforcement officials to handle vehicular traffic on the highway during such operation.

*History Note: Authority G.S. 136-18(5);
Temporary Amendment Eff. March 15, 1982, for a Period of 47 Days to Expire on May 1, 1982;
Eff. July 1, 1978;
Temporary Amendment Expired Eff. May 1, 1982;
Amended Eff. December 1, 2012; October 1, 1982.*

19A NCAC 02E .0418 FENCING WITHIN RIGHT OF WAY

It shall be unlawful for any person to erect a fence of any kind within the right of way limits of any highway except by written permission of the Chief Engineer or his authorized agent.

*History Note: Authority G.S. 136-18(10); 136-93;
Eff. July 1, 1978;
Amended Eff. December 1, 2012.*

19A NCAC 02E .0419 CULTIVATING CROPS AND MAINTAINING PASTURES WITHIN ROW

It shall be unlawful for any person to plant, cultivate or grow any crop or to maintain any pasture or pasture grass within the right of way limits of any highway except by written permission of the Chief Engineer or his authorized agent.

*History Note: Authority G.S. 136-18(10); 136-93; 143B-350(f);
Eff. July 1, 1978;
Amended Eff. December 1, 2012.*

19A NCAC 02E .0420 CONSTRUCTION WITHIN RIGHT OF WAY

It shall be unlawful for any person or firm to construct, place or erect any power, telephone or other poles, signboards, fences, water, gas, oil, petroleum products, steam, chemicals, sewage, drainage, irrigation or other pipelines, wires or cables or other obstructions in, over, or upon any road, highway or right of way of the State Highway System without the written permission of the Chief Engineer or his authorized agent.

Note: Rules for the preparation and submission of applications for utility encroachments can be found in 19A NCAC 02B .0500.

*History Note: Authority G.S. 136-18(10); 136-93;
Eff. July 1, 1978;
Amended Eff. December 1, 2012.*

19A NCAC 02E .0702 SOLICITATION AND AWARD OF CONTRACT

(a) The department shall establish and maintain a "Register of Firms" which have the necessary expertise and experience and have expressed a desire to perform for the department professional engineering or other kinds of professional or specialized services in connection with highway construction or repair. Prequalification pursuant to 19A NCAC 02D .0801 is not required for inclusion on the "Register" or award of a contract under this Section.

(b) Upon authorization by the Board of Transportation for the DOT staff to use a professional/specialized firm, a Selection Committee shall be established by the branch manager consisting of at least three members from the DOT staff who are experienced in the type of services to be contracted. For contracts anticipated to exceed ten thousand dollars (\$10,000) solicitation for proposals will be by published advertisement. In addition, solicitation for interest may also be by direct mail to several firms selected from the register. North Carolina firms qualified to do the required work shall be given priority consideration. A North Carolina firm is a firm which maintains an office in North Carolina which is permanently staffed and capable of performing a majority of the work required.

(c) The firm(s) to be employed shall be selected for each project by the Selection Committee.

(d) For contracts having a total cost over ten thousand dollars (\$10,000) and for amendments thereto, award shall be made by the Board of Transportation after consultation with the Advisory Budget Commission.

(e) Contract amendments that increase a contract cost to ten thousand dollars (\$10,000) or more require approvals as specified in Paragraph (d).

(f) In an emergency situation, these Rules may be waived by the Secretary of Transportation or the Secretary's designee pursuant to G.S. 136-28.1(e). A qualified firm may be selected, negotiations conducted and a contract executed by the Secretary of Transportation or the Secretary's designee as required to resolve the emergency conditions.

(g) A noncollusion certification shall be executed by prime contractors and lower tier participants in each transaction involving public funds. Transactions which require certifications from lower tier participants are:

- (1) Transactions between a prime contractor and a person other than for a procurement contract, for goods or services, regardless of type.
- (2) Procurement contracts for goods and services, between a prime contractor and a person, regardless of type, expected to equal or exceed the Federal small purchase threshold fixed at 10 U.S.C. 2304(g) and U.S.C. 253(g) [currently twenty-five thousand dollars (\$25,000)] under a prime contract; and
- (3) Procurement contracts for goods or services between a prime contractor and a person, regardless of the amount under which that person will have a substantive control over the transaction. Such include, but are not limited to, bid estimators and contract managers.

The certifications for both the prime contractor and the lower tier participants shall be on a form furnished by the Department of Transportation to comply with Federal Highway Administration requirements, as published in 49 C.F.R. Part 29. The prime contractor is responsible for obtaining the certifications from the lower tier participants and is responsible for keeping them as part of the contract records.

History Note: Authority G.S. 136-28.1(e) and (f); 143B-350(f) and (g);
Temporary Rule Eff. June 11, 1982 for a Period of 51 Days to Expire on August 1, 1982;
Eff. August 1, 1982;
Amended Eff. December 1, 2012; December 29, 1993; October 1, 1991; April 1, 1986; February 1, 1983.

19A NCAC 02E .0802 PERMITS REQUIRED

(a) All organizations desiring to solicit under the provisions of this Section must first obtain a permit from the Department of Transportation for the stated purpose of allowing their members to solicit at designated areas on the state highway system.

(b) Written requests for permits for solicitation shall be sent to the appropriate Division Engineer of the Division of Highways in which the rest area or welcome center is located.

(c) Written requests must include all of the following:

- (1) copy of certificate showing that the applicant is exempt from federal income tax as a religious, educational or charitable organization as provided in 26 USC 501(c)(3) together with the applicant's tax exemption number;
- (2) a statement indicating the locations where the organization intends to solicit contributions;
- (3) the name and address of each individual authorized to solicit for the applicant;
- (4) the name of an officer of the applicant, together with an address, to whom the permit is to be sent and complaints are to be directed; and
- (5) if the request for a permit is from a non-religious educational or charitable organization, a written description of the organization's past efforts serving and promoting the safety of the traveling public.

(d) When all the appropriate information required in Paragraph (c) of this Rule has been provided by the applicant, a permit shall be issued by the Chief Engineer, or his duly authorized representative, and said permit shall be effective for a period of 30 days from the date of issuance.

(e) Each permit issued shall describe the activity authorized, the area in which it may be conducted, and the period of time for which the permit is issued.

History Note: Authority G.S. 20-175; 136-18;
Eff. November 1, 1984;
Amended Eff. December 1, 2012; October 1, 1991; September 1, 1986; August 1, 1986; September 1, 1985.

19A NCAC 02E .0803 SOLICITATION RESTRICTIONS AND REQUIREMENTS

(a) Any member of an organization duly permitted under these Rules actually engaged in soliciting for contributions must provide and prominently display an identification tag or badge containing all of the following information:

- (1) a photograph;
- (2) name;
- (3) organization; and
- (4) DOT permit number.

(b) While engaged in the solicitation of contributions, individual solicitors shall orally identify themselves and state which organization they represent.

(c) Individual solicitors operating under a permit from the department shall be permitted to engage in their solicitation activities only between the hours of 9:00 a.m. and 5:00 p.m. each calendar day except during holidays, when a different time is authorized in the permit.

(d) Individual solicitors are prohibited from soliciting on any portion of a highway not designated as a rest area or welcome center.

(e) The area of the rest area which may be used shall be specified in the permit, and shall not impede visitors' access to rest facilities. At the same time, it shall provide visibility of the soliciting group when feasible.

- (f) Individual solicitors may use incidental water and electric utility services at highway rest areas or visitor centers with connections at locations approved by the Division of Highways.
- (g) A permittee shall be limited to one individual solicitor engaged in solicitation activities at each site, and this individual may have the assistance of no more than two other members of the permittee's organization.
- (h) Individual solicitors shall not persist in soliciting after solicitation has been declined, and solicitors shall not solicit State employees who are identifiable as such.
- (i) Individual solicitors shall not harass persons by demanding, threatening or intimidating conduct.
- (j) While individual solicitors may solicit from the general public donations for printed matter, refreshments or religious paraphernalia, the individual solicitors must inform the person solicited if a minimum donation is required.
- (k) All distribution of refreshments, pamphlets and other materials and transfers of money or funds solicited from a person acting pursuant to a permit issued by the Chief Engineer or his duly authorized representative, shall take place in or at the location specifically identified in the permit.
- (l) Individual solicitors may not engage in dancing, chanting, the use of music or other noise producing instruments, megaphones, microphones or any other similar devices.
- (m) Individual solicitors shall cease activities in the event of emergency situations involving dangers to the general public.
- (n) Individual solicitors shall not interfere with pedestrian or vehicular traffic.
- (o) No more than two organizations, one religious and one non-religious charitable or educational, may solicit at highway rest areas, wayside parks or visitor welcome centers at the same time.

*History Note: Authority G.S. 20-175; 136-18;
Eff. November 1, 1984;
Amended Eff. December 1, 2012; December 1, 1993; October 1, 1991; August 1, 1986; September 1, 1985.*

19A NCAC 04A .0105 BRIDGE WEIGHT LIMITATION

Any bridge that will not carry the maximum permissible statutory load limits shall have posted at each end of the bridge the gross weight limits as determined by the Chief Engineer or his designee.

*History Note: Authority G.S. 143B-350; 136-72;
Eff. July 1, 1978;
Amended Eff. December 1, 2012; June 1, 1995; December 1, 1993; April 1, 1986.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 – MEDICAL BOARD

21 NCAC 32M .0109 PRESCRIBING AUTHORITY

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement as outlined in Rule .0110(b) of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:
 - (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
 - (B) dosage units for schedules II, IIN, III and IIIN are limited to a 30 day supply; and
 - (C) the supervising physician(s) possesses the same schedule(s) of controlled substances as the nurse practitioner's DEA registration.
- (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:
 - (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
 - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
- (4) Refills may be issued for a period not to exceed one year.
- (5) Each prescription shall be noted on the patient's chart and include the following information:
 - (A) medication and dosage;
 - (B) amount prescribed;
 - (C) directions for use;
 - (D) number of refills; and
 - (E) signature of nurse practitioner.
- (6) Prescription Format:
 - (A) All prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse

- practitioner's name, telephone number, and approval number.
- (B) The nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.

- (7) A nurse practitioner shall not prescribe controlled substances, as defined by the State and Federal Controlled Substances Acts, for the nurse practitioner's own use or that of a nurse practitioner's supervising physician; or that of a member of the nurse practitioner's immediate family, which shall mean a spouse, parent, child, sibling, parent-in-law, son or daughter-in-law, brother or sister-in-law, step-parent, step-child, step-siblings, or any other person living in the same residence as the licensee; or anyone with whom the nurse practitioner is having a sexual relationship or has a significant emotional relationship.

(c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46 .1703 that is hereby incorporated by reference including subsequent amendments of the referenced materials.

History Note: Authority G.S. 90-18(14); 90-18.2; 90-171.23(14); Eff. February 1, 1991; Recodified from 21 NCAC 32M .0106 Eff. January 1, 1996; Amended Eff. December 1, 2012; April 1, 2011; November 1, 2008; August 1, 2004; May 1, 1999; January 1, 1996; September 1, 1994; March 1, 1994.

21 NCAC 32S .0208 LIMITED VOLUNTEER LICENSE

History Note: Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1; Eff. September 1, 2009; Repealed Eff. December 1, 2012.

21 NCAC 32S .0221 LIMITED VOLUNTEER LICENSE

- (a) A physician assistant who holds a regular license in North Carolina may convert that license to a Limited Volunteer License by notifying the Board in writing.
- (b) The Board may issue a Limited Volunteer License to a physician assistant who holds an active license or registration in another state. In order to obtain a Limited Volunteer License, an applicant shall;

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;

- (2) submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired U.S. passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) submit proof of active licensure from another state or jurisdiction indicating the status of the license and whether or not any action has been taken against it;
- (6) submit two completed fingerprint record cards supplied by the Board;
- (7) submit a signed consent form allowing a search of local, state and national files for any criminal record;
- (8) pay a non-refundable fee to cover the cost of a criminal background check;
- (9) submit a FSMB Board Action Data Bank report;
- (10) submit a NPDB/HIPDB report, dated within 60 days of submission of the application;
- (11) submit documentation of CME obtained in the last three years;
- (12) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character.

(c) All materials must be submitted to the Board from the primary source, when possible.

(d) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(e) An application must be completed within one year of the date of submission.

History Note: Authority G.S. 90-9.3; 90-18(c)(13); 90-18.1; Eff. December 1, 2012.

21 NCAC 32S .0222 RETIRED LIMITED VOLUNTEER LICENSE

(a) The Retired Limited Volunteer License is available to a physician assistant who has been licensed in North Carolina or another state or jurisdiction, has an inactive license, and wishes to volunteer at civilian indigent clinics.

(b) A physician assistant with an inactive North Carolina license who wishes to return to practice on a volunteer basis must first reactivate or reinstate his or her license, whichever applies, by complying with 21 NCAC 32S .0206 or 21 NCAC 32S .0207. Once reactivated or reinstated, a physician assistant may convert that license to a limited volunteer license without paying an additional fee. A physician assistant who has been inactive for

more than two years will be required to complete a reentry program.

(c) In order to obtain a Retired Limited Volunteer License an applicant who has not held a North Carolina license shall:

- (1) submit a completed application, attesting under oath that the information on the application is true and complete, and authorizing the release to the Board of all information pertaining to the application;
- (2) submit a recent photograph, at least two inches by two inches, affixed to the oath, and attested by a notary public;
- (3) submit documentation of a legal name change, if applicable;
- (4) supply a certified copy of applicant's birth certificate if the applicant was born in the United States or a certified copy of a valid and unexpired U.S. passport. If the applicant does not possess proof of U.S. citizenship, the applicant must provide information about applicant's immigration and work status which the Board will use to verify applicant's ability to work lawfully in the United States;
- (5) submit proof of licensure from another state or jurisdiction indicating the status of the license and whether or not any action has been taken against it;
- (6) submit two completed fingerprint record cards supplied by the Board;
- (7) submit a signed consent form allowing a search of local, state and national files for any criminal record;
- (8) pay a non-refundable fee to cover the cost of a criminal background check;
- (9) submit a FSMB Board Action Data Bank report;
- (10) submit a NPDB/HIPDB report, dated within 60 days of submission of the application;
- (11) submit documentation of CME obtained in the last three years; and
- (12) upon request, supply any additional information the Board deems necessary to evaluate the applicant's competence and character

(c) All materials must be submitted to the Board from the primary source, when possible.

(d) An applicant may be required to appear in person for an interview with the Board or its agent to evaluate the applicant's competence and character.

(e) An application must be completed within one year of the date of submission.

*History Note: Authority G.S. 90-8.1; 90-12.1B;
Eff. December 1, 2012.*

21 NCAC 32S .0223 SCOPE OF PRACTICE

The holder of a Limited Volunteer License or a Retired Limited Volunteer License may perform medical acts, tasks, or functions as a physician assistant under the supervision of a physician only

at clinics that specialize in the treatment of indigent patients, and may not receive any compensation for services rendered, either direct or indirect, monetary, in-kind, or otherwise for the provision of medical services.

*History Note: Authority G.S. 90-8.1; 90-12.4B;
Eff. December 1, 2012.*

CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0809 PRESCRIBING AUTHORITY

(a) The prescribing stipulations contained in this Rule apply to writing prescriptions and ordering the administration of medications.

(b) Prescribing and dispensing stipulations are as follows:

- (1) Drugs and devices that may be prescribed by the nurse practitioner in each practice site shall be included in the collaborative practice agreement as outlined in Rule .0810(b) of this Section.
- (2) Controlled Substances (Schedules II, IIN, III, IIIN, IV, V) defined by the State and Federal Controlled Substances Acts may be procured, prescribed or ordered as established in the collaborative practice agreement, providing all of the following requirements are met:
 - (A) the nurse practitioner has an assigned DEA number which is entered on each prescription for a controlled substance;
 - (B) dosage units for schedules II, IIN, III, and IIIN are limited to a 30 day supply; and
 - (C) the supervising physician(s) must possess the same schedule(s) of controlled substances as the nurse practitioner's DEA registration.
- (3) The nurse practitioner may prescribe a drug or device not included in the collaborative practice agreement only as follows:
 - (A) upon a specific written or verbal order obtained from a primary or back-up supervising physician before the prescription or order is issued by the nurse practitioner; and
 - (B) the written or verbal order as described in Part (b)(3)(A) of this Rule shall be entered into the patient record with a notation that it is issued on the specific order of a primary or back-up supervising physician and signed by the nurse practitioner and the physician.
- (4) Refills may be issued for a period not to exceed one year.

- (5) Each prescription shall be noted on the patient's chart and include the following information:
- (A) medication and dosage;
 - (B) amount prescribed;
 - (C) directions for use;
 - (D) number of refills; and
 - (E) signature of nurse practitioner.
- (6) Prescription Format:
- (A) all prescriptions issued by the nurse practitioner shall contain the supervising physician(s) name, the name of the patient, and the nurse practitioner's name, telephone number, and approval number;
 - (B) the nurse practitioner's assigned DEA number shall be written on the prescription form when a controlled substance is prescribed as defined in Subparagraph (b)(2) of this Rule.
- (7) A nurse practitioner shall not prescribe controlled substances, as defined by the State and Federal Controlled Substances Acts, for the nurse practitioner's own use or that of a nurse practitioner's supervising physician; or that of a member of the nurse practitioner's immediate family, which shall mean a spouse, parent, child, sibling, parent-in-law, son or daughter-in-law, brother or sister-in-law, step-parent, step-child, step-siblings, or any other person living in the same residence as the licensee; or anyone with whom the nurse practitioner is having a sexual relationship or has a significant emotional relationship.

(c) The nurse practitioner may obtain approval to dispense the drugs and devices other than samples included in the collaborative practice agreement for each practice site from the Board of Pharmacy, and dispense in accordance with 21 NCAC 46 .1703 that is hereby incorporated by reference including subsequent amendments of the referenced materials.

History Note: Authority G.S. 90-8.1; 90-8.2; 90-18(14); 90-18.2; 90-171.23(b)(14);

Recodified from 21 NCAC 36 .0227(h) Eff. August 1, 2004; Amended Eff. December 1, 2012; April 1, 2011; November 1, 2008; August 1, 2004.

CHAPTER 52 - BOARD OF PODIATRY EXAMINERS

21 NCAC 52 .0205 PRACTICE-AND-ETHICS TRAINING

The board may offer to each applicant, who has otherwise successfully completed his or her examination on medical and clinical subjects, to attend by personal appearance or verified electronic conference a practice- and ethics-training prior to an examination administered on those topics, on a date and at a time and location determined by the board. The license shall not be issued until the applicant has passed the practice- and ethics-examination.

History Note: Authority G.S. 90-202.4(g); 90-202.6(a)(b); Eff. February 1, 1976; Amended Eff. December 1, 2012; March 1, 2006; May 1, 2005; December 1, 1988.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on December 20, 2012 and January 17, 2013 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Addison Bell
Margaret Currin
Pete Osborne
Bob Rippy
Faylene Whitaker

Appointed by House

Ralph A. Walker
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

January 17, 2013 February 17, 2013
March 21, 2013 April 18, 2013

LIST OF APPROVED TEMPORARY RULES

December 20, 2012 Meeting

COASTAL RESOURCES COMMISSION

General Use Standards for Ocean Hazard Areas

15A NCAC 07H .0306

LIST OF APPROVED PERMANENT RULES

December 20, 2012 Meeting

ADMINISTRATION, DEPARTMENT OF

<u>Purpose</u>	01	NCAC 09	.0401
<u>Definitions</u>	01	NCAC 09	.0402
<u>Organization</u>	01	NCAC 09	.0403
<u>Criteria for Designation of Growth Centers</u>	01	NCAC 09	.0404
<u>Application for Growth Center Designation</u>	01	NCAC 09	.0405
<u>Review of Application</u>	01	NCAC 09	.0406
<u>Definitions</u>	01	NCAC 11	.2102
<u>Complaints: Form: Contents: Filing</u>	01	NCAC 11	.2103
<u>Amendment for Complaint</u>	01	NCAC 11	.2104
<u>Withdrawal of Complaint</u>	01	NCAC 11	.2105
<u>Investigation: Subpoenas</u>	01	NCAC 11	.2111
<u>Conciliation Agreements</u>	01	NCAC 11	.2116
<u>Definitions</u>	01	NCAC 11	.2201
<u>Filing of Complaint</u>	01	NCAC 11	.2202
<u>Notice of Respondent</u>	01	NCAC 11	.2203
<u>Investigation: Opinion: and Conciliation</u>	01	NCAC 11	.2204

<u>Purpose</u>	01	NCAC 22	.0101
<u>Definitions</u>	01	NCAC 22	.0102
<u>General</u>	01	NCAC 22	.0201
<u>Pollution Control Account</u>	01	NCAC 22	.0202
<u>Water Supply Systems Account</u>	01	NCAC 22	.0203
<u>Grant Limitations</u>	01	NCAC 22	.0204
<u>Eligible Applicants</u>	01	NCAC 22	.0205
<u>Eligible Projects and Project Costs</u>	01	NCAC 22	.0206
<u>Applicants</u>	01	NCAC 22	.0207
<u>Environmental Assessment</u>	01	NCAC 22	.0208
<u>Determination of Eligibility</u>	01	NCAC 22	.0209
<u>Public Notices</u>	01	NCAC 22	.0301
<u>Hearings</u>	01	NCAC 22	.0302
<u>Consideration of Information Presented at Hearing</u>	01	NCAC 22	.0303
<u>General Criteria</u>	01	NCAC 22	.0401
<u>Criteria for Water Conservation</u>	01	NCAC 22	.0402
<u>Criteria for Grant Increases</u>	01	NCAC 22	.0403
<u>Water Pollution Control Needs</u>	01	NCAC 22	.0501
<u>Applicable Conditions</u>	01	NCAC 22	.0502
<u>Service Area Need</u>	01	NCAC 22	.0503
<u>Financial Need of Applicant</u>	01	NCAC 22	.0504
<u>Fiscal Responsibility of the Applicant</u>	01	NCAC 22	.0505
<u>Status of Project</u>	01	NCAC 22	.0506
<u>Public Need</u>	01	NCAC 22	.0601
<u>Public Health Need</u>	01	NCAC 22	.0602
<u>Financial Need of the Applicant</u>	01	NCAC 22	.0603
<u>Fiscal Responsibility of the Applicant</u>	01	NCAC 22	.0604
<u>Financing of the Project</u>	01	NCAC 22	.0605
<u>Status of Project</u>	01	NCAC 22	.0606
<u>Public Necessity: Health: Safety and Welfare</u>	01	NCAC 22	.0701
<u>Compatibility with State, Regional and Local Planning</u>	01	NCAC 22	.0702
<u>Financial Considerations</u>	01	NCAC 22	.0703
<u>Environmental Assessment</u>	01	NCAC 22	.0704
<u>Review Periods</u>	01	NCAC 22	.0801
<u>Assignment of Priorities</u>	01	NCAC 22	.0802
<u>Determination of Grant Awards</u>	01	NCAC 22	.0901
<u>Certificate of Eligibility for Grant Awards</u>	01	NCAC 22	.0902
<u>Failure to Qualify for Grant Awards</u>	01	NCAC 22	.0903
<u>Restrictions: Grants Relating to Federal Grants and Loans</u>	01	NCAC 22	.0904
<u>Payment of Grants</u>	01	NCAC 22	.0905
<u>Application of Federal, State and Local Laws</u>	01	NCAC 22	.0906
<u>General Provisions</u>	01	NCAC 22	.1001
<u>Audit of Projects</u>	01	NCAC 22	.1002
<u>Annual Reports to the Advisory Budget Commission</u>	01	NCAC 22	.1101
<u>Information and Application Forms</u>	01	NCAC 22	.1102
<u>Severability</u>	01	NCAC 22	.1103

BANKS, OFFICE OF THE COMMISSIONER OF

<u>Application</u>	04 NCAC 03C .0101
<u>Report to Banking Commission</u>	04 NCAC 03C .0103
<u>Review by Banking Commission</u>	04 NCAC 03C .0104
<u>Bank Certificate</u>	04 NCAC 03C .0107
<u>Organizational Expenses</u>	04 NCAC 03C .0110
<u>National Bank Conversion</u>	04 NCAC 03C .0111
<u>Elimination of Director Liability</u>	04 NCAC 03C .0112
<u>Establishment of Branches and Limited Service Facilities</u>	04 NCAC 03C .0201
<u>Discontinuance</u>	04 NCAC 03C .0202
<u>Discontinuance of a Limited Service Facility</u>	04 NCAC 03C .0203
<u>Conversion of Branch to Limited Service Facility</u>	04 NCAC 03C .0204
<u>Investigation</u>	04 NCAC 03C .0403
<u>Report</u>	04 NCAC 03C .0404
<u>Review by the Banking Commission</u>	04 NCAC 03C .0405
<u>Waiver by Commissioner</u>	04 NCAC 03C .0407
<u>Days and Hours of Regular Operation</u>	04 NCAC 03C .0503
<u>Oath of Directors</u>	04 NCAC 03C .0801
<u>Depository Banks</u>	04 NCAC 03C .0802
<u>Suspension of Investment and Loan Limitation</u>	04 NCAC 03C .0804
<u>Subsidiary Investment Approval</u>	04 NCAC 03C .0807
<u>Retention: Reproduction and Disposition of Bank Records</u>	04 NCAC 03C .0903
<u>Leasing of Personal Property</u>	04 NCAC 03C .1002
<u>Capital Stock</u>	04 NCAC 03C .1103
<u>Maintenance of Capital Surplus</u>	04 NCAC 03C .1104
<u>Notice of Impairment</u>	04 NCAC 03C .1105
<u>School of Thrift or Savings Plan</u>	04 NCAC 03C .1201
<u>Resume of the Plan</u>	04 NCAC 03C .1202
<u>Share Purchase and Option Plans</u>	04 NCAC 03C .1302
<u>Reserve Fund Defined</u>	04 NCAC 03C .1403
<u>Definitions</u>	04 NCAC 03C .1701
<u>Establishment of Lockbox Services</u>	04 NCAC 03C .1703
<u>Establishment of a Trust Representative Office (TRO)</u>	04 NCAC 03C .1704
<u>Cash-Out Transactions</u>	04 NCAC 03L .0404
<u>Limitation on Delayed Deposit Check Cashing</u>	04 NCAC 03L .0405

INDUSTRIAL COMMISSION

<u>Fees for Medical Compensation</u>	04 NCAC 10J .0101
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CHILD CARE COMMISSION

<u>Early Learning Standards and Curricula</u>	10A NCAC 09 .3007
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HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Location of the Agency</u>	10A NCAC 14C .0102
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<u>Health Maintenance Organizations</u>	10A NCAC 14C .0302
<u>Definitions</u>	10A NCAC 14C .1701
<u>Information Required of Applicant</u>	10A NCAC 14C .1702
<u>Performance Standards</u>	10A NCAC 14C .1703
<u>Support Services</u>	10A NCAC 14C .1704
<u>Staffing and Staff Training</u>	10A NCAC 14C .1705
<u>Definitions</u>	10A NCAC 14C .3301
<u>Information Required of Applicant</u>	10A NCAC 14C .3302
<u>Performance Standards</u>	10A NCAC 14C .3303
<u>Staffing and Staff Training</u>	10A NCAC 14C .3305

PRIVATE PROTECTIVE SERVICES BOARD

<u>Uniform and Equipment</u>	12 NCAC 07D .0105
<u>Suspension of Authority to Expend Funds</u>	12 NCAC 07D .0114
<u>Application for Firearms Trainer Certificate</u>	12 NCAC 07D .0902
<u>Renewal of Firearms Trainer Certificate</u>	12 NCAC 07D .0904
<u>Unarmed Trainer Certificate</u>	12 NCAC 07D .0909
<u>Application for an Unarmed Trainer Certificate</u>	12 NCAC 07D .0910
<u>Renewal of an Unarmed Trainer Certificate</u>	12 NCAC 07D .0911
<u>Rosters of Unarmed Trainer Classes</u>	12 NCAC 07D .0912
<u>Consideration of Experience</u>	12 NCAC 07D .1106
<u>Grandfather Clause</u>	12 NCAC 07D .1108
<u>Application for Unarmed Armored Car Service Guard Registr...</u>	12 NCAC 07D .1401
<u>Fees for Unarmed Armored Car Service Guard Registration</u>	12 NCAC 07D .1402
<u>Minimum Standards for Unarmed Armored Car Service Guard R...</u>	12 NCAC 07D .1403
<u>Investigation for Unarmed Armored Car Service Guard Regis...</u>	12 NCAC 07D .1404
<u>Unarmed Armored Car Service Guard Registration Identifica...</u>	12 NCAC 07D .1405
<u>Renewal or Reissue of Unarmed Armored Car Service Guard R...</u>	12 NCAC 07D .1406
<u>Training Requirements for Unarmed Armored Car Service Guards</u>	12 NCAC 07D .1407
<u>Application/Armed Car Service Guard Firearms Registration...</u>	12 NCAC 07D .1501
<u>Fees for Armed Armored Car Service Guard Firearm Registra...</u>	12 NCAC 07D .1502
<u>Minimum Standards for Armed Armored Car Service Guard Fir...</u>	12 NCAC 07D .1503
<u>Investigation for Armed Armored Car Service Guard Firearm...</u>	12 NCAC 07D .1504
<u>Armed Armored Car Service Guard Registration Identificati...</u>	12 NCAC 07D .1505
<u>Renewal of Armed Armored Car Service Guard Firearm Regist...</u>	12 NCAC 07D .1506
<u>Training Requirement for Armed Armored are Service Guards</u>	12 NCAC 07D .1507

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Instructors</u>	12 NCAC 10B .2004
<u>Instructors</u>	12 NCAC 10B .2102

WILDLIFE RESOURCES COMMISSION

<u>Wildlife Taken for Depredations</u>	15A NCAC 10B .0106
<u>Dog Training and Field Trials</u>	15A NCAC 10B .0114
<u>Wildlife Collectors</u>	15A NCAC 10B .0119
<u>Possession of Wildlife Killed Accidentally or Found Dead</u>	15A NCAC 10B .0127

RULES REVIEW COMMISSION

<u>Deer (White Tailed)</u>	15A NCAC 10B .0203
<u>Squirrels</u>	15A NCAC 10B .0206
<u>Wild Turkey</u>	15A NCAC 10B .0209
<u>Public Mountain Trout Waters</u>	15A NCAC 10C .0205
<u>Trotlines and Set-Hooks</u>	15A NCAC 10C .0206
<u>Possession of Certain Fishes</u>	15A NCAC 10C .0211
<u>Open Seasons: Creel and Size Limits</u>	15A NCAC 10C .0305
<u>Manner of Taking Non-game Fishes: Purchase and Sale</u>	15A NCAC 10C .0401
<u>Taking Non-game Fishes for Bait or Personal Consumption</u>	15A NCAC 10C .0402
<u>General Regulations Regarding Use</u>	15A NCAC 10D .0102
<u>Hunting On Game Lands</u>	15A NCAC 10D .0103
<u>Protection of Endangered/Threatened/Special Concern</u>	15A NCAC 10I .0102
<u>General Regulations Regarding Use of Conservation Areas</u>	15A NCAC 10J .0102

TRANSPORTATION, DEPARTMENT OF

<u>Issuance or Denial of Selective Vegetation Removal Permit...</u>	19A NCAC 02E .0609
<u>Conditions of Selective Vegetation Removal Permit for Out...</u>	19A NCAC 02E .0610

LOCKSMITH LICENSING BOARD

<u>Due Date</u>	21 NCAC 29 .0702
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SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR

<u>Standards for Audiologists Who Dispense Hearing Aids</u>	21 NCAC 64 .0220
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AGENDA
RULES REVIEW COMMISSION
Thursday, January 17, 2013 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. Child Care Commission – 10A NCAC 09 .3004, .3008 (DeLuca)
 - B. Medical Care Commission – 10A NCAC 13D .2105, .2210, .2301 (DeLuca)
 - C. Department of Transportation – 19A NCAC 01C .0201 (DeLuca)
 - D. Department of Transportation – 19A NCAC 02D .0414 (DeLuca)
 - E. Board of Examiners for Speech and Language Pathologists and Audiologists – 21 NCAC 64 .0903 (Bryan)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between November 21, 2012 and December 20, 2012
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
- VI. Review of the 2012 State Medical Facilities Plan
- VII. G.S. 150B-19.1 Certification
- VIII. Commission Business
 - Next meeting: February 21, 2013

**Commission Review
Log of Permanent Rule Filings
November 21, 2012 through December 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); operations (.0900); loan administration and leasing (.1000); capital (.1100); bank personnel (.1300); legal reserve (.1400); fees (.1600); nonresident banks (.1700); and courier services (.1800).

<u>Change of Location of Main Office or Branch</u>	04	NCAC	03C	.0301
Repeal/*				
<u>Application</u>	04	NCAC	03C	.0401
Repeal/*				
<u>Filing with Secretary of State</u>	04	NCAC	03C	.0406
Repeal/*				

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 43 are from the Department of Health and Human Services and the Commission for Public Health and concern personal health.

The rules in Subchapter 43D concern WIC/Nutrition including WIC program general information (.0200); selection of local WIC agencies (.0300); eligibility for WIC program participation (.0400); WIC program food package (.0500); WIC program food delivery system (.0700); WIC program administrative appeals (.0800); WIC program participant fair hearings (.0900); and maternal and child health block grant nutrition program (.1200).

<u>Definitions</u>	10A	NCAC	43D	.0202
Amend/*				
<u>Vendor Peer Groups</u>	10A	NCAC	43D	.0706
Amend/*				
<u>Vendor Applicants</u>	10A	NCAC	43D	.0707
Adopt/*				
<u>Authorized Vendors</u>	10A	NCAC	43D	.0708
Adopt/**				
<u>Local WIC Agency</u>	10A	NCAC	43D	.0709
Adopt/*				
<u>Vendor Violations</u>	10A	NCAC	43D	.0710
Adopt/*				

The rules in Subchapter 48B establish the accreditation standards for local health departments including general provisions (.0100); the standards or benchmarks to monitor health status (.0200); diagnose and investigate health problems and health hazards in the community (.0300); inform, educate and empower people about health issues (.0400); mobilize community partnerships to identify and solve health problems (.0500); develop policies and plans that support individual and community health efforts (.0600); enforce laws and regulations that protect health and ensure safety (.0700); link people to personal health services to assure the provision of health care when otherwise unavailable (.0800); assure a competent public health workforce and personal health workforce (.0900); evaluate effectiveness, accessibility and quality of personal and population based health services (.1000); research for new insights and innovative solutions to health problems (.1100); provide facilities and administrative services (.1200) and provide governance (.1300).

<u>Accreditation Requirements</u>	10A	NCAC	48B	.0103
Amend/*				

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

<u>Specialized Firearms Instructor Training</u> Amend/*	12	NCAC	09B	.0226
<u>Specialized Driver Instructor Training</u> Amend/*	12	NCAC	09B	.0227
<u>Specialized Subject Control Arrest Techniques Instructor ...</u> Amend/*	12	NCAC	09B	.0232
<u>Specialized Physical Fitness Instructor Training</u> Amend/*	12	NCAC	09B	.0233

The rules in Subchapter 9E relate to the law enforcement officers' in-service training program.

<u>Instructors Annual In-Service Training</u> Amend/*	12	NCAC	09E	.0104
<u>Minimum Training Specifications: Annual In-Service Training</u> Amend/*	12	NCAC	09E	.0105

The rules in Subchapter 9F cover concealed handgun training.

<u>Topical Areas</u> Amend/*	12	NCAC	09F	.0102
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COASTAL RESOURCES COMMISSION

The rules in Subchapter 7H are the state guidelines for areas of environmental concern (AECs) including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); construction of sheetpile sill for shoreline protection in estuarine and public trust waters (.2100); construction of freestanding moorings in established waters and public trust areas (.2200); replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); placement of riprap for wetland protection in estuarine and public trust waters (.2400); replacement of structures, the reconstruction of primary or frontal dune systems, and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms (.2500); construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

<u>AECs Within Ocean Hazard Areas</u>	15A	NCAC	07H	.0304
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Amend/*

SECRETARY OF STATE, DEPARTMENT OF

The rules in Chapter 12 concern lobbying including general provisions (.0100); forms completion (.0200); submission, review, amendment, and correction of documents (.0300); fees (.0400); economic information confidentiality protection (.0500); registration requirements and ending of lobbyist-principal relationship (.0600); disclosure of lobbyist and principal identity (.0700); lobbyist reporting (.0800); reporting by principal (.0900); solicitors and the solicitation of others (.1000); liaison personnel (.1100); confidentiality and records (.1200); preservation of records by lobbyists, principals, solicitors and liaisons (.1300); and department provision of lists to designated individuals (.1400).

Lobbyist Compensation Shall Be Separately Reported

18 NCAC 12 .0904

Repeal/*

ENGINEERS AND SURVEYORS, BOARD OF EXAMINERS FOR

The rules in Chapter 56 concern the organization of the board (.0100); instructional programs (.0300); records and reports of the board, retention and dispositions (.0400); professional engineer (.0500); professional land surveyor (.0600); rules of professional conduct (.0700); firm registration (.0800); general business entities (.0900); temporary permit (.1000); seal (.1100); rulemaking proceedings (.1200); board disciplinary procedures (.1300); contested cases (.1400); fees (.1500); standards of practice for land surveying in North Carolina (.1600); and continuing professional competency (.1700).

General

21 NCAC 56 .1001

Repeal/*

Application Procedure

21 NCAC 56 .1002

Repeal/*

Seal

21 NCAC 56 .1003

Repeal/*

Certification with Temporary Permit

21 NCAC 56 .1104

Repeal/*

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	

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