

NORTH CAROLINA REGISTER

VOLUME 31 • ISSUE 13 • Pages 1281 - 1371

January 3, 2017

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Contact List for Rulemaking Questions or Concerns

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

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

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NORTH CAROLINA REGISTER
Publication Schedule for January 2017 – December 2017

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
31:13	01/03/17	12/07/16	01/18/17	03/06/17	03/20/17	05/01/17	05/2018	09/30/17
31:14	01/17/17	12/20/16	02/01/17	03/20/17	04/20/17	06/01/17	05/2018	10/14/17
31:15	02/01/17	01/10/17	02/16/17	04/03/17	04/20/17	06/01/17	05/2018	10/29/17
31:16	02/15/17	01/25/17	03/02/17	04/17/17	04/20/17	06/01/17	05/2018	11/12/17
31:17	03/01/17	02/08/17	03/16/17	05/01/17	05/22/17	07/01/17	05/2018	11/26/17
31:18	03/15/17	02/22/17	03/30/17	05/15/17	05/22/17	07/01/17	05/2018	12/10/17
31:19	04/03/17	03/13/17	04/18/17	06/02/17	06/20/17	08/01/17	05/2018	12/29/17
31:20	04/17/17	03/24/17	05/02/17	06/16/17	06/20/17	08/01/17	05/2018	01/12/18
31:21	05/01/17	04/07/17	05/16/17	06/30/17	07/20/17	09/01/17	05/2018	01/26/18
31:22	05/15/17	04/24/17	05/30/17	07/14/17	07/20/17	09/01/17	05/2018	02/09/18
31:23	06/01/17	05/10/17	06/16/17	07/31/17	08/21/17	10/01/17	05/2018	02/26/18
31:24	06/15/17	05/24/17	06/30/17	08/14/17	08/21/17	10/01/17	05/2018	03/12/18
32:01	07/03/17	06/12/17	07/18/17	09/01/17	09/20/17	11/01/17	05/2018	03/30/18
32:02	07/17/17	06/23/17	08/01/17	09/15/17	09/20/17	11/01/17	05/2018	04/13/18
32:03	08/01/17	07/11/17	08/16/17	10/02/17	10/20/17	12/01/17	05/2018	04/28/18
32:04	08/15/17	07/25/17	08/30/17	10/16/17	10/20/17	12/01/17	05/2018	05/12/18
32:05	09/01/17	08/11/17	09/16/17	10/31/17	11/20/17	01/01/18	05/2018	05/29/18
32:06	09/15/17	08/24/17	09/30/17	11/14/17	11/20/17	01/01/18	05/2018	06/12/18
32:07	10/02/17	09/11/17	10/17/17	12/01/17	12/20/17	02/01/18	05/2018	06/29/18
32:08	10/16/17	09/25/17	10/31/17	12/15/17	12/20/17	02/01/18	05/2018	07/13/18
32:09	11/01/17	10/11/17	11/16/17	01/02/18	01/22/18	03/01/18	05/2018	07/29/18
32:10	11/15/17	10/24/17	11/30/17	01/16/18	01/22/18	03/01/18	05/2018	08/12/18
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EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

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



NORTH CAROLINA
State Board of Elections

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P.O. Box 27255
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KIM WESTBROOK STRACH
Executive Director

December 6, 2016

Ms. Bly Hall, Revisor of Statutes
NC General Assembly Bill Drafting Division
Suite 401 Legislative Office Building
300 N. Salisbury St.
Raleigh, NC 27603

Dear Ms. Hall:

Pursuant to N.C.G.S. §163-278.13(a1), this letter serves as notification that the contribution limitation amounts found in N.C.G.S. §163-278.13(a), (b) and (c) should be revised from five thousand one hundred dollars (\$5,100) to five thousand two hundred dollars (\$5,200), effective January 1, 2017 and remaining in effect through December 31, 2018. This change is based on an increase of approximately .99% between the *Consumer Price Index—U.S. city average – all items* (CPI) for July 2014 and the CPI for July 2016. Please see the full text of the affected statutes below.

§ 163-278.13. Limitation on contributions.

- (a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of ~~five thousand one hundred dollars (\$5,100)~~ five thousand two hundred dollars (\$5,200) for that election.
- (b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of ~~five thousand one hundred dollars (\$5,100)~~ five thousand two hundred dollars (\$5,200) for that election.
- (c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of ~~five thousand one hundred dollars (\$5,100)~~ five thousand two hundred dollars (\$5,200) for that election.

By copy of this letter I am requesting the North Carolina Office of Administrative Hearings to publish this statutory revision in the North Carolina Register.

Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

Amy E. Strange
Deputy Director for Campaign Finance & Operations

cc: Dana Vojtko, Office of Administrative Hearings

6400 Mail Service Center • Raleigh, NC 27699-6400
441 N. Harrington Street • Raleigh, NC 27611-7255

NARROW THERAPEUTIC INDEX DRUGS DESIGNATED BY THE NORTH
CAROLINA SECRETARY OF HUMAN RESOURCES

Pursuant to N.C.G.S. §90-85.27(4a), this is a revised publication from the North
Carolina Board of Pharmacy of narrow therapeutic index drugs designated by the North Carolina
Secretary of Human Resources upon the advice of the State Health Director, North Carolina
Board of Pharmacy, and North Carolina Medical Board.

Carbamazepine: all oral dosage forms

Cyclosporine: all oral dosage forms

Digoxin: all oral dosage forms

Ethosuximide

Levothyroxine sodium tablets

Lithium (including all salts): all oral dosage forms

Phenytoin (including all salts): all oral dosage forms

Procainamide

Theophylline (including all salts): all oral dosage forms

Warfarin sodium tablets

Tacrolimus: all oral dosage forms

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 10A NCAC 41A .0302.

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

Proposed Effective Date: May 1, 2017

Public Hearing:

Date: January 30, 2017

Time: 10:00 a.m.

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

Reason for Proposed Action: This rule governs the sale of turtles in North Carolina. Under the current rule, all sales of turtles are prohibited. The proposed rule amendment reduces the burden on retail merchants to allow for the sale of small turtles. The proposed amendment will prohibit the sale of turtles with a carapace length of less than four inches, which conforms with the Federal Regulations regulating the sale of turtles of less than four inches. (21 CFR 1240.62).

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

Comment period ends: March 6, 2017

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
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 41 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41A - COMMUNICABLE DISEASE CONTROL

SECTION .0300 - SPECIAL CONTROL MEASURES

10A NCAC 41A .0302 SALE OF TURTLES RESTRICTED

(a) ~~Purpose of this Regulation.~~ This ~~Regulation~~ Rule is adopted to prevent the spread of salmonellosis from pet turtles to humans.

(b) ~~Sale of Turtles Prohibited.~~ No turtle with a carapace length of less than four inches shall be sold, offered for sale, or bartered by any retail or wholesale establishment in North Carolina.

(c) ~~Sale of Turtles for Scientific, Educational, or Food Purposes Exempted.~~ Subsection (b) of this ~~Regulation~~ Paragraph (b) of this Rule does not apply to the sale of turtles to institutions for scientific or educational purposes nor to the sale of turtles for food purposes.

(d) ~~Sale of Turtles Outside North Carolina Exempted.~~ Notwithstanding the provisions of Subsection Paragraph (b) of this ~~Regulation~~ Rule, wholesale establishments in North Carolina dealing in the sale of turtles shall not be prohibited from selling turtles to other wholesale or retail establishments outside the State of North Carolina.

(e) ~~Determination of Compliance.~~ Authorized agents of the ~~Department of Environment, Health, and Natural Resources and local health departments~~ shall have authority to enter any retail or ~~wholesale establishment at all times to determine compliance with this Regulation.~~ For establishments selling turtles as allowed by this Section, the following information or substantially similar information shall be:

- (1) Posted or provided conspicuously at every display of turtles for retail sale; or
- (2) Printed legibly on the sales receipt issued by the seller to the purchaser at the time of the sale; or
- (3) Printed legibly on an information sheet accompanying the sales receipt issued by the seller to the purchaser at the time of the sale: "CAUTION: Children under 5 years old and people with weak immune systems (such as chemotherapy patients or those with HIV/AIDS) should avoid contact with reptiles."

These people can get very sick from a germ called Salmonella that reptiles carry. Reptiles include lizards, snakes, alligators, and turtles. Wash hands thoroughly after handling turtles or material that had contact with turtles. Do not allow water or any other substance that had contact with turtles to come in contact with food or areas where food is prepared. Do not bathe turtles or clean their tanks in your kitchen or bathroom and do not have close contact with turtles which could allow direct contamination of the mouth (e.g., kissing, etc.)."

(f) The seller shall keep a record of all purchases, losses, and other dispositions of turtles for at least one year.

Authority G.S. 130A-144.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

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 07L .0101 and .0503 and repeal the rule cited as 15A NCAC 07L .0102.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

Proposed Effective Date: July 1, 2017

Public Hearing:

Date: February 8, 2017

Time: 1:30 p.m.

Location: DoubleTree by Hilton, 2717 W. Fort Macon Road, Atlantic Beach, NC 28512

Reason for Proposed Action: *Subchapter 07L establishes the criteria for funding grants to local governments for planning and management projects within the 20 coastal counties. The Coastal Resources Commission (CRC) is proposing amendments to the CAMA Planning & Management Grant Program. These amendments are intended to shift the primary focus of grant funding from local land use plans to a broad variety of local projects that address coastal issues and to allow the Division of Coastal Management to focus on specific issues or areas of Coastal Resources Commission (CRC) interest in awarding grant funds. 15A NCAC 07L .0102 has been deleted as the purpose of the grant has been incorporated into 15A NCAC 07L .0503.*

Comments may be submitted to: Braxton Davis, NC Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557

Comment period ends: March 6, 2017

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**
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07L - LOCAL PLANNING AND MANAGEMENT GRANTS

SECTION .0100 – PURPOSE AND AUTHORITY

15A NCAC 07L .0101 AUTHORITY

The rules in this Subchapter are promulgated pursuant to G.S. 113A-112 and G.S. 113A-124 by the Secretary of the Department of ~~Environment and Natural Resources (DENR)~~ Environmental Quality in the Secretary's capacity as executive head of the state agency designated by the Governor to administer state funds and to receive and administer federal funds granted by the National Oceanic and Atmospheric Administration under the Federal Coastal Zone Management Act.

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

15A NCAC 07L .0102 PURPOSE

~~The purpose of the Rules in this Subchapter is to establish the criteria and procedures for funding the Department of Environmental Quality program of grants for local land use plans or comprehensive plans, hereinafter referred to as "the plan", and coastal planning and management projects within North Carolina's coastal area. These funds are made available to assist local governments in developing and implementing plans and management strategies for their coastal resources, as mandated by the CAMA. Funds shall be used in refining and carrying out local land use planning and management programs by local governments within the 20 counties defined by the Coastal Area Management Act in G.S. 113A-103.~~

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

SECTION .0500 - GENERAL STANDARDS

15A NCAC 07L .0503 PRIORITIES FOR FUNDING PLANNING AND MANAGEMENT PROJECTS

(a) ~~In funding local planning and management grants, the Department of Environmental Quality (DEQ) shall follow these general priorities for local planning and management grants: The Department of Environmental Quality (DEQ) program of grants for coastal planning and management projects provides funding to assist local governments in the 20 counties as defined by the Coastal Area Management Act in the refining and implementing of plans and management strategies for their coastal resources. In funding local planning and management grants, DEQ shall select projects that need local attention in order to meet Coastal Resources Commission (CRC) management goals pursuant to 15A NCAC 07B .0702(d)(2) or contained within this Subparagraph. Priority management topics shall be designated on an annual basis following consultation with the CRC and may include, but are not limited to, expanded education and outreach efforts, special planning efforts focused on coastal resources or issues, improvements in intergovernmental coordination, targeted research or studies, and the development of local ordinances directly related to coastal concerns and not in contradiction with state rules. Projects selected for funding shall further the CRC's goals for the designated topics outlined below:~~

~~(1) The highest priority, Category I, includes projects mandated by statute, including initial and updated or amended land use plans or comprehensive plans, hereinafter referred to as the plan, local participation in projects initiated by DEQ, and projects DEQ indicates urgently need local attention in order to meet Coastal Resources Commission (CRC) management topics pursuant to 15A NCAC 07B .0702(d)(2). Examples of eligible projects and their associated priority category include:~~

~~(A) Those activities designated by DEQ on an annual basis, following consultation with the CRC and local governments, to be necessary to bring local plans into compliance with state rules for land use planning; or~~

~~(B) Adopting, amending, or updating plans to reflect changed conditions which may include necessary data collection, public participation, and policy development.~~

~~(2) The second priority, Category II, includes projects related to carrying out the explicit goals of the Coastal Area Management Act (CAMA), for which DEQ indicates there is a high priority for local actions or projects which are coastally dependent (water related) or projects to implement the plan such as public facilities planning or land use regulations preparation. Examples of eligible projects and their associated priority category include:~~

~~(A) Adopting or amending ordinances to further secure compliance with state~~

~~rules in AECs pursuant to 15A NCAC 07H;~~

~~(B) Beach access plans and studies which may include inventory and identification of sites, design of access improvements, acquisition plans and studies, and legal studies necessary to determine the extent of public use rights;~~

~~(C) Erosion control plans and studies which may include mapping, erosion rate measurement, design of protection strategies for public lands, cost benefit analysis, and relocation plans and strategies;~~

~~(D) Studies and planning leading to the nomination of new AECs as described in 15A NCAC 07H .0503, or locally significant environmental areas;~~

~~(E) Waterfront redevelopment and renewal plans and studies including feasibility studies, site design studies, and plans and studies for improving or enhancing waterfront parks and public areas which may include site design, use studies, and cost analysis;~~

~~(F) Preparing, adopting, or amending ordinances necessary to carry out CRC certified plans, state rules, and the state coastal zone management plan which may include regulations related to zoning, subdivision, stormwater management, dune protection beyond AEC standards, sanitation, building, mobile homes, historic preservation, signs, natural area protection, and environmental impact statements.~~

~~(3) The third priority, Category III, includes projects related to improving local coastal management and land use management capabilities. Examples of eligible projects and their associated priority category include:~~

~~(A) Initial water and sewer plans and studies;~~

~~(B) Land use related capital facilities programming;~~

~~(C) Base mapping as a management tool;~~

~~(D) Other planning, studies, and data acquisition supportive of coastal planning and management which may include public education or involvement on coastal issues; solid waste planning; port planning; and sport and commercial fishing studies;~~

~~(E) Enforcement of ordinances adopted to carry out certified plans;~~

~~(F) Coordination of local coastal management activities with other local management activities which may~~

~~include internal coordination, and city-county coordination; or~~
(G) ~~Other coastally related management projects.~~

- (1) Public Access: Maximize public access to the beaches and the public trust waters of the coastal region.
- (2) Land Use Compatibility: Ensure that development and use of resources or preservation of land balance protection of natural resources and fragile areas with economic development, avoids risks to public health, safety, and welfare.
- (3) Infrastructure Carrying Capacity: Ensure that public infrastructure systems are sized, located and managed so the quality and productivity of AECs and other fragile areas are protected or restored.
- (4) Natural Hazards: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural storm protection function and their natural resources giving recognition to public health, safety, and welfare issues.
- (5) Habitat Enhancement: Maintain, protect, and where possible enhance coastal habitats; for example, marsh restoration.
- (6) Other Topics or Special Issues: developed areas and working waterfronts, urban waterfront revitalization, economic growth and development, redevelopment and revitalization, recreation and tourism, historic and cultural resources, public trust rights, water use and water quality, stormwater management, erosion control, shoreline protection and management, open space, parks and recreation, storm recovery, farmland preservation and management, historic and cultural resources, stakeholder and citizen participation, and transportation.

(b) ~~In addition,~~ DEQ shall take into consideration the following factors listed in order of importance to establish priorities for individual projects within the general priority categories: projects:

- (1) project's contribution towards meeting CRC's prioritized management topics in 15A NCAC 07B .0702(d)(2); and associated management goals pursuant to 15A NCAC 07B .0702(d)(2) or contained in Subparagraph (a)(1) of this Rule;
- (2) the extent to which the project includes measures of environmental protection beyond Areas of Environmental Concern (AEC) standards of Subchapter 15A NCAC 07H;
- (3) applicant's urgency of need;
- (4) past history of applicant's implementation of planning and management grant program activities;
- (5) feasibility of completion of project by the applicant;

- (6) past experience with land use planning and implementation projects as well as present management and administrative capabilities;
- (7) potential applicability of the project to other coastal area municipalities and counties; and
- (8) geographic distribution of applicants.

(c) Matching fund requirements are based on the North Carolina Department of Commerce's Tier designations, as outlined by the Lee Act (G.S. 105-129.3). Local government contributions for ~~land-use planning and implementation management~~ projects shall be at least 25 percent of the project costs except for Tier 1 designated counties and their respective municipalities which shall have a local government contribution of at least 10 percent of the project costs. At least one half of the local contribution shall be cash match; the remainder may be in-kind match.

(d) Any local government whose plan is not certified due to failure to meet the criteria listed in 15A NCAC 07B or that has not submitted the most recent Required Periodic Implementation Status Report as described in 15A NCAC 07B, shall not receive further funding under this program until these inconsistencies are corrected.

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

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to adopt the rule cited as 25 NCAC 01J .0619 and amend rules cited as 25 NCAC 01H .0630-.0632, .0634, .0635, .0701, .0801, .0902, .1001, .1104, 01J .0603, .0605, .0606, .0610-.0614 and .1101.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://oshr.nc.gov/about-oshr/state-hr-commission/proposed-rulemaking>

Proposed Effective Date: *June 1, 2017*

Public Hearing:

Date: *January 24, 2017*

Time: *2:00 p.m.*

Location: *Learning & Development Center, Coastal Room, 101 W. Peace Street, Raleigh, NC 27603*

Reason for Proposed Action: *These amendments are based on recent changes to the statewide Salary Administration Policy, the statewide Performance Management Policy, and HB 495 (S.L. 2015-260).*

Comments may be submitted to: *Margaret Duke, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 807-4869, fax (919) 715-9750, email Margaret.b.duke@nc.gov*

Comment period ends: *March 6, 2017*

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
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 01 - OFFICE OF STATE HUMAN RESOURCES

SUBCHAPTER 01H - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

25 NCAC 01H .0630 RECRUITMENT AND SELECTION POLICY

(a) State government shall meet its workforce needs through systematic ~~recruitment~~ recruitment, programs, selection-selection, programs, and career support programs that are designed to identify, attract, and select the most qualified applicant from the ~~pool of most~~ qualified applicants for State employment, and to encourage diverse representation at all occupational levels of the workforce. The recruitment and selection process shall be consistently applied, non-discriminatory and promote open and fair competition and the hiring of a diverse workforce.

(b) While most positions are filled through systematic recruitment, it is recognized that some positions in State government are exempt from various provisions of the State Human Resources Act because of the relationship between the position and the responsibility of elected or appointed officials expected to implement the public policy of the State. While these positions are exempt from various provisions of the State Human Resources Act, they are subject to the following requirements:

- (1) If an individual applies for an exempt position, written notification that a position is exempt shall be given to the individual at the time the individual makes application for the exempt position. Written notification that the position is exempt may be contained in the vacancy announcement if the position is posted as exempt, or in a letter that either acknowledges acceptance of an application for an exempt position or contains an offer of employment for

an exempt position or a notification that the position is exempt;

- (2) In addition, written notification that a position is exempt shall be given to an employee placed in an exempt position not less than 10 working days prior to the employee's first day in the exempt position; and
- (3) If an employee occupies a subject position that is subsequently designated as exempt, the agency shall provide written notification to the employee that the position has been designated exempt. The exemption shall apply to the employee 10 working days after receiving written notification.

Authority G.S. 126-4(4)(10).

25 NCAC 01H .0631 POSTING AND ANNOUNCEMENT OF VACANCIES

(a) Vacant positions shall be publicized by the agency having the vacancy.

(b) Vacancies which shall be filled from within the agency workforce are to have an application period of not less than five working days and shall be posted in at least the following locations:

- (1) The ~~personnel~~ human resource office of the agency having the vacancy; and
- (2) The particular work unit of the agency having the vacancy.

(c) Vacancies to be filled from within or outside the state government workforce are to be listed with the Office of State Human Resources and the Employment Security Commission as required by G.S. 96-29. The vacancies shall have an application period of not less than five working days. For purposes of this Rule, "state government workforce" means those employees who are subject to Articles 1, 2, 5, 6, 7, 8, 13 and 14 of Chapter 126 of the North Carolina General Statutes.

(d) Each vacancy shall be described in an announcement which includes:

- (1) For graded classes: the position number, classification title, ~~salary pay grade grade, and salary range,~~ range or recruitment range, essential functions, knowledge, skills, abilities, minimum ~~training-education~~ and experience, and any vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H .0635(c) the application period, and the contact information;
- (2) For banded classes: the position number, banded class title, competency level, banded class salary range or recruitment range corresponding to the competencies and duties, salary grade equivalency, essential functions, competencies, minimum ~~training-education~~ and experience, vacancy-specific qualifications as determined by the agency in accordance with 25 NCAC 01H .0635(c), the application period, and the contact information; and

- (3) For all vacancy listings: a closing date unless the classification has been determined as critical. Factors used in determining critical classifications include agency turnover; number of positions in class; geographic location; scarcity of skills; and safety, health or quality of care for clients. The critical classifications shall be approved by the State Human Resources Commission. On those classes determined to be critical, which are considered open and continuous postings, agencies shall determine how long applications shall be considered active.

(e) Posting is not required when an agency determines that it will not openly recruit. This decision shall be based upon a bona fide business need and is the responsibility of the agency head. Examples are:

- (1) Vacancies that are committed to a budget reduction;
- (2) Vacancies used to avoid a reduction in force;
- (3) Vacancies used for disciplinary transfers or demotions;
- (4) Vacancies to be filled by transfer of an employee to avoid the threat of bodily harm;
- (5) Vacancies that are designated exempt policymaking under G.S. 126-5(d);
- (6) Vacancies that must be filled immediately to prevent work stoppage in constant demand situations, or to protect the public health, safety, or security;
- (7) Vacancies to be filled by chief deputies and chief administrative assistants to elected or appointed department heads; and vacancies for positions to be filled by confidential assistants and confidential secretaries to elected or appointed department heads, chief deputies, or chief administrative assistants;
- (8) Vacancies to be filled by an eligible exempt employee who has been removed from an exempt position and is being placed back in a position subject to all provisions of the State Human Resources Act;
- (9) Vacancies to be filled by a legally binding settlement agreement;
- (10) Vacancies to be filled in accordance with a pre-existing written agency workforce plan; and
- (11) Vacancies that must be filled immediately because of a widespread outbreak of a serious communicable disease.

(f) The Office of State Human Resources may withhold approval for an agency to fill a job vacancy as set out in G.S. 126-7.1.

Authority G.S. 96-29; 126-4(4); 126-5(d); 126-7.1.

25 NCAC 01H .0632 APPLICANT INFORMATION AND APPLICATION

(a) Applicants applying for a state vacancy shall complete and submit a State Application Form (Form PD-107 or its equivalent) to the hiring authority.

(b) In completing an Application Form, persons subject to registration under the Military Selective Service Act (50 United States Code, Appx Section 453) shall certify compliance with such registration requirements to be eligible for State employment, as required by G.S. 143B-421.1. The knowing and willful failure of a subject person to certify compliance with this Act when submitting an application for consideration, or to falsely certify compliance, is grounds for dismissal from employment.

(c) Persons eligible for veteran's preference shall submit a DD Form 214, Certificate of Release or Discharge from Active Duty, with the application. The agency shall verify eligibility for veterans' preference.

Authority G.S. 96-29; 126-4(4); 126-4(6).

25 NCAC 01H .0634 SELECTION OF APPLICANTS

(a) All agencies shall select from the pool of ~~the most~~ qualified persons to fill a vacant ~~positions~~ position. Employment shall be offered based upon the job-related qualifications of applicants for employment using fair and valid selection criteria and not on political affiliation or political influence.

(b) Using fair and valid selection criteria, the agency shall review the credentials of each applicant in order to determine who possesses the minimum qualifications as defined in Rule .0635 of this Section including selective criteria. "Selective criteria" are defined as additional minimum qualifications identified by the agency. From those applicants who meet the minimum qualifications, a pool of ~~the most~~ qualified candidates shall be identified. The pool of ~~most~~ qualified candidates shall be those individuals determined to be substantially more qualified than other applicants pursuant to G.S. 126-14.2. The individual selected for the position shall be from among the ~~most~~ qualified applicants.

(c) Selection procedures and methods shall be validly related to the duties and responsibilities of the vacancy to be filled.

(d) The agency shall provide timely written notice of non-selection to all unsuccessful candidates in the ~~most~~ qualified pool.

Authority G.S. 126-4(4); 126-14.2; 126-14.3.

25 NCAC 01H .0635 MINIMUM QUALIFICATIONS

(a) The employee or applicant must possess at least the minimum qualifications set forth in the class specification of the vacancy being filled. Additional minimum qualifications, if any, included on the specific vacancy announcement must also be met. The additional qualifications shall have a documented business need. Qualifications include ~~training~~, education, experience, competencies and knowledge, skills and abilities. The minimum qualifications on the vacancy announcement shall bear a direct and logical relationship to the minimums on the class specification, class administration guidelines developed by the Office of State Human Resources, and the specific position description. This requirement shall apply in new ~~appointments~~, hires, promotions, demotions or reassignments, lateral transfers, and reinstatements.

(b) Qualifications necessary to perform successfully may be attained in a variety of combinations. Reasonable substitutions of formal training and job-related experience, one for the other, may be made.

(c) Agency management is responsible for determining and defending the vacancy-specific qualifications that are in addition to minimum ~~training-education~~ and experience requirements. Such vacancy-specific qualifications shall bear a logical and job-related relationship to the minimum requirements.

(d) The Office of State Human Resources shall make the final determination as to whether the employee or applicant meets the minimum qualifications in questionable selection situations.

Authority G.S. 126-4(4).

SECTION .0700 - PRIORITY CONSIDERATION: GENERAL PROVISIONS

25 NCAC 01H .0701 GENERAL PROVISIONS

(a) It is recognized that certain applicants for positions of State employment may receive a priority over other applicants for the position. Priority consideration in certain situations may be accorded to the following applicants:

- (1) Career State employees applying for a position that is a higher ~~salary-pay~~ grade (or salary grade equivalency) as provided in 25 NCAC 01H .0800;
- (2) Career State employees who have received written notification of imminent separation due to a reduction in force;
- (3) Eligible employees in positions which are designated as exempt policymaking and who have less than 10 years of cumulative State service in subject positions as provided in 25 NCAC 01H .1000;
- (4) Eligible employees in positions which are designated as exempt managerial and who have less than 10 years of cumulative State service in subject positions and who have been removed from the exempt position for reasons other than cause but not because the employee's selection violated G.S. 126-14.2, as provided in 25 NCAC 01H .1000;
- (5) Eligible employees in positions which are designated as exempt managerial and who have less than 10 years of cumulative State service and who have been removed from the exempt managerial position because the employee's selection violated G.S. 126-14.2, as provided in 25 NCAC 01H .1000; and
- (6) Eligible veterans applying for initial employment or subsequent employment in State government, as provided in 25 NCAC 01H .1100.

(b) The priority consideration listed in Subparagraph (a)(6) of this Rule may only be asserted against substantially equal or less qualified non-veteran outside applicants or other State employees who do not fall into any of the categories listed in Subparagraphs (a)(1) – (a)(5) of this Rule.

(c) The priority consideration listed in Subparagraphs (a)(3), (a)(4) and (a)(5) of this Rule may be defeated by an employee with the priority listed in Subparagraph (a)(2) of this Rule or by a current State employee who has greater cumulative State service

in positions subject to the State Human Resources Act. The selected applicant must meet the minimum qualifications, including ~~training-education~~, experience, competencies and knowledge, skills and abilities.

Authority G.S. 126-4; 126-82; 128-15.

SECTION .0800 - PROMOTIONAL PRIORITY

25 NCAC 01H .0801 PROMOTIONAL PRIORITY CONSIDERATION FOR CURRENT EMPLOYEES

(a) Promotional priority consideration shall be provided when a career State employee, as defined in G.S. 126-1.1, applies for a position that is a higher ~~salary-pay~~ grade (salary grade equivalency) or has a higher market rate and the eligible employee is in competition with outside applicants.

(b) If it is determined that an eligible employee and an outside applicant have "substantially equal qualifications," then the eligible employee shall receive the job offer over an outside applicant.

(c) "Substantially equal qualifications" occur when the employer cannot make a reasonable and justifiable determination that the job-related qualifications held by one applicant are significantly better suited for the position than the job-related qualifications held by another applicant.

(d) For purposes of this Rule, an outside applicant is any applicant who is not a member of the State government workforce as defined in 25 NCAC 01H .0631(c).

Authority G.S. 126-4; 126-7.1.

SECTION .0900 – REDUCTION-IN-FORCE - PRIORITY REEMPLOYMENT

25 NCAC 01H .0902 REQUIREMENTS FOR REDUCTION IN FORCE PRIORITY CONSIDERATION

Upon written notification of imminent separation through reduction in force (RIF), a career State employee shall receive priority consideration for positions at an equal or lower ~~salary-pay~~ grade (or salary grade equivalency) for a period of 12 months pursuant to G.S. 126-7.1, unless the priority has been satisfied in accordance with the rules of this Section. The following conditions apply:

- (1) For employees receiving notification of imminent separation from ~~trainee or~~ flat rate positions, the ~~salary-pay~~ grade for which priority is to be afforded shall be determined as follows: For employees in flat rate positions, the ~~salary-pay~~ grade shall be the grade that has as its maximum a rate nearest to the flat rate salary of the eligible ~~employee-employee~~; ~~For eligible employees in trainee status, the salary grade shall be the salary grade of the full class;~~
- (2) For employees receiving notification of imminent separation through reduction in force while actively possessing priority consideration from a previous reduction in force shall retain the initial priority for the remainder of the 12-month priority period. A new priority

- consideration period shall then begin at the ~~salary-pay~~ grade (or salary grade equivalency), or salary rate of the position held at the most recent notification of separation and shall expire 12 months from the most recent notification date;
- (3) If after receiving formal notice of imminent reduction in force, an employee retires or applies for retirement prior to the separation date, an employee shall have no right to priority consideration;
 - (4) Employees notified of separation from permanent full-time positions shall have priority consideration for permanent full-time and permanent part-time positions. Employees notified of separation from permanent part-time positions shall have priority consideration for permanent part-time positions only;
 - (5) Employees who have priority consideration at the time of application for a vacant position, and who apply during the designated agency recruitment period, shall be continued as priority applicants until the selection process is complete;
 - (6) If an employee with priority consideration applies for a position but declines an interview or offer of the position, the employee loses priority if the position is at a ~~salary-pay~~ grade (or salary grade equivalency), market rate, or salary rate equal to or greater than that held at the time of notification;
 - (7) If an employee with priority consideration is placed in another position prior to the separation due to reduction in force, the employee does not lose priority if the position is at a lower ~~salary-pay~~ grade (or salary grade equivalency), market rate, or salary rate less than that held at the time of notification and if the position is at the same appointment status;
 - (8) An employee with priority consideration may accept a temporary position at any level and retain priority consideration;
 - (9) When priority has been granted for a lower ~~salary-pay~~ grade (or salary grade equivalency) or lower market rate or lower salary rate than that held at the time of notification, the employee retains priority for higher ~~salary-pay~~ grades (or salary grade equivalencies) or higher market rate up to and including that held at the time of the notification of separation;
 - (10) An employee with priority consideration may accept employment outside State government or in a State position not subject to the State Human Resources Act and retain the priority consideration through the 12-month priority period;
 - (11) Priority consideration for an eligible employee is terminated when:
 - (a) an employee accepts a permanent or time-limited position with the State at the same salary rate or higher rate than the salary rate at the time of notification of separation;
 - (b) an employee accepts a permanent or time-limited position with the State equal to or greater than the employee's ~~salary-pay~~ grade (or salary grade equivalency) of the full-time or part-time position held at the time of notification, in accord with Item (4) of this Rule;
 - (c) an employee accepts a career banded position with the same or higher market rate than that held at the time of notification;
 - (d) an employee has received 12 months of priority consideration; or
 - (e) an employee applies for retirement or retires from State employment.
 - (12) Priority consideration for employees notified of or separated through reduction in force shall not include priority to any exempt positions;
 - (13) When an employee with priority consideration accepts a position at a lower salary rate or lower employee's ~~salary-pay~~ grade (or salary grade equivalency) and is subsequently terminated by disciplinary action, any remaining priority consideration ceases; and
 - (14) An employee with priority consideration shall serve a new probationary period when there is a break in service, as defined in 25 NCAC 01D .0114.

Authority G.S. 126-4(6); 126-4(10); 126-7.1.

SECTION .1000 – EXEMPT PRIORITY CONSIDERATION

25 NCAC 01H .1001 EXEMPT PRIORITY REEMPLOYMENT CONSIDERATION – POLICY AND SCOPE

- (a) The rules in this Section apply to employees hired on or before August 20, 2013 and removed from:
- (1) Exempt policymaking positions for reasons other than just cause; and
 - (2) Exempt managerial positions for reasons other than just cause.
- (b) A career State employee as defined in G.S. 126-1.1 with less than 10 years cumulative service in subject positions prior to placement in an exempt policymaking or exempt managerial position, who is removed from an exempt policymaking or exempt managerial position for reasons other than just cause, shall receive a one-time reemployment priority. This reemployment priority shall be exercised by the employee in writing on the application for employment within one year following the date of the employee's separation. The employee shall be offered any available subject position for which the employee has applied and

is qualified as set forth in the job vacancy announcement when the position applied for is equal to or below the ~~salary-pay~~ grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt policymaking or exempt managerial position unless an offer has been made to, and accepted by, a person qualified for mandated reassignment under G.S. 126-5(e)(2) or G.S. 126-5(e)(4) or an employee notified of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to the State Human Resources Act.

(c) A career State employee as defined in G.S. 126-1.1 ~~who had more than 2 but with~~ less than 10 years of cumulative service in a subject position who moves from one exempt policymaking or exempt managerial position to another exempt policymaking or exempt managerial position without a break in service, who is removed from the last exempt position for reasons other than just cause, shall receive a one-time reemployment priority. This reemployment priority shall be exercised by the employee within one year following the date of the employee's separation. The employee shall be offered any available subject position for which the employee has applied and is qualified as set forth in the job vacancy announcement, when the position applied for is equal to or below the ~~salary-pay~~ grade (or salary grade equivalency) of the most recent subject position held prior to placement in the exempt managerial position unless an offer has been accepted by a person qualified for mandated reassignment under G.S. 126-5(e)(2) or G.S. 126-5(e)(4) or an employee notified of or separated by a reduction in force, or a current State employee with greater cumulative State service subject to the State Human Resources Act.

(d) The reemployment priority considerations described in Paragraphs (b) and (c) of this Rule shall expire when an employee refuses an interview or offer for a position for which the employee has applied, regardless of the position's ~~salary-pay~~ grade (or salary grade equivalency), or when an employee accepts a position with the State for which he or she has applied.

(e) If an employee does not receive notice as described in Rule .0630(b) of this Subchapter, the employee shall remain subject to the State Human Resources Act until 10 working days after the employee receives written notification of the exempt status. If an otherwise eligible employee is removed from the position designated as exempt, the employee shall receive reemployment priority consideration to a position at the same ~~salary-pay~~ grade (or salary grade equivalency) as the most recent subject position.

Authority G.S. 126-1.1; 126-5.

SECTION .1100 – VETERANS' PREFERENCE

25 NCAC 01H .1104 APPLICATION OF THE VETERANS' PREFERENCE

(a) Veterans' preference shall be accorded eligible veterans, as defined in 25 NCAC 01H .1105, by giving additional credit as follows:

- (1) In initial employment, subsequent employment, promotion, reassignment, and lateral or horizontal transfer procedures, where numerically scored examinations are used in

- (2) determining the relative ranking of candidates, 10 points shall be awarded to eligible veterans. In initial employment, subsequent employment, promotion, reassignment, and lateral or horizontal transfer procedures where structured interview, assessment center, in-basket, or any other procedure, not numerically scored, is used to qualitatively assess the relative ranking of candidates, the veteran who has met the minimum qualification requirements for the vacancy, and who has less than four years of related military experience beyond that necessary to minimally qualify, shall also receive additional experience credit for up to four years of unrelated military service. The spouse or dependent shall not receive additional experience credit for the veteran's unrelated military service. To determine the amount of additional experience credit to be granted for unrelated military service, first determine the amount of related military service possessed by the eligible veteran beyond that required to meet the minimum qualifications, then apply the following:

- (A) If the total of such experience equals or exceeds four years, the additional credit for unrelated military service does not apply.
- (B) If the total of such experience is less than four years, the veteran shall receive direct experience credit for unrelated military service in an amount not to exceed the difference between the eligible veteran's related military service and the four-year maximum credit that may be granted.

- (3) In reduction-in-force situations, when calculating length of service, the eligible veteran shall be accorded one year of State service for each year or fraction thereof of military service, up to a maximum of five years credit. This additional credit does not count as total state service.

(b) After applying the preference to candidates from outside the State government structure, upon initial employment or subsequent employment as outlined in Subparagraph (a)(1) or (2) of this Rule, the eligible veteran shall be hired when the veteran's overall qualifications are substantially equal to the non-veterans in the applicant pool as provided in 25 NCAC 01H .0701(b). Substantially equal qualifications occur when the employing agency cannot make a reasonable determination that the qualifications held by one or more applicants are significantly better suited for the position than the qualifications held by another applicant.

(c) The spouse, surviving spouse or surviving dependent of that veteran may claim veterans' preference without regard to whether such preference has been claimed previously by the veteran.

(d) For promotion, reassignment and lateral or horizontal transfer, transfers, after applying the preference to veterans who are current

State employees as explained under Subparagraph (a)(1) or (2) of this Rule, the eligible veteran receives no further preference and competes with all other applicants who have substantially equal qualifications.

Authority G.S. 126-4(4); 126-4(10); 128-15.

SUBCHAPTER 01J - EMPLOYEE RELATIONS

SECTION .0600 - DISCIPLINARY ACTION AND GRIEVANCES

25 NCAC 01J .0603 APPEALS

(a) A career ~~State employee~~ employee, as defined in G.S. 126-1.1, who has been demoted, suspended, or dismissed shall have 15 calendar days from the date of his or her receipt of written notice of such action to file an appeal with his ~~department/university~~ agency grievance procedure. If an employee does not appeal his or her demotion, suspension, or dismissal through the agency grievance procedure within 15 days, then the employee shall have no right to file a contested case with the Office of Administrative Hearings under G.S. 126-34.02.

(b) If ~~an a career State~~ employee appeals his or her demotion, suspension, or dismissal through the agency grievance procedure, then the initial dismissal letter shall not constitute the final agency decision, but the final agency decision shall be the decision made at the conclusion of the employee's appeal through the agency grievance procedure.

(c) Grievances that allege discrimination, harassment, or retaliation shall follow the agency grievance ~~process~~ procedure. Employees with grievances alleging discrimination, harassment, or retaliation who do not follow the agency grievance ~~process~~ procedure shall have no right to file a contested case with the Office of Administrative Hearings.

(d) All other grievable issues identified in G.S. 126-34.02 shall follow the agency grievance procedure. Employees with grievances arising under G.S. 126-34.02 who do not follow the agency grievance procedure shall have no right to file a contested case with the Office of Administrative Hearings.

(e) Any issue for which an appeal to the Office of Administrative Hearings has not been specifically authorized by G.S. 126-34.02 shall not be grounds for a contested case hearing.

Authority G.S. 126-1A; 126-34.01; 126-34.02; 126-35; 150B, Article 3; 150B-23.

25 NCAC 01J .0605 DISMISSAL FOR UNSATISFACTORY JOB PERFORMANCE

(a) The intent of this Section is to assist and promote improved employee performance, rather than to punish. This Rule covers all types of performance-related inadequacies. This Section does not require that successive disciplinary actions all concern the same type of unsatisfactory job performance. Disciplinary actions related to personal conduct may be included in the successive system for performance-related dismissal provided that the employee receives at least the number of disciplinary actions, regardless of the basis of the disciplinary actions, required for dismissal on the basis of inadequate performance. Disciplinary actions administered under this Section are intended to bring

about a permanent improvement in job performance. Should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance with further disciplinary action.

(b) In order to be dismissed for a current incident of unsatisfactory job performance ~~an a career State~~ employee must first receive at least two prior disciplinary actions: First, one or more written warnings followed by a warning or other disciplinary action which notifies the employee that failure to make the required performance improvements may result in dismissal.

(c) Prior to the decision to dismiss an employee, a management representative must conduct a ~~pre-dismissal~~ pre-disciplinary conference with the employee in accordance with the procedural requirements of this Section.

(d) An employee who is dismissed must receive written notice of the specific reasons for the dismissal, as well as notice of any applicable appeal rights.

(e) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a ~~pre-dismissal~~ pre-disciplinary conference constitute procedural violations with remedies as provided for in ~~25 NCAC 1B-0432~~ 25 NCAC 01J .1316. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

Authority G.S. 126-4; 126-35.

25 NCAC 01J .0606 DISMISSAL FOR GROSSLY INEFFICIENT JOB PERFORMANCE

(a) Dismissal on the basis of grossly inefficient job performance is administered in the same manner as for unacceptable personal conduct. Employees may be dismissed on the basis of a current incident of grossly inefficient job performance without any prior disciplinary action.

(b) Prior to dismissal of a career State employee on the basis of grossly inefficient job performance, there shall be a ~~pre-dismissal~~ pre-disciplinary conference between the employee and the person recommending dismissal. This conference shall be held in accordance with the provisions of 25 NCAC 1J. 0613.

(c) Dismissals for grossly inefficient job performance require written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.

(d) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a ~~pre-dismissal~~ pre-disciplinary conference constitute procedural violations with remedies as provided for in ~~25 NCAC 1B-0432~~ 25 NCAC 01J .1316. Time limits for filing a grievance do not start until the employee receives written notice of any applicable appeal rights.

Authority G.S. 126-4(7a).

25 NCAC 01J .0610 WRITTEN WARNING

(a) The supervisor shall monitor and promote the satisfactory performance of work assignments and assure that employees do not engage in unacceptable personal conduct. All types of performance-related job inadequacies may constitute

unsatisfactory job performance under this Section. Unacceptable personal conduct may be work-related or non-work-related conduct and may be intentional or unintentional. When the supervisor determines that disciplinary action is appropriate for unsatisfactory job performance, a written warning is the first type of disciplinary action that an employee shall receive. The supervisor may elect to issue a written warning for grossly inefficient job performance or unacceptable personal conduct. The written warning shall:

- (1) inform the employee in writing that this is a written warning, and not some other non-disciplinary process such as counseling;
- (2) inform the employee of the specific issues that are the basis for the warning;
- (3) tell the employee what specific improvements, if applicable, shall be made to address these specific issues;
- (4) tell the employee the time frame allowed for making the required improvements or corrections. Absent a specified time frame, 60 days is the time frame allowed for correcting unsatisfactory job performance and immediate correction is required for grossly inefficient job performance or unacceptable personal conduct; and
- (5) tell the employee the consequences of failing to make the required improvements or corrections;
- (6) tell the employee of any appeal rights provided by agency policy.

(b) A written warning shall be issued in accordance with the procedural requirements of this Section.

Authority G.S. 126-4; 126-34.02.

25 NCAC 01J .0611 DISCIPLINARY SUSPENSION WITHOUT PAY

An employee may be suspended without pay for disciplinary purposes for unsatisfactory job performance after the receipt of at least one prior disciplinary action or for causes relating to any form of unacceptable personal conduct or grossly inefficient job performance. A disciplinary suspension without pay for an employee who is subject to the overtime compensation provisions of the Fair Labor Standards Act (FLSA) must be for at least one full work day, but not more than two work weeks. The length of a disciplinary suspension without pay for an employee who is exempt from the overtime compensation provisions of the FLSA must be for at least one full work week, but not more than two full work weeks. Prior to placing any employee on disciplinary suspension without pay, a management representative shall conduct a ~~pre-suspension~~ pre-disciplinary conference with the employee in accordance with the procedural requirements of this Section. An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights. An agency or university has the option of imposing the same periods of disciplinary suspension without pay upon all employees as long as the period is the same as for

employees exempt from the overtime provisions of the FLSA as set forth in this Section.

Authority G.S. 126-4(6); 126-35.

25 NCAC 01J .0612 DEMOTION

(a) Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct.

- (1) Unsatisfactory Job Performance. An employee may be demoted for unsatisfactory job performance after the employee has received at least one prior disciplinary action.
- (2) Grossly Inefficient Job Performance. An employee may be demoted for grossly inefficient job performance without any prior disciplinary action.
- (3) Personal Conduct. An employee may be demoted for unacceptable personal conduct without any prior disciplinary action.
- (4) An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice of any applicable appeal rights.

(b) Disciplinary demotions may be accomplished in three ways:

- (1) The employee may be demoted to a lower pay grade with a reduction in salary rate as long as the new salary rate does not exceed the maximum of the salary schedule for the new lower pay grade;
- (2) The employee may be demoted to a lower pay grade without a reduction in salary rate as long as the salary rate does not exceed the maximum of the salary schedule for the new lower pay grade; or
- (3) The employee may be demoted while retaining the same pay grade with a reduction in salary rate. In no event shall an employee's salary rate be reduced to less than the minimum salary rate for the applicable pay ~~grade or the special entry rate, if in effect.~~ grade.

(c) Prior to the decision to demote an employee for disciplinary reasons, a management representative must conduct a ~~pre-demotion~~ pre-disciplinary conference with the employee in accordance with the procedural requirements of this Section.

Authority G.S. 126-4(6).

25 NCAC 01J .0613 PROCEDURAL REQUIREMENTS

The following procedural requirements shall be followed to issue disciplinary action under this Section:

- (1) WRITTEN WARNING - to issue a written warning to an employee, a supervisor shall issue the employee a written warning, detailing the matters referenced in Rule .0610(a)(1) - ~~(5)(6)~~ of this Section and including any applicable appeal rights.

(2) **DISCIPLINARY SUSPENSION WITHOUT PAY** - to place an employee on disciplinary suspension without pay, a supervisor shall comply with the following procedural requirements:

- (a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action. In matters of grossly inefficient job performance or unacceptable personal conduct there are no pre-conditions so an employee may be suspended without pay for a current incident of grossly inefficient performance or unacceptable misconduct;
- (b) Schedule and conduct a ~~pre-suspension~~ pre-disciplinary conference. Advance oral or written notice of the appropriate pre-disciplinary conference shall be given to the employee of the time, location, ~~and the issue for which discipline has been recommended.~~ and the type of disciplinary action being considered. The amount of advance notice shall be as much as is practical under the circumstances;
- (c) Furnish the employee a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension;
- (d) Advise the employee of any applicable appeal rights in the document effecting the suspension.

(3) **DEMOTION** - to demote an employee, a supervisor shall comply with the following procedural requirements:

- (a) In matters of unsatisfactory job performance, insure that the employee has received at least one prior disciplinary action;
- (b) In matters of grossly inefficient job performance or unacceptable personal conduct, there is no requirement for previous disciplinary action, so an employee may be demoted for a current incident of grossly inefficient job performance or unacceptable personal conduct without any prior disciplinary action;
- (c) Advance oral or written notice of the appropriate pre-disciplinary conference shall be given to the employee of the time, location, ~~and the issue for which discipline has been recommended.~~ and the type of disciplinary action being considered. The amount of advance

notice shall be as much as is practical under the circumstances;

- (d) An employee who is demoted shall receive written notice of the specific acts or omissions that are the reasons for the demotion;
- (e) An employee shall be advised of how and to what extent the demotion will affect the employee's salary rate or pay grade; and
- (f) The employee shall also be advised of any applicable appeal rights in the document effecting the demotion.

(4) **DISMISSAL** - Before an employee may be dismissed, a supervisor shall comply with the following procedural requirements:

- (a) The ~~Supervisor~~ supervisor recommending dismissal shall discuss the recommendation with appropriate agency management and receive management's authorization to hold a ~~pre-dismissal~~ pre-disciplinary conference with the employee. The person conducting the ~~pre-dismissal~~ pre-disciplinary conference shall have the authority to recommend or to decide what, if any disciplinary action shall be imposed on the employee;
- (b) The ~~Supervisor~~ supervisor or designated management representative shall schedule a ~~pre-dismissal~~ pre-disciplinary conference with the employee;
- (c) Advance written notice of the ~~pre-dismissal~~ pre-disciplinary conference shall be given to the employee of the time, location, and the issue for which dismissal has been recommended. The amount of advance notice shall be as much as is practical under the circumstances;
- (d) The ~~Supervisor~~ supervisor or designated management representative shall conduct a ~~pre-dismissal~~ pre-disciplinary conference with the employee, limiting attendance to the employee and the person conducting the conference; a second management representative may be present at management's discretion. The purpose of the ~~pre-dismissal~~ pre-disciplinary conference shall be to review the recommendation for dismissal with the affected employee and to listen to and to consider any information put forth by the employee, in order to insure that a dismissal decision is sound and not based on misinformation or mistake.

- Security personnel may be present when, in the discretion of the person conducting the conference, a need for security exists. No attorneys representing either side may attend the conference;
- (e) In the conference, the ~~Supervisor~~ supervisor shall give the employee oral or written notice of the recommendation for dismissal, including specific reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal, to refute information supporting the recommended dismissal action and to offer information or arguments in support of the employee's position. Every effort shall be made by the ~~Supervisor~~ supervisor or the designated management representative to assure that the employee has had a full opportunity to set forth any available information in opposition to the recommendation to dismiss prior to the end of the conference. This opportunity shall not include the right to present witnesses;
- (f) Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed recommendation. If management's decision is to dismiss the employee, a written letter of dismissal containing the specific reasons for dismissal, the effective date of the dismissal and the employee's appeal rights shall be issued to the employee in person or by certified mail, return receipt requested, to the last known address of the employee. To minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to dismiss should not be communicated to the employee in accordance with this Paragraph, prior to the beginning of the next business day following the conclusion of the ~~pre-dismissal~~ pre-disciplinary conference or after the end of the second business day following the completion of the ~~pre-dismissal-pre-disciplinary~~ conference;
- (g) The effective date of a dismissal for unsatisfactory job performance shall be determined by management. A career State employee who is dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks' working notice of his dismissal. Instead of providing up to two weeks' working notice and at the discretion of management, an employee may be given up to two weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissals for unsatisfactory job performance. The effective date of the dismissal shall not be earlier than the letter of dismissal nor more than 14 calendar days after the notice of dismissal; and
- (h) If an employee is dismissed and appeals his dismissal through the agency grievance procedure, the final agency decision shall set forth the specific acts or omissions that are the basis of the employee's dismissal. In addition, the employee shall be informed in the final agency decision letter that the final agency decision letter is a public record and that the agency is required by law to release it pursuant to any public record requests.

Authority G.S. 126-4; 126-35.

25 NCAC 01J .0614 DEFINITIONS

As used in this Subchapter:

- (1) Current Unresolved Incident means conduct or performance that:
 - (a) constitutes a violation of this Section; and
 - (b) for which no disciplinary action has been previously imposed or issued by agency or university management.
- (2) Disciplinary Demotion means a personnel action taken, without employee agreement, to discipline the employee, which results in:
 - (a) reduction in salary within the employee's current classification;
 - (b) an assignment to a position in a lower ~~salary~~ pay grade without a corresponding loss of salary; or
 - (c) an assignment to a position in a lower ~~salary~~ pay grade with a corresponding loss of salary.
- (3) Disciplinary Suspension Without Pay means the removal of an employee from work for disciplinary purposes without paying the employee.

- (4) Dismissal means the involuntary termination or ending of the employment of an employee for disciplinary purposes or failure to obtain or maintain necessary credentials.
- (5) ~~Gross Inefficiency (Grossly Inefficient Job Performance)~~ Performance means a type of unsatisfactory job performance that occurs in instances in which the employee: fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency; and, that failure results in
- (a) death, serious bodily injury or the creation of the potential for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) over whom the employee has responsibility; or
 - (b) the loss of or damage to state property or funds that result in a serious impact on the State or work unit.
- (6) Inactive Disciplinary Action means any disciplinary action issued after October 1, 1995 is deemed inactive for the purpose of this Section if:
- (a) the manager or supervisor notes in the employee's personnel file that the reason for the disciplinary action has been resolved or corrected;
 - (b) the purpose for a performance-based disciplinary action has been achieved, as evidenced by ~~a summary performance rating of level 3 (Good) or other~~ an official designation of performance at an acceptable level or better and at least a level 3 an acceptable or better in the performance area cited in the warning or disciplinary action, following the disciplinary warning or action; or
 - (c) 18 months have passed since the warning or other disciplinary action, and the employee does not have another active warning or disciplinary action which occurred within the last 18 months. If an employee receives a new disciplinary action while he or she has an active disciplinary action in his or her personnel file, the other active disciplinary action(s) in the file will take on the life span of the most recent disciplinary action not to exceed 18 months.
- (7) Insubordination means the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning.
- (8) Unacceptable Personal Conduct means:
- (a) conduct for which no reasonable person should expect to receive prior warning;
 - (b) job-related conduct which constitutes a violation of state or federal law;
 - (c) conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the State;
 - (d) the willful violation of known or written work rules;
 - (e) conduct unbecoming a state employee that is detrimental to state service;
 - (f) the abuse of client(s), patient(s), student(s) or a person(s) over whom the employee has charge or to whom the employee has a responsibility or an animal owned by the State;
 - (g) absence from work after all authorized leave credits and benefits have been exhausted; ~~or~~
 - (h) falsification of a state application or in other employment ~~documentation.~~ documentation; or
 - (i) failure to maintain or obtain necessary credentials or certifications.
- (9) Unsatisfactory Job Performance means work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency. The employee is performing the job at an unsatisfactory performance level in terms such as quantity, quality, timeliness, cost, and customer satisfaction. Performance improvement counseling by the manager or supervisor has not resulted in adequate employee performance improvement.

Authority G.S. 126-4; 126-35.

25 NCAC 01J .0619 DISMISSAL FOR UNACCEPTABLE PERSONAL CONDUCT

- (a) Employees may be dismissed on the basis of a current incident of unacceptable personal conduct without any prior disciplinary action.
- (b) Prior to dismissal of a career State employee on the basis of unacceptable personal conduct, there shall be a pre-disciplinary conference between the employee and the person recommending dismissal. This conference shall be held in accordance with the provisions of Rule .0613 of this Section.
- (c) Dismissals for unacceptable personal conduct require written notification to the employee. Such notification must include specific reasons for the dismissal and notice of the employee's right of appeal.
- (d) Failure to give specific written reasons for the dismissal, failure to give written notice of applicable appeal rights, or failure to conduct a pre-disciplinary conference constitute procedural

violations with remedies as provided for in Rule .1316 of this Subchapter. Time limits for filing a grievance do not start until the employee receives a written notice of any applicable appeal rights.

Authority G.S. 126-4(7a).

SECTION .1100 - UNLAWFUL WORKPLACE HARRASSMENT

25 NCAC 01J .1101 UNLAWFUL WORKPLACE HARRASSMENT AND RETALIATION

(a) Purpose. The purpose of this Rule is to establish that the State of North Carolina prohibits in any form unlawful workplace harassment, including sexual harassment or retaliation based on opposition to unlawful workplace harassment of state employees or applicants. Every agency with employees subject to the State Human Resources Act shall develop strategies to ensure that work sites are free of unlawful workplace harassment, sexual harassment discrimination and retaliation.

(b) As used in this Rule:

- (1) "unlawful workplace harassment" means unsolicited and unwelcome speech or conduct based upon race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation that creates a hostile work environment or under circumstances involving quid pro quo."
- (2) "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:
 - (A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
 - (B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; and
 - (C) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

- (3) "retaliation" means adverse action taken against an individual for filing a discrimination charge; testifying; or participating in any way in an investigation, proceeding, or lawsuit related to discriminatory employment practices based on race, religion, color, national origin, sex, age, disability, political affiliation or genetic information; or because of opposition to employment practices in violation of the unlawful workplace harassment policy.

(c) Policy. No state employee shall engage in conduct that falls under the definition of unlawful workplace harassment, sexual harassment or retaliation, and no personnel employment decisions shall be made on the basis of race, sex, religion, national origin, age, color, disability, political affiliation, or genetic information.

(d) All employees are guaranteed the right to work in an environment free from unlawful workplace harassment and retaliation.

(e) Coverage of this Rule includes:

- (1) applicants,
- (2) former employees, and
- (3) full-time and part-time employees with either a permanent, probationary, ~~trainee~~, time-limited, or temporary appointment.

(f) Agency Workplace Harassment Prevention Strategies. Each agency head shall develop strategies to prevent unlawful workplace harassment, sexual harassment, or retaliation. These strategies shall include:

- (1) a commitment by the agency to the prohibition of unlawful workplace harassment, sexual harassment or retaliation;
- (2) training and other methods to prevent harassing or retaliating actions; and
- (3) a process for disseminating information prohibiting unlawful workplace harassment and retaliation to all agency employees.

Workplace harassment prevention strategies shall be included as part of the agency Equal Employment Opportunity (EEO) plan.

Authority G.S. 126-4; 126-16; 126-17; 126-34.01; 126-34.02; 126-36.

*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 17, 2016.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

HISTORICAL COMMISSION

<u>Scope of Rules and Overview of Statutory Authority under</u>	07	NCAC	04R	.0918*	31:03 NCR
<u>Definitions</u>	07	NCAC	04R	.0919*	31:03 NCR
<u>Applications</u>	07	NCAC	04R	.0920*	31:03 NCR
<u>Certification of Historic Significance</u>	07	NCAC	04R	.0921*	31:03 NCR
<u>Standards for Evaluating Significance within National</u>	07	NCAC	04R	.0922*	31:03 NCR
<u>Certifications of Rehabilitations</u>	07	NCAC	04R	.0923*	31:03 NCR
<u>Standards for Rehabilitation</u>	07	NCAC	04R	.0924*	31:03 NCR
<u>Fees for Processing Rehabilitation Certification Requests</u>	07	NCAC	04R	.0925*	31:03 NCR

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Definitions</u>	10A	NCAC	14C	.1802	31:04 NCR
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PUBLIC HEALTH, COMMISSION FOR

<u>Reportable Diseases, Illnesses, and Injuries</u>	10A	NCAC	41C	.0702*	31:03 NCR
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INSURANCE, COMMISSIONER OF

<u>Approval of Courses</u>	11	NCAC	06A	.0809*	31:02 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Coastal Counties</u>	15A	NCAC	02H	.1019*	30:16 NCR
<u>Standard Permitting Process</u>	15A	NCAC	02H	.1042*	30:16 NCR
<u>Fast Track Permitting Process: Authorization to Construct</u>	15A	NCAC	02H	.1043*	30:16 NCR
<u>Fast Track Permitting Process: Final Permit</u>	15A	NCAC	02H	.1044*	30:16 NCR
<u>Requirements for Permit Transfers and Permit Renewals</u>	15A	NCAC	02H	.1045*	30:16 NCR
<u>MDC for All Stormwater Control Measures</u>	15A	NCAC	02H	.1050*	30:16 NCR
<u>MDC for Infiltration Systems</u>	15A	NCAC	02H	.1051*	30:16 NCR
<u>MDC for BioRetention Cells</u>	15A	NCAC	02H	.1052*	30:16 NCR
<u>MDC for Wet Ponds</u>	15A	NCAC	02H	.1053*	30:16 NCR
<u>MDC for Stormwater Wetlands</u>	15A	NCAC	02H	.1054*	30:16 NCR
<u>MDC for Permeable Pavement</u>	15A	NCAC	02H	.1055*	30:16 NCR
<u>MDC for Sand Filters</u>	15A	NCAC	02H	.1056*	30:16 NCR
<u>MDC for Level Sopper-Filter Strips</u>	15A	NCAC	02H	.1059*	30:16 NCR
<u>MDC for Disconnected Impervious Surfaces</u>	15A	NCAC	02H	.1060*	30:16 NCR
<u>Form and Contents of Petition</u>	15A	NCAC	02I	.0501*	n/a G.S. 150B-21.5

WILDLIFE RESOURCES COMMISSION

<u>Wildlife Taken for Depredations</u>	15A	NCAC	10B	.0106*	31:04 NCR
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NATURAL AND CULTURAL RESOURCES, DEPARTMENT OF

<u>Definitions as Used in This Subchapter</u>	15A	NCAC	12H	.0103*	31:03 NCR
<u>Responsibilities and Duties of Natural Heritage Program</u>	15A	NCAC	12H	.0104	31:03 NCR
<u>Natural Heritage Advisory Committee</u>	15A	NCAC	12H	.0105*	31:03 NCR
<u>Objectives of Registry</u>	15A	NCAC	12H	.0201*	31:03 NCR
<u>Criteria for Eligibility</u>	15A	NCAC	12H	.0202*	31:03 NCR
<u>Registration Process</u>	15A	NCAC	12H	.0203*	31:03 NCR
<u>Registration</u>	15A	NCAC	12H	.0204	31:03 NCR
<u>Rescission</u>	15A	NCAC	12H	.0205*	31:03 NCR
<u>Public Access</u>	15A	NCAC	12H	.0206*	31:03 NCR
<u>Management of Registered Natural Areas</u>	15A	NCAC	12H	.0207*	31:03 NCR
<u>Designation of Natural Areas on State Lands</u>	15A	NCAC	12H	.0208*	31:03 NCR
<u>Objectives of Dedication</u>	15A	NCAC	12H	.0301*	31:03 NCR
<u>Dedication Process</u>	15A	NCAC	12H	.0302*	31:03 NCR
<u>Articles of Dedication</u>	15A	NCAC	12H	.0303*	31:03 NCR
<u>Buffer Areas</u>	15A	NCAC	12H	.0304*	31:03 NCR
<u>Public Trust</u>	15A	NCAC	12H	.0305*	31:03 NCR
<u>Amendments</u>	15A	NCAC	12H	.0306*	31:03 NCR
<u>Extinguishment by the State</u>	15A	NCAC	12H	.0307*	31:03 NCR
<u>Mutual Termination</u>	15A	NCAC	12H	.0308*	31:03 NCR
<u>Management Plan</u>	15A	NCAC	12H	.0401*	31:03 NCR
<u>Management Principles</u>	15A	NCAC	12H	.0402*	31:03 NCR
<u>Management Rules for Preserves</u>	15A	NCAC	12H	.0403*	31:03 NCR

TRANSPORTATION, DEPARTMENT OF

<u>Identifying Information</u>	19A	NCAC	06B	.0402*	31:03 NCR
<u>Ineligible Costs</u>	19A	NCAC	06B	.0405	31:03 NCR
<u>Application</u>	19A	NCAC	06B	.0406*	31:03 NCR
<u>Application Evaluation</u>	19A	NCAC	06B	.0410*	31:03 NCR
<u>Allocation of Funding</u>	19A	NCAC	06B	.0411*	31:03 NCR
<u>Requests for Reimbursement</u>	19A	NCAC	06B	.0413*	31:03 NCR

COSMETIC ART EXAMINERS, BOARD OF

<u>Complaints</u>	21	NCAC	14B	.0608*	31:04 NCR
<u>Renewals, Expired Licenses, Licenses Required</u>	21	NCAC	14P	.0105*	31:04 NCR
<u>Licenses to be Posted</u>	21	NCAC	14P	.0107	31:04 NCR
<u>Establishment of Cosmetic Art Schools</u>	21	NCAC	14P	.0111	31:04 NCR
<u>Operation of Schools of Cosmetic Art</u>	21	NCAC	14P	.0113*	31:04 NCR
<u>Cosmetology Curriculum</u>	21	NCAC	14P	.0114	31:04 NCR
<u>New School Applications</u>	21	NCAC	14T	.0102*	31:04 NCR
<u>Esthetics Schools</u>	21	NCAC	14T	.0203	31:04 NCR
<u>Manicuring Schools</u>	21	NCAC	14T	.0204	31:04 NCR

APPROVED RULES

<u>Natural Hair Care Schools</u>	21	NCAC	14T	.0205	31:04 NCR
<u>Permanent Records, Forms and Documentation</u>	21	NCAC	14T	.0502*	31:04 NCR
<u>School Operations/Licensure Maintenance</u>	21	NCAC	14T	.0701	31:04 NCR
<u>School Performance Requirements</u>	21	NCAC	14T	.0705*	31:04 NCR
<u>School Probation</u>	21	NCAC	14T	.0901*	31:04 NCR

DENTAL EXAMINERS, BOARD OF

<u>Limited Exception for Assisting Hygienists</u>	21	NCAC	16H	.0207*	31:04 NCR
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NURSING, BOARD OF

<u>Definitions</u>	21	NCAC	36	.0120*	31:01 NCR
<u>Establishment of a Nursing Program Initial Approval</u>	21	NCAC	36	.0302*	31:01 NCR
<u>Existing Nursing Program</u>	21	NCAC	36	.0303*	31:01 NCR
<u>Process for Closure of a Program</u>	21	NCAC	36	.0309*	31:01 NCR
<u>Administration</u>	21	NCAC	36	.0317*	31:01 NCR
<u>Faculty</u>	21	NCAC	36	.0318*	31:01 NCR
<u>Students</u>	21	NCAC	36	.0320*	31:01 NCR
<u>Curriculum</u>	21	NCAC	36	.0321*	31:01 NCR
<u>Facilities</u>	21	NCAC	36	.0322*	31:01 NCR
<u>Records and Reports</u>	21	NCAC	36	.0323*	31:01 NCR

SOCIAL WORK CERTIFICATION AND LICENSURE BOARD

<u>Definitions</u>	21	NCAC	63	.0102*	31:01 NCR
<u>References</u>	21	NCAC	63	.0204*	31:01 NCR
<u>Work Experience</u>	21	NCAC	63	.0211*	31:01 NCR
<u>Certification and Licensure for Military Personnel and Mi...</u>	21	NCAC	63	.0214*	31:01 NCR
<u>Continuing Education Requirements</u>	21	NCAC	63	.0401*	31:01 NCR
<u>Continuances</u>	21	NCAC	63	.0610*	31:01 NCR

The following Rules are subject to the next Legislative Session. (see G.S. 150B-21.3(b1))

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Purpose and Scope</u>	10A	NCAC	14C	.1801	31:04 NCR
<u>Performance Standards</u>	10A	NCAC	14C	.1804	31:04 NCR
<u>Purpose and Scope</u>	10A	NCAC	14C	.3101	31:04 NCR
<u>Definitions</u>	10A	NCAC	14C	.3102	31:04 NCR
<u>Need for Services</u>	10A	NCAC	14C	.3104	31:04 NCR

TITLE 07 – DEPARTMENT OF NATURAL AND CULTURAL RESOURCES**07 NCAC 04R .0918 PURPOSE**

(a) Rules .0918 - .0925 of this Section set forth the procedures for obtaining certifications for the state historic rehabilitation tax credits for qualifying rehabilitation expenditures and rehabilitation expenses incurred on or after January 1, 2016 pursuant to Article 3L of G.S. 105.

History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;

Temporary Adoption Eff. January 1, 2016;

Temporary Adoption Expired Eff. October 11, 2016;

Eff. December 1, 2016.

07 NCAC 04R .0919 DEFINITIONS

(a) For purposes of Rules .0918 through .0925 of this Section:

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| <p>(1) "Certified historic district" is defined in 36 C.F.R. 67.2 and 26 USCS 47.</p> <p>(2) "Certified historic structure" is defined in 36 C.F.R. 67.2 and 26 U.S.C. Section 47.</p> <p>(3) "Certified rehabilitation" is defined in:</p> <p style="padding-left: 20px;">(A) 36 C.F.R. 67.2 for income-producing structures; and</p> <p style="padding-left: 20px;">(B) G.S. 105-129.106(c)(1) for non-income-producing structures.</p> <p>(4) "C.F.R." means the Code of Federal Regulations.</p> <p>(5) "Department of the Interior" means the United States Department of the Interior.</p> <p>(6) "Discrete property parcel" is defined in G.S. 105-129.106(c)(2).</p> <p>(7) "Historic district" is defined in 36 C.F.R. 67.2.</p> <p>(8) "Income-producing" refers to a certified historic structure that qualifies a taxpayer for a federal income tax credit under Section 47 of the Internal Revenue Code.</p> <p>(9) "Inspection" is defined in 36 C.F.R. 67.2. For purposes of this definition, "Authorized Representative of the Secretary" means a representative of the State Historic Preservation Officer.</p> <p>(10) "Integrity" means "historic integrity" as defined in NPS publication How to Apply the National Register Criteria for Evaluation: Bulletin 15. How to Apply the National Register Criteria for Evaluation: Bulletin 15 is hereby incorporated by reference, including subsequent amendments and editions. The Historical Commission has copies of the Bulletin available for inspection or it can be accessed online at no charge at https://www.nps.gov/nr/publications/bulletins/nrb15/.</p> <p>(11) "National Park Service" (NPS) means the division within the United States Department of the Interior responsible for administering national parks and historic preservation programs.</p> <p>(12) "National Register Historic District" means any historic district listed in the National Register of Historic Places.</p> <p>(13) "National Register Nomination" means the documentation for a resource that includes the National Register Nomination Form NPS 10-900 with accompanying continuation sheets, maps, and photographs, prepared in accord with requirements and guidance in the NPS publication How to Complete the National Register Registration Form: Bulletin 16A. How to Complete the National Register Registration Form: Bulletin 16A is hereby incorporated by reference, including subsequent amendments and editions. The Historical Commission has copies of the Bulletin available for inspection or it can be</p> | <p>accessed online at https://www.nps.gov/nr/publications/bulletins/nrb16a/.</p> <p>(14) "National Register of Historic Places" is defined in 36 C.F.R. 67.2.</p> <p>(15) "Non-income-producing" refers to a certified historic structure that does not qualify a taxpayer for a federal income tax credit under Section 47 of the Internal Revenue Code.</p> <p>(16) "Owner" means a person, partnership, corporation, or public agency holding a fee-simple interest in a property or any other person or entity recognized by the North Carolina Department of Revenue for purposes of the applicable tax benefits.</p> <p>(17) "Period of significance" is defined in NPS publication How to Complete the National Register Registration Form: Bulletin 16A. How to Complete the National Register Registration form is incorporated by reference as provided in Subparagraph (a)(13) of this Rule.</p> <p>(18) "Property" is defined in 36 C.F.R. 67.2.</p> <p>(19) "Rehabilitation" is defined in 36 C.F.R. 67.2.</p> <p>(20) "Secretary of the Interior" means the Secretary of the United States Department of the Interior or the designee authorized to carry out his or her responsibilities.</p> <p>(21) "Standards for Rehabilitation" means the Secretary of the Interior's "Standards for Rehabilitation" as cited in the Code of Federal Regulations, 36 C.F.R. 67.</p> <p>(22) "State Historic Preservation Office (HPO)" means the section within the North Carolina Office of Archives, History, and Parks responsible for administering historic preservation programs.</p> <p>(23) "State Historic Preservation Officer (SHPO)" is defined in G.S. 105-129.105(c)(7) for income-producing rehabilitation projects, and G.S. 105-129.106(c)(6) for non-income-producing rehabilitation projects.</p> <p>(24) "State-certified historic structure" is defined in G.S. 105-129.106(c)(5).</p> <p>(25) "Structure" means "building" as defined by 36 C.F.R. 60.3(a), and includes houses, barns, churches, hotels, warehouses, and mills. Objects and sites as defined in 36 C.F.R. 60.3(j) and (l) shall not qualify as structures.</p> <p>(b) Whenever reference is made to the Code of Federal Regulations in this Section, the definition in the Code of Federal Regulations shall apply unless specifically stated otherwise in a particular rule.</p> <p><i>History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107; 121-4(13); 121-8;</i>
 <i>Temporary Adoption Eff. January 1, 2016;</i>
 <i>Temporary Adoption Expired Eff. October 11, 2016;</i>
 <i>Eff. December 1, 2016.</i></p> |
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07 NCAC 04R .0920 APPLICATIONS

(a) An owner, or a person with the owner's consent in accordance with 36 CFR 67.3(a)(1), (4), and (5), may apply for a state historic tax credit. Tax credits for rehabilitating income-producing historic structures shall only be available to applicants who qualify for a federal historic rehabilitation tax credit in accordance with 36 CFR 67 and Rules .0901-.0908 of this Section. Tax credits for rehabilitating non-income-producing historic structures shall not be conditioned on qualification for the federal historic rehabilitation tax credits.

(b) Application forms are available upon request from the HPO. Applicants shall include the following information and documentation in Part A of their application:

- (1) Name and address of the property;
- (2) Whether the property is income-producing or non-income-producing;
- (3) Whether the property is listed on the National Register of Historic Places or located within a National Register District or a Certified Local Historic District;
- (4) Date of building construction;
- (5) Estimated rehabilitation expenses;
- (6) Use of building prior to rehabilitation and proposed use after rehabilitation;
- (7) Floor area before and after rehabilitation;
- (8) Estimated rehabilitation start and end dates;
- (9) Owner name and contact information
- (10) If different from the owner, the name and contact information of a person who is available to answer questions related to the rehabilitation project;
- (11) A description of the rehabilitation work;
- (12) Photographs of the structure and its surroundings before rehabilitation, documenting both interior and exterior features along with a description of each photograph;
- (13) Drawings or sketches of proposed work; and
- (14) Floor plans.

(c) Applicants may amend their applications at any time after submission by providing the following:

- (1) Name and address of the property;
- (2) A description of the original proposed rehabilitation plan; and
- (3) A description of the amended rehabilitation plan.

(d) Upon completion of a rehabilitation project, an applicant shall submit Part B of the application which shall contain the following information and documentation:

- (1) Name and address of the property;
- (2) Rehabilitation start and end dates;
- (3) Rehabilitation expenses;
- (4) Photographs of the structure and its surroundings after the rehabilitation, documenting both interior and exterior features along with a description of each photograph; and
- (5) If applicable, a fee as provided in Rule .0925 of this Section.

(e) Upon completion of a non-income-producing rehabilitation project on a property not listed in the National Register of Historic Places as an individual property, an applicant shall provide the following in addition to the requirements in Paragraph (d) of this Rule:

- (1) Name of the National Register Historic District or Certified Local Historic District in which the property is located;
- (2) Date of construction;
- (3) Dates of alterations to the structure;
- (4) Whether the building has been moved from its original location;
- (5) Description of physical appearance of the structure;
- (6) Summary of how the building contributes to the significance of the historic district;
- (7) Map of the historic district; and
- (8) If available, a copy of Section 7 of the National Register of Historic Districts nomination form. The nomination forms for most properties are available on the HPO's website at <http://hpo.ncdcr.gov/NR-PDFs.html>.

(f) Applicants shall submit two copies of the application along with required documentation via mail addressed to Tax Credit Coordinator, State Historic Preservation Office, 4617 Mail Service Center, Raleigh, NC 27699-4617.

(g) If the application is incomplete in accordance with this Rule, the applicant will be notified in writing of the information necessary to complete the review. The application shall be placed on hold pending the receipt of complete information. If complete information is not received within 30 days from the date of the request to the applicant, the application shall be returned due to insufficient documentation.

(h) Approval of applications shall be conveyed to the applicant in writing by the SHPO or his or her representative. Certification decisions shall be made on the basis of the application in accordance with the applicable Rules of this Section. In the event of any discrepancy between the application and other supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the applicant shall resolve the discrepancy in writing. In the event the discrepancy is not resolved, the description in the application shall take precedence.

(i) Reviews of State historic tax credit projects shall not be undertaken if the owner has objected to the listing of the property in the National Register of Historic Places.

History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;

Temporary Adoption Eff. January 1, 2016;

Temporary Adoption Expired Eff. October 11, 2016;

Eff. December 1, 2016.

07 NCAC 04R .0921 CERTIFICATIONS OF HISTORIC SIGNIFICANCE

(a) Part A of applications provided in accordance with Rule .0920 of this Section shall be evaluated by the SHPO and the HPO to determine if the property qualifies for a certification of historic significance. In accordance with 36 C.F.R. 67.4(a), a property

shall qualify for a certification of historic significance if it meets one of the following requirements:

- (1) The individual property is located on the National Register of Historic Places in accordance with 54 U.S.C. Chapter 3021. Income-producing properties not listed on the National Register shall be considered if they meet the criteria in 36 C.F.R. 67.4. Non-income-producing properties must be listed on the National Register prior to the issuance of a certification of historic significance. A list of North Carolina properties on the National Register of Historic Places is available at <http://www.hpo.ncdcr.gov/NR-PDFs.html>; or
- (2) The property is a historically significant property located within a National Register District or a Certified Local Historic District.

(b) Certifications of historic significance for properties containing more than one structure shall be reviewed in accordance with 36 C.F.R. 67.4(d)(2) and (e).

(c) If a structure is to be moved as part of a rehabilitation for which certification is sought, the owner shall follow the procedures outlined in 36 C.F.R. 60 and 36 C.F.R. 67.4(h), or risk denial of a certification of historic significance.

(d) The SHPO shall send written notification to the applicant issuing a certification of historic significance or denying the application in accordance with this Rule and Rule .0922 of this Section.

History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;

Temporary Adoption Eff. January 1, 2016;

Temporary Adoption Expired Eff. October 11, 2016;

Eff. December 1, 2016.

07 NCAC 04R .0922 STANDARDS FOR EVALUATING SIGNIFICANCE WITHIN NATIONAL REGISTER OR CERTIFIED HISTORIC DISTRICTS

(a) A property shall be determined to be historically significant by the SHPO if it meets one of the following requirements:

- (1) The property is located within a National Register Historic District as provided in 36 C.F.R. 60 and contributes to the historical significance of the district as provided in 36 C.F.R. 67.5 by adding to the district's sense of time, place, and historical development. References in the cited C.F.R. sections to the "Secretary" shall mean "SHPO". A list of the National Register Historic Districts in North Carolina is available at <http://www.hpo.ncdcr.gov/NR-PDFs.html>; or
- (2) The property is located within a Certified Local Historic District as provided in G.S. 160A, Article 19, Part 3C and contributes to the historical significance of the district by the standards set forth in 36 C.F.R. 67.5 by adding to the district's sense of time, place, and historical development. The local historic district shall also be certified as a Registered

Historic District by the Secretary of the Interior as provided in 36 C.F.R. 67.2.

(b) If a property is located in a National Register Historic District or Certified Local Historic District, but outside the district's time period of significance, the time period associated with the historic district shall be amended in accord with National Register amendment procedures set forth in NPS publication How to Complete the National Register Registration Form: Bulletin 16A to expand the time period of significance before a request for final certification is submitted to the SHPO. Bulletin 16A is incorporated by reference in Rule .0919(a)(13) of this Section.

History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;

Temporary Adoption Eff. January 1, 2016;

Temporary Adoption Expired Eff. October 11, 2016;

Eff. December 1, 2016.

07 NCAC 04R .0923 CERTIFICATIONS OF REHABILITATION

(a) A taxpayer shall obtain a certification of rehabilitation to claim a tax credit for rehabilitating an income-producing historic structure or a non-income producing historic structure. Applicants seeking certifications of rehabilitation shall submit an application in accordance with Rule .0920 of this Section.

- (1) Submission of Part A of the application initiates review of a rehabilitation project. Upon receipt of a completed Part A application, the SHPO shall determine if the project meets the "Standards for Rehabilitation" as outlined in Rule .0924 of this Section. If the proposed project does not meet the Standards for Rehabilitation, the SHPO shall notify the applicant in writing of a way to bring the proposed project into compliance with the Standards of Rehabilitation.
- (2) Upon completion of a rehabilitation project and submission of Part B of the application in accordance with Rule .0920 of this Section, the SHPO shall review the completed project to determine if it complies with the Standards for Rehabilitation in accordance with Rule .0924 of this Section.
- (3) If the project obtained a certification of historical significance and meets the Standards for Rehabilitation upon completion, then the SHPO shall issue a certification of rehabilitation.

(b) A rehabilitation project for certification purposes shall encompass all work on the interior and exterior of the certified historic structure(s) and its site and environment, including related demolition, new construction or rehabilitation work consistent with the standards set forth in 36 C.F.R. 67.6(b)(1) through (7). For purposes of this Rule, references in these cited C.F.R. sections to the "Secretary" shall mean "SHPO", and to "Internal Revenue Service" shall mean "Department of Revenue". For certification purposes, the SHPO shall only consider work related to the rehabilitation project described in the application.

(c) Once a proposed project has been approved, changes in the work as described in the application shall be brought to the attention of the SHPO in writing to ensure continued conformance to the Standards of Rehabilitation. The SHPO shall notify the applicant in writing whether the revised project continues to meet the Standards.

(d) To facilitate project review, the SHPO, by and through HPO staff, reserves the right to conduct on-site inspections of completed or pending projects to confirm matters represented in applications, to review any alterations, and to determine if the work meets the "Standards for Rehabilitation." The SHPO shall determine which projects to inspect based on Parts A and B of the application as provided in Rule .0920 of this Section and the applicable rules, statutes, and federal regulations.

(f) If a completed rehabilitation project does not meet the "Standards for Rehabilitation," the SHPO or his or her representative shall send a letter to the applicant enumerating the reasons for the project's failure to obtain a certification of rehabilitation.

History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;

Temporary Adoption Eff. January 1, 2016;

Temporary Adoption Expired Eff. October 11, 2016;

Eff. December 1, 2016.

07 NCAC 04R .0924 STANDARDS FOR REHABILITATION

(a) The SHPO shall evaluate applications for certifications of rehabilitation pursuant to the Standards of Rehabilitation as provided in 36 C.F.R. 67.7(a) – (d) and (f). For purposes of this Rule, references in these C.F.R. sections to the "Secretary" shall mean "SHPO." The Standards shall apply to interior and exterior features, related landscape features, the building's site and environment, as well as attached, adjacent, or related new construction. The SHPO shall also consult the NPS Guidelines for Rehabilitating Historic Building and the NPS Preservation Briefs during review of applications. The NPS Guidelines for Rehabilitating Historic Buildings are incorporated by reference, including subsequent amendments and editions, and can be found at <https://www.nps.gov/tps/standards/rehabilitation/rehab>. The NPS Preservation Briefs are incorporated by reference, including subsequent amendments and editions, and can be found at <https://www.nps.gov/tps/how-to-preserve/briefs.htm>. Both publications are available for inspection with the North Carolina Historical Commission. The SHPO shall also consider the economic and technical feasibility of application of the Standards to the project under consideration.

(b) Prior approval of a project by local agencies and organizations shall not ensure certification by the SHPO for State tax credit purposes.

History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;

Temporary Adoption Eff. January 1, 2016;

Temporary Adoption Expired Eff. October 11, 2016;

Eff. December 1, 2016.

07 NCAC 04R .0925 FEES FOR PROCESSING REHABILITATION CERTIFICATION REQUESTS

(a) Upon submission of the application for a certification of rehabilitation, applicants for income-producing and non-income-producing rehabilitation certificates shall pay a fee in accordance with this Rule.

(b) Payment shall be made payable to: North Carolina Department of Natural and Cultural Resources. A certification decision by the State Historic Preservation Office shall not be issued on an application until the appropriate remittance is received by the department. Fees are nonrefundable.

(c) Applicants submitting proposed rehabilitation projects of over twenty-five thousand dollars (\$25,000) shall submit an application fee of two hundred fifty dollars (\$250.00) with Part A of their application as described in Rule .0920 of this Section.

(d) Upon completion of a rehabilitation project and submission of Part B of the application as described in Rule .0920 of this Section, applicants shall submit an additional fee for review of the completed rehabilitation project in accordance with the schedule below. The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed to the rehabilitation of the certified historic structure. The schedule below sets forth the total fee owed, including the initial two hundred and fifty-dollar (\$250.00) application fee as described in Paragraph (c) of this Rule:

Completed Qualifying Rehabilitation Expenditures	Fee
\$5,000 - \$25,000	\$0
\$25,001 - \$50,000	\$250
\$50,001 - \$75,000	\$500
\$75,001 - \$100,000	\$750
\$100,001 - \$150,000	\$1,000
\$150,001 - \$200,000	\$1,500
\$200,001 - \$300,000	\$1,750
\$300,001 - \$400,000	\$2,000
\$400,001 - \$500,000	\$2,250
\$500,001 - \$1,000,000	\$2,750
\$1,000,001 - \$5,000,000	\$5,750
\$5,000,001 or more	\$8,750

(e) The total fee for application and review of non-income-producing projects shall be capped at one thousand dollars (\$1,000) per discrete property parcel every five years.

History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;

Temporary Adoption Eff. January 1, 2016;

Temporary Adoption Expired Eff. October 11, 2016;

Eff. December 1, 2016.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 14C .1801 PURPOSE AND SCOPE

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Repealed Eff. Pending Legislative Review.

10A NCAC 14C .1802 DEFINITIONS

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Repealed Eff. December 1, 2016.

10A NCAC 14C .1804 PERFORMANCE STANDARDS

History Note: Authority G.S. 131E-177(1); 131E-183;
Eff. November 1, 1996;
Repealed Eff. Pending Legislative Review.

10A NCAC 14C .3101 PURPOSE AND SCOPE

10A NCAC 14C .3102 DEFINITIONS

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Repealed Eff. Pending Legislative Review.

10A NCAC 14C .3104 NEED FOR SERVICES

History Note: Authority G.S. 131E-177(1); 131E-183(b);
Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Repealed Eff. Pending Legislative Review.

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

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

- (1) asbestosis - 15 working days;
- (2) silicosis - 15 working days;
- (3) elevated blood lead levels for adults aged 18 years of age and above - 15 working days;
- (4) injuries caused by tractors, farm equipment, or farm machinery that occur while working on a

farm and require medical care - 15 working days;

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

(b) All laboratories providing diagnostic service in North Carolina shall report to the Occupational and Environmental Epidemiology Branch within the Division of Public Health elevated blood lead levels for adults aged 18 years of age and above.

(c) Physicians shall not be required to report elevated blood lead levels for adults aged 18 years of age and above when a laboratory providing diagnostic service in North Carolina reports elevated blood lead levels.

History Note: Authority G.S. 130A-455; 130A-456; 130A-457; 130A-458;
Eff. January 4, 1994;
Amended Eff. December 1, 2016.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 06A .0809 APPROVAL OF COURSES

(a) All providers of courses specifically approved under Rule .0803 of this Section shall pay the fee prescribed in G.S. 58-33-133(b) and shall provide to the Commissioner or Administrator copies of:

- (1) program catalogs;
- (2) course outlines; and
- (3) advertising literature.

(b) All providers of courses not specifically approved under Rule .0803 of this Section shall do the following:

- (1) Any individual, school, insurance company, insurance industry association, or other organization intending to provide classes, seminars, or other forms of instruction as approved courses shall:
 - (A) apply on forms provided by the Commissioner or Administrator, located on the N.C. Department of Insurance's website at http://www.ncdoi.com/ASD/CE_Providers_For_Insurance.aspx#Forms;
 - (B) pay the fee prescribed in G.S. 58-33-133(b);
 - (C) provide outlines of the subject matter to be covered; and
 - (D) provide copies of handouts to be distributed to course participants.

- (2) All providers of supervised individual study programs shall file copies of:
 - (A) the study programs;
 - (B) the examination; and
 - (C) the Internet course security procedures.

(c) The Commissioner shall determine the number of ICECs that have been assigned to the approved course in accordance with Rule .0805 of this Section.

(d) If a course is not approved or disapproved by the Commissioner or his designee within 60 days after receipt of all

required information, the course shall be deemed to be approved at the end of the 60-day period.

(e) If a course approval application is denied by the Commissioner or his designee, a written explanation of the reason for denial shall be furnished to the provider.

(f) Course approval applications shall include the following:

- (1) a statement indicating for whom the course is designed;
- (2) the course objectives;
- (3) the names and duties of all persons who will be affiliated in an official capacity with the course;
- (4) the course provider's tuition and fee refund policy;
- (5) an outline that shall include:
 - (A) a statement of whether there will be a written examination, a written report, or a certification of attendance only;
 - (B) the method of course presentation;
 - (C) a course content outline with instruction hours assigned to the major topics; and
 - (D) a schedule of dates, beginning and ending times, and places the course will be offered, along with the names of instructors for each course session, submitted at least 30 days before any subsequent course offerings.
- (6) a copy of the course completion certificate;
- (7) a course rating form;
- (8) a course bibliography; and
- (9) an electronic copy of the course content and course examination for Internet courses.

(g) A provider may request that its materials be kept confidential if they are of a proprietary nature.

(h) A provider shall not cancel a course unless the provider gives written notification to all students on the roster and to the Commissioner or Administrator at least five days before the date of the course. This Paragraph does not apply to the cancellation of a course or class because of inclement weather.

(i) A provider shall submit course attendance records electronically to the Commissioner or Administrator within 15 business days after course completion.

(j) An error on the licensee's record that is caused by the provider in submitting the course attendance records shall be resolved by the provider within 15 days after the discovery of the error by the provider.

History Note: Authority G.S. 58-2-40; 58-33-130; 58-33-132; 58-33-133;

Temporary Adoption Eff. June 22, 1990, for a period of 180 days to expire on December 19, 1990;

ARRC Objection Lodged July 19, 1990;

Eff. December 1, 1990;

Amended Eff. October 1, 2014; March 1, 2011; February 1, 2008; February 1, 1996; June 1, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 25, 2016;

Amended Eff. December 1, 2016.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02H .1019 COASTAL COUNTIES

The purpose of this Rule is to protect surface waters in the 20 Coastal Counties from the impact of stormwater runoff from new development.

(1) Implementing Authority. This Rule shall be implemented by:

- (a) local governments and other entities within the 20 Coastal Counties that are required to implement a Post-Construction program as a condition of their NPDES permits;
- (b) local governments and state agencies that are delegated to implement a stormwater program pursuant to G.S. 143-214.7(c) and (d); and
- (c) the Division in all other areas where this Rule applies.

(2) **APPLICABILITY OF THIS RULE.** This Rule shall apply to the following types of developments within the Coastal Counties:

- (a) projects that require an Erosion and Sedimentation Control Plan pursuant to G.S. 113A-57;
- (b) projects that require a Coastal Area Management Act (CAMA) Major Development Permit pursuant to G.S. 113A-118; and
- (c) projects that do not require either an Erosion and Sedimentation Control Plan or a CAMA Major Development Permit, but meet one of the following criteria:
 - (i) nonresidential projects that propose to cumulatively add 10,000 square feet or more of built-upon area; or
 - (ii) residential projects that are within ½ mile of and draining to SA waters, and propose to cover 12 percent or more of the undeveloped portion of the property with built-upon area.

(3) **EFFECTIVE DATES.** The effective dates are as follows:

- (a) for prior Rule .1000 of this Section, January 1, 1988;
- (b) for prior Rule .1005 of this Section, September 1, 1995;
- (c) for S.L. 2006-264, August 16, 2006; and
- (d) for S.L. 2008-211, October 1, 2008.

Prior versions of these rules are available for no cost on the Division's website at <http://deq.nc.gov/about/divisions/energy->

- mineral-land-resources/energy-mineral-land-permits/stormwater-program.
- (4) **GENERAL REQUIREMENTS FOR ALL PROJECTS.** In addition to the requirements of this Rule, development projects shall also comply with the requirements set forth in Rule .1003 of this Section.
- (5) **DETERMINATION OF WHICH COASTAL STORMWATER PROGRAM APPLIES.**
- (a) **SA WATER.** SA Water requirements shall apply to projects located within one-half mile of and draining to waters classified as SA-HQW or SA-ORW per 15A NCAC 02B .0301.
- (i) The SA boundary shall be measured from either the landward limit of the top of bank or the normal high water level. In cases where a water is listed on the Schedule of Classifications, but the applicant provides documentation from the Division of Water Resources or the U.S. Army Corps of Engineers that the water is not present on the ground, the applicant shall not be subject to the SA requirements of this Rule.
- (ii) An SCM with any portion of its drainage area located within the SA waters boundary shall be designed to meet SA water requirements.
- (b) **FRESHWATER ORW.** Freshwater ORW requirements shall apply to projects that drain to waters classified as B-ORW and C-ORW per 15A NCAC 02B .0301.
- (c) **OTHER COASTAL COUNTY WATER.** If a project does not meet the applicability requirements for Sub-Items (5)(a) or (b) of this Rule, then it shall be subject to the [other Coastal County Water requirements set forth in Item (6) of this Rule.
- (d) **PROJECTS THAT ARE SUBJECT TO TWO OR MORE COASTAL STORMWATER PROGRAMS.** Projects with portions that are located within two or more coastal stormwater program boundaries shall meet the applicable requirements of Item (6) inside each of the project's portions.
- (6) **STORMWATER REQUIREMENTS.** Depending on the applicable program pursuant to Item (5) of this Rule, the following stormwater requirements shall apply:
- (a) **SUMMARY OF COASTAL PROGRAM REQUIREMENTS.** The requirements shall be in accordance with the following table:

Program that Applies	Maximum BUA for Low Density	Required Storm Depth for High Density Projects	Additional Special Provisions
SA Water that is SA-HQW	12%	One-year, 24-hour storm	SCMs for High Density SA Projects per Item (7) of this Rule
SA Water that is SA-ORW	12%	One-year, 24-hour storm	SCMs for High Density SA Projects per Item (7) of this Rule; and Density Requirements for SA-ORW Projects per Item (8) of this Rule
Freshwater ORW	12%	1.5 inch storm	None
Other Coastal County Water	24%	1.5 inch storm	None

- (b) **VEGETATED SETBACKS.** For all subject projects within the Coastal Counties, vegetated setbacks from perennial waterbodies, perennial streams, and intermittent streams shall be at least 50 feet in width for new development and at least 30 feet in width for redevelopment and shall comply with Rule .1003(4) of this Section.

- (7) SCMS FOR SA WATER HIGH DENSITY PROJECTS REQUIREMENTS. High density projects subject to SA water requirements shall use one of the following approaches for treating and discharging stormwater:
- (a) RUNOFF VOLUME MATCH. The project shall achieve runoff volume match, and excess runoff volume shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
 - (b) RUNOFF TREATMENT WITH NON-DISCHARGING SCMs. SCM(s) shall provide runoff treatment without discharging in excess of the pre-development conditions during the one-year, 24-hour storm event. The runoff volume in excess of the one-year, 24-hour runoff volume shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
 - (c) RUNOFF TREATMENT WITH DISCHARGING SCMs. SCM(s) shall provide runoff treatment for the difference between the pre- and post-development runoff volumes for the one-year, 24-hour storm event and meet the following requirements:
 - (i) documentation shall be provided that it is not feasible to meet the MDC for infiltrations systems as set forth in Rule .1051 of this Section;
 - (ii) the stormwater shall be filtered through a minimum of 18 inches of sand prior to discharge;
 - (iii) the discharge from the SCM shall be directed to either a level spreader-filter strip designed as set forth in Rule .1059 of this Section, a swale that fans out at natural grade, or a natural wetland that does not contain a conveyance to SA waters; and
 - (iv) the runoff volume in excess of the one-year, 24-hour storm event shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
- (8) DENSITY REQUIREMENTS FOR SA-ORW PROJECTS. The following shall apply:

- (a) For the entire project, the percentage built-upon area shall not exceed 25 percent.
- (b) For the portion of a project that is within 575 feet of SA-ORW waters, the percentage built-upon area shall not exceed 25 percent for high density projects and shall not exceed 12 percent for low density projects.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);
Eff. January 1, 2017 (portions of this rule previously codified in 15A NCAC 02H .1005).

15A NCAC 02H .1042 STANDARD PERMITTING PROCESS

This Rule contains the requirements for the application, review, issuance, and denial of state stormwater management permits under the standard permitting process.

- (1) **APPLICABILITY.** This rule applies to:
 - (a) any person seeking to permit a development activity subject to a stormwater program implemented by the Division under the standard permitting process; and
 - (b) any person proposing a major modification to an existing state stormwater permit under the standard permitting process.
- (2) **APPLICATION SUBMITTAL REQUIREMENTS.** The applicant shall submit a nonrefundable permit application fee in accordance with G.S. 143-215.3D and two signed hard copies and one electronic copy of each of the following:
 - (a) a completed and signed Standard Process Application Form. This form may be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> and shall include the following information:
 - (i) current project name and previous project name, if applicable;
 - (ii) information about the physical location of project;
 - (iii) stormwater project number, if assigned;
 - (iv) density of the entire project and each drainage area;
 - (v) information about applicability of other State and federal environmental

- permits to the project including CAMA Major Development Permits, NPDES, Erosion and Sedimentation Control Plans, and Section 401 of the Clean Water Act (33 U.S.C. 1341) permits;
- (vi) description of SCMs that will be used on the project;
- (vi) information about vested rights, if applicable;
- (vii) applicant name, address, and contact information; and
- (ix) owner name, address, and contact information.
- (b) when the applicant is a corporation or limited liability corporation (LLC):
 - (i) documentation showing the corporation or LLC is an active corporation in good standing with the NC Secretary of State; and
 - (ii) documentation from the NC Secretary of State or other official documentation showing the titles and positions held by the person who signed the application pursuant to Rule .1040(1) of this Section;
- (c) when the applicant is not the property owner, a copy of a lease agreement, affidavit, or other document showing that the applicant has obtained legal rights to submit a stormwater permit application within the proposed project area;
- (d) a U.S. Geological Survey (USGS) map identifying the project location and the GPS coordinates for the project. Areas within the project that are subject to SA Waters, Outstanding Resource Waters (ORW), or High Quality Waters (HQW) stormwater requirements set forth in Rules .1019 and .1021 of this Section shall be shown on the map;
- (e) a location map with street names and SR numbers to the nearest intersection, with 1, 2, or 3 digit road numbers, legend, and north arrow. This map is not required to be to scale;
- (f) signed, sealed, and dated calculations and documentation of project density and allocation of built-upon area for all lots at project completion;
- (g) signed, sealed, and dated plans of the entire site that are a minimum of 22 inches by 34 inches in size and are at a legible scale. All plan packages shall include:
 - (i) project name, designer, and dates;
 - (ii) dimensioned project or project phase boundary with bearings and distances;
 - (iii) the boundaries of all surface waters, wetlands, regulatory flood zones, protected vegetated setbacks, and protected riparian buffers, or a note on the plans that none exist;
 - (iv) proposed contours and drainage patterns;
 - (v) site layout showing all existing and proposed built-upon areas, except for built-upon areas associated with single family residential lots and outparcels on commercial developments that are undetermined at the time of project submittal;
 - (vi) subdivision lot lines, maintenance access routes and easements, utility and drainage easements, public rights of way, and SCMs; and
 - (vii) the location of the stormwater collection system, including the locations of the inlets, outlets, pipes, and swales, as well as the inverts and diameters of pipes, excluding driveway culverts.
- (h) signed, sealed, and dated plan details of each SCM in plan view at a scale of one inch equal to 30 feet or larger and a cross-section view. Other scales may be accepted if the scale is such that all details are legible on a copy. The plan details shall include:
 - (i) dimensions, side slopes, and elevations with a benchmark for clean-out if appropriate;

- (ii) all conveyance devices, including inlet device, bypass structure, pretreatment area, flow distribution device, underdrains, outlet device, energy dissipater, and level spreader; and
 - (iii) specification sheets for materials used in the SCM, such as planting media, filter media, and aggregate;
 - (i) signed, sealed, and dated planting plans for each SCM that requires a planting plan per the Minimum Design Criteria. The planting plan shall include:
 - (i) plant layout with species names and locations;
 - (ii) total number and sizes of all plant species; and
 - (iii) for stormwater wetlands, a delineation of planting zones;
 - (j) a signed and notarized operation and maintenance agreement;
 - (k) for major modifications, a copy of the recorded deed restrictions and protective covenants limiting the built-upon area so that it does not exceed the capacity of the SCM(s) or the BUA thresholds. For new projects, proposed deed restrictions and protective covenants. A signed agreement to provide final recorded articles shall be accepted when final documents are not available at the time of submittal; and
 - (l) for major modifications, a copy of the recorded drainage easements, when applicable. For new projects, proposed drainage easements shown on the plans, and a signed agreement to provide final recorded drainage easements if recorded documents are not available at the time of submittal; and
 - (m) wherever this Item requires sealed documents, a seal shall not be required if the person designing an SCM or components of an SCM is not required to be licensed as provided in Rule .1050 of this Section.
- (3) **DIVISION REVIEW OF APPLICATIONS.**
 - (a) The Division shall take one of the following actions:
 - (i) notify the applicant that additional information is necessary for the Division to determine whether the project complies with this Section. The Division shall provide a list of the additional information that is required. The applicant shall have 30 days from the date the letter was sent to submit the additional information to the Division;
 - (ii) return the application if the required information listed in Item (2) of this Rule is not provided or if information the Division has requested per Sub-Item (i) of this Sub-Item is not provided within 30 days. In this case, the application shall be deemed denied, and the applicant shall be required to resubmit a complete application with a new application fee;
 - (iii) issue a permit pursuant to Rule .1040 of this Section; or
 - (iv) deny a permit pursuant to Rule .1040 of this Section.
 - (b) The Division shall require an applicant to submit plans, specifications, and other information it considers necessary to evaluate the application when the information provided is inadequate or incorrect. The applicant shall allow the Division safe access to the records, lands, and facilities of the applicant.
 - (c) If the Division fails to act within the required response times set forth in G.S. 143-215.1, then the application shall be considered approved unless:
 - (i) the applicant agrees, in writing, to a longer period;
 - (ii) a final decision is to be made pursuant to a public hearing;
 - (iii) the applicant fails to furnish information necessary for the Division's decision in accordance with Item (2) or Sub-item (3)(a) of this Rule; or
 - (iv) the applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Division's decision.
- (4) **FINAL SUBMITTAL REQUIREMENTS IF COMPLETED PROJECT COMPLIES WITH PERMITTED PLANS.** If the actual built-upon area is equal to or less than that shown on the permitted plans and the constructed SCM is in

compliance with the approved plans, then within 45 days of completion of the project the applicant shall submit to the Division one hard copy and one electronic copy of the following:

- (a) a completed and signed Designer's Certification Form. This form may be obtained on the Division's website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> and shall include the following information:
 - (i) designer name and licensure number;
 - (ii) project name;
 - (iii) project owner name; and
 - (iv) information about deviations from approved plans and specifications;
 - (b) unless already provided with the permit application, a copy of the recorded deed restrictions and protective covenants limiting the built-upon area so that it does not exceed the capacity of the SCM(s) or the built-upon area thresholds; and
 - (c) a copy of the recorded drainage easements, when applicable.
- (5) IF PROJECT DOES NOT COMPLY WITH PERMITTED PLANS. If the actual built-upon area exceeds that shown on the permitted plans or if the constructed SCM is not in compliance with the approved plans, then within 30 days of completion of the project, the applicant shall submit an application for a modified stormwater permit in accordance with the requirements of this Rule. On a case-by-case basis, based on the project's size and complexity, the Division may grant the applicant more time to submit the modification application.

History Note: Authority G.S. 143-214.7; 143-215.1; 143-215.3; 143-215.3(a); 143-215.3D; Eff. January 1, 2017 (portions of this Rule previously codified in 15A NCAC 02H .1008, 1009, and .1010).

15A NCAC 02H .1043 FAST TRACK PERMITTING PROCESS: AUTHORIZATION TO CONSTRUCT

The purpose of this Rule is to set forth the first of two phases of the Fast-Track Stormwater Permit application process: applying for and receiving an authorization to construct permit. There will be a completeness review during the first phase of this process; however, at project completion, the Division shall review the as-built submittal package to determine compliance with the Minimum Design Criteria (MDC).

- (1) **APPLICABILITY.** The fast-track permitting process shall be an option for new projects and major modifications of existing projects

provided that all of the MDC shall be met upon project completion. Projects that do not qualify for the fast-track permitting process include:

- (a) projects claiming an exemption from the MDC based on vested rights, a waiver, or Director's certification pursuant to Rule .1040(7) of this Section;
 - (b) modifications to existing projects where the proposed changes to the SCMs will not result in compliance with MDC; and
 - (c) projects that are not in compliance with a current stormwater permit.
- (2) **ELIGIBILITY FOR FAST-TRACK SUBMITTAL.** Persons seeking authorization to construct under the fast-track permitting process shall submit an application bearing the signature and seal of a person licensed pursuant to either Chapter 89A or Chapter 89C of the NC General Statutes. The signature and seal of such persons on the fast-track application shall signify that they have the expertise, education, and experience required to design the SCMs proposed in the application in accordance with the MDC and that they are in compliance with the applicable standards of professional conduct.
- (3) **APPLICATION SUBMITTAL REQUIREMENTS.** The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and two signed hard copies and one electronic copy of each of the following:
- (a) a completed and signed Fast-Track Process Application Form. This form may be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> and shall include the following information:
 - (i) current project name and previous project name, if applicable;
 - (ii) information about the physical location of project;
 - (iii) stormwater project number, if assigned;
 - (iv) information about applicability of other State and federal environmental permits to the project including CAMA Major Development Permits, NPDES, Erosion and Sedimentation Control Plans, and Section 401 of the Clean Water Act (33 U.S.C. 1341) permits;

- (v) applicant name, address, and contact information;
 - (vi) owner name, address, and contact information; and
 - (vii) certification of financially responsible owner.
 - (b) when the applicant is a corporation or a limited liability corporation (LLC):
 - (i) documentation showing the corporation or LLC is an active corporation in good standing with the NC Secretary of State; and
 - (ii) documentation from the NC Secretary of State or other official documentation showing the titles and positions held by the persons signed the application pursuant to Rule .1040(1) of this Section;
 - (c) when the applicant is not the property owner, a copy of lease agreements, affidavits, or other documents showing that the applicant has obtained legal rights to submit a stormwater permit application within the proposed project area;
 - (d) a guaranty signed and notarized by the applicant and sealed by the licensed professional in accordance with Item (2) of this Rule attesting to the following:
 - (i) the design has been completed in accordance with the MDC as set forth in Rules .1050 through .1062 of this Section, as applicable.
 - (ii) the completed design meets the MDC and that the percentage built-upon area that is the basis for the design shall not be exceeded; and
 - (iii) the applicant shall maintain a licensed professional of record for the duration of the project who will prepare and certify the as-built package. If the applicant retains another licensed professional before the project is complete, then the applicant shall provide an updated guaranty with the current licensed professional's seal. A licensed professional shall inform the Division if he is no longer associated with this project;
 - (e) a U.S. Geological Survey (USGS) map identifying the project location and the GPS coordinates for the project. Areas within the project that are subject to SA Waters, Outstanding Resource Waters (ORW) or High Quality Waters (HQW) stormwater requirements set forth in Rules .1019 and .1021 of this Section shall be shown on the map;
 - (f) a site plan depicting the boundary of the project or project phase currently being permitted, including the locations of stormwater control measures, streams, wetlands, and buffers; and
 - (g) a construction sequence that discusses how any future development on the project may be phased.
- (4) **DIVISION REVIEW OF APPLICATIONS.** The Division shall take one of the following actions within 30 days of the receipt of the application:
- (a) Notify the applicant that the project does not qualify for the fast track permitting process pursuant to Item (1) of this Rule. The applicant shall then follow the standard permitting process in accordance with Rule .1042 of this Section;
 - (b) Notify the applicant that additional information is necessary for the Division to determine whether the project complies with this Section. The Division shall provide a list of the additional information required. The applicant shall have 30 days to submit the additional information to the Division;
 - (c) Return the application if the required information listed in Item (3) of this Rule is not provided or if information the Division has requested per Sub-item (4)(b) of this Rule is not provided within 30 days. In this case, the applicant shall be required to resubmit a complete application with a new application fee; or
 - (d) Issue an authorization to construct permit; or
 - (e) Deny the application in accordance with Rule .1040 of this Section.
- (5) **EXPIRATION OF THE AUTHORIZATION TO CONSTRUCT PERMIT.** The authorization to construct permit shall expire five years after the date of issuance.

History Note: Authority G.S. 143.214.7; 143-214.7B; 143-215.1; 143-215.3(a); S.L. 2013-82;

Eff. January 1, 2017.

15A NCAC 02H .1044 FAST TRACK PERMITTING

PROCESS: FINAL PERMIT

The purpose of this Rule is to set forth the Fast-Track Stormwater permitting process from the approval of the Authorization to Construct Permit to the approval of the Final Fast-Track Permit.

- (1) **CONSTRUCTION REQUIREMENTS.** Technical design documents shall be available upon request by the Division.
- (2) **PROJECT COMPLETION.** Approval of the as-built stormwater plans shall be required before the Erosion and Sedimentation Control Plan for the project may be closed out.
- (3) **AS-BUILT PACKAGE SUBMITTAL.** The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and an as-built package within 45 days of completion of the project. Signed and sealed documents shall be signed and sealed in accordance with Rule .1043(2) of this Section. The as-built package shall include the following:
 - (a) an As-Built Certification Form signed and sealed by the licensed professional of record and signed by the applicant. The As-Built Certification Form may be obtained on the Division's website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> and shall include the following information:
 - (i) current project name and previous project name, if applicable;
 - (ii) information about the physical location of project;
 - (iii) stormwater project number, if assigned;
 - (iv) density of the entire project and each drainage area;
 - (v) information about applicability of other State and federal environmental permits to the project including CAMA Major Development Permits, NPDES, Sedimentation and Erosion Control Plan, and Section 401 of the Clean Water Act (33 U.S.C. 1341) permits;
 - (vi) description of SCMs that were used on the project;
 - (vii) applicant name, address, and contact information; and
 - (viii) owner name, address, and contact information.

- (b) signed, sealed, and dated as-built calculations for the SCMs and calculations of the project density;
- (c) when an SCM that has an MDC requiring evaluation of the SHWT or the soil infiltration rate, the applicant shall include the signed, sealed, and dated soils report based on field evaluation indicating the depth of SHWT within the footprint of the SCM, and a map of the boring locations, and boring logs. When the MDC require determination of the infiltration rate, the report shall include the soil type, infiltration rate, and method for determining the infiltration rate. Soils reports shall be signed and sealed by a licensed professional;
- (d) a location map with street names and SR numbers to the nearest intersection with 1, 2, or 3 digit road numbers, legend, and north arrow. This is not required to be to scale;
- (e) signed, sealed, and dated plans of the entire site that are a minimum 22 by 34 inch in size and are at a legible scale. All plan packages shall include:
 - (i) project name, designer, and dates;
 - (ii) dimensioned project or project phase boundary with bearings and distances;
 - (iii) the boundaries of all surface waters, wetlands, regulatory flood zones, protected vegetated setbacks, and protected riparian buffers or a note on the plans that none exist; and
 - (iv) site layout showing all built-upon areas, maintenance access routes and easements, utility easements, drainage easements, public rights of way, stormwater collection systems, and SCMs at ultimate build-out. The information on stormwater collection systems shall include the locations of the inlets, outlets, pipes, and swales, as well as the inverts and diameters of pipes, excluding driveway culverts;
- (f) signed, sealed, and dated as-built plan details of each SCM in both plan view at a scale of one inch equal to 30 feet or larger and cross-section. Other

- scales may be accepted if the scale is such that all details are legible on a copy. The as-built plan details shall include:
- (i) dimensions, side slopes, and elevations with a benchmark for clean-out if appropriate;
 - (ii) all conveyance devices, including inlet devices, bypass structures, pretreatment areas, flow distribution devices, underdrain discharge points (if accessible), outlet devices, energy dissipater, and level spreader; and
 - (iii) specification sheets for materials used in the SCM, such as planting media, filter media, and aggregate.
- (g) signed, sealed, and dated as-built planting plans for each stormwater wetland and bioretention cell (or typical) at a scale of one inch equals 20 feet or larger. The planting plan shall include:
- (i) plant layout with species names and locations;
 - (ii) total number and sizes of all plant species; and
 - (iii) for stormwater wetlands, a delineation of planting zones;
- (h) a copy of the signed, notarized, and recorded operation and maintenance agreement;
- (i) a copy of the recorded documents, deed restrictions, and protective covenants limiting the built-upon area so that it does not exceed the capacity of the SCM(s) or the built-upon area thresholds;
- (j) a copy of the recorded drainage easements; and
- (k) if there is an increase in built-upon area or a change in SCM design from the permitted plans, then the applicant shall explain the increase or change. The permit applicant shall have the burden of providing sufficient evidence to ensure that the proposed system complies with all applicable water quality standards and requirements.
- (4) **SITE INSPECTION.** The Division may perform a site inspection of the project to ensure that the as-built drawings are an accurate depiction of the stormwater management plan. The Division may inspect the site either:
- (a) before the final stormwater permit is issued by scheduling an inspection with the applicant. If the applicant does not agree to the inspection date selected by the Division, then the Division shall work with the applicant to schedule another inspection date; however, in this case, the Division's deadline for action shall be modified pursuant to Item (5) of this Rule; or
 - (b) after issuance of the final stormwater permit as part of the sediment and erosion control plan close-out.
- (5) **DIVISION REVIEW OF THE AS-BUILT PACKAGE.** Within 15 days after receipt of the as-built package or of additional or amended information, the Division shall notify the applicant if additional information is necessary to determine compliance with this Section. The applicant shall have 30 days from the date of such notice to submit the required information to the Division. If the as-built package is complete, then within 40 days after receipt of the as-built package or 30 days after completion of a site inspection that has been rescheduled at the request of the applicant, whichever date is later, the Division shall take any of the following actions:
- (a) issue the final permit pursuant to Rule .1040 of this Section;
 - (b) draft a permit with special conditions in accordance with Item (6) of this Rule;
 - (c) initiate compliance and enforcement action in accordance with G.S. 143, Article 21; or
 - (d) deny the permit pursuant to Rule .1040 of this Section.
- (6) **PERMIT WITH SPECIAL CONDITIONS.** If the Division determines that the stormwater plan has only minor deviations from the MDC, then it shall draft a permit with special conditions to bring the project into compliance with the MDC. The Division shall provide the applicant with a draft of the proposed permit and the applicant shall have 10 days to submit comments or concerns back to the Division. After the draft permit is reviewed by the applicant, the Division shall issue a final permit with special conditions that includes the following:
- (a) a list of corrections to be made to the stormwater plan to bring the project into compliance with the MDC; and
 - (b) a proposed schedule of compliance for meeting the MDC.
- (7) **COMPLIANCE.** Applicants who fail to comply with the requirements of this Rule may

be subject to enforcement action as set forth in G.S. 143-215.3.

- (8) **EXCEPTIONS TO ABOVE TIMEFRAMES.** If the Division fails to act within the timelines specified in Item (5) of this Rule, the project shall be considered to be approved unless:
- (a) the applicant does not agree to the inspection date proposed by the Division pursuant to Sub-item (4)(a) of this Rule.
 - (b) the applicant agrees, in writing, to a longer period;
 - (c) the final decision is to be made pursuant to a public notice or hearing;
 - (d) the applicant fails to furnish information necessary for the Division's as set forth in Items (3) and (5) of this Rule; or
 - (e) the applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Division's decision.

History Note: Authority 143.214.7; 143-214.7B; 143-215.1; 143-215.3; 143-215.3(a); 143-215.6A; 143-215.6B; 143-215.6C; S.L. 2013-82; Eff. January 1, 2017.

15A NCAC 02H .1045 REQUIREMENTS FOR PERMIT TRANSFERS AND PERMIT RENEWALS

This Rule contains the requirements for the transfer and renewal of State stormwater management permits that have been issued by the Division, including those issued under the standard and fast-track permitting processes.

- (1) **CONDITIONS UNDER WHICH A PERMIT SHALL BE TRANSFERRED.** Permit transfer applications shall be accepted by the Division under the following scenarios:
 - (a) upon the request of the current and proposed permittees;
 - (b) upon the request of a permitted declarant of a condominium or planned community to the unit owners association, owners association, or other management entity identified in the condominium or planned community's declaration in accordance with G.S. 143-214.7(c2); or
 - (c) upon the request for a transfer without the consent of the permit holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in G.S. 143-214.7(c5).
- (2) **PERMIT TRANSFER APPLICATION SUBMITTAL REQUIREMENTS.** The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and two

signed hard copies and one electronic copy of each of the following:

- (a) a completed and signed Permit Transfer Application Form. This form may be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> and shall include the following information:
 - (i) current stormwater permit number;
 - (ii) current project name;
 - (iii) current permittee name and contact information; and
 - (iv) proposed permittee name and contact information.
- (b) when the applicant is a corporation or limited liability corporation (LLC):
 - (i) Documentation showing the corporation or LLC for the proposed permittee is an active corporation in good standing with the NC Secretary of State; and
 - (ii) Documentation from the NC Secretary of State or other official documentation, showing the titles and positions held by the person who signed the application pursuant to Rule .1040 of this Section;
- (c) legal documentation of the property transfer to a new owner;
- (d) a copy of a signed and notarized operation and maintenance agreement from the proposed permittee;
- (e) a copy of the recorded deed restrictions and protective covenants where required by the permit. If the project has been built, documentation that the maximum allowed per lot built-upon area or the maximum allowed total built-upon area has not been exceeded. If the project has not been built, the new owner shall provide a signed agreement to submit final recorded deed restrictions and protective covenants; and
- (f) if the project has been built, a signed, sealed, and dated letter from a licensed professional or other qualified person in accordance with Rule .1050 of this Section stating that the stormwater management system has been inspected and that it has been built and maintained in accordance with the approved plans.

- (3) **PERMIT RENEWAL APPLICATION SUBMITTAL REQUIREMENTS.** Permittees shall submit a permit renewal application to the Division a minimum of 180 days prior to the permit's expiration date. The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and two signed hard copies and one electronic copy of each of the following:

- (a) a completed and signed Permit Renewal Application Form. This form can be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> and shall include the following information:
 - (i) project name and stormwater permit number;
 - (ii) permittee name and contact information;
 - (iii) owner name, title, and contact information;
 - (iv) information about the physical location of project;
 - (v) description of SCMs used on the project; and
 - (vi) if applicable, description of any changes made to the project as permitted.
- (b) when the applicant is a corporation or limited liability corporation (LLC):
 - (i) Documentation showing the corporation or LLC is an active corporation in good standing with the NC Secretary of State; and
 - (ii) Documentation from the NC Secretary of State or other official documentation, showing the titles and positions held by the person who signed the application pursuant to Rule .1040 of this Section.
- (c) documentation that the maximum allowed per lot built-upon area or the maximum allowed total built-upon area has not been exceeded;
- (d) a signed, sealed, and dated letter from a licensed professional or other qualified person in accordance with Rule .1050 of this Section stating that the stormwater management system has been inspected and that it has been built and maintained in accordance with the approved plans;
- (e) a copy of the current signed and notarized operation and maintenance

agreement where required by the permit;

- (f) a copy of the recorded deed restrictions and protective covenants, where required by permit; and
- (g) if the project is out of compliance with permit conditions, a written schedule of actions to bring the project into compliance.

- (4) **DIVISION REVIEW OF APPLICATIONS.** The Division shall follow these procedures in reviewing and approving applications for permit transfers and renewals.

- (a) The Division shall take one of the following actions upon receipt of the application:
 - (i) notify the applicant that the application is incomplete, and specify the additional information required as set forth in Items (2) or (3) of this Rule for the Division to determine whether the project complies with this Section. The Division shall provide a list of the additional information required. The applicant shall have 30 days from the date the letter was sent to submit the additional information to the Division;
 - (ii) return the application if the required information listed in Items (2) or (3) of this Rule is not provided or if information the Division has requested per Sub-item (4)(a)(i) is not provided. In this case, the application shall be deemed denied, and the applicant shall be required to resubmit a complete application with a new application fee; or
 - (iii) issue an updated permit in accordance with this Section if the application is complete and the project is in compliance with its permit conditions and approved plans.
- (b) The applicant shall allow the Division safe access to the records, lands, and facilities of the applicant. The Division may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit

- plans, specifications, and other information the Division considers necessary to evaluate the application.
- (c) If the Division fails to act within the response times set forth by G.S. 143-215.1, then the application shall be considered approved unless:
- (i) the applicant agrees, in writing, to a longer period;
 - (ii) the project being transferred or renewed is out of compliance with the stormwater permit;
 - (iii) a public notice or public hearing is required by the Director;
 - (iv) the applicant fails to furnish information necessary for the Division's decision in accordance with this Rule; or
 - (v) the applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Division's decision.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); Eff. January 1, 2017 (portions of this Rule previously codified in 15A NCAC 02H .1003).

15A NCAC 02H .1050 MDC FOR ALL STORMWATER CONTROL MEASURES

The purpose of this Rule is to set forth the design requirements for all Stormwater Control Measures (SCMs) that are constructed to meet the requirements of this Section. These Minimum Design Criteria (MDC) are required for every SCM. SCMs shall adhere to the MDC associated with the specific type of SCM being implemented.

- (1) **SIZING.** The design volume of SCMs shall take into account the runoff at build out from all surfaces draining to the system. Drainage from off-site areas may be bypassed. The combined design volume of all SCMs on the project shall be sufficient to handle the required storm depth.
- (2) **CONTAMINATED SOILS.** SCMs that allow stormwater to infiltrate shall not be located on or in areas with contaminated soils.
- (3) **SIDE SLOPES.** Side slopes of SCMs stabilized with vegetated cover shall be no steeper than 3:1 (horizontal to vertical). Retaining walls, gabion walls, and other engineered surfaces may be steeper than 3:1. Steeper vegetated slopes may be accepted on a case-by-case basis if the applicant demonstrates that the soils and vegetation shall remain stable.
- (4) **EROSION PROTECTION.** The inlets of SCMs shall be designed to protect the SCM

from erosion resulting from stormwater discharges. The outlets of SCMs shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.

- (5) **EXCESS FLOWS.** SCMs shall include an overflow or bypass device for inflow volumes in excess of the treatment volume, or, if applicable, the peak attenuation volume.
- (6) **DEWATERING.** SCMs shall have a method to draw down any standing water to facilitate maintenance and inspection.
- (7) **CLEAN OUT AFTER CONSTRUCTION.** Every SCM impacted by sedimentation and erosion control during the construction phase shall be cleaned out and converted to its approved design state.
- (8) **MAINTENANCE ACCESS.** Every SCM installed pursuant to this Section shall be made accessible for maintenance and repair. Maintenance accesses shall:
 - (a) have a minimum width of ten feet;
 - (b) not include lateral or incline slopes that exceed 3:1 (horizontal to vertical); and
 - (c) extend to the nearest public right-of-way.
- (9) **EASEMENTS.** All SCMs and associated maintenance accesses on privately owned land except for those located on single family residential lots shall be located in permanent recorded easements. The SCM shall be shown and labeled within the easement. These easements shall be granted in favor of the party responsible for enforcing the stormwater program under which the SCMs were approved.
- (10) **SINGLE FAMILY RESIDENTIAL LOTS.** Plats for residential lots that contain an SCM shall include:
 - (a) the specific location of the SCM on the lot;
 - (b) a typical detail for SCM to be used; and
 - (c) a note that the SCM on the property has been required to meet stormwater regulations and that the property owner may be subject to enforcement procedures as set forth in G.S. 143, Article 21 if the SCM is removed, relocated, or altered without prior approval.
- (11) **OPERATION AND MAINTENANCE AGREEMENT.** The owner of the SCMs shall enter into a Operation and Maintenance (O&M) Agreement with the party responsible for implementing the stormwater program under which the SCMs were approved. The O&M Agreement shall require the owner to maintain,

- repair, or reconstruct the SCMs in accordance with the approved design plans and the O&M Plan. The O&M Agreement shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the O&M Agreement shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers.
- (12) **OPERATION AND MAINTENANCE PLAN.** There shall be an O&M Plan for every project subject to this Rule. The O&M Plan shall specify all operation and maintenance work necessary for the function of all SCM components, including the stormwater conveyance system, perimeter of the device, inlet(s), pretreatment measures, main treatment area, outlet, vegetation, and discharge point. The O&M plan shall specify methods to be used to maintain or restore the SCMs to design specifications in the event of failure. O&M plans shall be signed by the owner and notarized. The owner shall keep maintenance records and these shall be available upon request by the party responsible for enforcing the stormwater program under which the SCMs were approved.
- (13) **SCM SPECIFIC MINIMUM DESIGN CRITERIA (MDC).** Every SCM shall follow the applicable device specific MDC pursuant to Rules .1051 through .1062 of this Section.
- (14) **SCM DESIGNER QUALIFICATIONS FOR THE FAST-TRACK PERMITTING PROCESS.** For the fast-track permitting process as set forth in Rules .1043 and .1044 of this Section, SCMs and components of SCMs shall be designed by persons licensed under Chapters 89A, 89C, 89E, or 89F of the General Statutes.
- (15) **NEW STORMWATER TECHNOLOGIES.** Applicants shall have the option to request Division approval of new stormwater technologies and associated MDC. The applicant shall submit to the Division the standards for siting, site preparation, design, construction, and maintenance of the stormwater technology as well as research studies demonstrating that the stormwater technology functions in perpetuity and is equally or more protective of water quality than the requirements of this Section. In accordance with G.S. 143-215.1 and 143-215.3, the Commission may delegate the review and approval of new stormwater technologies to Division staff and the Commission or its designee may request additional information deemed necessary to evaluate the stormwater technology. If the Commission or its designee deems that the applicant has demonstrated that the new stormwater technology shall be the same or more protective than the requirements of this Section, then the Division shall approve the use of the new stormwater technology to satisfy the requirements of this Section.
- (16) **NO EXCEPTIONS TO UNAUTHORIZED PROFESSIONAL PRACTICE.** This Rule creates no exceptions to the unauthorized practice of the professions described in Chapters 89A, 89C, 89E, or 89F of the General Statutes, or the rules, standards, or codes of professional conduct promulgated by the applicable professional licensing boards.
- History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a); Eff. January 1, 2017.*
- 15A NCAC 02H .1051 MDC FOR INFILTRATION SYSTEMS**
- The purpose of this Rule is to set forth the design requirements for infiltration systems that are constructed to meet the requirements of this Section.
- (1) **SOIL INVESTIGATION.** A site-specific soil investigation shall be performed to establish the hydraulic properties and characteristics of the soil within the proposed footprint and at the proposed elevation of the infiltration system.
- (2) **SEPARATION FROM THE SHWT.** The lowest point of the infiltration system shall be a minimum of two feet above the SHWT. However, the separation may be reduced to no less than one foot if the applicant provides a hydrogeologic evaluation that demonstrates that the water table will subside to its pre-storm elevation within five days or less.
- (3) **SOIL SUBGRADE SURFACE.** The surface of the soil subgrade shall have a slope of less than or equal to two percent. Terraces and baffles may be installed to achieve a level subgrade.
- (4) **PRETREATMENT.** Pretreatment devices shall be provided to prevent clogging. Pretreatment devices may include measures such as sumps in catch basins, gravel verges, screens on roof and patio drains, filters, filter strips, grassed swales, and forebays. Rooftop runoff that is discharged to the surface of an infiltration system shall not require pretreatment.
- (5) **DRAW DOWN TIME.** Infiltration systems shall be designed to dewater the design volume to the bottom of the infiltration device within 72 hours or less. In-situ soils may be removed and replaced with infiltration media or infiltration media may be placed on top of in-situ soils if the applicant provides a soils report that demonstrates that the modified soil profile

- allows for infiltration of the design volume within 72 hours or less.
- (6) **OBSERVATION PORT.** For infiltration devices located under the ground surface, a minimum of one inspection port shall be provided.

History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);
Eff. January 1, 2017.

15A NCAC 02H .1052 MDC FOR BIORETENTION CELLS

The purpose of this Rule is to set forth the design requirements for bioretention cells that are constructed to meet the requirements of this Section.

- (1) **SEPARATION FROM THE SHWT.** The lowest point of the bioretention cell shall be a minimum of two feet above the SHWT. However, the separation may be reduced to no less than one foot if the applicant provides a hydrogeologic evaluation.
- (2) **MAXIMUM PONDING DEPTH FOR DESIGN VOLUME.** The maximum ponding depth for the design volume shall be 12 inches above the planting surface.
- (3) **PEAK ATTENUATION VOLUME.** Bioretention cells may store peak attenuation volume at a depth of up to 24 inches above the planting surface. The peak attenuation outlet shall be a maximum of 18 inches above the planting surface.
- (4) **UNDERDRAIN.** An underdrain with internal water storage shall be installed unless a soils report is provided showing that the in-situ soil infiltration rate is two inches per hour or greater prior to the initial placement of the media. The top of the internal water storage zone shall be set at a minimum of 18 inches below the planting surface.
- (5) **MEDIA DEPTH.** The minimum depth of the media depends on the design of the cell as follows:
 - (a) all cells with trees and shrubs: 36 inches;
 - (b) cells without trees and shrubs:
 - (i) with no internal water storage: 24 inches; or
 - (iii) with internal water storage: 30 inches.
- (6) **MEDIA MIX.** The media shall be a homogeneous engineered media blend with approximate volumes of:
 - (a) 75 to 85 percent medium to coarse washed sand (ASTM C33, AASHTO M 6/M 80, ASTM C330, AASHTO M195, or the equivalent);
 - (b) 8 to 10 percent fines (silt and clay); and

- (c) 5 to 10 percent organic matter (such as pine bark fines).
- (7) **MEDIA P-INDEX.** The phosphorus index (P-index) for the media shall not exceed 30 in Nutrient Sensitive Waters (NSW) as defined in 15A NCAC 02B .0202 and shall not exceed 50 elsewhere.
- (8) **NO MECHANICAL COMPACTION.** The media shall not be mechanically compacted. It is recommended to either water it or walk on it as it is placed.
- (9) **MAINTENANCE OF MEDIA.** The bioretention cell shall be maintained in a manner that results in a drawdown of at least one inch per hour at the planting surface.
- (10) **PLANTING PLAN.** For bioretention cells with vegetation other than sod, the planting plan shall be designed to achieve a minimum of 75 percent plant coverage at five years after planting. The maximum coverage with tree or shrub canopy shall be 50 percent at five years after planting. If sod is used, then it shall be a non-clumping, deep-rooted species.
- (11) **MULCH.** For bioretention cells with vegetation other than sod, triple shredded hardwood mulch shall be used for the portion of the cell that will be inundated. Mulch shall be uniformly placed two to four inches deep.
- (12) **CLEAN-OUT PIPES.** A minimum of one clean-out pipe shall be provided on each underdrain line. Clean out pipes shall be capped.

History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);
Eff. January 1, 2017.

15A NCAC 02H .1053 MDC FOR WET PONDS

The purpose of this Rule is to set forth the design requirements for wet ponds that are constructed to meet the requirements of this Section.

- (1) **MAIN POOL SURFACE AREA AND VOLUME.** The main pool of the wet pond shall be sized using either:
 - (a) the Hydraulic Retention Time (HRT) Method; or
 - (b) the SA/DA and Average Depth Method.
- (2) **MAIN POOL DEPTH.** The average depth of the main pool shall be three to eight feet below the permanent pool elevation. The applicant shall have the option of excluding the submerged portion of the vegetated shelf from the calculation of average depth.
- (3) **SEDIMENT STORAGE.** The forebay and main pool shall have a minimum sediment storage depth of six inches.

- (4) LOCATION OF INLET(S) AND OUTLET. The inlet(s) and outlet shall be located in a manner that avoids short circuiting.
- (5) FOREBAY. A forebay that meets the following specifications shall be included;
 - (a) Forebay volume shall be 15 to 20 percent of the volume in the main pool;
 - (b) The forebay entrance shall be deeper than the forebay exit;
 - (c) The water flowing over or through the structure that separates the forebay from the main pool shall flow at a nonerosive velocity; and
 - (d) If sediment accumulates in the forebay in a manner that reduces its depth to less than 75 percent of its design depth, then the forebay shall be cleaned out and returned to its design state.
- (6) VEGETATED SHELF. The main pool shall be equipped with a vegetative shelf around its perimeter. The minimum width of the vegetated shelf shall be six feet and the slope shall be no steeper than 6:1 (horizontal to vertical).
- (7) DRAWDOWN TIME. The design volume shall draw down to the permanent pool level between two and five days.
- (8) PROTECTION OF THE RECEIVING STREAM. The wet pond shall discharge the runoff from the one-year, 24-hour storm in a manner that minimizes hydrologic impacts to the receiving channel.
- (9) FOUNTAINS. If fountains are proposed, then documentation shall be provided that they will not cause a resuspension of sediment within the pond, or cause erosion on the side slopes of the pond.
- (10) TRASH RACK. A trash rack or other device shall be provided to prevent large debris from entering the outlet system.
- (11) VEGETATION. The following criteria apply to vegetation in and around the wet pond:
 - (a) The dam structure, including front and back embankment slopes, of the pond shall be vegetated with non-clumping turf grass; trees and woody shrubs shall not be allowed; and
 - (b) The vegetated shelf shall be planted with a minimum of three diverse species of herbaceous, native vegetation at a minimum density of 50 plants per 200 square feet of shelf area.

15A NCAC 02H .1054 MDC FOR STORMWATER WETLANDS

The purpose of this Rule is to set forth the design requirements for stormwater wetlands that are constructed to meet the requirements of this Section.

- (1) TEMPORARY PONDING DEPTH. The ponding depth for the design volume shall be a maximum of 15 inches above the permanent pool.
- (2) PEAK ATTENUATION DEPTH. The wetland may be designed to temporarily pond peak attenuation volume at a depth exceeding 15 inches.
- (3) SURFACE AREA. The surface area shall be sufficient to limit the ponding depth to 15 inches or less. The surface area specifications in Items (6) through (9) of this Rule are based on the wetland at its temporary ponding depth.
- (4) SOIL AMENDMENTS. The pH, compaction, and other attributes of the first 12-inch depth of the soil shall be adjusted if necessary to promote plant establishment and growth.
- (5) LOCATION OF INLET(S) AND OUTLET. The inlet(s) and outlet shall be located in a manner that avoids short circuiting.
- (6) FOREBAY. A forebay shall be provided at the inlet to the stormwater wetland. The forebay shall comprise 10 to 15 percent of the wetland surface area. The forebay depth shall be 24 to 40 inches below the permanent pool elevation. The forebay entrance shall be deeper than the forebay exit. If sediment accumulates in the forebay in a manner that reduces its depth to 15 inches, then the forebay shall be cleaned out and returned to its design state.
- (7) NON-FOREBAY DEEP POOLS. Deep pools shall be provided throughout the wetland and adjacent to the outlet structure to prevent clogging. The non-forebay deep pools shall comprise 5 to 15 percent of the wetland surface area and shall be designed to retain water between storm events. The deep pools at their deepest points shall be at least 18 inches below the permanent pool elevation.
- (8) SHALLOW WATER ZONE. The shallow water zone shall comprise 35 to 45 percent of the wetland surface area. The shallow water zone shall be zero to nine inches below the permanent pool elevation.
- (9) TEMPORARY INUNDATION ZONE. The temporary inundation zone shall comprise 30 to 45 percent of the wetland surface area. The temporary inundation zone shall be between 0 and 15 inches above the permanent pool elevation.
- (10) DRAWDOWN TIME. The design volume shall draw down to the permanent pool level between two and five days.

History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);
Eff. January 1, 2017.

- (11) **PROTECTION OF THE RECEIVING STREAM.** The wetland shall discharge the runoff from the one-year, 24-hour storm in a manner that minimizes hydrologic impacts to the receiving channel.
- (12) **LANDSCAPING PLAN.** A landscape plan shall be provided and shall include the following:
 - (a) delineation of planting zones;
 - (b) plant layout with species names and locations; and
 - (c) total number and sizes of all plant species.
- (13) **SHALLOW WATER PLANTINGS.** The shallow water zone shall be planted with a minimum of three diverse species of herbaceous, native vegetation at a minimum density of 50 plants per 200 square feet (equivalent to 2 foot on center spacing).
- (14) **TEMPORARY INUNDATION ZONE PLANTINGS.** The temporary inundation zone shall be planted according to one of the following options:
 - (a) a minimum of three diverse species of herbaceous, native vegetation at a minimum density of 50 plants per 200 square feet (equivalent to 2 foot on center spacing);
 - (b) a minimum of eight shrubs per 200 square feet (equivalent to 5 foot on center spacing); or
 - (c) a minimum of one tree and a minimum of 40 grass-like herbaceous plants per 100 square feet.
- (15) **DAM STRUCTURE AND PERIMETER FILL SLOPES.** On the dam structure and perimeter fill slopes, non-clumping turf grass shall be provided; trees and woody shrubs shall not be allowed.
- (16) **NO CATTAILS.** Cattails shall not be planted in the wetland.
- (17) **TRASH RACK.** A trash rack or other device to trap debris shall be provided on piped outlet structures.

- (2) **SHWT REQUIREMENTS.** The minimum separation between the lowest point of the subgrade surface and the SHWT shall be:
 - (a) two feet for infiltrating pavement systems; however, the separation may be reduced to a minimum of one foot if the applicant provides a soils report that demonstrates that the modified soil profile allows for infiltration of the design volume within 72 hours; and
 - (b) one foot for detention pavement systems.
- (3) **SITING.** Permeable pavement shall not be installed in areas where toxic pollutants are stored or handled.
- (4) **SOIL SUBGRADE SLOPE.** The soil subgrade surface shall have a slope of less than or equal to two percent.
- (5) **STONE BASE.** Washed aggregate base materials shall be used.
- (6) **PAVEMENT SURFACE.** The proposed pavement surface shall have a demonstrated infiltration rate of at least 50 inches per hour using a head less than or equal to 4 inches.
- (7) **RUNOFF FROM ADJACENT AREAS.** Runoff to the permeable pavement from adjacent areas shall meet these requirements:
 - (a) The maximum ratio of additional built-upon area that may drain to permeable pavement is 1:1. Screened rooftop runoff shall not be subject to the 1:1 loading limitation.
 - (b) Runoff from adjacent pervious areas shall be prevented from reaching the permeable pavement except for incidental, unavoidable runoff from stable vegetated areas.
- (8) **DRAW DOWN TIME.** Infiltrating permeable pavement systems shall be designed to dewater the design volume to the bottom of the subgrade surface within 72 hours. In-situ soils may be removed and replaced with infiltration media or infiltration media may be placed on top of in-situ soils if the applicant provides a soils report that demonstrates that the modified soil profile allows for infiltration of the design volume within 72 hours.
- (9) **OBSERVATION WELL.** Permeable pavement shall be equipped with a minimum of one observation well placed at the low point in the system. If the subgrade is terraced, then there shall be one observation well for each terrace. Observation wells shall be capped.
- (10) **DETENTION SYSTEMS.** Pavement systems may be designed to detain stormwater in the aggregate for a period of two to five days.

History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);
 Eff. January 1, 2017.

15A NCAC 02H .1055 MDC FOR PERMEABLE PAVEMENT

The purpose of this Rule is to set forth the design requirements for permeable pavement systems that are constructed to meet the requirements of this Section.

- (1) **SOIL INVESTIGATION.** For infiltrating pavement systems, site-specific soil investigation shall be performed to establish the hydraulic properties and characteristics within

- (11) **EDGE RESTRAINTS.** Edge restraints shall be provided around the perimeter of permeable interlocking concrete pavers (PICP) and concrete grid pavers.
- (12) **GRADE WHEN DRY.** The soil subgrade for infiltrating permeable pavement shall be graded when there is no precipitation.
- (13) **INSPECTIONS AND CERTIFICATION.** After installation, permeable pavement shall be protected from sediment deposition until the site is completed and stabilized. An in-situ infiltration permeability test shall be conducted and certified on the pavement after site stabilization.

History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);
Eff. January 1, 2017.

15A NCAC 02H .1056 MDC FOR SAND FILTERS

The purpose of this Rule is to set forth the design requirements sand filters that are constructed to meet the requirements of a State post-construction stormwater program.

- (1) **SHWT SEPARATION.** The minimum separation between the lowest point of the sand filter system and the SHWT shall be:
 - (a) two feet for open-bottom designs; and
 - (b) one foot for closed bottom designs.
 Exceptions to the one foot SHWT separation may be made if the applicant provides documentation that the design will neither float nor drain the water table.
- (2) **TWO CHAMBER SYSTEM.** The sand filter shall include a sediment chamber and a sand chamber. Storage volume in each chamber shall be equivalent.
- (3) **SEDIMENT/SAND CHAMBER SIZING.** The volume of water that can be stored in the sediment chamber and the sand chamber above the sand surface combined shall be 0.75 times the treatment volume. The elevation of bypass devices shall be set above the ponding depth associated with this volume. The bypass device may be designed to attenuate peak flows.
- (4) **MAXIMUM PONDING DEPTH.** The maximum ponding depth from the top of the sand to the bypass device shall be six feet.
- (5) **FLOW DISTRIBUTION.** Incoming stormwater shall be evenly distributed over the surface of the sand chamber.
- (6) **SAND MEDIA SPECIFICATION.** Sand media shall meet ASTM C33 or the equivalent.
- (7) **MEDIA DEPTH.** The filter bed shall have a minimum depth of 18 inches. The minimum depth of sand above the underdrain pipe shall be 12 inches.
- (8) **MAINTENANCE OF MEDIA.** The sand filter shall be maintained in a manner that results in a

drawdown of at least two inches per hour at the sand surface.

- (9) **CLEAN-OUT PIPES.** At least one clean-out pipe shall be provided at the low point of each underdrain line. Clean out pipes shall be capped.

History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);
Eff. January 1, 2017.

15A NCAC 02H .1059 MDC FOR LEVEL SPREADER-FILTER STRIPS

The purpose of this Rule is to set forth the design requirements for level spreader-filter strips that are constructed to meet the requirements of this Section.

- (1) **LEVEL SPREADER LENGTH.** The level spreader shall be a minimum of 10 feet in length per one cubic foot per second of stormwater flow that is directed to it.
- (2) **REQUIRED STORM INTENSITY AND BYPASS.** The required storm intensity and bypass system shall be based on the source of the stormwater:
 - (a) a level spreader that receives flow directly from the drainage area shall be sized based on the flow rate during the 0.75 inch per hour storm, with a flow bypass system for larger storm events; or
 - (b) a level spreader that receives flow from an SCM shall be sized based on the draw down rate of the design volume, with a flow bypass for larger storm events.
- (3) **EXCEPTION FROM FLOW BYPASS REQUIREMENT.** A flow bypass system shall not be needed if the level spreader is sized to handle the flow during 10-year storm event.
- (4) **BLIND SWALE.** Upslope of the level spreader, there shall be a blind swale or other method of ponding water. The blind swale shall be designed to provide for uniform overtopping of the level spreader.
- (5) **LEVEL SPREADER SPECIFICATIONS.** The lip of the level spreader shall be at a uniform elevation with a construction tolerance of plus or minus 0.25 inch at any point along its length. The level spreader shall be constructed of concrete or other stable material.
- (6) **LEVEL SPREADER SHAPE.** The level spreader shall be straight or convex in plan view.
- (7) **TRANSITION ZONE.** Downslope of the level spreader, there shall be a one to three inch drop followed by a transition zone that shall be protected from erosion by aggregate or high performance turf reinforcement matting. The

- transition zone shall be a minimum of 12 inches wide.
- (8) **MINIMUM WIDTH OF THE FILTER STRIP.** The minimum width of the filter strip shall be 30 feet, measured perpendicular to the level spreader lip.
 - (9) **NO DRAWS OR CHANNELS IN THE FILTER STRIP.** The filter strip shall not contain draws or channels.
 - (10) **FILTER STRIP SPECIFICATIONS.** The following specifications shall apply to the filter strip:
 - (a) filter strips shall be graded with a uniform transverse slope of eight percent or less;
 - (b) the pH, compaction, and other attributes of the first 12 inches of the soil shall be adjusted if necessary to promote plant establishment and growth;
 - (c) the filter strip and side slopes shall be planted with non-clumping, deep-rooted grass sod; and
 - (d) soils shall be stabilized with temporary means such as straw or matting until the permanent vegetative cover has taken root or the runoff shall be directed elsewhere until vegetation has established.

*History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);
Eff. January 1, 2017.*

15A NCAC 02H .1060 MDC FOR DISCONNECTED IMPERVIOUS SURFACES

The purpose of this Rule is to set forth the design requirements for disconnected impervious surfaces that are constructed to meet the requirements of this Section.

- (1) **VEGETATED RECEIVING AREA FOR DISCONNECTED ROOFS.** The following requirements shall apply to vegetated receiving areas for disconnected roofs:
 - (a) a maximum of 500 square feet of roof shall drain to each disconnected downspout;
 - (b) the receiving vegetated area shall be a rectangular shape. The length of the rectangle in the direction of flow shall be a minimum of 0.04 times the area of the roof that drains to it. The width of the rectangle shall be one-half the length of the rectangle.
 - (c) the downspout shall discharge in the center of upslope end of the vegetated receiving area;
 - (d) the downspout shall be equipped with a splash pad; and

- (e) the vegetated receiving area shall not include any built-upon area.
- (2) **VEGETATED RECEIVING AREA FOR DISCONNECTED PAVEMENT.** The following requirements shall apply to the vegetated receiving area for disconnected pavement:
 - (a) the pavement draining to the vegetated receiving area shall be a maximum of 100 feet in length in the direction of flow;
 - (b) the vegetated receiving area shall be a minimum of 10 feet in length in the direction of flow; and
 - (c) the vegetated receiving area shall not contain any built-upon area except for incidental areas such as utility boxes, signs, and lamp posts.
- (3) **VEGETATED RECEIVING AREA SPECIFICATIONS.** The following specifications shall apply to the vegetated receiving areas for both disconnected roofs and disconnected pavement:
 - (a) vegetated receiving areas shall have a uniform transverse slope of 8 percent or less, except in Hydrologic Soil Group A soils where slope shall be 15 percent or less;
 - (b) The pH, compaction, and other attributes of the first eight inches of the soil shall be adjusted if necessary to promote plant establishment and growth;
 - (c) the vegetated receiving area shall be planted with a non-clumping, deep-rooted grass species; and
 - (d) soils shall be stabilized with temporary means such as straw or matting until the permanent vegetative cover has taken root or the runoff shall be directed elsewhere until vegetation has established.

*History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);
Eff. January 1, 2017.*

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

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

Director
Division of Air Quality

1641 Mail Service Center
Raleigh, North Carolina 27699-1641

Director
Division of Energy, Mineral, and Land Resources
1612 Mail Service Center
Raleigh, North Carolina 27699-1612

Director
Division of Waste Management
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

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

Recording Clerk of the Commission
Directors Office
Division of Water Resources
1611 Mail Service Center
Raleigh, NC 27699-1611
EMCclerk@ncdenr.gov

- (b) The petition shall contain the following information:
- (1) the text of the proposed rule(s) for adoption or amendment;
 - (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an existing rule(s);
 - (3) a statement of the effect on existing rules or orders;
 - (4) the name(s) and address(es) of the petitioner(s); and
 - (5) a request to present the petition to the committee in accordance with Rule .0502 of this Section, if desired.

(c) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and regulated entities. The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rules(s);
- (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
- (3) a statement explaining the computation of the cost factors;
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
- (5) documents and data supporting the proposed rule(s).

(d) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the petitioner by the Director on behalf of the Commission.

History Note: Authority G.S. 143B-282; 150B-20; Eff. April 1, 2003; Amended Eff. December 1, 2016; November 1, 2012.

15A NCAC 10B .0106 WILDLIFE TAKEN FOR DEPREDATIONS

(a) Depredation permits allow the taking of undesirable or excess wildlife resources as described in Subparagraphs (1) and (2) of this Paragraph. Only employees of the Wildlife Resources Commission and Wildlife Damage Control Agents may issue depredation permits. Each permit shall be written on a form supplied by the Commission. No permit is needed for the owner or lessee of a property to take wildlife while committing depredations on the property; however the manner of taking, disposition of dead wildlife, and reporting requirements as described in this Rule still apply.

No permit shall be issued to take any endangered or threatened species of wildlife listed under 15A NCAC 10I, except alligators, by reason of depredations to property. Only the Executive Director may issue depredation permits for Special Concern species listed in 15A NCAC 10I .0105 and for alligators. An individual may take an endangered or threatened species in immediate defense of his own life or of the lives of others without a permit. Any endangered or threatened species that may constitute a demonstrable but non-immediate threat to human safety shall be reported to a federal or state wildlife enforcement officer, who, upon verification of the report, may take or remove the specimen as provided by 15A NCAC 10I .0102. Depredation permits for other species shall be issued under the following conditions:

- (1) for taking wildlife that is or has been damaging or destroying property provided there is evidence of property damage. No permit may be issued for the taking of any migratory birds and other federally-protected animals unless a corresponding valid U.S. Fish and Wildlife Service depredation permit, if required, has been issued. A permit issued pursuant to this Rule shall name the species allowed to be taken and may contain limitations as to age, sex, or any other condition, such as type of depredation, location of animal or damage, and local laws, within the species so named. The permit shall be issued to a landholder or an authorized representative of a unit of local government for depredations on public property; and the permit shall be used only by individuals named on the permit.
- (2) for taking of wildlife resources in circumstances of overabundance or when the wildlife resources present a danger to human safety. Cities as defined in G.S. 160A-1(2) seeking such a depredation permit shall apply

to the Executive Director using a form supplied by the Commission requesting the following information:

- (A) the name and location of the city;
- (B) the acreage of the affected property;
- (C) a map of the affected property;
- (D) the signature of an authorized city representative;
- (E) the nature of the overabundance or the threat to public safety; and
- (F) a description of previous actions taken by the city to ameliorate the problem.

(b) **Wildlife Damage Control Agents:** Upon completion of a training course designed for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques, and demonstration of a knowledge of wildlife laws and safe, humane wildlife handling techniques, an individual with no record of wildlife law violations may apply to the Wildlife Resources Commission (Commission) to become a Wildlife Damage Control Agent (WDCA). Those persons who demonstrate knowledge of wildlife laws and safe, humane wildlife handling techniques by a passing score of 85 percent or better on a written examination provided by a representative of the Wildlife Resources Commission, in cooperation with the training course provider, shall be approved. Those persons failing to obtain a passing score shall be given one chance for re-testing without re-taking the course. Those persons approved as agents by the Commission may then issue depredation permits for depredation as defined in Subparagraph (a)(1) of this Rule to landholders and be listed as a second party to provide the control service. WDCAs may not issue depredation permits for coyotes in the counties of Beaufort, Dare, Hyde, Tyrrell, Washington; big game animals; bats; or species listed as endangered, threatened, or special concern under 15A NCAC 10I .0103, .0104, and .0105 of this Chapter. WDCAs shall report to the Wildlife Resources Commission the number and disposition of animals taken, by county, annually. Records shall be available for inspection by a Wildlife Enforcement officer at any time during normal business hours. These business hours are the posted business hours of the Commission at ncwildlife.org. WDCA status shall be revoked at any time by the Executive Director when there is evidence of violations of wildlife laws, failure to report, or inhumane treatment of animals by the WDCA. A WDCA may not charge for the permit, but may charge for his or her investigations and control services. In order to maintain a knowledge of current laws, rules, and techniques, each WDCA shall renew his or her agent status every three years by showing proof of having attended at least one training course provided for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques within the previous 12 months or agency approved continuing education credits.

(c) Each depredation permit shall have an expiration date or time after which the depredation permit is no longer valid. The depredation permit authorizes possession of any wildlife resources taken under the permit and shall be retained as long as the wildlife resource is in the permittee's possession. All individuals taking wildlife resources under the authority of a depredation permit shall comply with the conditions written on the permit and the requirements specified in this Rule.

(d) **Manner of Taking:**

- (1) **Taking Without a Permit.** Wildlife taken without a permit while committing depredations to property may, during the open season on the species, be taken by the landholder by any lawful method. During the closed season, such depredating wildlife may be taken without a permit only by the use of firearms or archery equipment as defined in 15A NCAC 10B .0116.
- (2) **Taking With a Permit.** Wildlife taken under a depredation permit may be taken only by the method or methods authorized by the permit. When trapping is authorized, in order to limit the taking to the intended purpose, the permit may specify a reasonable distance from the property sought to be protected, according to the particular circumstances, within which the traps shall be set. The Executive Director or agent may also state in a permit authorizing trapping whether or not bait may be used and the type of bait, if any, that is authorized based upon factors such as type of depredation, locations of animal or damage, and local laws. In addition to any trapping restrictions that may be contained in the permit, the method of trapping shall be in accordance with the requirements and restrictions imposed by G.S. 113-291.6 and other local laws passed by the General Assembly. No depredation permit shall authorize the use of poisons or pesticides in taking wildlife except in accordance with the provisions of the North Carolina Pesticide Law of 1971, G.S. 143, Article 52, the Structural Pest Control Act of 1955, G.S. 106, Article 4C, and G.S. 113, Article 22A. No depredation permit shall authorize the taking of wildlife by any method by any landholder upon the lands of another except when the individual is listed as a second party on a depredation permit.
- (3) **Intentional Wounding.** It is unlawful for any landholder, with or without a depredation permit, intentionally to wound a wild animal in a manner so as not to cause its immediate death as suddenly and humanely as the circumstances permit.

(e) **Disposition of Wildlife Taken:**

- (1) **Generally.** Except as provided by Subparagraphs (e)(2) through (5) of this Paragraph, any wildlife killed without a permit while committing depredations shall be buried or otherwise disposed of in a safe and sanitary manner on the property. Wildlife killed under a depredation permit may be transported to an alternate disposal site if desired. Anyone in possession of carcasses of animals being transported under a depredation permit shall have the depredation permit in his or her possession. Except as provided by

Subparagraphs (e)(2) through (5) of this Rule, all wildlife killed under a depredation permit shall be buried or otherwise disposed of as stated on the permit.

- (2) Deer and feral swine. The edible portions of feral swine and deer may be retained by the landholder for consumption but shall not be transported from the property where the depredations took place without a valid depredation permit. The landholder may give a second party the edible portions of the feral swine and deer taken under the depredation permit. The receiver of the edible portions shall hold a copy of the depredation permit. The nonedible portions of any deer carcass, including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) of this Paragraph or turned over to a wildlife enforcement officer for disposition.
- (3) Fox. Any fox killed under a depredation permit may be disposed of as described in Subparagraph (1) of this Paragraph or, upon compliance with the fur tagging requirements of 15A NCAC 10B .0400, the carcass or pelt thereof may be sold to a licensed fur dealer.
- (4) Furbearing Animals. The carcass or pelt of any furbearing animal killed during the open season for taking such furbearing animal for control of depredations to property, whether with or without a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt for sale has a valid hunting or trapping license; provided further that bobcats and otters may only be sold upon compliance with any required fur tagging requirement set forth in 15A NCAC 10B .0400.
- (5) Animals Taken Alive. Wild animals in the order Carnivora, armadillos, groundhogs, nutria, and beaver shall be humanely euthanized either at the site of capture or at a facility designed to humanely handle the euthanasia or released on the property where captured. Feral swine shall be euthanized while still in the trap in accordance with G.S. 113-291.12. For all other animals taken alive, the animal shall be euthanized or released on property with permission of the landowner. When the relocation site is public property, written permission shall be obtained from an appropriate local, state, or federal official before any animal may be released. Animals transported or held for euthanasia shall be euthanized within 12 hours of capture. Anyone in possession of live animals being transported for relocation or euthanasia under a depredation permit shall have the depredation permit in his or her possession.

(f) Reporting Requirements. Any landholder who kills an alligator; a coyote in the counties of Beaufort, Dare, Hyde,

Tyrrell, or Washington; deer; Canada goose; bear; elk; or wild turkey under a valid depredation permit shall report such kill on the form provided with the permit and mail the form upon the expiration date to the Wildlife Resources Commission. Any landowner who kills a coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, and Washington shall report such kill as directed on the form provided with the depredation permit. The killing and method of disposition of every alligator; coyote in the counties of Beaufort, Dare, Hyde, Tyrrell, and Washington; bear; or elk taken without a permit shall be reported to the Wildlife Resources Commission within 24 hours following the time of such killing.

History Note: Authority G.S. 113-134; 113-273; 113-274; 113-291.4; 113-291.6; 113-300.1; 113-300.2; 113-307; 113-331; 113-333; 113-334(a); 113-337;
Eff. February 1, 1976;
Amended Eff. August 1, 2013; January 1, 2012; August 1 2010; July 1, 2010; May 1, 2008; August 1, 2002; July 1, 1997; July 1, 1995; January 1, 1995; January 1, 1992; August 1, 1990;
Temporary Amendment Eff. August 1, 2014 and shall remain in effect until amendments expire as specified in G.S. 150B-21.1(d) or the United States District Court for the Eastern District of North Carolina's court order number 2:13-CV-60-BOs signed on May 13, 2014 is rescinded, whichever date is earlier. The court order is available at www.ncwildlife.org;
Temporary Amendment Eff. February 27, 2015;
Amended Eff. December 1, 2016; July 1, 2016; May 1, 2016.

15A NCAC 12H .0103 DEFINITIONS AS USED IN THIS SUBCHAPTER

In addition to the definitions in G.S. 143B-135.254, the following terms shall apply to this Subchapter:

- (1) "Natural diversity" means the native plant and animal species, geological features, plant communities, ecosystem types, and other natural features.
- (2) "Natural Heritage Areas List" means a list of those natural areas recommended by the Natural Heritage Program, pursuant to G.S. 143B-135.256(7), that are of special importance to the maintenance of the state's natural diversity and that may warrant protection by registration or dedication.
- (3) A "natural community" means any area with a recognizable and reoccurring assemblage of plants, animals, bacteria, and fungal species naturally associated with each other and their physical environment.

History Note: Authority G.S. 143B-135.254; 143B-135.256;
Eff. April 4, 1979;
Amended Eff. August 1, 1988; January 1, 1986; October 1, 1984; August 30, 1980;
Readopted Eff. March 1, 2017.

15A NCAC 12H .0104 RESPONSIBILITIES AND DUTIES OF NATURAL HERITAGE PROGRAM

History Note: Authority G.S. 113-3; 113-8; 113A-164.4; Eff. April 4, 1979;
Amended Eff. January 1, 1986; October 1, 1984; August 30, 1980;
Repealed Eff. March 1, 2017.

15A NCAC 12H .0105 NATURAL HERITAGE ADVISORY COMMITTEE

(a) The Natural Heritage Advisory Committee shall be composed of nine members appointed by the Secretary, in accordance with G.S. 143B-135.256(6).

(b) The Natural Heritage Advisory Committee shall:

- (1) advise and make recommendations to the Department on inventory and evaluation of natural areas;
- (2) review and make recommendations for registration, acquisition, and dedication of natural areas and nature preserves by the Department;
- (3) review and make recommendations on Department priorities and plans for the selection of particular natural areas for State acquisition and for designation of nature preserves;
- (4) review and make recommendations on master plans, management plans, and other plans and proposals for development and use of lands administered by the Department;
- (5) advise the Secretary on policies and rules governing management, protection, and use of registered natural areas and dedicated nature preserves by the Department;
- (6) advise and consult with the Secretary and Department staff on policies and programs relating to preservation of natural diversity and outstanding natural areas in the state; and
- (7) consult and coordinate with other public agencies, conservation organizations, and scientific bodies on matters concerning natural diversity inventory and natural areas identification, acquisition, management, and dedication.

History Note: Authority G.S. 143B-10; 143B-135.256; Eff. April 4, 1979;
Amended Eff. January 1, 1986; October 1, 1984; March 1, 1983; August 30, 1980;
Readopted Eff. March 1, 2017.

15A NCAC 12H .0201 OBJECTIVES OF REGISTRY

History Note: Authority G.S. 143B-135.254; 143B-135.256; 143-135.258; Eff. April 4, 1979;
Repealed Eff. March 1, 2017.

15A NCAC 12H .0202 CRITERIA FOR ELIGIBILITY

(a) For an area to qualify as a Natural Heritage Area and be eligible for registration or dedication, the Natural Heritage Program staff shall determine that the area possesses one or more of the following natural values:

- (1) a habitat for individual species of plants or animals that are in danger of or threatened by extirpation;
- (2) a rare terrestrial natural community;
- (3) a rare aquatic community;
- (4) features that illustrate geologic processes or the history of the earth;
- (5) unique or unusual ecological types; or
- (6) biological or ecological phenomena of significance.

(b) Upon meeting one of the criteria in Paragraph (a) of this Rule, the Natural Heritage Program staff shall evaluate an area with respect to the following factors:

- (1) the presence of ecological values represented in previously registered Natural Heritage Areas;
- (2) the natural diversity of the area;
- (3) the quality and viability of the environmental features including self-sufficiency of the ecosystem when managed and degree of vulnerability to disturbances and intrusions;
- (4) the extent to which past disturbances or land uses have altered natural communities. An area may be considered even if it shows evidence of past disturbance or land use;
- (5) the ability to be managed to protect and maintain ecological features in a natural condition, and a buffer area, as set forth in Rule .0304 of this Subchapter, to ensure protection. A buffer zone, where possible, shall follow defensible boundaries and help protect the site against adverse effects from use and development of adjacent land. The buffer zone may be included in the designated area but need not itself possess any eligibility criteria as set forth in this Rule;
- (6) compatibility of protective management practices with current use practices on adjacent lands; and
- (7) scientific and educational value.

History Note: Authority G.S. 143B-135.256; 143B-135.258; Eff. April 4, 1979;
Amended Eff. January 1, 1986;
Readopted Eff. March 1, 2017.

15A NCAC 12H .0203 REGISTRATION PROCESS

(a) Nomination.

- (1) Nominations for the Registry of Natural Heritage Areas may be made by the Natural Heritage Program staff, by other public agencies, by members of the Natural Heritage Advisory Committee, or by any other resident or property owner of the State. Nominations shall be submitted, in writing, to the North

Carolina Natural Heritage Program, 1651 Mail Service Center, Raleigh, North Carolina 27699. Nominations shall include the name, address and phone number for both the nominator and the owner of the of the nominated area and the location where the area is located.

- (2) The Natural Heritage Program staff shall conduct an on-site evaluation of a nominated area in order to gather information to determine that the area meets eligibility criteria.
- (3) After reviewing information on a nominated area, the Natural Heritage Program staff shall determine if an area qualifies for the registry and shall document its findings in an evaluation report with recommendations for action.
- (4) Nominations initiated by the public or other agencies shall be accepted or rejected by the Department within one year of receipt. Rejections shall include an explanation. The nominator may request consideration again by submitting information that was not previously considered to the Natural Heritage Program.

(b) Notification of Landowner or Administrator. Once an area is nominated and is recommended for registration, the Natural Heritage Program staff shall notify the owner or administering agency. The owner may request that the property be or not be considered further for registration.

(c) All nominations and recommendation reports shall be submitted by the Natural Heritage Program to the Natural Heritage Advisory Committee ("Committee"). Upon approval of the nomination by the Committee, the chairman or acting chairman shall sign the statement of recommendation and submit it for review by the Division Director. If the Division Director approves the statement of recommendation, it shall be submitted to the Natural Heritage Program staff. The Natural Heritage Program staff shall solicit comments about the nomination from the landowner or managing agency. Recommendation statements, comments, and a report of the owner's willingness to accept registration shall then be submitted to the Secretary by the Natural Heritage Program staff.

(d) Designation. Upon review of the information submitted in Paragraph (c) of this Rule, the Secretary shall decide whether the nominated area is eligible for listing in the Registry of Natural Heritage Areas. The registration of a site shall be the voluntary decision of the landowner or administering agency, pursuant to G.S. 143B-135.258.

(e) The owner or a volunteer shall annually report to the Natural Heritage Program Director once a year on the condition of the registered area.

History Note: Authority G.S. 143B-135.256; 143B-135.258; Eff. April 4, 1979;
Amended Eff. January 1, 1986; October 1, 1984; August 30, 1980;
Readopted Eff. March 1, 2017.

15A NCAC 12H .0204 REGISTRATION

History Note: Authority G.S. 113-3; 113-8; 113A-164.4; 113A-164.5;

Eff. April 4, 1979;
Amended Eff. January 1, 1986;
Repealed Eff. March 1, 2017.

15A NCAC 12H .0205 RESCISSION

(a) The registration agreement may be terminated at any time upon notification by either party. Such termination shall remove the area from the Registry.

(b) Any person may submit a written request to the Department to remove an area from the Registry if he or she believes the site no longer meets the criteria for registration as set forth in Rule .0202 of this Section. The request for removal shall explain the changes that have occurred to the area since the area was registered and why the area no longer meets the criteria in Rule .0202 of this Section. All requests made under this Rule shall be submitted to the North Carolina Natural Heritage Program, 1651 Mail Service Center, Raleigh, North Carolina 27699. After considering the request, the Secretary, upon recommendation of the Natural Heritage Program staff and Natural Heritage Advisory Committee, may order removal from the Registry as set forth in G.S. 143B-135.258.

(c) Rescission shall remove the area from the Registry of Natural Heritage Areas, and the owner or administering agency shall be requested to return the certificate to the agency signifying the area's inclusion on the Registry, as set forth in G.S. 143B-135.256.

(d) Any person aggrieved by any of the steps in the process described in this Rule may seek an administrative hearing as set forth in G.S. 150B-23.

History Note: Authority G.S. 143B-135.256; 143B-135.258; Eff. April 4, 1979;
Amended Eff. August 1, 1988; January 1, 1986; October 1, 1984;
Readopted Eff. March 1, 2017.

15A NCAC 12H .0206 PUBLIC ACCESS

Registration of a natural area shall not create a right of public access to the registered area. Any person visiting a registered area shall first obtain the permission of the owner or managing agency before entering the property. The landowner or managing agency retains the option to restrict publicity and access to the property.

History Note: Authority G.S. 143B-135.256; Eff. April 4, 1979;
Readopted Eff. March 1, 2017.

15A NCAC 12H .0207 MANAGEMENT OF REGISTERED NATURAL AREAS

History Note: Authority G.S. 143B-135.256; 143B-135.258; Eff. April 4, 1979;
Repealed Eff. March 1, 2017.

15A NCAC 12H .0208 DESIGNATION OF NATURAL AREAS ON STATE LANDS

History Note: Authority G.S. 143B-135.258; 143B-135.264; Eff. March 1, 1983;
Amended Eff. October 1, 1984;
Repealed Eff. March 1, 2017.

15A NCAC 12H .0301 OBJECTIVES OF DEDICATION

The State may accept the dedication of nature preserves on lands deemed by the Secretary to qualify as "outstanding natural areas," based on the criteria of eligibility as set forth in Rule .0202 of this Subchapter. The Secretary shall recommend to the Governor and Council of State, through the Director of the State Property Office in the Department of Administration, that an area be dedicated as a nature preserve. Dedication of a preserve becomes effective only upon acceptance of Articles of Dedication by the Governor and Council of State. Articles of Dedication shall be recorded in the county or counties where the nature preserve is located, in the State Property Office and in the office of the Natural Heritage Program.

History Note: Authority G.S. 143B-135.252; 143B-135.256; 143B-135.260; 146-26;
Eff. August 30, 1980;
Amended Eff. January 1, 1986; October 1, 1984;
Readopted Eff. March 1, 2017.

15A NCAC 12H .0302 DEDICATION PROCESS

(a) Upon receipt of the recommendation reports from the Natural Heritage Program and statements of recommendation from the Natural Heritage Advisory Committee, the Secretary shall determine whether the proposed area qualifies under criteria set forth in Rule .0202 of this Subchapter and constitutes an "outstanding natural area" through dedication as a nature preserve.

(b) Nature preserves are created when natural areas are dedicated by:

- (1) the owner who transfers to the State the title or other interest in the land with Articles of Dedication agreed to by the owner and the State;
- (2) any local unit of government that transfers fee simple title or other interest in land to the State through Articles of Dedication agreed to by the local government agency and the State; or
- (3) the State itself for State-owned lands through Articles of Dedication, and declaring the State as trustee for the dedication, subject to allocation pursuant to the provisions of G.S. 143-341(4)g. The Secretary and Director of the State Property Office shall make recommendations to the Governor and Council of State for dedicating State-owned lands as nature preserves.

History Note: Authority G.S. 143B-135.256; 143B-135.260; 143B-135.262; 143B-135.264; 143B-135.266; 143B-135.268;
Eff. August 30, 1980;
Amended Eff. August 1, 1988; January 1, 1986;
Readopted Eff. March 1, 2017.

15A NCAC 12H .0303 ARTICLES OF DEDICATION

(a) Articles of Dedication shall include:

- (1) a statement of the public purposes served by the dedication and a declaration that the State shall

hold such title or interest to the area in trust for the public as a dedicated nature preserve under the terms and authority set forth in G.S. 143B-135.262, and describe the rights and restrictions as will protect the dedicated area consistent with the criteria set forth in Rule .0202 of this Subchapter.

- (2) the primary custodian who will be responsible for managing the nature preserve in accordance with the Articles of Dedication and these Rules;
- (3) the right of the State or its agents to enter dedicated lands to inspect its condition and to enforce the Articles of Dedication. This right of inspection shall not in and of itself create an automatic right of public access; and
- (4) any other provision necessary to carry out the purpose of this Subchapter.

(b) Articles of Dedication on land remaining in private ownership shall contain a provision notifying the State before any sale or transfer by deed or lease of the land or other interests therein. The State shall not regulate or prohibit such sale or transfer, but shall ensure that the grantee or lessee is familiar with the Articles of Dedication. The Articles of Dedication shall contain a provision indicating that any transfer of any interest in the dedicated nature preserve shall be subject to the conditions set forth in the Articles of Dedication.

History Note: Authority G.S. 143B-135.260; 143B-135.262; 143B-135.264; 143B-135.266; 143B-135.268;
Eff. January 1, 1986;
Amended Eff. August 1, 1988;
Readopted Eff. March 1, 2017.

15A NCAC 12H .0304 BUFFER AREAS

(a) For the purpose of protecting a nature preserve, adjoining land that is not otherwise suitable for dedication as a nature preserve may be dedicated as a buffer area in the same manner as a nature preserve under this Section. A buffer area, where possible, shall help protect the site against adverse effects from use and development of adjacent land. The buffer area may be included in the designated area but need not itself possess eligibility criteria.

(b) Provisions in the Articles of Dedication for the management, use, development, and public access of the buffer area may differ from those used for the adjacent nature preserve.

History Note: Authority G.S. 143B-135.256; 143B-135.260;
Eff. January 1, 1986;
Readopted Eff. March 1, 2017.

15A NCAC 12H .0305 PUBLIC TRUST

(a) Members of the public may bring notice to the Secretary or his or her agents of suspected violations of terms of dedications. Notice shall be made by U.S. Mail to 4601 Mail Service Center, Raleigh, North Carolina 27699. The Natural Heritage Program shall investigate notices of violations and shall maintain monitoring of all dedicated preserves. After investigation of a notice of violation, the Natural Heritage Program shall respond, via U.S. Mail, to the notifying party and recommend action to the Secretary.

(b) The Natural Heritage Program shall maintain administrative records for dedicated areas. These shall be available for public review online at www.ncnhp.org, or at 121 West Jones Street, Raleigh, North Carolina 27603, and copies shall be available at actual cost.

(c) The State may enter into contracts and agreements with other agencies and persons to manage and monitor dedicated preserves, but the State shall not abdicate its trusteeship for dedicated lands through such contracts or agreements.

History Note: Authority G.S. 143B-135.256; 143B-135.262; Eff. January 1, 1986; Readopted Eff. March 1, 2017.

15A NCAC 12H .0306 AMENDMENTS

(a) Amendments that remove some portion of the existing Articles of Dedication shall not be approved until after a public hearing in the county or counties where the dedicated preserve lies. The State shall provide not less than 30 days notice of the hearing in the newspaper of largest circulation in the county or counties where the land lies. The State shall provide not less than 30 days notice to the chief county and municipal administrative officials in the jurisdiction where the land lies.

(b) Notwithstanding the provisions of Paragraph (a) of this Rule, Articles of Dedication may be amended as they affect use or disposition of land, even if the purposes of G.S. 143B-135.262 or the original dedication will be violated under the following circumstances:

- (1) the Governor and Council of State find that an amendment serves the best interest of the State and no prudent alternative exists;
- (2) after a public hearing with notice provided in Paragraph (a) of this Rule; and
- (3) with the concurrence of the Governor and Council of State.

(c) After the public hearing and finding by the Governor and Council of State, the State shall publish a statement of its findings in the newspaper of largest circulation in the county or counties where the land lies at least 30 days before the amended Articles of Dedication is final.

History Note: Authority G.S. 143B-135.256; 143B-135.260; 143B-135.262; 143B-135.268; Eff. January 1, 1986; Amended Eff. August 1, 1988; Readopted Eff. March 1, 2017.

15A NCAC 12H .0307 EXTINGUISHMENT BY THE STATE

(a) Articles of Dedication may be extinguished by amendment and the dedication abandoned if:

- (1) the Secretary finds that qualifying features of the land have been destroyed or damaged;
- (2) the Secretary finds that the public purposes of the dedication have been frustrated;
- (3) after a public hearing with notice provided as described in Rule .0306(a) of this Section; and
- (4) with the approval of the Governor and Council of State.

(b) Articles of Dedication may be extinguished by amendment and the dedication abandoned if:

- (1) the Secretary finds that the extinguishment and abandonment serves a public necessity and no alternative exists;
- (2) after a public hearing with notice provided as described in Rule .0306(a) of this Section; and
- (3) with the approval of the Governor and Council of State.

(c) After the public hearing, the State shall publish a statement of its findings in the newspaper of largest circulation in the county or counties where the land lies at least 30 days before the extinguishment is final.

History Note: Authority G.S. 143B-135.256; 143B-135.260(c); Eff. January 1, 1986; Readopted Eff. March 1, 2017.

15A NCAC 12H .0308 MUTUAL TERMINATION

Articles of Dedication shall terminate only under the following circumstances:

- (1) in accordance with the terms of the Articles of Dedication itself;
- (2) in accordance with the nature and duration of the underlying legal interest in the property being placed under the Articles of Dedication; or
- (3) upon mutual written consent executed by and between the owner, its successors or assigns, the State, and approved by the Governor and Council of State.

History Note: Authority G.S. 143B-135.256; 143B-135.260(c); Eff. January 1, 1986; Readopted Eff. March 1, 2017.

15A NCAC 12H .0401 MANAGEMENT PLAN

(a) A management plan shall be prepared for each dedicated nature preserve. The Articles of Dedication shall assign responsibility for the preparation of the management plan.

(b) The Secretary of the Department of Natural and Cultural Resources or his or her designee shall review all management plans and their revisions, and shall approve those plans that implement the principles set forth in Rule .0402 of this Section.

(c) The Secretary or his or her designee shall monitor all dedicated preserves as set forth in Rule .0305 of this Subchapter and report violations of the approved plan, situations that violate the Articles of Dedication, or actions harmful to the natural resources of the preserve.

(d) In the event that the owner or the State agency managing the dedicated preserve does not adopt an approved management plan or does not adhere to the provisions of the plan, the Secretary shall request the Department of Administration to take an action such as mediation, reallocation of the land to another agency, or referral to the Office of the Attorney General.

History Note: Authority G.S. 143B-135.256; 143B-135.262;

*Eff. January 1, 1986;
Readopted Eff. March 1, 2017.*

15A NCAC 12H .0402 MANAGEMENT PRINCIPLES

The following management principles shall apply to all dedicated preserves, unless exceptions are expressly provided in the Articles of Dedication:

- (1) the natural character of the property shall be maintained;
- (2) improvements, including building of all types, trails, parking areas, vehicular roadways, signs, fences, steps, and bridges, shall only be constructed when approved by the Secretary or his or her designee as necessary for the security, safety, access of the public or for the maintenance and management of the preserve;
- (3) destruction of flora and fauna shall not be permitted except for the purpose of preserving species and natural communities of concern, or for the purpose of establishing and maintaining public access facilities. In case of either exception, and upon approval of the exception by the Secretary or his or her designee, manipulation of the flora and fauna shall be consistent and compatible with the ecological character of the area and shall not be damaging or detrimental to the preserve;
- (4) no motorized vehicles shall be permitted on the dedicated property other than those utilized by the owner or the owner's agents in management and protection of the property or used by the general public for ingress and egress to the property in compliance with the management plan for the preserve;
- (5) no signs, billboards, or other advertising of any kind shall be erected, with the exception of informational and directional signs, designed by the Secretary, owner, or State agency, related to the designation of the area as a preserve or for public access to the preserve;
- (6) no change shall be made in the topography of the preserve except as approved by the Secretary or his or her designee for those alterations that may be necessary to provide on-foot access to the public for visitation or observation, if the change is compatible and consistent with the character of the property, and where no detrimental effect will result;
- (7) no activity shall be allowed that may pollute any stream or body of water in the preserve;
- (8) no stream in the preserve shall be dammed, impounded, or have its course altered as a result of human activity;
- (9) visitor activities shall be controlled to prevent disturbance and environmental degradation of the preserve;
- (10) prescribed fire and necessary fire lines may be used as management tools to maintain or protect the natural community type;

- (11) the cutting or removal of trees, dead or alive, shall be prohibited, except when it is necessary for public safety, as determined by the Secretary, owner, or State agency;
- (12) persons wishing to engage in scientific research or collection of natural materials within a preserve shall first secure written permission from the owner or the State agency;
- (13) when necessary, as determined by the Secretary, owner, or State agency, boundaries of a preserve shall be made evident by placing markers or boundary signs at corners and other strategic locations;
- (14) control of exotic (non-native) species may be undertaken where eradication may be accomplished without disturbance of the area's natural conditions; and
- (15) no other acts or uses that are detrimental to the maintenance of the property in its natural condition shall be allowed, including disturbance of the soil, mining, commercial or industrial uses, timber harvesting, ditching and draining, or depositing waste materials.

*History Note: Authority G.S. 143B-135.256; 143B-135.262;
Eff. January 1, 1986;
Readopted Eff. March 1, 2017.*

15A NCAC 12H .0403 MANAGEMENT RULES FOR PRESERVES

Additional management principles consistent with the general management principles for dedicated preserves, as set forth in Rule .0402 of this Section, may be adopted through an amendment to the Articles of Dedication by the owner or State agency, in accordance with Rule .0306 of this Subchapter.

*History Note: Authority G.S. 143B-135.256; 143B-135.262;
Eff. January 1, 1986;
Readopted Eff. March 1, 2017.*

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 06B .0402 IDENTIFYING INFORMATION

Information related to RIAP may be obtained from:

Branch Manager, Planning and Development
North Carolina Department of Transportation
(Mail) 1553 Mail Service Center
Raleigh, NC 27699-1553

(Delivery) 1 South Wilmington Street
Raleigh, NC 27601
Telephone 919-707-4700

<http://www.ncbytrain.org/projects/industrial/default.html>

*History Note: Authority G.S. 136-44.36; 143B-348;
Eff. April 30, 1997;*

Readopted Eff. December 1, 2016.

19A NCAC 06B .0405 INELIGIBLE COSTS

Costs which are not eligible for RIAP program costs are as follows:

- (1) Relocation of utilities;
- (2) Acquisition of rights of way; and
- (3) Rail dock.

*History Note: Authority G.S. 136-44.36; 143B-348;
Eff. April 30, 1997;
Amended Eff. April 1, 1999;
Readopted Eff. December 1, 2016.*

19A NCAC 06B .0406 APPLICATION

Candidates for RIAP funding shall complete and submit a funding application as specified in Rule .0410 of this Section to the Department of Transportation. Copies of the application may be obtained from:

Branch Manager, Planning and Development
North Carolina Department of Transportation
(Mail) 1553 Mail Service Center
Raleigh, NC 27699-1553

(Delivery) 1 South Wilmington Street
Raleigh, NC 27601

Telephone 919-707-4700

*History Note: Authority G.S. 136-44.36; 143B-348;
Eff. April 30, 1997;
Readopted Eff. December 1, 2016.*

19A NCAC 06B .0410 APPLICATION EVALUATION

The Department shall evaluate the following when recommending rail projects to the Board of Transportation for approval:

- (1) Employment created by the project during the first two years;
- (2) Capital investment in the project during the first two years;
- (3) Annual rail traffic created by the project;
- (4) Whether the project is served by a shortline railroad; and
- (5) Impact on local or regional income or economic development.

*History Note: Authority G.S. 136-44.36; 143B-348;
Eff. April 30, 1997;
Amended Eff. April 1, 1999;
Readopted Eff. December 1, 2016.*

19A NCAC 06B .0411 ALLOCATION OF FUNDING

(a) After evaluation of public benefits, including new employment, capital investment, and available funding, the Department may award up to a maximum 50 percent of total project costs. Except as provided in Paragraph (b) of this Rule, a project shall receive no more than 20 percent of the total RIAP budget allocated for the RIAP in any fiscal year.

(b) The North Carolina Board of Transportation may approve funding above the maximum for individual projects based on the following criteria:

- (1) Comparison of project costs, benefits, and grantee resources; and
- (2) Availability of funding.

*History Note: Authority G.S. 136-44.36; 143B-348;
Eff. April 30, 1997;
Readopted Eff. December 1, 2016.*

19A NCAC 06B .0413 REQUESTS FOR REIMBURSEMENT

(a) Upon execution of the Grant Agreement, the Grantee shall be required by the Project Manager or Grants Administrator to submit periodic progress reports to the Department until the project tracks are completed.

(b) The Department shall not reimburse the Grantee for eligible expenses until the Department verifies completion of the project tracks, the railroad certifies that it has used the project tracks, or the Department confirms that the railroad has used the project tracks.

(c) The Grantee shall submit one itemized request that includes project information, sponsor, amount due, and contact information for reimbursement to the Department upon completion of project work at the following address:

Rail Planning Manager
Rail Industrial Access Program
North Carolina Department of Transportation
(Mail) 1553 Mail Service Center
Raleigh, NC 27699-1553

(Delivery) 1 South Wilmington Street
Raleigh, NC 27601

Telephone 919-707-4700

(d) The Department shall examine the request for reimbursement to verify that the costs were necessary to accomplish the project.

*History Note: Authority G.S. 143B-348;
Eff. April 30, 1997;
Amended Eff. April 1, 1999;
Readopted Eff. December 1, 2016.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14B .0608 COMPLAINTS

(a) Any person may file a complaint alleging violation of the Cosmetic Art Act or this Chapter with the Board for investigation and disciplinary action per G.S. 88B-24.

(b) The complaint shall be filed in writing with the Board. Complaints will be accepted by fax, mail, email, through the Board's online complaint form at www.ncccosmeticarts.com or

delivered in office. Upon receipt of a complaint, Board staff shall review the content for jurisdiction and when finding authority under G.S. 88B or this Chapter assign the complaint for investigation. Complaints received alleging violation outside the jurisdictional authority of the Board shall be forwarded to the appropriate agency and the complainant notified, if contact information is provided by the complainant.

(c) The Board shall notify the complainant and the respondent in any complaint filed with the Board of the disposition of the case.

*History Note: Authority G.S. 88B-4;
Eff. December 1, 2016.*

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

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

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

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

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

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

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

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

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

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

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

*History Note: Authority G.S. 88B-4; 88B-7; 88B-11; 88B-12; 88B-14; 88B-21; 88B-22; 88B- 23(a); 88B-24; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;*

*Amended Eff. September 1, 2011; December 1, 2008; September 1, 2006; February 1, 2004; August 1, 2002; April 1, 2001;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. December 1, 2016.*

21 NCAC 14P .0107 LICENSES TO BE POSTED

(a) The presumptive civil penalty for failure to display a current cosmetic art shop/school license is:

(1)	1 st offense	\$50.00
(2)	2 nd offense	\$100.00

(3) 3rd offense \$200.00

(b) The presumptive civil penalty for failure to display a current individual license is:

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

(c) The presumptive civil penalty for a school/shop for allowing practice or instruction of cosmetic art without displaying a current license is:

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

(d) The presumptive civil penalty for displaying a copied license is:

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

*History Note: Authority G.S. 88B-4; 88B-23; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;*

Amended Eff. December 1, 2008; February 1, 2004; April 1, 2001;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. December 1, 2016.*

21 NCAC 14P .0111 ESTABLISHMENT OF COSMETIC ART SCHOOLS

(a) The presumptive civil penalty for failure to provide minimum floor space or equipment and supplies as required by Subchapters 14G, 14J, and 14T is:

(1)	1st offense	\$200.00
(2)	2nd offense	\$350.00
(3)	3rd offense	\$500.00

(b) The presumptive civil penalty for failure to provide instruction at a ratio required in 21 NCAC 14T .0701 is:

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

(c) The presumptive civil penalty for failure to report a change in the teaching staff as required in 21 NCAC 14T .0701 is:

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

(d) The presumptive civil penalty for failure to submit an application for the approval of a school in the case of a change of location or ownership as required in in 21 NCAC 14T .0706 is:

(1)	1st offense	\$100.00
(2)	2nd offense	\$200.00
(3)	3rd offense	\$500.00

*History Note: Authority G.S. 88B-4(2); 88B-16; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;
Amended Eff. September 1, 2012; July 1, 2010; February 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. December 1, 2016.*

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

(a) The presumptive civil penalty for failure to record student's hours of daily attendance per 21 NCAC 14T .0502 is:

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

(b) The presumptive civil penalty for failure to report withdrawal or graduation of a student per 21 NCAC 14T .0502 is:

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

(c) The presumptive civil penalty for failure to submit student enrollments per 21 NCAC 14T .0502 is:

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

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

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

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

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

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

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

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

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

(h) The presumptive civil penalty for failure to have any student wear the required school uniform or identification per 21 NCAC 14T .0613 is:

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

(i) The presumptive civil penalty for failure to renew or file school bond or bond alternative is:

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

(j) The presumptive civil penalty for failure to maintain the student permanent file with required documents per 21 NCAC 14T .0502 is:

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

(k) The presumptive civil penalty for failure to maintain records of daily hours of attendance documents per 21 NCAC 14T .0502 is:

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

(l) The presumptive civil penalty for failure to maintain records of performances documents per 21 NCAC 14T .0502 is:

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

(m) The presumptive civil penalty for allowing an unlicensed individual to instruct cosmetic art is:

- | | | |
|-----|-------------------------|-----------|
| (1) | 1 st offense | \$500.00 |
| (2) | 2 nd offense | \$750.00 |
| (3) | 3 rd offense | \$1000.00 |

History Note: Authority G.S. 88B-4; 88B-16; 88B-17; 88B-29;

Temporary Adoption Eff. January 1, 1999;

Eff. August 1, 2000;

Amended Eff. August 1, 2014; September 1, 2012; July 1, 2010; December 1, 2008; April 1, 2004;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;

Amended Eff. December 1, 2016.

21 NCAC 14P .0114 COSMETOLOGY CURRICULUM

History Note: Authority G.S. 88B-4; 88B-29;

Temporary Adoption Eff. January 1, 1999;

Eff. August 1, 2000;

Amended Eff. September 1, 2012; July 1, 2010;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13 2015;

Repealed Eff. December 1, 2016.

21 NCAC 14T .0102 NEW SCHOOL APPLICATIONS

(a) Persons desiring to operate a cosmetic art school in the state of North Carolina shall make application for licensure by submitting to the Board the Board's School Application. The Board's School Application shall include:

- | | |
|------|--|
| (1) | School name; |
| (2) | Cosmetic Art discipline(s) to be taught; |
| (3) | Physical address and mailing address; |
| (4) | Phone number; |
| (5) | Email address; |
| (6) | Ownership type; |
| (7) | Reason for application; |
| (8) | Owner name; |
| (9) | School contact person with phone number and email address; and |
| (10) | List of teachers with cosmetic art license number. |

(b) School application forms must be submitted along with supporting documents as follows:

- | | |
|-----|---|
| (1) | Proof of bond as required by G.S. 88B-17; |
|-----|---|

- (2) Diagram with location of equipment placement and marking square footage of all areas including classrooms, dispensary, water supplies, stations, locker room/dressing room, office areas, reception areas and restroom facilities;
- (3) Course curriculum for each cosmetic art discipline and teacher trainee program to be taught in the school;
- (4) Plans for record keeping of student hours, minimum course requirement qualifications, and student performances;
- (5) Evaluation plans for the assignment of performance services, the qualifications for passing a performance requirement and techniques for grading of performances;
- (6) Handbook for students containing student policies on attendance, leave of absence policy, performance assignment, and a plan to assist students to achieve the required minimum hours and performances per 21 NCAC 14T .0602-.0610;
- (7) A raised seal identifying the school name and physical location to be used on all Board forms, reports, and other official papers;
- (8) Documentation of local municipality fire, occupancy, electrical and plumbing approval; and
- (9) School operation schedule including days, hours and observed holidays.

(c) The Board shall not approve an application for a license until all plans, furniture, supplies and equipment as prescribed by the rules in this Subchapter have been installed.

(d) The Board shall issue a license to any cosmetic art school that meets the requirements of this Subchapter.

History Note: Authority G.S. 88B-4; 88B-16; 88B-17; Eff. January 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. December 1, 2016.

21 NCAC 14T .0203 ESTHETICS SCHOOLS
21 NCAC 14T .0204 MANICURING SCHOOLS
21 NCAC 14T .0205 NATURAL HAIR CARE SCHOOLS

History Note: Authority G.S. 88B-2; 88B-4; 88B-16; 88B-17; Eff. January 1, 2012;
Amended Eff. October 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015 (.0203,.0204);
Readopted Eff. January 1, 2016 (.0205);
Repealed Eff. December 1, 2016.

21 NCAC 14T .0502 PERMANENT RECORDS, FORMS AND DOCUMENTATION

(a) Cosmetic art schools must maintain locked storage for the permanent files of all enrolled students and students who have

withdrawn or graduated within the last six months together in one room within the approved square footage of the cosmetic art school. Withdrawal and graduation forms reviewed by the Board or an agent of the Board may be removed from this room. The permanent file shall include a copy of:

- (1) Board Enrollment Form;
- (2) Documentation of student receipt of school policies, school and student contract and the Board felony policy;
- (3) All applicable Board Withdrawal Forms;
- (4) Social security card for any individual who has a social security number or tax ID card or student visa information;
- (5) Government issued ID and proof of date of birth;
- (6) Grades for all examinations and documentation for pass performances;
- (7) Documentation for any leave of absence over 30 days;
- (8) Transfer of hours form documenting hours earned in other schools and hours accepted by current school; and
- (9) Graduation Form.

(b) The school shall keep onsite, records of hours earned daily including field trip hours and documentation of field trip hours updated with a running grand total:

- (1) A daily record shall be kept of the performances for each student, showing the actual date of the performance and the teacher who approved the performance;
- (2) A daily record shall be kept of the actual number of hours of attendance; and
- (3) An updated Performance Record.

(c) When a student enrolled in a cosmetic art school withdraws from the school, the cosmetic art school shall report the withdrawal to the Board.

(d) If a student withdraws from a cosmetic art discipline within the first five days, the school need not submit the enrollment to the Board.

(e) The graduation form documentation must be signed by on site school staff or on site school administrators and must have the seal of the school affixed. The original graduation form documentation must be prepared on the Board form and shall indicate that the applicable requirement of this Chapter have been met. The cosmetic art school shall mail the graduation form to the Board at the Board's address set forth in Rule 14A .0104 or submit the graduation form via the Board's school documents portal at www.nccosmeticarts.com within 30 days of the student's graduation date.

(f) All forms submitted to the Board must be sealed originals or a digital scan of sealed originals and a copy shall be maintained in the school permanent file storage. Except for student signatures, all forms submitted to the Board must be completed, by on site school staff or on site school administrators. Board forms shall be used for the sole purpose of documenting to the Board student records and shall not be used to notify students of enrollment, transfer of hours, withdrawal or graduation.

(g) Changes or corrections made by the school to any Board form must be submitted to the Board with supporting documentation.

(h) All cosmetic art schools must maintain on file at the school an original daily record of enrolled students' hour and performances. This record must be kept in a secured location under lock and key but made available for review by the Board or its agent at any time.

(i) All records kept by a cosmetic art school on a student who has withdrawn or graduated must be kept in the school's locked files for future reference until the date the student is accepted for the Board examination or five years after the date the student first enrolled in the school, whichever occurs earlier. Forms reviewed by the Board or an agent of the Board may be removed from this room.

(j) The record of all hours and performances must be documented in writing. Credit issued to students that cannot be verified may be eliminated from the student record by an agent of the Board.

(k) Access to student records must be limited to agents of the Board, teachers and administrators of the school. Records cannot be altered offsite. Records altered onsite must have documentation supporting the change attached.

(l) All individuals in a cosmetic art school receiving cosmetic art education, earning hours, performing or practicing cosmetic art services must be enrolled in the school.

(m) Only teachers reported to the Board as employees of a cosmetic art school may grade practical student examinations and evaluate pass or fail of student performances. Only on site teachers, on site school administrators or on site school staff shall record student hours and performances, grade examinations and determine completion and record credit of live model and mannequin performances.

(n) Minimum scores required for examinations and the successful completion of live model/mannequin performances as determined through the school's evaluation plan that is approved by the Board at the time of application shall be disclosed to students at the time of enrollment. Passing grades and performances cannot be credited to students who fail to meet the requirements of the evaluation plan.

(o) Cosmetic art schools must provide to each student a copy of school policies, the Board felony policies and shall retain for the permanent file a copy of the student's acknowledgement of receipt of these policies.

(p) The names of students with unsatisfied academic obligations shall not be submitted to the Board as graduates but may be submitted as withdrawn.

(q) Cosmetic art schools shall not report to the Board the unsatisfied financial obligations of any cosmetic art student. Cosmetic art schools shall not prevent the graduation of students who have met the Board minimum requirements and passed all school academic requirements.

(r) Records of hours must be rounded to no more than the nearest quarter hour. Cosmetic art schools shall not give or deduct hours or performances as rewards or penalties.

(s) An applicant may receive credit for instruction taken in another state if the conditions set forth in this Paragraph are met. In order to determine if the conditions have been met the applicant's record shall be certified by the state agency or department that issues licenses to practice in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, then the records may be certified by any state department or state

agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then the Board shall review the student's records for validity on a case-by-case basis using the documentation provided by the student.

(t) Hours transferred between open North Carolina schools must be obtained by the submission of the Board transfer form mailed directly from the school in which the hours are earned with the school seal affixed, with grades for examinations and performances to the new school in which a student enrolls. Such original documentation shall be submitted to the Board with enrollment. Transfer forms shall include the following:

- (1) Student name and social security number;
- (2) School code;
- (3) Course type and total number of live model and mannequin service performances;
- (4) Enrollment date and last date of attendance;
- (5) Number of hours and minutes completed;
- (6) School owner name and signature; and
- (7) School seal.

(u) A student must pass an entrance examination given by the school to which the student is transferring for the hours to be transferred from one cosmetic art school to another.

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

Eff. January 1, 2012;

Amended Eff. January 1, 2014; June 1, 2013;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;

Amended Eff. December 1, 2016.

21 NCAC 14T .0701 SCHOOL OPERATIONS/LICENSURE MAINTENANCE

(a) No individual shall be given credit for any hours earned in a cosmetic art school before the date the school is granted a license, before the student is enrolled, or after graduation or withdrawal of the student without a new enrollment.

(b) All Cosmetic Art schools shall submit hours of operation per cosmetic art discipline to the Board. Any changes to the hours of operation shall be submitted to the Board. A school will be considered open by the Board when cosmetic art instruction, services, or performances are provided.

(c) Students may be required to clean and disinfect work areas, reception areas, implements, and the dispensary. Students shall not be required to perform regular maintenance.

(d) All cosmetic art schools shall adhere to all Board sanitation regulations located in 21 NCAC 14H Sanitation.

(e) Cosmetic art schools may permit students to leave the cosmetic art school during instructional time to visit on campus libraries and other educational resource rooms such as computer labs for research and study under the supervision of a cosmetic art instructor.

(f) Cosmetic art schools shall use the following grading scale as a minimum for passing grades:

Grade A	100-90
Grade B	80-89
Grade C	70-79
Grade F (Fail)	0-69

(g) Cosmetic art schools shall not graduate any student who has not met the minimum school and Board requirements for graduation as prescribed by Rules .0602-.0610 of this Subchapter.

(h) Examinations shall be administered in all subjects of the cosmetic art curriculum.

(i) Students present at school shall be supervised by a cosmetic art teacher at all times. If a guest lecturer is leading a class, at least one cosmetic art teacher must be present in the lecture.

(j) All cosmetic art schools shall provide:

- (1) One teacher for every 25 students enrolled in the practice department;
- (2) One teacher for every 20 students during practical work on live models in the clinic department; and
- (3) Cosmetic art teachers at a ratio of 1:25 teacher to teacher trainees; or
 - (A) one teacher and up to 25 practice cosmetic art students and 5 teacher trainees; or
 - (B) one teacher and up to 20 cosmetic art students in practice on the clinic floor and 5 teacher trainees.

(k) In theory classes, the teacher-student ratio may exceed the ratios established in this Rule.

(l) The teacher student ratios established in this Rule shall be adhered to when schools are in operation.

(m) A teacher may administer instruction to up to 10 students enrolled in practice and clinic departments at the same time. A teacher shall not administer instruction to more than 10 students enrolled in practice and clinic departments at the same time.

(n) At no time can any one teacher be simultaneously responsible for students in a theory class and students in practice on the clinic floor.

(o) In cases of change in teaching staff, the school shall notify the Board of the change in writing prior to beginning instruction. A change in teaching staff includes any substitution for the regularly scheduled teacher and any change, scheduled or otherwise, in the list of teachers last given to the Board.

- (1) All courses in a cosmetic art school shall be taught by a licensed cosmetology teacher, except as follows:
 - (A) manicuring courses may be taught by either a licensed cosmetology teacher or a licensed manicurist teacher;
 - (B) natural hair care courses may be taught by either a licensed cosmetology teacher or a licensed natural hair care teacher;
 - (C) esthetics courses may be taught by either a licensed cosmetology teacher or a licensed esthetician teacher.
- (2) A licensed cosmetologist not licensed as a cosmetology teacher may substitute for a cosmetology, esthetician, natural hair care or manicurist teacher; a licensed manicurist not licensed as a manicurist teacher may substitute for a manicurist teacher; a licensed natural hair care specialist not licensed as a natural hair care teacher may substitute for a natural hair care

teacher; and a licensed esthetician not licensed as an esthetician teacher may substitute for an esthetician teacher.

(p) In no event may any cosmetic art licensee substitution last for more than 15 consecutive working days per year per teacher. If any teacher substitution is 16 consecutive days or longer, the school shall provide a new cosmetic art teacher.

(q) Enrolled students may earn a maximum of 10 hours per day per discipline of cosmetic art and a maximum of 48 hours per week per discipline. A student enrolled in more than one cosmetic art discipline may not earn hours or complete performances concurrently.

(r) The Board shall certify student hours for any North Carolina cosmetic art school that is closed. The Board shall not certify student hours between any North Carolina open cosmetic art schools. The Board shall certify student hours earned at North Carolina cosmetic art schools to other state boards and schools open outside of the state of North Carolina as set forth in Rule .0502 of this Subchapter.

History Note: Authority G.S. 88B-2; 88B-4; 88B-16;

Eff. February 1, 2012;

Amended Eff. August 1, 2014; June 1, 2013; October 1, 2012;

Readopted Eff. January 1, 2016;

Amended Eff. December 1, 2016.

21 NCAC 14T .0705 SCHOOL PERFORMANCE REQUIREMENTS

(a) Each cosmetic art school shall meet or exceed a program completion rate of at least 50 percent during any five year period and shall meet or exceed a student pass rate on state licensure examinations of at least 70 percent during any two year period.

(b) The school shall allow the teachers to have the opportunity to prepare for class, evaluate students' progress in the course, counsel students individually, and participate in activities of continuing education.

(c) Cosmetic art schools shall provide to substitutes copies of lesson plans and the performance evaluation plan for the successful grading of clinical performances.

(d) School attendance policies shall give attendance credit for all hours attended.

(e) If a graduate meets all the school financial and academic requirements and the Board hours and performance requirements as set forth in 21 NCAC 14T .0602-.0610 the school shall approve the student for Board examination.

(f) Cosmetic art schools shall maintain current bond according to G.S. 88B-17 and shall submit certification of renewal or new bond prior to expiration of the bond approved by the Board.

(g) At the time of school license renewal, each school shall submit to the Board financial records of prepaid tuition and a letter signed by an authorized representative of the school documenting the calculations made and the method of computing the amount of the bond for the preceding year. If the school did not collect prepaid tuition, the school shall submit a letter signed by an authorized representative of the school documenting that no prepaid tuition was collected.

(h) Each school shall maintain and submit to the Board proof of bond in an amount of ten thousand dollars (\$10,000), or

equivalent to prepaid tuition received during the previous year, whichever is greater.

History Note: Authority G.S. 88B-4; 88B-16; 88B-17;
Eff. January 1, 2012;
Amended Eff. January 1, 2015; September 1, 2012;
Readopted Eff. January 1, 2016;
Amended Eff. January 1, 2016.

21 NCAC 14T .0901 SCHOOL PROBATION

(a) After notice and opportunity for a hearing, the Board shall put the school on probation if the Board finds that the program fails to comply with General Statutes or these Rules. The decision shall identify all deficiencies required to be corrected for the program to come into compliance.

(b) No later than one calendar year after notification of probation, the school shall either:

- (1) Correct the deficiencies identified and come into compliance with Board requirements; or
- (2) Request an extension of time in which it shall:
 - (A) Explain the basis for its failure to correct the deficiencies within the allotted time;
 - (B) Provide a summary of the program's efforts to come into compliance within the allotted time; and
 - (C) Present a plan of action to come into compliance.

(c) After a request for an extension the Board shall extend the time to come into compliance by a single six-month period based on:

- (1) The explanation provided contains all material related to the non-compliance;
- (2) There are efforts by the school to correct the deficiencies pursuant to Paragraph (a) of this Rule to come into compliance; and
- (3) The efforts made by the school to come into compliance address each instance of non-compliance.

(d) The Board shall make site visits or require the school to submit progress reports, syllabi, evaluative tools and student records.

(e) When a program previously placed on probation fails to demonstrate compliance with General Statutes or these Rules as set forth in the Board's order, the Board shall order the school's official and the director to appear at a hearing at which time the school shall present evidence why the school's license should not be revoked.

(f) If after a probationary period and hearing in accordance with this Rule, the Board revokes the school license due to failure to comply with the applicable Rules and Statutes, the school shall work with Board inspectors and personnel for the collection of student records.

History Note: Authority G.S. 88B-4; 88B-16;
Eff. January 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. January 1, 2016.

21 NCAC 16H .0207 LIMITED EXCEPTION FOR ASSISTING HYGIENISTS

A Dental Assistant II may assist a Limited Supervision Hygienist, who is qualified and practicing pursuant to 21 NCAC 16Z .0101-.0103, in providing oral hygiene instruction, applying sealants, applying topical fluorides, applying fluoride varnishes, and while the Hygienist is performing prophylaxis, provided:

- (1) The treatment is provided to children in school-based programs under the NC Children's Dental Home/School Based Sealant Initiative and the related pilot project developed by the North Carolina Dental Society and funded by Duke Endowment Grant No. 6564-SP; and
- (2) Prior to any treatment being provided, a licensed North Carolina dentist has:
 - (a) examined the patient;
 - (b) ordered the treatment provided to the patient; and
 - (c) agreed to provide the patient with any necessary additional treatment resulting from the treatment rendered in accordance with this Rule.

History Note: Authority G.S. 90-29(c)(9); 90-48; 90-233;
Eff. December 1, 2016.

CHAPTER 36 – BOARD OF NURSING

21 NCAC 36 .0120 DEFINITIONS

The following definitions apply throughout this chapter unless the context indicates otherwise:

- (1) "Academic term" means one semester of a school year.
- (2) "Accountability/Responsibility" means being answerable for action or inaction of self, and of others in the context of delegation or assignment.
- (3) "Accredited institution" means an institution accredited by a United States Department of Education approved institutional accrediting body.
- (4) "Active Practice" means activities that are performed, either for compensation or without compensation, consistent with the scope of practice for each level of licensee as defined in G.S. 90-171.20(4), (7) and (8).
- (5) "Advanced Practice Registered Nurse (APRN)" means a nurse practitioner, nurse anesthetist, nurse-midwife or clinical nurse specialist.
- (6) "Assigning" means designating responsibility for implementation of a specific activity or set of activities to a person licensed and competent to perform such activities.
- (7) "Clinical experience" means application of nursing knowledge in demonstrating clinical judgment in a current or evolving practice

- setting where the student provides care to clients under the supervision of faculty or a preceptor.
- (8) "Clinical judgment" means the application of the nursing knowledge, skills, abilities, and experience in making decisions about client care.
- (9) "Competent" means having the knowledge, skills, and ability to safely perform an activity or role.
- (10) "Continuing Competence" means the on-going acquisition and application of knowledge and the decision-making, psychomotor, and interpersonal skills expected of the licensed nurse resulting in nursing care that contributes to the health and welfare of clients served.
- (11) "Contact Hour" means 60 minutes of an organized learning experience.
- (12) "Continuing Education Activity" means a planned, organized learning experience that is related to the practice of nursing or contributes to the competency of a nurse as outlined in 21 NCAC 36 .0223 Subparagraph (a)(2).
- (13) "Controlling institution" means the degree-granting organization or hospital under which the nursing education program is operating.
- (14) "Curriculum" means an organized system of teaching and learning activities directed toward the achievement of specified learning objectives and outcomes.
- (15) "Delegation" means transferring to a competent individual the authority to perform a selected nursing activity in a selected situation. The nurse retains accountability/responsibility for the delegation.
- (16) "Debriefing" means an activity that follows a clinical or simulated experience and is led by a trained faculty facilitator. Students' reflective thinking is encouraged, and feedback is provided regarding the students' performance during discussion of various aspects of the completed experiences.
- (17) "Dimensions of Practice" means those aspects of nursing practice that include professional responsibility, knowledge-based practice, ethical and legal practice, and collaborating with others, consistent with G.S. 90-171.20(4), (7) and (8).
- (18) "Distance education" means teaching and learning strategies used to meet the learning needs of students when the students and faculty are not in the same location.
- (19) "External standardized examination" means a commercially available standardized predictive test that provides individual student scores that are linked to a probability of passing the NCLEX™ examination.
- (20) "Faculty directed clinical practice" means clinical experiences provided under the accountability/responsibility and direction of nursing program faculty.
- (21) "Focused client care experience" means a clinical experience that emulates an entry-level work experience in nursing. The intent is to assist the student to transition to an entry-level nursing practice. There is no specific setting requirement. Supervision may be by faculty and preceptor dyad or direct faculty supervision.
- (22) "Interdisciplinary faculty" means faculty from professions other than nursing.
- (23) "Interdisciplinary team" means all individuals involved in providing a client's care who cooperate, collaborate, communicate, and integrate care to ensure that care is continuous and reliable.
- (24) "Learning resources" means materials that faculty use to assist students in meeting the expectations for learning defined by the curriculum.
- (25) "Level of Licensure" means practice of nursing by either a Licensed Practical Nurse or a Registered Nurse as defined in G.S. 90-171.20(7) and (8).
- (26) "Level of student" means the point in the program to which the student has progressed.
- (27) "Maximum enrollment" means the total number of pre-licensure students that can be enrolled in the nursing program at any one time. The number reflects the capacity of the nursing program based on demonstrated resources sufficient to implement the curriculum.
- (28) "Methods of Instruction" means the planned process through which teacher and student interact with selected environment and content so that the response of the student gives evidence that learning has taken place. It is based upon stated course objectives and outcomes for learning experiences in classroom, laboratory, simulation and clinical settings.
- (29) "National Credentialing Body" means a credentialing body that offers certification or re-certification in the licensed nurse's or Advanced Practice Registered Nurse's specialty area of practice.
- (30) "NCLEX-PN™" means the National Council Licensure Examinations for Practical Nurses.
- (31) "NCLEX-RN™" means the National Council Licensure Examinations for Registered Nurses.
- (32) "Nursing Accreditation body" means a national nursing accrediting body, recognized by the United States Department of Education.
- (33) "Nursing program faculty" means individuals employed full or part-time by academic institution responsible for developing, implementing, evaluation and updating nursing curricula.

- (34) "Nursing project" means a project or research study of a topic related to nursing practice that includes a problem statement, objectives, methodology and summary of findings.
- (35) "Participating in" means to have a part in or contribute to the elements of the nursing process.
- (36) "Pattern of noncompliance" means episodes of recurring non-compliance with one or more Rules in Section .0300.
- (37) "Preceptor" means a registered nurse at or above the level of licensure that an assigned student is seeking, who may serve as a teacher, mentor, role model and supervisor for a faculty directed clinical experience.
- (38) "Prescribing Authority" means the legal permission granted by the Board of Nursing and Medical Board for the nurse practitioner and nurse midwife to procure and prescribe legend and controlled pharmacological agents and devices to a client in compliance with Board of Nursing rules and other applicable federal and state law and regulations.
- (39) "Program Closure" means to cease operation of a nursing program.
- (40) "Program" means a course of study that prepares an individual to function as an entry-level practitioner of nursing. The three "Program Types" are:
- (a) BSN - Curriculum components for Bachelor of Science in Nursing provides for the attainment of knowledge and skill sets in the current practice in nursing, nursing theory, nursing research, community and public health, health care policy, health care delivery and finance, communications, therapeutic interventions and current trends in health care. For this program type, the client is the individual, family, group, and community.
 - (b) Associate Degree in Nursing (ADN)/Diploma in Registered Nursing - Curriculum components for the ADN/Diploma in Registered Nursing provides for the attainment of knowledge and skill sets in the current practice in nursing, community concepts, health care delivery, communications, therapeutic interventions and current trends in health care. For this program type, client is the individual, group of individuals, and family.
 - (c) Practical Nurse Diploma - Curriculum prepares for providing direct nursing care under the supervision of a registered nurse or other health care provider as defined by the Nursing Practice Act. Curriculum components provide for the attainment of knowledge and skill sets in the current practice of practical nursing, communications, therapeutic interventions, including pharmacology, growth and development, and current trends in health care. For this program type client is the individual or group of individuals.
- (41) "Review" means collecting and analyzing information to assess compliance with Section .0300 of this Chapter. Information may be collected by multiple methods, including review of written reports and materials, on-site observations, review of documents, and in-person or telephone interview(s) and conference(s).
- (42) "Rescind Approval" means a Board action that removes the approval status previously granted by the Board.
- (43) "Self Assessment" means the process whereby an individual reviews her or his own nursing practice and identifies the knowledge and skills possessed as well as those skills to be strengthened or acquired.
- (44) "Simulation" means a technique, not a technology, to replace or amplify clinical experiences with guided experiences that evoke or replicate substantial aspects of the real world of nursing practice in a fully interactive manner.
- (45) "Specialty" means a broad, population-based focus of study encompassing the common health-related problems of a particular group of patients and the likely co-morbidities, interventions, and responses to those problems.
- (46) "Supervision" means the provision of guidance or direction, evaluation, and follow-up by a licensed nurse to accomplish an assigned or delegated nursing activity or set of activities.
- (47) "Survey" means an on-site visit for the purpose of gathering data in relation to reviewing a nursing program's compliance with Section .0300 of this Chapter.

History Note: Authority G.S. 90-171.23; 90-171.38; Eff. April 1, 2003; Amended Eff. December 1, 2016; July 1, 2012; November 1, 2008; May 1, 2006; December 1, 2005; August 1, 2005.

21 NCAC 36 .0302 ESTABLISHMENT OF A NURSING PROGRAM - INITIAL APPROVAL

- (a) At least six months prior to the proposed enrollment of students in a nursing program, an institution seeking approval to operate a nursing program shall employ a program director qualified pursuant to 21 NCAC 36 .0317(c) to develop an application documenting the following:

- (1) a narrative description of the organizational structure of the program and its relationship to the controlling institution, including accreditation status. The controlling institution shall be an accredited institution;
- (2) a general overview of the entire proposed curriculum that includes:
 - (A) the program philosophy, purposes, and objectives;
 - (B) a master plan of the curriculum, indicating the sequence for both nursing and non-nursing courses, as well as prerequisites and corequisites;
 - (C) course descriptions and course objectives for all courses; and
 - (D) course syllabi pursuant to 21 NCAC 36. 0321(i) for all first-year nursing courses;
- (3) the proposed student population;
- (4) the projected student enrollment;
- (5) evidence of learning resources and clinical experiences available to implement and maintain the program;
- (6) financial resources adequate to begin and maintain the program;
- (7) physical facilities adequate to house the program;
- (8) support services available to the program from the controlling institution;
- (9) approval of the program by the governing body of the controlling institution; and
- (10) a plan with a specified time frame for:
 - (A) availability of qualified faculty as specified in 21 NCAC 36 .0318;
 - (B) course syllabi as specified in 21 NCAC 36. 0321(h) of this Section for all nursing courses;
 - (C) student policies for admission, progression, and graduation of students, pursuant to 21 NCAC 36 .0320 of this Section; and
 - (D) comprehensive program evaluation pursuant to 21 NCAC 36 .0317(d).

(b) The application to establish a nursing program shall be on a Board form, contain current and accurate information required in Paragraph (a) of this Rule, be complete, and be signed by the program director and the chief executive officer of the controlling institution.

(c) The completed application shall be received by the Board not less than 120 days prior to a regular meeting of the Board to be considered for placement on the agenda of that meeting.

(d) The Board shall conduct an on-site survey of the proposed program after the application meets all the requirements set forth in this Rule, shall prepare a survey report, and afford the petitioning institution an opportunity to respond to the survey report.

(e) The Board shall consider all evidence, including the application, the survey report, comments from representatives of the petitioning institution, public comments, and the status of

other nursing programs at the institution in determining whether to approve the application.

(f) If the Board finds, from the evidence presented, that the resources and plans meet all requirements set forth in this Rule for establishing a new nursing program, the Board shall grant Initial Approval, and shall establish a maximum enrollment and implementation date.

(g) If the Board determines that a proposed program does not comply with all rules, Initial Approval shall be denied.

(h) The Board shall rescind the Initial Approval of a program if the controlling institution fails to submit documentation as set forth in the plan required by Subparagraph (a)(10) of this Rule.

(i) The Board shall rescind the Initial Approval of a program if the first class of students is not enrolled in the program within one year after issuing the Initial Approval.

(j) For 12 months following rescission of approval, the controlling institution shall not submit an application for establishing a nursing program.

(k) A program shall retain Initial Approval Status for the time necessary for full implementation of the curriculum provided that the program complies with Section .0300 of this Chapter.

(l) Programs with Initial Approval shall be surveyed:

- (1) during the final term of curriculum implementation of the program; and
- (2) upon receipt by the Board of information that the program may not be complying with Section .0300.

(m) If at any time it comes to the attention of the Board that a program on Initial Approval is not complying with Section .0300 of this Chapter, the program, upon written notification, shall:

- (1) correct the area of noncompliance and submit written evidence of this correction to the Board; or
- (2) submit and implement a plan for correction to the Board.

(n) The Board shall rescind the Initial Approval of a program if the Board determines that the program does not comply with Paragraph (m) of this Rule.

(o) If, following the survey and during final curriculum implementation, the Board finds that the program is complying with Section .0300 of this Chapter, the Board shall place the program on Full Approval status.

(p) If, following the survey and during final curriculum implementation, the Board finds that the program does not comply with the Section .0300 of this Chapter, the Board shall rescind the program's Initial Approval and provide the program with written notice of the Board's decision.

(q) Upon written request from the program submitted within 10 business days of the Board's written notice of rescinding the Initial Approval, the Board shall schedule a hearing within 30 business days from the date on which the request was received.

(r) Following the hearing and consideration of all evidence provided, the Board shall assign the program Full Approval status or shall enter an Order rescinding the Initial Approval status, which shall constitute program closure pursuant to 21 NCAC 36 .0309.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. February 1, 1976;

Amended Eff. June 1, 1992; January 1, 1989; November 1, 1984; May 1, 1982;
Temporary Amendment Eff. October 11, 2001;
Amended Eff. December 1, 2016; January 1, 2009; December 1, 2005; August 1, 2002.

21 NCAC 36 .0303 EXISTING NURSING PROGRAM

(a) All nursing programs under the authority of the Board may obtain national program accreditation by a nursing accreditation body as defined in 21 NCAC 36 .0120(29).

(b) Full Approval

- (1) The Board shall review approved programs at least every eight years as specified in G.S. 90-171.40. Reviews of individual programs shall be conducted at shorter intervals upon request from the individual institution or as considered necessary by the Board. National accreditation self-study reports shall provide a basis for review for accredited programs.
- (2) The Board shall send a written report of the review no more than 20 business days following the completion of the review process. Responses from a nursing education program regarding a review report or Warning Status as referenced in Paragraph (c) of this Rule shall be received in the Board office by the deadline date specified in the letter accompanying the report or notification of Warning Status. If no materials or documents are received by the specified deadline date, the Board shall act upon the findings in the review report and the testimony of the Board staff.
- (3) If the Board determines that a program has complied with the rules in this Section, the program shall be continued on Full Approval status.
- (4) If the Board determines a pattern of noncompliance with one or more rules in this Section, a review shall be conducted. The program shall submit to the Board a plan of compliance to correct the identified pattern. Failure to comply with the correction plan shall result in withdrawal of approval, constituting program closure, consistent with 21 NCAC 36 .0309.

(c) Warning Status

- (1) If the Board determines that a program is not complying with the rules in this Section, the Board shall assign the program Warning Status and shall give written notice by certified mail to the program specifying:
 - (A) the areas in which there is noncompliance;
 - (B) the date by which the program must comply with the rules in this Section. The maximum time for compliance is two years after issuance of the written notice; and

- (C) the opportunity to schedule a hearing. Any request for a hearing regarding the program Warning Status shall be submitted to the Board. A hearing shall be afforded pursuant to the provisions of G.S. 150B, Article 3A.
- (2) On or before the required date of compliance identified in this Paragraph, if the Board determines that the program is complying with the rules in this Section, the Board shall assign the program Full Approval Status.
- (3) If the Board finds the program is not in compliance with the rules in this Section by the date specified in Part (c)(1)(B) of this Rule, the program shall remain on Warning Status; and,
 - (A) a review by the Board shall be conducted during that time;
 - (B) following review, the Board may continue the program on Warning Status; or
 - (C) the Board may withdraw approval, constituting program closure consistent with Subparagraph (b)(4) of this Rule.
- (4) Upon written request from the program submitted within 10 business days of the Board's written notice of Warning Status, the Board shall schedule a hearing within 30 business days after the date on which the request was received.
- (5) When a hearing is held at the request of the program and the Board determines the program is in compliance with the rules in this Section, the Board shall assign the program Full Approval Status.
- (6) When a hearing is held at the request of the program and the Board determines that the program is not in compliance with the rules in this Section, the program shall remain on Warning Status; and,
 - (A) a review by the Board shall be conducted during that time;
 - (B) following review, the Board may continue the program on Warning Status; or
 - (C) the Board may withdraw approval, constituting program closure consistent with Subparagraph (b)(4) of this Rule.

History Note: Authority G.S. 90-171.23(b); 90-171.38; 90-171.39; 90-171.40;
Eff. February 1, 1976;
Amended Eff. December 1, 2016; August 1, 2011; July 3, 2008; March 1, 2006; January 1, 2004; June 1, 1992; January 1, 1989.

21 NCAC 36 .0309 PROCESS FOR PROGRAM CLOSURE

- (a) When the controlling institution makes the decision to close a nursing program, the Administration of the institution shall submit a written plan for the discontinuation of the program to the Board and shall include the reason(s) for program closure, the date of intended closure, and a plan for students to complete this or another approved program.
- (b) When the Board closes a nursing program, the program director shall, within 30 days, develop and submit a plan for discontinuation of the program for Board approval. The plan shall address transfer of students to approved programs.
- (c) The controlling institution shall notify the Board of the arrangement for secure storage and access to academic records and transcripts.

History Note: Authority G.S. 90-171.38; 90-171.39; 90-171.40; Eff. June 1, 1992; Amended Eff. December 1, 2016; December 1, 2005.

21 NCAC 36 .0317 ADMINISTRATION

- (a) The controlling institution of a nursing program shall provide those human, physical, technical, and financial resources and services essential to support program processes and outcomes, including those listed in Paragraph (d) and (e) of this Rule, and maintain compliance with Section .0300 of this Chapter.
- (b) A full-time registered nurse qualified pursuant to Paragraph (c) of this Rule shall have the authority for the direction of the nursing program. This authority shall encompass responsibilities for maintaining compliance with rules and other legal requirements in all areas of the program. The program director shall have non-teaching time sufficient to allow for program organization, administration, continuous review, planning, and development.
- (c) Program director in a program preparing students for initial nurse licensure shall satisfy the following requirements:
- (1) hold a current unrestricted license or multistate licensure privilege to practice as a registered nurse in North Carolina;
 - (2) have two years of full-time experience as a faculty member in a Board-approved nursing program;
 - (3) be experientially qualified to lead the program to accomplish the mission, goals, and expected program outcomes;
 - (4) hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution. If newly employed on or after January 1, 2016, hold a graduate degree from an accredited institution. If newly employed on or after January 1, 2021, hold a graduate degree in nursing from an accredited institution;
 - (5) prior to or within the first three years of employment, have education in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to

the program director role. This education may be demonstrated by one of the following:

- (A) completion of 45 contact hours of Board-approved continuing education courses;
 - (B) completion of a certificate program in nursing education;
 - (C) nine semester hours of graduate course work in adult learning and learning principles;
 - (D) national certification in nursing education; or
 - (E) documentation of successful completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval include content in the faculty role within the curriculum implementation, curricular objectives to be met and evaluated, review of strategies for identified student population, and expectations of student and faculty performance;
- (6) maintain competence in the areas of assigned responsibility; and
 - (7) have current knowledge of nursing practice for the registered nurse and the licensed practical nurse.
- (d) The nursing education program shall implement, for quality improvement, a comprehensive program evaluation that shall include the following:
- (1) students' achievement of program outcomes;
 - (2) evidence of program resources, including fiscal, physical, human, clinical, and technical learning resources; student support services; and the availability of clinical sites and the viability of those sites adequate to meet the objectives of the program;
 - (3) measures of program outcomes for graduates;
 - (4) evidence that accurate program information for the public is available;
 - (5) evidence that the controlling institution and its administration support program outcomes;
 - (6) evidence that program director and program faculty meet Board qualifications and are sufficient in number to achieve program outcomes;
 - (7) evidence that the academic institution assures security of student information;
 - (8) evidence that collected evaluative data is utilized in implementing quality improvement activities; and
 - (9) evidence of student participation in program planning, implementation, evaluation, and continuous improvement.
- (e) The controlling institution and the nursing education program shall communicate information describing the nursing education program that is accurate, complete, consistent across mediums,

and accessible by the public. The following shall be accessible to all applicants and students:

- (1) admission policies and practices;
- (2) policy on advanced placement and transfer of credits;
- (3) the number of credits required for completion of the program;
- (4) tuition, fees, and other program costs;
- (5) policies and procedures for withdrawal, including refund of tuition or fees;
- (6) the grievance procedure;
- (7) criteria for successful progression in the program, including graduation requirements; and
- (8) policies for clinical performance.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. June 1, 1992; Amended Eff. December 1, 2016; January 1, 2015; April 1, 2008; March 1, 2006.

21 NCAC 36 .0318 FACULTY

(a) Nursing program faculty shall include full-time and part-time faculty members. Part-time faculty shall participate in curriculum implementation and evaluation.

(b) Policies for nursing program faculty members shall be consistent with those for other faculty of the institution. Variations in these policies may be necessary due to the nature of the nursing curriculum.

(c) Fifty percent or more of the nursing faculty shall hold a graduate degree.

(d) As of January 1, 2021, at least 80 percent of the full-time faculty shall hold a graduate degree in nursing.

(e) As of January 1, 2021, at least 50 percent of the part-time faculty shall hold a graduate degree in nursing.

(f) All faculty shall hold a current unrestricted license or multistate licensure privilege to practice as a registered nurse in North Carolina.

(g) Nurses licensed pursuant to this Chapter who are full-time and part-time faculty and who teach in a program leading to initial licensure as a nurse shall:

- (1) hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution;
- (2) have two calendar years or the equivalent of full-time clinical experience as a registered nurse;
- (3) if newly employed in a full-time faculty position on or after January 1, 2016, hold a graduate degree from an accredited institution or obtain a graduate degree in nursing from an accredited institution within five years of initial full-time employment;
- (4) prior to or within the first three years of employment, have education in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to

faculty assignment. This preparation may be demonstrated by one of the following:

- (A) completion of 45 contact hours of Board-approved continuing education courses;
- (B) completion of a certificate program in nursing education;
- (C) nine semester hours of graduate course work in adult learning and learning principles;
- (D) national certification in nursing education; or
- (E) documentation of successful completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval include content in the faculty role in the curriculum implementation, curricular objectives to be met and evaluated, review of strategies for identified student population, and expectations of student and faculty performance;
- (5) maintain competence in the areas of assigned responsibility; and
- (6) have current knowledge of nursing practice for the registered nurse and the licensed practical nurse.

(h) Interdisciplinary faculty who teach in nursing program courses shall have academic preparation in the content area they are teaching.

(i) Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned clinical teaching responsibilities and shall serve as role models to students. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received basic instruction for that specific learning experience. Clinical preceptors shall hold a current, unrestricted license to practice as a registered nurse in North Carolina.

(j) Nurse faculty members shall have the authority and responsibility for:

- (1) student admission, progression, and graduation requirements; and
- (2) the development, implementation, and evaluation of the curriculum.

(k) Nurse faculty members shall be academically qualified and sufficient in number to implement the curriculum as required by the course objectives, the levels of the students, the nature of the learning environment, and to provide for teaching, supervision, and evaluation.

(l) The faculty-student ratio for faculty-directed preceptor clinical experiences shall be no larger than 1:15. The faculty-student ratio for all other clinical experiences shall be no larger than 1:10.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83; Eff. February 1, 1976;

Amended Eff. December 1, 2016; January 1, 2015; August 1, 2011; November 1, 2008; July 1, 2006; July 1, 2000; January 1, 1996; June 1, 1992; January 1, 1989; January 1, 1984.

21 NCAC 36 .0320 STUDENTS

(a) Students in nursing programs shall meet requirements established by the controlling institution.

(b) Admission requirements and practices shall be stated and published in the controlling institution's publications and shall include assessment of:

- (1) record of high school graduation, high-school equivalent, or earned credits from a post-secondary institution;
- (2) achievement potential through the use of previous academic records and pre-entrance examination cut-off scores that are consistent with curriculum demands and scholastic expectations; and
- (3) physical and emotional health that would provide evidence that is indicative of the applicant's ability to provide safe nursing care to the public.

(c) The number of students enrolled in nursing courses shall not exceed by more than 10 students the maximum number approved by the Board, as established pursuant to 21 NCAC 36 .0302(f) and 21 NCAC 36 .0321(k).

(d) The nursing program shall publish policies in nursing student handbook and college catalog that provide for identification and dismissal of students who:

- (1) present physical or emotional problems which conflict with the safety essential to nursing practice and do not respond to treatment or counseling within a timeframe that enables meeting program objectives;
- (2) demonstrate behavior which conflicts with the safety essential to nursing practice; or
- (3) fail to demonstrate professional behavior, including honesty, integrity, and appropriate use of social media, while in the nursing program of study.

(e) The nursing program shall maintain a three-year average at or above 95 percent of the national pass rate for licensure level pass rate on first writing of the licensure examination for calendar years ending December 31.

(f) The controlling institution shall publish policies in nursing student handbook and college catalog for transfer of credits or for admission to advanced placement and the nursing program shall determine the total number of nursing courses or credits awarded for advanced placement.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.43;

Eff. February 1, 1976;

Amended Eff. December 1, 2016; January 1, 2006; August 1, 1998; January 1, 1996; June 1, 1992; January 1, 1989; January 1, 1984.

21 NCAC 36 .0321 CURRICULUM

(a) The nursing program curriculum shall:

- (1) be planned by nursing program faculty;
- (2) reflect the stated program philosophy, purposes, and objectives pursuant to 21 NCAC 36 .0302(a)(2);
- (3) be consistent with Article 9A of G.S. 90 and the Rules in this Chapter governing the practice of nursing;
- (4) define the level of performance required to pass each course in the curriculum;
- (5) enable the student to develop the nursing knowledge, skills and abilities necessary for competent practice consistent with the level of licensure and scope as set forth in 21 NCAC 36 .0221, .0224, .0225, and .0231;
- (6) include content in the biological, physical, social, and behavioral sciences to provide a foundation for safe and effective nursing practice;
- (7) provide students the opportunity to acquire and demonstrate, through didactic content and clinical experience under faculty supervision, the knowledge, skills, and abilities required for safe, effective, and competent nursing practice across the lifespan; and
- (8) be revised as necessary to maintain a program that reflects changes and advances in health care and its delivery.

(b) Didactic content and supervised clinical experience across the lifespan appropriate to program type shall include:

- (1) Implementing safety principles and practices minimizing risk of harm to clients and providers through both system effectiveness and individual performance;
- (2) Using informatics to communicate, manage knowledge, mitigate error, and support decision making;
- (3) Employing evidence-based practice to integrate best research with clinical expertise and client values for optimal care, including skills to identify and apply best practices to nursing care;
- (4) Providing client-centered, culturally competent care by:
 - (A) respecting client differences, values, preferences, and expressed needs;
 - (B) involving clients in decision-making and care management;
 - (C) coordinating and managing continuous client care consistent with the level of licensure. This includes the demonstrated ability to supervise others and provide leadership of the profession appropriate for program type; and
 - (D) promoting healthy lifestyles for clients and populations.

- (5) Working in interdisciplinary teams to cooperate, collaborate, communicate, and integrate client care and health promotion; and,
 - (6) Participating in quality improvement processes to measure client outcomes, identify hazards and errors, and develop changes in processes of client care.
- (c) Clinical experience shall be comprised of sufficient hours to accomplish the curriculum, shall be supervised by qualified faculty pursuant to 21 NCAC 36 .0318, and shall ensure students' ability to practice at an entry level.
- (d) All student clinical experiences, including those with preceptors, shall be directed by nursing faculty.
- (e) A focused client care experience with a minimum of 120 hours shall be provided in the final year of curriculum implementation for programs preparing registered nurses.
- (f) A focused client care experience with a minimum of 90 hours shall be provided in the final semester of the curriculum for programs preparing practical nurses.
- (g) Learning experiences and methods of instruction, including distance education methods, shall be consistent with the written curriculum plan and shall demonstrate logical curricular progression.
- (h) Objectives for each course shall indicate the knowledge, skills, and abilities expected for competent student performance. These objectives shall:
- (1) indicate the relationship between the classroom learning and the application of this learning in the clinical experience;
 - (2) serve as criteria for the selection of the types of and settings for learning experiences; and
 - (3) serve as the basis for evaluating student performance.
- (i) Student course syllabi shall include a description and outline of:
- (1) the course content;
 - (2) the learning environments and activities;
 - (3) when the course is taken in the curriculum;
 - (4) allocation of time for didactic content, clinical experience, laboratory experience, and simulation; and,
 - (5) methods of evaluation of student performance, including all evaluation tools used in the curriculum.
- (j) Each course shall be implemented in accordance with and evaluated by reference to the student course syllabus.
- (k) Requests for approval of changes in, or expansion of, the program, accompanied by all required documentation, shall be submitted in the format provided by the Board at least 30 days prior to implementation for approval by the Board. Criteria for approval include the availability of classrooms, laboratories, clinical placements, equipment and supplies, and faculty sufficient to implement the curriculum to an increased number of students. Approval is required for any increase in enrollment that exceeds, by more than 10 students, the maximum number approved by the Board. Requests for expansion are considered only for programs with Full Approval status that demonstrate at least a three-year average licensure examination pass rate equal to

or greater than the NC three-year average pass rate for program type.

- (l) The nursing education program shall notify the Board of:
 - (1) alternative or additional program schedules; and
 - (2) planned decrease in the Board-approved student enrollment number to accurately reflect program capacity.
- (m) For all programs using simulation experiences substituted for clinical experience time, the nursing education program shall:
 - (1) demonstrate that simulation faculty have been formally educated, and maintain the competencies in simulation and debriefing; and
 - (2) provide a simulation environment with adequate faculty, space, equipment, and supplies that simulate realistic clinical experiences to meet the curriculum and course objectives.
- (n) Programs not holding national nursing accreditation shall limit simulation experiences to no more than 25 percent in any course including the focused client care experience.
- (o) Programs holding national nursing accreditation shall limit simulation experiences to:
 - (1) no more than 25 percent in the focused client care experience, and
 - (2) no more than 50 percent of clinical experience time in any other course.
- (p) External standardized examinations shall not be used as a determinant of a student's progression or graduation in a nursing education program preparing students for initial nurse licensure.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. February 1, 1976; Amended Eff. June 1, 1992; January 1, 1989; January 1, 1984; Temporary Amendment Eff. October 11, 2001; Amended Eff. December 1, 2016; December 1, 2005; August 1, 2002.

21 NCAC 36 .0322 FACILITIES

- (a) Campus facilities shall be appropriate in type, number, and accessibility for the total needs of the program.
- (b) Classrooms, laboratory and simulation space, and conference rooms shall be sufficient in size, number, and types for the number of students and purposes for which the rooms are to be used. Lighting, ventilation, location, and equipment must be suitable for the number of students and purposes for which the rooms are to be used.
- (c) Office and conference space for nursing program faculty members shall be appropriate and available for uninterrupted work and privacy, including conferences with students.
- (d) Learning resources, including clinical experiences, shall be comprehensive, current, developed with nursing faculty input, accessible to students and faculty, and support the implementation of the curriculum.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; Eff. February 1, 1976; Amended Eff. January 1, 1996; June 1, 1992; January 1, 1989; May 1, 1988;

*Temporary Amendment Eff. October 11, 2001;
Amended Eff. December 1, 2016; April 1, 2006; August 1, 2002.*

21 NCAC 36 .0323 RECORDS AND REPORTS

- (a) The controlling institution's publications describing the nursing program shall be accurate.
- (b) There shall be a system for maintaining official records. Current and permanent student records shall be stored in a secure manner that prevents physical damage and unauthorized access.
- (c) Both permanent and current records shall be available for review by Board staff.
- (d) The official permanent record for each graduate shall include documentation of graduation from the program and a transcript of the individual's achievement in the program.
- (e) The record for each currently enrolled student shall contain up-to-date and complete information, including the following:
 - (1) documentation of admission criteria met by the student;
 - (2) documentation of high school graduation, high school equivalent, or earned credits from post-secondary institution approved pursuant to G.S. 90-171.38(a); and
 - (3) a transcript of credit hours achieved in the classroom, laboratory, and clinical instruction for each course that reflects progression consistent with program policies.
- (f) The nursing program shall file with the Board records, data, and reports in order to furnish information concerning operation of the program as prescribed in the rules in this Section, including:
 - (1) an Annual Report to be filed with the Board by November 1 of each year;
 - (2) a Program Description Report for non-accredited programs filed with the Board at least 30 days prior to a scheduled review by the Board; and
 - (3) notification by institution administration of any change of the registered nurse responsible for the nursing program. This notification shall include a curriculum vitae for the new individual and shall be submitted no later than 10 business days of the effective date of the change.
- (g) All communications relevant to accreditation shall be submitted to the North Carolina Board of Nursing at the same time that the communications are submitted to the accrediting body.
- (h) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with the rules in this Section by a program and its controlling institutions.
- (i) The part of the application for licensure by examination to be submitted by the nursing program shall include a statement verifying satisfactory completion of all requirements for graduation and the date of completion. The nursing program director shall verify completion of requirements to the Board no later than one month following completion of the Board-approved nursing program.

*History Note: Authority G.S. 90-171.23(b)(8); 90-171.38;
Eff. February 1, 1976;*

Amended Eff. December 1, 2016; January 1, 2015; December 1, 2005; January 1, 2004; June 1, 1992; January 1, 1989; January 1, 1984.

**CHAPTER 63 – SOCIAL WORK CERTIFICATION AND
LICENSURE BOARD**

21 NCAC 63 .0102 DEFINITIONS

Whenever used in this Chapter, the definitions set forth in G.S. 90B-3 are herein incorporated by reference. The following definitions apply in this Chapter:

- (1) CMSW - this designation represents the certified master social worker level of certification.
- (2) CSW - this designation represents the certified social worker level of certification.
- (3) CSWM - this designation represents the certified social work manager level of certification.
- (4) LCSW - this designation represents the licensed clinical social worker level of certification.
- (5) LCSWA - this designation represents the licensed clinical social worker associate level of certification.
- (6) NCSWCLB - this designation represents the North Carolina Social Work Certification and Licensure Board.
- (7) Censure. Censure is an act involving severe condemnation and a sanction by the Board for practice misconduct. Censuring is typically for severe offenses and may require specific follow-up actions by the social worker.
- (8) Client. Client means the individual, couple, family, group, organization, or community that seeks or receives social work services. Client status is not dependent on billing or payment of fees for such services. A power of attorney, legal guardian or person who is responsible for making decisions relative to the provision of social work services for a minor or adult is also deemed a recipient of social work services as part of the client system.
- (9) Client system. Client system means the client and those in the client's environment who are potentially influential in contributing to a resolution of the client's issues.
- (10) Clinical Case Management. A comprehensive approach to care integrating a broad array of interventions to include planning, implementation and management of care for clients with one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions. Interventions by the clinical case manager shall involve face-to-face contact with the client on a regular basis, shall be grounded in clinical

- social work theory, and shall be guided by the client's treatment plan or personal care plan.
- (11) **Clinical Social Work Experience.** As it relates to the work experience required for LCSW licensure, two years of clinical social work experience in direct practice means the professional application of master or doctoral social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial function. Clinical social work experience requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment, including the use of psychotherapy, to treat one or more of the following disorders or conditions: mental, emotional, addictive, behavioral, or developmental disorders and conditions. In addition, the clinical social work experience may also include clinical case management, information and referral, mediation, client education, clinical supervision and clinical consultation that is directly related to the treatment plan or personal care plan of a client or consumer.
- (12) **Diagnosis.** In the context of licensed clinical social work practice diagnosis is the process of distinguishing, beyond the general social work assessment, among one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions within a psychosocial framework on the basis of their similar and unique characteristics consistent with American Psychiatric Association or World Health Organization classification systems.
- (13) **Probation.** Probation is a period of time in which a license or certification is subject to specific practice conditions determined by the Board. The individual is permitted to continue practice subject to compliance with the conditions set forth in the order determining the probation status. A violation of the conditions of probation can result in additional disciplinary action taken by the Board.
- (14) **Reprimand.** Reprimand is a public rebuke and sanction by the Board for practice misconduct. A reprimand typically is given for less severe offenses and may require specific follow-up actions by the social worker.
- (15) **Revocation.** Revocation is the withdrawal of privilege to practice as a certified or licensed social worker in the State of North Carolina.
- (16) **Surrender.** Surrender is the voluntary relinquishment of a certification or license by its holder. The surrender of a certification or license shall be accepted only by Consent Order with the Board.
- (17) **Suspension.** Suspension is the withdrawal of privilege to practice for a specific period of time.
- (18) **Treatment.** Clinical social work intervention, including individual, couples, family, or group psychotherapy, that is empirically grounded and used to help resolve symptoms of one or more of the following: mental, emotional, addictive, behavioral, or developmental disorders and conditions.

History Note: Authority G.S. 90B-3; 90B-6; Eff. August 1, 1987; Temporary Amendment Eff. October 1, 1999; Amended Eff. October 1, 2012; July 1, 2011; January 1, 2009; July 1, 2000; Readopted Eff. February 1, 2017.

21 NCAC 63 .0204 REFERENCES

- (a) Applicants for the LCSW and CSWM classifications shall have a minimum of three references related to the applicant's experience, as required by G.S. 90B-7(d) and (e). Applicants for other classifications shall have a minimum of three references. The Board shall not accept references by relatives, clients, or subordinates of applicants. A current Board member shall not submit a reference for an applicant unless he or she is the applicant's current or only social work supervisor. In such a case the Board member may submit a reference, but he or she shall excuse himself or herself from review of that applicant.
- (b) All references shall come from individuals who have or had a professional association with the applicant and have knowledge of the applicant's professional experience in the practice of social work.
- (c) For applicants for LCSWA licensure, at least one reference shall be from one who has been or is currently supervising the applicant in a social work setting.
- (d) For applicants from other jurisdictions seeking certification or licensure in accordance with G.S. 90B-8, at least one reference shall be from a registered, certified, or licensed social worker who has been or is currently practicing in a social work setting.

History Note: Authority G.S. 90B-6; 90B-7; Eff. August 1, 1987; Temporary Amendment Eff. October 1, 1999; Amended Eff. January 1, 2009; April 1, 2001; Readopted Eff. February 1, 2017.

21 NCAC 63 .0211 WORK EXPERIENCE

- (a) Qualifications as required by G.S. 90B-7(d)(s) for the Licensed Clinical Social Worker (LCSW) credential:
- (1) Two years of post-MSW clinical social work experience shall mean 3,000 clock hours of work or employment for a fee or salary while engaged in the practice of clinical social work as defined in this Chapter. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six consecutive years. Practicum or internship experience gained as part of any educational

- program shall not be included. Pursuant to G.S. 93B-15.1(a), military applicants may receive credit for military occupational specialty experience obtained post MSW degree and deemed substantially equivalent to clinical social work practice as defined in this Chapter.
- (2) Appropriate supervision shall mean supervision by a MSW who is also a Licensed Clinical Social Worker and who is in good standing with the Board. A supervisor disciplined by any professional credentialing body or professional organization, or who has violated the provisions of an occupational licensing Board may not provide supervision to an associate licensee without the written permission of the Board. The Licensed Clinical Social Worker Associate's (LCSWA) clinical social work supervisor shall have an additional two years of clinical social work experience post LCSW licensure.
 - (3) Appropriate supervision shall be that which is provided on a regular basis, conducted no less than once every two weeks, with at least one hour of supervision during every 30 hours of experience. A minimum of 100 hours of supervision is required. The clinical supervisor shall make the initial determination whether the applicant's work experience meets the definition of clinical social work in accordance with the rules of this Chapter. The Board shall make the final determination whether or not the applicant's work experience meets the definition of clinical social work practice. Appropriate supervision may be individual or group supervision. Individual supervision shall mean one on one, face-to-face supervision by a MSW who is also a LCSW where the supervisor reviews and discusses clinical social work cases, reviews documentation, and provides evaluative comments and direction to the LCSWA. Group supervision shall mean face-to-face supervision provided by a MSW who is also a LCSW in a group setting, during which the supervisor reviews and discusses clinical social work cases, reviews documentation, and provides feedback and direction to each LCSWA in the group. A maximum of 25 hours of group supervision may be applied toward meeting the supervision requirements for the LCSW.
 - (4) Unless otherwise preapproved by the Board, no more than 20 hours of supervision may be provided through the use of technology. The clinical supervisor may seek approval by providing a written request to the Board. The request shall include the parties' information, including name, license number, and business address; and the circumstances for which the additional hours are needed. Approval of the

request shall be determined on a case by case basis, based upon the circumstances provided in the request. All supervision provided through the use of technology shall be synchronous, involve visual and audio interactions throughout the entire session, and shall take place in such a manner as to maintain the confidentiality of the communication.

(b) Qualifications as required by G.S. 90B-7(e)(2) for the Certified Social Work Manager (CSWM) credential:

- (1) Two years of post social work degree experience shall mean 3,000 clock hours of employment for a salary while engaged in administrative social work duties including, policy and budgetary development and implementation, supervision and management, program evaluation, planning, and staff development. Such duties shall be carried out in an administrative setting where social work or other mental health services are delivered. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six consecutive years. Practicum or internship experience gained as part of any educational program shall not be included.
- (2) Appropriate supervision shall mean face-to-face supervision by a social work administrator certified or licensed by the Board who has a minimum of two years of administrative experience in a social work or mental health setting. Appropriate supervision shall be that which is provided on a regular basis, conducted no less than once every two weeks throughout the applicant's two years of administrative social work experience. A minimum of 100 hours of supervision is required. A maximum of 50 hours of group supervision may be applied toward meeting the supervision requirements for the CSWM. No more than 20 hours of supervision may be provided through the use of technology. All supervision provided through the use of technology shall be synchronous, involve visual and audio interaction throughout the entire session, and shall take place in such a manner as to maintain the confidentiality of the communication.

*History Note: Authority G. S. 90B-6; 90B-7;
 Temporary Adoption Eff. October 1, 1999;
 Eff. July 1, 2000;
 Amended Eff. October 1, 2012; January 1, 2009; September 1, 2005;
 Readopted Eff. February 1, 2017.*

**21 NCAC 63 .0214 CERTIFICATION AND
 LICENSURE FOR MILITARY PERSONNEL AND
 MILITARY SPOUSES**

(a) Upon receipt of a request for certification or licensure pursuant to G.S. 93B-15.1 from an applicant with military training

and experience, the Board shall issue a certificate or license upon the applicant's satisfying the following conditions:

- (1) Has completed and submits to the Board, application information as described in Rules .0202, .0203, and .0204 of this Section;
- (2) Has provided to the Board written documentation to satisfy conditions set out in G.S. 93B-15.1(a) and (c); and
- (3) Has passed the qualifying examination for the level of certification or licensure for which the applicant is applying.

(b) Upon receipt of a request for certification or licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a certificate or license upon the applicant's satisfying the following conditions:

- (1) Has completed and submits to the Board, application information as described in Rules .0202, .0203, and .0204 of this Section;
- (2) Has provided written documentation to satisfy conditions set out in G.S. 93B-15.1(b) and (c); and
- (3) Has passed the qualifying examination for the level of certification or licensure for which the applicant is applying.

(c) Military trained applicants and military spouse applicants may apply for a temporary license as described in Rule .0213 of this Section. A temporary license shall apply only to clinical licensure and requires the following:

- (1) Submission of an application and official written verification of equivalent licensure, certification, or registration in good standing from the jurisdiction under which the applicant is currently licensed, certified, or registered;
- (2) Payment of the applicable fee;
- (3) Prior to the expiration of the temporary license, the applicant shall fulfill all requirements for documentation of education, experience, training, and examination, and pay any additional application fee as described in Rule .0202 of this Section. Upon receipt of all required documentation and applicable fees, the Board shall issue the appropriate clinical license for a period not to exceed two years.

History Note: Authority G.S. 90B-6(h); 93B-15.1; Eff. February 1, 2017.

21 NCAC 63 .0401 CONTINUING EDUCATION REQUIREMENTS

(a) Continuing education for certification or licensure renewal shall be required to maintain professional knowledge and technical competency. Renewal of certification or licensure shall require 40 contact hours of continuing education credits approved by the Board within each two year renewal cycle. If a certification or licensure is for less than a full two-year period, then 30 contact hours of continuing education credits shall be required. Continuing education credits shall be awarded as follows:

- (1) Continuing education units awarded that do not reflect contact hours or clock hours of

instruction shall be awarded at the rate of one contact hour of credit for each continuing education unit;

- (2) One academic course hour of credit shall be equal to 15 contact hours; and

- (3) Credit for auditing an academic course shall be for clock hours of instruction attended with one clock hour equal to one contact hour of credit.

(b) During each renewal period all certified and licensed social workers shall engage in a minimum of four contact hours of continuing education focused on ethics related to social work practice and ethical decision-making.

(c) The following activities shall be approved for continuing education:

- (1) Academic social work courses taken for credit or audit;
- (2) Agency-based staff development, seminars, institutes, workshops, mini courses or conferences oriented to social work practice, values, skills and knowledge;
- (3) Cross-disciplinary offerings from medicine, law and the behavioral/social sciences or other disciplines, if such offerings are related to social work practice, values, skills and knowledge;
- (4) Distance learning activities including online courses and home study courses that have been pre-approved by the Association of Social Work Boards (ASWB) or the North Carolina Chapter of the National Association of Social Workers (NASW-NC). A list of approved distance learning courses and providers are available online at www.aswb.org and www.naswnc.org. The maximum continuing education credit granted for distance learning activities is one half of the required hours, up to a maximum of 20 contact hours per renewal period. Live synchronous audio-video broadcasts allowing for real time interaction between the instructor and participants attending through electronic means shall not be considered distance learning activities; and
- (5) A group of professionals within the health and human services or related fields organized to come together to study a particular topic focusing on social work practice provided the following can be documented:
 - (A) study topic;
 - (B) study material;
 - (C) facilitator; and
 - (D) date and hours of attendance.

(d) Continuing education focusing on practitioner self-care and well-being shall not exceed six contact hours of credit during a single renewal cycle.

(e) Up to five contact hours of credit shall be granted per renewal cycle for presenting a training focused on social work practice provided that:

- (1) The Board receives confirmation from the organization for which the licensee presented

that identifies the licensee as the presenter, confirms the title and date of the presentation, the length of the presentation, and number of attendees; and

- (2) the dates of the presentation occur within the renewal cycle;

(f) Credit shall not be granted for:

- (1) identical programs completed within the same renewal period;
- (2) job orientation or training directed at procedural mandates such as health and safety practices, new hire training, and compliance training; or
- (3) supervision and case consultation.

History Note: Authority G.S. 90B-6; 90B-9;

Eff. August 1, 1987;

Amended Eff. September 1, 1993;

Temporary Amendment Eff. October 1, 1999;

Amended Eff. January 1, 2009; September 1, 2005; April 1, 2001;

Readopted Eff. February 1, 2017.

21 NCAC 63 .0610 CONTINUANCES

(a) All motions for continuance shall be addressed to the Chair.

(b) Motions for a continuance of a hearing may be granted in accordance with the North Carolina Rules of Civil Procedure as set forth in G.S. 1A-1. The Board is not required to grant a motion to continue.

(c) In determining whether good cause exists, the presiding officer shall consider the ability of the party requesting a continuance to proceed without a continuance.

(d) Motions for a continuance shall be in writing and shall be received in the office of the Board no less than seven calendar days before the hearing date.

(e) A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied if a continuance has been previously granted unless the reason for the motion could not have been ascertained earlier.

History Note: G.S. 90B-6(h); 150B-38(h);

Eff. February 1, 2017.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission January 19, 2017 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House

Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Paul Powell
Jeanette Doran
Danny Earl Britt, Jr.

COMMISSION COUNSEL

Abigail Hammond	(919)431-3076
Amber Cronk May	(919)431-3074
Amanda Reeder	(919)431-3079
Jason Thomas	(919)431-3081

RULES REVIEW COMMISSION MEETING DATES

January 19, 2017	February 16, 2017
March 16, 2017	April 21, 2017

AGENDA

RULES REVIEW COMMISSION

THURSDAY, JANUARY 19, 2017 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
 - Department of Insurance - 11 NCAC 05A .0101, .0105, .0201, .0202, .0301, .0302, .0303, .0501, .0503, .0504, .0505, .0506, .0507, .0508, .0510, .0511, .0512, .0601, .0602, .0603, .0604, .0701, .0702, .0703, .0704, .0705 (Hammond)
 - Manufactured Housing Board - 11 NCAC 08 .0904 (Thomas)
- IV. Review of Log of Filings (Permanent Rules) for rules filed November 22, 2016 through December 20, 2016
 - Industrial Commission (Reeder)
 - HHS - Division of Mental Health, Developmental Disabilities and Substance Abuse Services (May)
 - Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (May)
 - Social Services Commission (Reeder)
 - Coastal Resources Commission (Hammond)
 - Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors (Hammond)
 - State Human Resources Commission (Thomas)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
 - Review of Reports
 - 1. 02 NCAC 48C - Board of Agriculture (Hammond)
 - 2. 02 NCAC 48D - Board of Agriculture (Hammond)
 - 3. 02 NCAC 48F - Plant Conservation Board (Hammond)
 - 4. 02 NCAC 52B - Board of Agriculture (Hammond)

5. 02 NCAC 52C - Board of Agriculture (Hammond)
6. 02 NCAC 52D - Board of Agriculture (Hammond)
7. 02 NCAC 52E - Board of Agriculture (Hammond)
8. 02 NCAC 52F - Board of Agriculture (Hammond)
9. 02 NCAC 52G – Board of Agriculture (Hammond)
10. 02 NCAC 52H – Board of Agriculture (Hammond)
11. 02 NCAC 52I – Board of Agriculture (Hammond)
12. 02 NCAC 59D – Soil and Water Conservation Commission (Hammond)
13. 02 NCAC 59H – Soil and Water Conservation Commission (Hammond)
14. 10A NCAC 27E - Commission for Mental Health (Hammond)
15. 10A NCAC 27F - Commission for Mental Health (Hammond)
16. 10A NCAC 27H - Commission for Mental Health (Hammond)

VII. Review of the 2017 State Medical Facilities Plan (Thomas)

VIII. Commission Business

- Next meeting: Thursday, February 16, 2017

**Commission Review
Log of Permanent Rule Filings
November 22, 2016 through December 20, 2016**

INDUSTRIAL COMMISSION

The rules in Chapter 10 are from the Industrial Commission. The rules in Subchapter 10A concern workers' compensation rules including administration (.0100); notice of act (.0200); insurance (.0300); disability, compensation, fees (.0400); agreements (.0500); claims administration and procedures (.0600); appeals (.0700); rules of the commission (.0800); report of earnings (.0900); and preauthorization for medical treatment (.1000).

Electronic Filings with the Commission; How to File
Amend/*

04 NCAC 10A .0108

HHS - MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, DIVISION OF

The rules in Subchapter 26C concern other general mental health rules including designation of facilities for the custody and treatment of involuntary clients (.0100); research (.0200); death reporting (.0300); miscellaneous (.0400); summary suspension and revocation (.0500); removal of local management entity functions (.0600); and county disengagement from a local management entity-managed care organization (.0700).

Scope
Adopt/*

10A NCAC 26C .0701

County Request to Disengage from a Local Management Entit...
Adopt/*

10A NCAC 26C .0702

Secretary Response to County Requests to Disengage from a...
Adopt/*

10A NCAC 26C .0703

MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES, COMMISSION FOR

The rules in Chapter 27 concern mental health community facilities and services. The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); facility licensing procedures (.0400); area program requirements (.0500); area authority or county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800);

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

Operations
Amend/*

10A NCAC 27G .6702

Subchapter 27H concerns miscellaneous rules including admission procedures for minors or incompetent persons to nonrestrictive treatment facilities (.0100); training and registration of forensic evaluators (.0200); Hepatitis B screening and vaccination of residents and employees in group homes for developmentally disabled persons (.0300); client eligibility (.0400); surrogate parents for infants and toddlers in early intervention services (.0500); and continuity of care (.0600).

Scope
Amend/*

10A NCAC 27H .0201

Definitions
Amend/*

10A NCAC 27H .0202

Eligibility for Training
Amend/*

10A NCAC 27H .0203

Training and Certification
Amend/*

10A NCAC 27H .0204

LME-MCO Oversight of Forensic Evaluator Program
Amend/*

10A NCAC 27H .0205

Termination of Certification
Amend/*

10A NCAC 27H .0206

Duties of Certified Forensic Evaluator
Amend/*

10A NCAC 27H .0207

SOCIAL SERVICES COMMISSION

The rules in Chapter 70 are from the Social Services Commission and deal with children's services.

The rules in Subchapter 70A deal with protective services including general (.0100); and community child protection teams (.0200).

Reports of Neglect, Abuse or Dependency 10A NCAC 70A .0103
Amend/*

The rules in Subchapter 70B concern foster care services including general provisions (.0100); resource items to support school participation (.0200); and risk assessment (.0300).

Eligibility 10A NCAC 70B .0102
Amend/*

The rules in Subchapter 70M concern adoption standards including general provisions (.0100); organization and administration (.0200); functions of an adoption agency (.0300); adoption assistance (.0400); out-of-state adoption fees (.0500); and non-recurring adoption costs (.0600).

Eligibility Requirements for Regular Monthly Cash Assista... 10A NCAC 70M .0402
Amend/*

Requirements 10A NCAC 70M .0603
Amend/*

The rules in Subchapter 70P concern the guardianship assistance program.

Scope 10A NCAC 70P .0101
Adopt/*

Purpose 10A NCAC 70P .0102
Adopt/*

Definitions 10A NCAC 70P .0103
Adopt/*

Guardianship Assistance Program Eligibility 10A NCAC 70P .0104
Adopt/*

Guardianship Assistance Program Requirements 10A NCAC 70P .0105
Adopt/*

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); general permit to construct boat ramps along estuarine and public trust 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).

General Use Standards for Ocean Hazard Areas
Amend/*

15A NCAC 07H .0306

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

The rules in Chapter 50 are from the Plumbing, Heating and Fire Sprinkler Contractors including rules about organization (.0100); forms (.0200); examinations (.0300); general procedures (.0400); policy statements and interpretative rules (.0500); contested cases (.1000); fees (.1100); petitions for rules (.1200); declaratory rulings (.1300); and continuing education (.1400).

State and Local Government Plumbing or Heating Technician
Adopt/*

21 NCAC 50 .0312

Responsibilities of State and Local Government Technician...
Adopt/*

21 NCAC 50 .0313

Multiple Licenses
Amend/*

21 NCAC 50 .0405

Supervision in Absence of Inspection
Adopt/*

21 NCAC 50 .0414

Fees for Copies of Records and Returned Checks
Amend/*

21 NCAC 50 .1104

STATE HUMAN RESOURCES COMMISSION

The rules in Subchapter 1C concern personnel administration including employment (.0100); general employment policies (.0200); personnel records and reports (.0300); appointment (.0400); work schedule (.0500); competitive service (.0600); secondary employment (.0700); requirements for teleworking programs (.0800); employee recognition programs (.0900); and separation (.1000).

Permanent and Time-Limited Appointment
Amend/*

25 NCAC 01C .0402

Reduction in Force
Amend/*

25 NCAC 01C .1004

The rules in Subchapter 1D are the rules dealing with compensation and include administration of the pay plan (.0100); new appointments (.0200); promotion (.0300); demotions or reassignments (.0400); separation (.0500); reallocation (.0600); salary range revision (.0700); initial classification (.0800); transfer (.0900); reinstatement (.1000); longevity pay (.1200); holiday premium pay (.1300); shift premium pay (.1400); emergency call-back pay (.1500); foreign service pay (.1600); employment of physicians for extended duty (.1800); hours of work and overtime compensation (.1900); unemployment insurance (.2000); special salary adjustments (.2100); comprehensive compensation system (.2500); and in-range salary adjustments (.2600).

Compensation Plan Philosophy and Plan
Amend/*

25 NCAC 01D .0101

Salary Structures
Amend/*

25 NCAC 01D .0102

<u>Pay Status</u>	25	NCAC	01D	.0105
Amend/*				
<u>Total State Service Defined</u>	25	NCAC	01D	.0112
Amend/*				
<u>Break in Service</u>	25	NCAC	01D	.0114
Amend/*				
<u>Initial Employment</u>	25	NCAC	01D	.0201
Readopt with Changes/*				
<u>Promotion</u>	25	NCAC	01D	.0301
Amend/*				
<u>Demotion and Reassignment</u>	25	NCAC	01D	.0401
Amend/*				
<u>Reallocation</u>	25	NCAC	01D	.0608
Amend/*				
<u>Lateral Transfer</u>	25	NCAC	01D	.0901
Amend/*				
<u>Reinstatement</u>	25	NCAC	01D	.1001
Amend/*				
<u>Severance Salary Continuation Policy</u>	25	NCAC	01D	.2701
Readopt without Changes/*				
<u>Severance Salary Continuation Eligibility</u>	25	NCAC	01D	.2702
Amend/*				

The rules in Subchapter 1O are rules dealing with the performance management system.

<u>Performance Management Covered Employees</u>	25	NCAC	01O	.0108
Amend/*				

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	David Sutton
Stacey Bawtinheimer	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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NC Alcoholic Beverage Control Commission v. Cristina Miron Bello and Victor Giles Bello T/A La Poblanita	16 ABC 02166	05/25/16	
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NC Alcoholic Beverage Control Commission v. Susan Michelle Cloninger T/A Dallas Pub	16 ABC 07133	10/11/16	
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Sara Neomi Giron v. Department of Public Safety, Victim Services	16 CPS 07583	09/14/16	
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For the Love of Dogs, Max and wife Della Fitz-Gerald v. Department of Agriculture and Consumer Services	15 DAG 09366	09/22/16	31:11 NCR 1147
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
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Agape Homes Inc. v. Department of Health and Human Services	13 DHR 12398	05/26/16	
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Lavonnie Simmons v. DHHS, Division of Health Service Regulations	15 DHR 05374	10/31/16	
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Jessie Buie, George Buie v. DHHS, DMA	15 DHR 07341	05/10/16	
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New Hope Adult Care, Frank N. Fisher v. Office of Health and Human Services	15 DHR 08262	06/22/16	
Sandra McKinney Page v. DHHS, Division of Health Service Regulation	15 DHR 09286	05/25/16	
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A Brighter Day Group Home Shannon Hairston v. Department of Health and Human Services	16 DHR 01859	05/05/16	
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09/09/2016 12:10 PM

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 REV 07692

Lynn Baldwin Jr. & Vera J Summerville, Petitioner, v. North Carolina Department of Revenue, Respondent.	FINAL DECISION
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THIS MATTER came on for hearing before the undersigned Administrative Law Judge, Augustus B. Elkins II at the April 2016 session of the Office of Administrative Hearings located in Raleigh, North Carolina. After presentation of testimony and exhibits, the record was left open for the parties' submission of materials, including but not limited to supporting briefs, further arguments and proposals. Mailing time was allowed for submissions including the day of mailing as well as time allowed for receipt by the Administrative Law Judge. A Transcript of this Hearing was received at the Office of Administrative Hearings on May 23, 2016. Records on file show Respondent submitted proposals to the Office of Administrative Hearings which were received by the Undersigned on July 25, 2016. The record was held open for seven additional business days to allow any further submissions from Petitioners, and receiving nothing further, the record was closed on August 3, 2016

APPEARANCES

For Petitioners: Lynn Baldwin, Jr. and Vera J. Summerville, *pro se*
5311 Winterset Drive
Greensboro, North Carolina

For Respondent: Perry J. Pelaez, Assistant Attorney General
North Carolina Department of Justice
Raleigh, North Carolina

ISSUE

Whether Petitioners engaged in a racing activity for profit so that Petitioners were entitled to claim a net operating loss related to this racing activity for the 2010, 2011 and 2012 tax years ("Period at Issue").

WITNESSES and EVIDENCE

Three Witnesses were presented at this hearing, including Lynn Baldwin, Jr., Vera J. Baldwin, and Willis Edward Finch.

Admitted into evidence was Petitioners' Exhibits 1 – 3 and 5-10 and Respondent's Exhibits 1 - 31.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. From the evidence presented, the undersigned makes the following Findings of Fact.

FINDINGS OF FACT

1. Petitioners timely appealed to the Office of Administrative Hearings from the Notice of Final Determination issued by the Department on August 24, 2015.
2. Since 2010 to the present, Lynn Baldwin and Vera Summerville have resided at 5311 Winterset Drive, Greensboro, North Carolina. As of the date of the hearing, Lynn Baldwin and Vera Summerville have been married for approximately 10 years.
3. In 1972, Lynn Baldwin ("Baldwin") graduated from North Carolina A&T State University with a degree in mechanical engineering.
4. From 1972-1977, Baldwin was employed full-time as a plant engineer with Carolina Power & Light. From 1977-1985, Baldwin was employed full-time as a design engineer with DuPont in Kinston, North Carolina.
5. From 1985-2008, Baldwin was employed full-time with General Motors Corporation ("GM"). Baldwin was originally hired as a District Manager and was later promoted to Senior District Manager. While employed with GM, Baldwin worked in Auburn Hills, Michigan, St. Louis, Missouri and Tulsa, Oklahoma. During his last five years with GM, Baldwin worked an average of 50 hours per week and had an annual income of approximately \$95,000 to \$105,000.
6. In the mid 1970's, Baldwin purchased a Dodge Roadrunner and began bracket racing. At that time and for the next ten years, Baldwin engaged in this racing activity for pleasure. Baldwin has participated in bracket racing since the mid 1970's to the present.

7. For all years that he has participated in bracket racing, Baldwin has driven the same Dodge Roadrunner. It has the original body but not the same engine and transmission. During the tax years at issue, Baldwin paid various automobile service centers for the repair, maintenance and improvements to the vehicle.

8. Sometime in 1984-85, Baldwin received a notice from the Internal Revenue Service ("IRS") regarding a 1099 issued to him for winnings from bracket racing that Baldwin failed to report on his federal income tax return. At that time, Baldwin decided to file a Schedule C with his federal tax return to claim expenses from the racing activity. Baldwin has filed a Schedule C with his federal income tax returns for the 1985 through 2014 tax years. Starting in 1984 Baldwin's racing was not just for fun. He realized he was better at it than average and decided to see if he could make it into a business. He had to compete or otherwise lose his skills at driving. Moreover, in order for Baldwin to win a championship he could not skip races as he had to be present during every points race.

9. From 1985 until 2008, Baldwin's primary source of income was derived from employment unrelated to the racing activity, which was his employment with GM. In 2008, Baldwin opted for early retirement from GM and received many benefits as an incentive to retire early.

10. Beginning in the mid-1980s, Baldwin declared his racing activities on the appropriate business tax forms when filing in the states of Missouri, Michigan and Oklahoma. None of those states requested supporting documentation regarding his tax returns.

11. In 2010 after retiring from GM, Baldwin moved from Tulsa, Oklahoma to his current residence in Greensboro, North Carolina.

12. For the 2010, 2011 and 2012 tax years, Petitioners had income unrelated to the racing activity, which was in the amount of \$64,133 in 2010, \$58,757 in 2011, and \$77,447 in 2012.

13. For the 2010, 2011, and 2012 tax years, Lynn Baldwin and Vera Summerville filed joint North Carolina individual income tax returns. For each tax year at issue, Petitioners filed a Schedule C with their federal income tax return to deduct certain expenses claimed from a racing activity which generated a loss for each tax year. As a result of the loss claimed on the Schedule C, Petitioners reported no taxable income on their North Carolina tax returns and received a refund for the 2010, 2011 and 2012 tax years.

14. During the 2010, 2011 and 2012 tax years for the racing activity, Baldwin did not maintain a business plan, accounting books, general ledger, annual budget, expense forecast, balance sheets, end of year reports or monthly reports to reconcile income and expenses. Baldwin did not attempt to determine the financial breakeven point for the racing activity and did not attempt to determine how to make a profit with the racing activity.

15. For the 2010, 2011 and 2012 tax years, Baldwin saved receipts of expenses for the racing activity, categorized them and kept them in a drawer in a file. At the end of each tax year these expenses were added against the winnings from racing as reported on the Schedule C.

16. For all years that he has engaged in bracket racing, Baldwin never had an investor, sponsor, promotor or financial advisor for the racing activity. Baldwin stated that his business was a sole proprietorship. He would submit his expenses and winnings yearly to H & R Block in a handwritten summarized manner. He did not send them any supporting documentation as they did not ask for any. He did not send individual receipts but would add up expenses and winnings and submit a summary. Baldwin did recall there was a time when H & R Block did ask for some supporting documentation, but it was once and he could not recall what year it was.

17. Vera (Summerville) Baldwin testified. She was not involved in any record keeping regarding her husband's racing activities. She stated the only document she sent to H & R Block was a form with her social security number on it. After the tax return was prepared, she and her husband viewed the preparer's computer and the forms being shown, and afterwards signed as directed by the preparer.

18. For each tax year at issue, Baldwin devoted approximately 1,040 man hours annually to the racing activity but was never paid for any of the hours he spent in the racing activity. A labor expense was not reported on the Schedule C for each tax year at issue. Baldwin did have a truck that was used strictly for racing, for pulling his trailer and incurred some expenses for it. Expenses for his racing activity also included entry fees.

19. For the 1997 through 2013 tax years, Baldwin reported 17 consecutive years of losses from the racing activity during this period. In the past twenty years, Baldwin only reported a profit from the racing activity in 1996 in the amount of \$982 and in 2014 in the amount of \$180.

20. For the tax years at issue, Baldwin reported losses from the racing activity in the amount of \$4,991.25 for 2010, \$11,562.59 for 2011 and \$8,055.72 for 2012.

21. For the 2010, 2011 and 2012 tax years, Baldwin's winnings, expenses and losses from the racing activity and Petitioners' income unrelated to the racing activity as reported on their federal income tax returns were as follows:

Year	Races Entered	Total Winnings	Expenses Excluding Labor	Net Profit (Loss)	Income Unrelated to Racing
2010	25	\$1,250	\$6,241.25	(\$4,991.25)	\$64,133
2011	14	\$4,000	\$15,652.59	(\$11,652.59)	\$58,757
2012	20	\$2,100	\$10,155.72	(\$8,055.72)	\$77,447
TOTALS	59	\$7,350	\$32,049.56	(\$24,699.56)	\$200,337

22. Without Petitioners' substantial income unrelated to racing, Baldwin could not sustain years of losses from the racing activity, including the 2010, 2011 and 2012 tax years.

23. Eddie Finch who was employed at the North Carolina Department of Revenue at the time of the hearing testified. In positions ranging from Auditor to Assistant Director of was called the Personal Taxes Division, Finch dealt with individual income tax. In examining the relevant sections in the Code of Federal Regulations, Finch reviewed certain factors as outlined in the Code in connection with assessing whether this was an activity being engaged in for profit. Finch concluded that Baldwin was not engaged in the business for profit. The Department disallowed the losses claimed by Petitioners on the Schedule C of their federal income tax returns for all three tax years at issue, which resulted in additional North Carolina tax, interest and penalties due and owing from Petitioners.

BASED UPON the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following Conclusions of Law.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter.
2. To the extent that certain portions of the foregoing Findings of Fact constitute mixed issues of law and fact, such Findings of Fact shall be deemed incorporated herein by reference as Conclusions of Law. A court need not make findings as to every fact, which arises from the evidence, and need only find those facts that are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).
3. The burden of proof rests on the Petitioner challenging an agency decision. *Overcash v. N.C. Dept. of Env't & Natural Res.*, 179 N.C. App. 697, 704, 635 S.E.2d 442, 447 (2006). The Petitioner bears the burden of proof by a greater weight or preponderance of the evidence of showing that the Agency has substantially prejudiced its rights as well as whether the agency acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. See N.C. Gen. Stat. § 150B-23. See also *Surgical Care Affiliates, LLC v. NC. Dep't of Health & Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-75 (N.C. Ct. App. 2014), review denied, 768 S.E.2d 564 (N.C. 2015).
4. [A]gency action is considered 'arbitrary and capricious' if it indicates a 'lack of fair and careful consideration' and fails 'to indicate 'any course of reasoning and the exercise of judgment.'" *Watson v. NC. Real Estate Corn'n*, 87 N.C. App. 637, 649, 362 S.E.2d 294, 301 (1987), quoting *State ex rel. Comm'r of Insurance v. North Carolina Rate Bureau*, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980).
5. In accordance with *Painter v. Wake County Bd of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be presumed that "public officials will

discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption." The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S.E. 2d 285, 289 (1995), *aff'd*, 343 N.C. 119, 468 S.E.2d 57 (1996); *Comm'r of Ins. V Fire Ins. Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977). "It is more than a scintilla or a permissible inference." *Lackey v. Dept. of Human Resources*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982).

6. In weighing evidence which detracts from the agency decision," "[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand." *Little v. Bd. of Dental Examiners*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983) (citations omitted).

7. For residents of the State, North Carolina taxable income means the taxpayer's taxable income determined under the Internal Revenue Code, adjusted as provided in G.S. 105-134.6 and G.S 105-134.7. N.C.G.S. § 105-134.5(a) (2012).

8. Deductions are in the nature of exemptions: they are privileges, not rights, and are allowed as a matter of legislative grace. *Wal-Mart Stores East v. Hinton*, 197 N.C. App. 30, 54, 676 S.E.2d 634, 651 (2009). A taxpayer claiming a deduction must bring himself within the statutory provisions authorizing the deduction. *Ward v. Clayton*, 5 N.C. App. 53, 58, 167 S.E.2d 808, 811 (1969), *aff'd*, 276 N.C. 411, 172 S.E.2d 531 (1970).

9. Section 162(a) of the U.S. Tax Code allows deductions for all ordinary and necessary expenses paid or incurred during a taxable year in carrying on a trade or business. 26 USC § 162. In the case of an activity engaged in by an individual, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed under this chapter except as provided in this section. 26 USC § 183(a).

10. The test for determining whether a taxpayer is carrying on an activity for profit is whether the taxpayer's actual and honest objective in engaging in the activity is to make a profit. *Dreicer v. Commissioner*, 78 T.C. 642, 645 (1982). Greater weight is to be given to objective facts than to a taxpayer's statement of intent. *See Dreicer* at 645.

11. Section 1.183-2(b) of the Code of Federal Regulations provides a non-exhaustive list of factors to consider in determining whether an activity is engaged in for profit. 26 CFR § 1.183-2(b). Petitioner bears the burden of proof on this issue. *Golanty v. Commissioner*, 72 T.C. 411, 426 (1979).

12. The Undersigned has examined the Manner in Which the Taxpayer Carried On the Activity. 26 CFR § 1.183-2(b)(1). Petitioner did not maintain books or written records, had no formal business plan, and did not create annual budget and expense forecasts relating to bracket racing. Although a taxpayer is not required to maintain a sophisticated system of accounting, the taxpayer should keep documents that allow the taxpayer to make informed business decisions.

Burger v. Commissioner, 809 F.2d 355, 359 (7th Cir. 1987). Petitioners did save receipts from expenses related to bracket racing; however, there is no evidence that Petitioners used these receipts as a management tool to reduce expenses or increase profitability. This factor favors Respondent.

13. The Undersigned has examined the Expertise of the Taxpayer or His Advisors. 26 CFR § 1.183-2(b)(2). Petitioner Baldwin has extensive experience with drag racing and has been involved in the activity for over 40 years. However, the focus here is on expertise and preparation with regard to the economic aspects of the activity. *Wesinger v. Commissioner*, T.C. Memo. 1999-372. Petitioners have not shown that they possessed the requisite expertise regarding the business aspects of bracket racing or that they relied on anyone who had that expertise. The fact that Petitioners did not seek advice on the economic aspects of the bracket racing activity suggests that Petitioners lacked a profit objective. See *Filios v. Commissioner*, T.C. Memo. 1999-92, *affd.* 224 F.3d 16 (1st Cir. 2000). This factor favors Respondent.

14. The Undersigned has examined the Time and Effort Expended in Carrying On the Activity. 26 CFR § 1.183-2(b)(3). Petitioner dedicated significant time and effort to his bracket racing activity. While this fact tends to favor Petitioners' position, Petitioner Baldwin also derived substantial personal enjoyment from drag racing. On balance, this factor is neutral.

15. The Undersigned has examined the Expectation That Assets May Appreciate in Value. 26 CFR § 1.183-2(b)(4). When property's appreciation in value is independent of the claimed business activity, the gain realized from a sale of the property will not be a significant factor in evaluating the nature of the activity in question. *Ruben v. Commissioner*, T.C. Memo. 1986-260, *affd.* without published opinion 852 F.2d 1290 (9th Cir. 1988). Petitioners failed to show that any potential increase in value of the racing car, or any other asset, was attributable to Petitioner Baldwin's success in the racing activity rather than the result of the value of labor and newly purchased component parts. This factor favors Respondent.

16. The Undersigned has examined the Success of Taxpayer in Other Activities. 26 CFR § 1.183-2(b)(5). Petitioner Baldwin was not involved in any other business activities apart from his former employment with and retirement from General Motors Corporation. This factor favors Respondent.

17. The Undersigned has examined the Taxpayer's History of Income or Losses. 26 CFR § 1.183-2(b)(6). Petitioners incurred losses for each tax year at issue. In fact, from 1997 through 2013, Petitioners incurred 17 consecutive years of losses. During the tax years at issue, Petitioners received only \$7,350 in cash winnings while spending \$32,049.56 on the racing activity. On the basis of Petitioners' record of significant years of losses, it is unlikely that Petitioners will be able to recoup his expenses. This factor favors Respondent.

18. The Undersigned has examined the Amount of Occasional Profits, If Any. 26 CFR § 1.183-2(b)(7). With the exception of small cash awards, Petitioner Baldwin's racing activity produced no income during the tax years at issue. The expenses incurred in the racing activity were over 4.5 times the amount of income earned. This factor favors Respondent.

19. The Undersigned has examined the Financial Status of the Taxpayer. 26 CFR § 1.183-2(b)(8). "The rationale for this rule is that a taxpayer with substantial income unrelated to the activity can more easily afford to operate the activity as a hobby." *Emerson v. Commissioner*, T.C. Memo. 2000-137. Petitioners had substantial income unrelated to racing, totaling \$200,337 during the tax years at issue, with an average of \$66,779 of income unrelated to racing per year. Substantial income from sources unrelated to the activity in question, particularly if losses from the activity generate substantial tax benefits, indicate that an activity is not engaged in for profit. This factor favors Respondent.

20. The Undersigned has examined the Elements of Personal Pleasure. 26 CFR § 1.183-2(b)(9). Petitioner undoubtedly obtained enjoyment from this racing activity. It is not necessary that an activity be engaged in with the exclusive intention of making a profit, if for example other investments would more likely be profitable. This factor favors Respondent.

21. Petitioners' racing activity was an "activity . . . not engaged in for profit" within the meaning of 26 USC § 183. Accordingly, the losses claimed by Petitioners related to the racing activity for the 2010, 2011 and 2012 tax years are disallowed and not deductible.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following Final Decision.

DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The Undersigned enters the following Final Decision based upon the preponderance of the evidence, having given due regard to the demonstrated knowledge and expertise of the Agency with respect to facts and inferences within the specialized knowledge of the Agency as required under N.C. Gen. Stat. § 150B-34.

The Undersigned holds that Petitioners failed to carry their burden of proof by a greater weight of the evidence that the Respondent erred in its Notice of Final Determination. The finder of fact cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbears, in some degree, the weight upon the other side. The weight of Petitioner's evidence does not overbear in that degree required by law the weight of evidence of Respondent to the ultimate issues.

Based on foregoing the Undersigned determines that the Department's Notice of Final Determination is **UPHELD** in its entirety and Petitioners are liable for the tax, penalties, and interest set forth below.

Individual Income Tax (from Notice of Final Determination)	\$3,426.00
Penalties (from Notice of Final Determination)	\$856.50
Interest (updated through May 5, 2016) *	\$678.71
Total due as of May 5, 2016	\$4,961.21

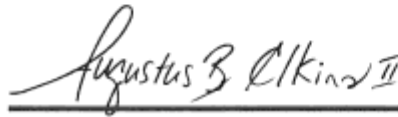
*Plus daily interest which accrues at the rate of \$0.48 per day.

NOTICE

THIS IS A FINAL DECISION issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of N.C. Gen. Stat. §§ 150B-34, 150B-45 and 105-241.16, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County and in accordance with the procedures for a mandatory business case set forth in N.C. Gen. Stat. § 7A-45.4(b) through (f). The party seeking judicial review must pay the tax due including penalties and interest and file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. This Final Decision was served on the parties as indicated on the Certificate of Service attached to this Final Decision.

This the 9th day of September, 2016.

A handwritten signature in black ink, reading "Augustus B Elkins II", is written over a horizontal line.

Augustus B Elkins II
Administrative Law Judge