

NORTH CAROLINA REGISTER

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March 15, 2018

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NORTH CAROLINA REGISTER
Publication Schedule for January 2018 – December 2018

| 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 | RRC Meeting Date | 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 |
| 32:13 | 01/02/18 | 12/06/17 | 01/17/18 | 03/05/18 | 03/20/18 | 04/19/18 | 05/01/18 | 05/2018 | 09/29/18 |
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| 32:17 | 03/01/18 | 02/08/18 | 03/16/18 | 04/30/18 | 05/21/18 | 06/21/18 | 07/01/18 | 01/2019 | 11/26/18 |
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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.



State of North Carolina

ROY COOPER
GOVERNOR

February 16, 2018

EXECUTIVE ORDER NO. 40

**REESTABLISHING THE NORTH CAROLINA
EARLY CHILDHOOD ADVISORY COUNCIL**

WHEREAS, North Carolina's future prosperity depends upon the success of its young children;
and

WHEREAS, research demonstrates that investments in high quality early learning and development produce the best outcomes in education, health, and economic well-being, which in turn benefit all North Carolinians, by creating a more skilled workforce, lowering health care costs, and reducing incarceration; and

WHEREAS, a premiere birth-to-age-eight learning and development system will provide each North Carolina child with a strong foundation for the future; and

WHEREAS, North Carolina can build upon its successful legacy of public and private leadership and innovation to strengthen and sustain a comprehensive, integrated early childhood learning and development system that delivers positive outcomes for young children, families, and communities; and

WHEREAS, 42 U.S.C. § 9837b(1)(B) requires an advisory council be established to advise the Governor on early childhood education.

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

Section 1. Establishment and Purpose

The North Carolina Early Childhood Advisory Council ("NCECAC") is hereby reestablished, consistent with 42 U.S.C. § 9837b(1)(B). The purpose of the NCECAC is to establish a shared early childhood action plan with defined measures of success for young children from birth-to-age-eight. This plan will incorporate benchmarks, strategies, and recommendations from multiple sources, including but not limited to the B-3 Interagency Council, the Child Well-Being Transformation Council, and the NC Pathways to Grade-Level Reading Initiative.

Section 2. Membership

The Governor or the Governor's designee shall chair the NCECAC.

The Governor shall appoint up to twenty-five (25) members to the NCECAC as follows:

- a. The Secretary of the North Carolina Department of Health and Human Services.
- b. The State Director of Head Start – State Collaboration Office.
- c. Three (3) members from the North Carolina Department of Health and Human Services ("DHHS") representing child care, NC Pre-K, health, mental health, social services, and the Infant-Toddler Program (Part C of the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1419, 1431). At least one of these members shall also serve on the B-3 Interagency Council (N.C. Gen. Stat. §

- 115C-64.25 (2017)) and at least one shall serve on the Child Well-Being Transformation Council (N.C. Gen. Stat. § 143-775 (2017)).
- d. Two (2) members from state institutions of higher education.
 - e. One (1) member from the North Carolina Office of State Budget and Management.
 - f. The President of the North Carolina Partnership for Children.
 - g. Two (2) current providers of child care and early childhood education services.
 - h. One (1) member from a Head Start agency located in the State, including migrant and seasonal Head Start programs and Indian Head Start programs.
 - i. One (1) member of a local educational agency.
 - j. Two (2) current consumers of early childhood services.
 - k. One (1) member of the North Carolina Department of Public Instruction ("DPI").
 - l. Up to nine (9) additional members that may include, but are not limited to, representatives from the private business sector, philanthropic institutions and organizations, early childhood research institutions and organizations, nonprofit agencies providing early childhood services, the faith community, and early childhood policy institutions and organizations.

Section 3. Term of Membership

NCECAC members shall serve two (2) year terms. Members may be re-appointed for additional two-year term(s). Vacancies shall be filled by the Governor for the remainder of the unexpired term(s). Members appointed to fill unexpired terms shall serve for the remainder of their terms.

Section 4. Meetings and Public Hearings

The NCECAC shall meet three (3) times a year and upon the call of the Governor. The Governor or the Governor's designee shall set the NCECAC's meeting agendas. A simple majority of the NCECAC's membership shall constitute a quorum for the purpose of transacting business.

The NCECAC shall hold public hearings and provide an opportunity for public comment regarding its activities.

Section 5. Committees

The Governor or the Governor's designee may establish such committees or work groups as are necessary to carry out the NCECAC's duties.

Section 6. Duties

Subject to 42 U.S.C. § 9837b(1)(D), its duties may include the following:

1. Create and guide a bold state early childhood action plan.
 - a. Develop and periodically review progress on a statewide early childhood action plan that outlines major strategies, actions, and positive measurable goals and impacts for North Carolina's young children and families.
 - b. Coordinate with the B-3 Interagency Council and the Child Well-Being Transformation Council to align activities, priorities, and messaging.
 - c. Provide input on early childhood related state grants, including the Child Care and Development Block Grant.
2. Support aligned activities, evidence-based practices, and innovation.
 - a. Conduct periodic needs assessments on the quality and availability of innovative programs and services for children from birth-to-age-eight and their families.
 - b. Strengthen coordination, collaboration, and innovation among public and private early childhood programs in the State, including family support, health, mental health, and education programs.
 - c. Identify key infrastructure needs or enhancements and recommend policies to promote and sustain collaboration and bring innovative, evidence-based practices to scale.
 - d. In collaboration with the B-3 Interagency Council:
 - i. Recommend strategies to create a talented, well-compensated, stable workforce and high-quality professional development system for early childhood educators and specialists serving young children and their families.
 - ii. Periodically assess the capacity and effectiveness of two- and four-year public and private institutions of higher education in North Carolina that support the development of early childhood educators and specialists.
3. Promote shared measurement and measurement practices.
 - a. Identify prioritized and shared metrics for success for children birth-to-age-eight that are coordinated with the NC Pathways to Grade-Level Reading Initiative.

- b. Recommend and promote strategies to enhance the State's longitudinal data collection system for early childhood to track progress on selected success measures and enhance quality, accessibility, equity, and accountability of early childhood programs and services.
 - c. Monitor progress toward metrics for success and assess equity of access to needed services to achieve metrics for success using standard geographic and demographic indicators.
 - d. Present an annual written report of progress and recommendations to the Governor, the President Pro Tempore of the North Carolina State Senate, the Speaker of the North Carolina State House of Representatives, the DHHS Secretary, the DPI Superintendent, and the public.
- 4. Build public will.
 - a. Develop and implement plans to promote the importance of early childhood development and to increase commitment among parents, professionals, businesses, policy makers, and the public at large to ensure that young children in North Carolina, especially at-risk children, are learning and thriving.
- 5. Advance policy.
 - a. Recommend and advocate for policies that improve equitable access to high-quality early childhood services and better outcomes for young children and families.
 - b. Recommend strategies for promoting and maintaining high-quality state early childhood learning standards.
- 6. Mobilize funding.
 - a. Periodically review current and needed funding to ensure sufficient access to high-quality early childhood services statewide.
 - b. Recommend to policy makers funding priorities for a high-quality, efficient, and effective system of services for young children and their families.
 - c. Identify potential funding opportunities and support efforts to secure new funding.

Section 7. Administration

The Office of the Governor shall provide necessary administrative and staff support services to the NCECAC. Administrative costs, special function expenses, and NCECAC member per diem, travel, and subsistence costs shall be paid for by DHHS in accordance with state law.

Section 8. Effect and Duration

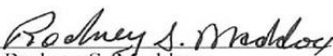
This Executive Order is effective immediately and shall remain in effect until March 31, 2020, pursuant to N.C. Gen. Stat. § 147-16.2, or until rescinded, whichever comes first. The duration of the NCECAC may also be extended by future executive order(s). This order supersedes and replaces all other executive orders and directives on this subject.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 16th day of February in the year of our Lord two thousand and eighteen.



 Roy Cooper
 Governor

ATTEST:



 Rodney S. Maddox
 Chief Deputy Secretary of State



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

TITLE 07 – DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Natural and Cultural Resources intends to adopt the rule cited as 07 NCAC 13H .0404.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdcr.gov/>

Proposed Effective Date: July 1, 2018

Public Hearing:

Date: April 24, 2018

Time: 11:00 a.m.

Location: Department of Natural and Cultural Resources, 109 E. Jones Street, Auditorium (1st Floor), Raleigh, NC 27601

Reason for Proposed Action: 07 NCAC 13H .0404 will establish the fees authorized by N.C. Gen. Stat. 143B-135.272 to defray the costs associated with responding to inquiries requiring customized environmental review services and developing, improving, or maintaining technology that supports an online interface for external users to access Natural Heritage Program data.

Comments may be submitted to: Rodney Butler, Natural Heritage Program, 1651 Mail Service Center, Raleigh, NC 27699-1651; phone (919) 707-8603; email Rodney.butler@ncdcr.gov

Comment period ends: May 14, 2018

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 13 - PARKS AND RECREATION AREA RULES

SUBCHAPTER 13H - NATURAL HERITAGE PROGRAM

SECTION .0400 – MANAGEMENT; USE; AND PROTECTION OF DEDICATED NATURE PRESERVES

07 NCAC 13H .0404 NATURAL HERITAGE PROGRAM FEES; INVENTORY DATA, ENVIRONMENTAL SERVICES, AND DATA

(a) Individuals may obtain access to Natural Heritage Program (NHP) data by purchasing a subscription at <https://ncnhde.natureserve.org/> as set forth in Paragraph (b) of this Rule.

(b) Data subscriptions shall be available in accordance with the following fee schedules:

- (1) Annual subscription for online project review: six hundred dollars (\$600.00) per individual user. Annual subscription shall include 12 months of access to reports and maps of rare species, natural areas, and nature preserves related to a user specified geographic location. Reviews conducted by NHP shall not be included with an annual subscription. Access shall last for 12 months from the purchase date of the subscription.
- (2) Online project review with no annual subscription: one hundred dollars (\$100.00) per project review request. Online project review with no annual subscription shall include a generated map of a rare species, natural community, natural area, and nature preserves for user specified geographic location.
- (3) Customized environmental review services: sixty-five dollars (\$65.00) per hour. Customized environmental review services shall include a report and a map, prepared by NHP of rare species, natural communities, natural areas, and nature preserves related to a user specified geographic location.
- (4) Electronic Geographic Information Systems (GIS) files of natural heritage element occurrence records: one hundred dollars (\$100.00) per county, species, or eight digit

hydrologic unit code (HUC) established by the U.S. Geological Survey. NHP shall provide updated GIS files upon request for the same county, species, or eight digit HUC for a 12-month period from delivery of the initial GIS files.

- (5) Biological field surveys: sixty-five dollars (\$65.00) per hour. Biological field surveys shall include an observation summary and habitat assessment of maps, rare species, natural communities, natural areas, and nature preserves for the user specified project area.

(c) Federal, State, local government, and nonprofit agencies using natural heritage data to establish or manage nature preserves in accordance with this Section shall be exempt from fees set forth in Paragraph (b) of this Rule.

Authority G.S. 143B-135.256; 143B-135.272.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to adopt the rules cited as 10A NCAC 13B .6003, .6105, and .6228.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www2.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: *Pending Legislative Review*

Public Hearing:

Date: *April 26, 2018*

Time: *10:00 a.m.*

Location: *Dorothea Dix Park, Williams Building, Room 123B, 1800 Umstead Drive, Raleigh, NC 27603*

Reason for Proposed Action: *These rules are currently temporary rules which became effective December 1, 2017 and are now proposed for permanent rule adoption. These proposed rule adoptions in 10A NCAC 13B Licensing of Hospitals are in response to a recent act of the General Assembly, Session Law 2017-174, Section 1.(d) Additional Rule-Making Authority, which became effective on July 21, 2017. The intent of this section of the Act is to adopt the recommendations of the American Society of Healthcare Engineering's Facility Guidelines Institute (FGI) for hospital facilities. These proposed adoptions incorporate the FGI by reference as the Session Law requires. The purpose of incorporating the FGI in rule is for licensed hospitals in North Carolina to be designed and constructed in compliance with a national standard of practice. Following the national standards will benefit the quality of physical plant safety provided to the citizens of North Carolina in these facilities.*

Comments may be submitted to: *Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov*

Comment period ends: *May 14, 2018*

Rule is automatically subject to legislative review: *See S.L. 2017-174, s.l.(d)*

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 Session Law 2017-174, Section 1.(d)**

CHAPTER 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13B – LICENSING OF HOSPITALS

SECTION .6000 – PHYSICAL PLANT

10A NCAC 13B .6003 DEFINITIONS

In addition to the definitions set forth in G.S. 131E-76, the following definitions shall apply in Sections .6000 through .6200 of this Subchapter:

- (1) "Addition" means an extension or increase in floor area or height of a building.
- (2) "Alteration" means any construction or renovation to an existing building other than construction of an addition.
- (3) "Construction documents" means final building plans and specifications for the construction of a facility that a governing body submits to the Construction Section for approval as specified in Rule .3102 of this Subchapter.
- (4) "Construction Section" means the Construction Section of the Division of Health Service Regulation.
- (5) "Division" means the Division of Health Service Regulation of the North Carolina Department of Health and Human Services.
- (6) "Facility" means a hospital as defined in G.S. 131E-76.

Authority G.S. 131E-76; 131E-79; S.L. 2017-174.

SECTION .6100 - GENERAL REQUIREMENTS

10A NCAC 13B .6105 INCORPORATION BY REFERENCE AND APPLICATION OF THE REQUIREMENTS OF THE FGI GUIDELINES

(a) For the purposes of Sections .6000 through .6200 of this Subchapter, the Guidelines for the Design and Construction of Hospitals and Outpatient Facilities shall be referred to as the FGI Guidelines.

(b) The FGI Guidelines are incorporated herein by reference, including all subsequent amendments and editions; however, the following chapters of the FGI Guidelines shall not be incorporated herein by reference:

- (1) Chapter 3.1;
- (2) Chapter 3.2;
- (3) Chapter 3.3;
- (4) Chapter 3.4;
- (5) Chapter 3.5;
- (6) Chapter 3.6;
- (7) Chapter 3.7;
- (8) Chapter 3.8;
- (9) Chapter 3.9;
- (10) Chapter 3.10;
- (11) Chapter 3.11;
- (12) Chapter 3.12; and
- (13) Chapter 3.14.

- (4) a Neonatal Level IV nursery shall comply with the requirements of Section 2.2-2.10 Neonatal Intensive Care Unit.

Authority G.S. 131E-79; S.L. 2017-174.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Insurance intends to readopt without substantive changes the rules cited as 11 NCAC 20 .0202 and .0204.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncdoi.com/LS/Rules.aspx>

Proposed Effective Date: *July 1, 2018*

Public Hearing:

Date: *April 18, 2018*

Time: *10:00 a.m.*

Location: *Room B090B located in the Administration Building at 116 W. Jones Street, Raleigh, NC 27603*

Reason for Proposed Action: *Pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g the Department of Insurance is initiating the re-adoption process for 11 NCAC 20 .0202 and .0204.*

Comments may be submitted to: *Loretta Peace-Bunch, NC Department of Insurance, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919) 807-6004; email Loretta.peace-bunch@ncdoi.gov*

Comment period ends: *May 14, 2018*

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.

(c) The FGI Guidelines incorporated by this Rule may be purchased from the Facility Guidelines Institute online at <https://www.fgiguideelines.org/guidelines-main/purchase/> at a cost of two hundred dollars (\$200.00) or accessed electronically free of charge at <https://www.fgiguideelines.org/guidelines-main/>.

(d) A new facility or any additions or alterations to an existing facility whose construction documents were approved by the Construction Section on or after January 1, 2018 shall meet the requirements set forth in:

- (1) Sections .6000 through .6200 of this Subchapter; and
- (2) the edition of the FGI Guidelines that was in effect at the time the construction documents were approved by the Construction Section.

(e) An existing facility whose construction documents were approved by the Construction Section prior to January 1, 2018 shall meet those standards established in Sections .6000 through .6200 of this Subchapter that were in effect at the time the construction documents were approved by the Construction Section.

(f) Any existing building converted from another use to a new facility shall meet the requirements of Paragraph (d) of this Rule.

(g) Previous versions of the Rules of Sections .6000 through .6200 of this Subchapter can be accessed online at <https://www.ncdhhs.gov/dhsr/const/index.html>.

Authority G.S. 131E-79; S.L. 2017-174.

SECTION .6200 - CONSTRUCTION REQUIREMENTS

10A NCAC 13B .6228 NEONATAL LEVEL I, II, III, AND IV NURSERIES

A facility that provides neonatal services as specified in Rule .4305 of this Subchapter shall meet the requirements of the FGI Guidelines as follows:

- (1) a Neonatal Level I nursery shall comply with the requirements of Sections 2.2-2.12 Nursery Unit and 2.2-2.12.3.1 Newborn Nursery;
- (2) a Neonatal Level II nursery shall comply with the requirements of Sections 2.2-2.12 Nursery Unit and 2.2-2.12.3.3 Continuing Care Nursery;
- (3) a Neonatal Level III nursery shall comply with the requirements of Section 2.2-2.10 Neonatal Intensive Care Unit; and

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
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 20 - MANAGED CARE HEALTH BENEFIT PLANS

SECTION .0200 - CONTRACTS BETWEEN NETWORK PLAN CARRIERS AND HEALTHCARE PROVIDERS

11 NCAC 20 .0202 CONTRACT PROVISIONS (READoption WITHOUT SUBSTANTIVE CHANGES)

11 NCAC 20 .0204 CARRIER AND INTERMEDIARY CONTRACTS (READoption WITHOUT SUBSTANTIVE CHANGES)

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09B .0209, .0406; and 09G .0414.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://ncdoj.gov/getdoc/82ec95af-b758-4888-b831-8fdd5cc9beb4/Public-Hearing-02-14-17.aspx>

Proposed Effective Date: July 1, 2018

Public Hearing:

Date: May 16, 2018

Time: 10:30 a.m.

Location: Wake Technical Community College-Public Safety Training Center, 321 Chapanoke Road, Raleigh, NC 27603

Reason for Proposed Action: *To change topics and hours to be consistent with Instructor training. To grant a medical waiver to cadets who have successfully completed BLET training with the exception of the final POPAT, due to injury.*

12 NCAC 09B .0209 CRIMINAL JUSTICE INSTRUCTOR TRAINING

- (a) The instructor training course required for general instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.
- (b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.
- (c) Each instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

| | |
|--|---------|
| (1) Orientation and Pre-Test | 3 Hours |
| (2) Instructional Systems Design (ISD) | 6 Hours |
| (3) Law Enforcement Instructor Liabilities and Legal Responsibilities | 3 Hours |
| (4) Instructional Leadership <i>Criminal Justice Instructional Leadership</i> | 4 Hours |
| (5) Lesson Plan Preparation: Professional Resources | 3 Hours |

Comments may be submitted to: Charminique Williams, PO
Drawer 149, Raleigh, 27602; phone (919) 779-8206; fax (919) 779-8210; email cdwilliams@ncdoj.gov

Comment period ends: May 16, 2018

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 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0200 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

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

- | | | |
|------|---|------------------------------|
| (6) | Lesson Plan Development: Format and Objectives <u>Lesson Plan Development and Formatting</u> | 4 Hours |
| (7) | Adult Learning | 4 <u>6</u> Hours |
| (8) | Instructional Styles and Platform Skills | 4 <u>5</u> Hours |
| (9) | Classroom Management | 4 <u>5</u> <u>3</u> Hours |
| (10) | Active Learning: Demonstration and Practical Exercises | 6 Hours |
| (11) | The Evaluation <u>Process</u> of Learning | 4 Hours |
| (12) | Principles of Instruction: Audio Visual Aids <u>Audio Visual Aids</u> | 4 Hours |
| (13) | Student 8-Minute <u>Introductions</u> Talk and Video Critique | 6 <u>5</u> <u>6</u> Hours |
| (14) | Student Performance: First 30-Minute <u>35-Minute</u> Presentation | 5 <u>6</u> Hours |
| | Second 30-Minute <u>35-Minute</u> Presentation | 5 <u>6</u> Hours |
| | Final 70-Minute Presentation and Review | 12 <u>8</u> Hours |
| (15) | Course Closing <u>Course Closing and Post-test</u> | 1 <u>2</u> Hour |
- (d) The "Instructor Training" manual published by the North Carolina Justice Academy shall be the curriculum for instructor training courses. Copies of this publication may be inspected at the agency:
- Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27602
- and may be purchased at the cost of printing and postage from the Academy at the following address:
- North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

Authority G.S. 17C-6.

SECTION .0400 - MINIMUM STANDARDS FOR COMPLETION OF TRAINING

12 NCAC 09B .0406 COMPREHENSIVE WRITTEN EXAMINATION - BASIC LAW ENFORCEMENT TRAINING

- (a) Within 60 days of the conclusion of a school's offering of the Basic Law Enforcement Training Course, the Commission shall administer a comprehensive written examination to each trainee who has completed all of the required course work. A trainee shall not be administered the comprehensive written examination until such time as all of the course work is ~~completed~~. completed or granted a medical waiver by the Director of the Criminal Justice Standards Division.
- (b) The examination shall be comprised of six units as specified in 12 NCAC 09B .0205(b).
- (c) The Commission's representative shall submit to the school director within five business days of the administration of the examination a report of the results of the test for each trainee examined.
- (d) A trainee shall have achieved a passing score on the comprehensive written examination upon achieving a minimum of 70 percent correct answers on each of the six units as prescribed in Paragraph (b) of this Rule.
- (e) A trainee who has participated in a scheduled delivery of an accredited training course and has achieved a passing score in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum score of 70 percent on no more than two units of the Commission's comprehensive written examination may request the Director of the Standards Division to authorize a re-examination of the trainee in only those units for which he or she failed to make a passing score of 70 percent:

- (1) The trainee's request for re-examination shall be made in writing on the Commission's Re-Examination Request form and shall be received by the Standards Division within 30 days of the examination. The Re-examination Request form is located on the agency's website:
~~<http://www.ncdoj.gov/getdoc/b38b7eee-e311-4ee3-8f9e-bd8fd58f6281/SMI-6-Reexam-6-11.aspx>~~
[http://ncdoj.gov/getdoc/dcb72ee9-fa01-4664-a7a0-ef33ac0941ee/Exam-Admission-Form F-23 4-19-17.aspx](http://ncdoj.gov/getdoc/dcb72ee9-fa01-4664-a7a0-ef33ac0941ee/Exam-Admission-Form-F-23-4-19-17.aspx)
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course(s).
- (3) A trainee shall have, within 60 days of the original examination(s), only one opportunity for re-examination and shall achieve a passing score on the subsequent unit examination.
- (4) The trainee shall be assigned in writing by the Director of the Standards Division a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve a minimum score of 70 percent on the examination, the trainee shall not be eligible for probationary certification, as prescribed in 12 NCAC 09C .0303(d). The trainee may enroll and complete a subsequent offering of the Basic Law Enforcement Training Course before further examination is permitted.
- (f) A trainee who sustains injury prior to the final POPAT attempt and achieved passing score on the last attempt and meeting the

prerequisites specified in 12 NCAC 09B .0405, with the exception of the final POPAT, may request from the Director of the Criminal Justice Standards Division a medical waiver to take the comprehensive written examination. The request shall consist of a memorandum from the School Director justifying a medical waiver. Providing copies of the last POPAT assessment, medical documentation from a surgeon, physician, physician assistant, or nurse practitioner showing the diagnosis of the injury and the estimated medical release date. The School Director shall submit the medical waiver approval with the comprehensive examination admission form. The trainee must complete the final POPAT

attempt within 120 calendar days of the original state written examination date.

~~(f)~~(g) A trainee who fails to achieve a passing score of 70 percent on three or more of the units as prescribed in 12 NCAC 09B .0406(b) shall not be given the opportunity for re-examination on those units; and shall enroll in and complete a subsequent offering of the Basic Law Enforcement Training Course before further examination is permitted.

Authority G.S. 17C-6; 17C-10.

SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS EMPLOYMENT, TRAINING, AND CERTIFICATION

SECTION .0400 – MINIMUM STANDARDS FOR TRAINING OF CORRECTIONAL OFFICERS, PROBATION/PAROLE OFFICERS, AND PROBATION/PAROLE OFFICERS-SURVEILLANCE

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

12 NCAC 09G .0414 INSTRUCTOR TRAINING

(a) The instructor training course required for general instructor certification shall consist of a minimum of 78 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.

(c) Each instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- | | | |
|------|--|------------------------|
| (1) | Orientation and Pretest; | 3 hours |
| (2) | Instructional Systems Design (ISD); | 6 hours |
| (3) | Law Enforcement Instructor Liabilities and Legal Responsibilities; | 3 hours |
| (4) | Instructional Leadership <i>Criminal Justice Instructional Leadership</i> | 4 hours |
| (5) | Lesson Plan Preparation: Professional Resources; | 3 hours |
| (6) | Lesson Plan Development: Format and Objective <i>and Formatting</i> | 4 hours |
| (7) | Adult Learning; | 4 6 hours |
| (8) | Instructional Style and Platform Skills; | 4 5 hours |
| (9) | Classroom Management; | 4 5 3 hours |
| (10) | Active Learning: Demonstration and Practical Exercises; | 6 hours |
| (11) | The Evaluation Process of Learning; | 4 hours |
| (12) | Principles of Instruction: Audio-Visual Aids; | 4 hours |
| (13) | Student 8-Minute Talk <i>Introduction</i> and Video Critique; and | 6 5 hours |
| (14) | Student Performance: First 30-Minute <i>35-Minute</i> Presentation; | 5 6 hours |
| | Second 30-Minute <i>35-Minute</i> Presentation; and | 5 6 hours |
| | Final 70-Minute Presentation and Review; | 12 8 hours |
| (15) | Course Closing <i>and Post Test</i> | 1 2 hours |

(d) The "Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as the basic curriculum for instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division
North Carolina Department of Justice

1700 Tryon Park Drive Post Office Drawer 149
Raleigh, North Carolina 27602

and may be purchased at the cost of printing and postage from the North Carolina Justice Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

Authority G.S. 17C-6.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Alcoholic Beverage Control Commission intends to adopt the rules cited as 14B NCAC 15A .0104 and 15B .0113, amend the rule cited as 14B NCAC 15B .1104 and readopt with substantive changes the rules cited as 14B NCAC 15B .0102 and .0103.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.abc.nc.gov

Proposed Effective Date: July 1, 2018

Public Hearing:

Date: April 18, 2018

Time: 10:00 a.m.

Location: ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610

Reason for Proposed Action: To readopt the permanent rule(s) regulating the application for permit process, to adopt a related rule with regards to Alcohol Seller/Server Training, and to adopt and amend rules related to the allowing payment of fees for permit applications and renewals, and fines, by credit card or electronic funds transfer.

Comments may be submitted to: Walker Reagan, 400 East Tryon Road, Raleigh, NC 27610; phone (919) 779-8367; fax (919) 661-6165; email walker.reagan@abc.nc.gov

Comment period ends: May 14, 2018

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** See fiscal note at www.abc.nc.gov
- ☐ **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**
- ☐ **No fiscal note required by G.S. 150B-21.3A(d)(2)**

CHAPTER 15 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 15A - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

14B NCAC 15A .0104 PAYMENT OF FEES AND FINES

Except as otherwise limited in this Rule, payment of fees and fines owed to the Commission may be paid by certified check, cashier's check, money order, electronic payment, or Discover, Mastercard, or Visa credit cards. Payments for permit renewals for more than nine locations shall not be made by credit card. Credit card and electronic payments may be made online through the Commission's website. All payments shall be made payable to the North Carolina ABC Commission.

Authority G.S. 18B-100, 18B-104; 18B-206; 18B-207; 18B-902; 18B-903.

SUBCHAPTER 15B - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS

SECTION .0100 - DEFINITIONS: PERMIT APPLICATION PROCEDURES

14B NCAC 15B .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS

(a) ~~Forms.~~ Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage Control Commission's office or ~~web site~~ website as ~~referenced~~ set forth in 14B NCAC 15A .0102.

(b) ~~Statutory Requirements.~~ Before the issuance of any ABC permit, an applicant shall comply with the statutory requirements of Articles 9 and 10 of Chapter 18B of the General Statutes and with the rules of the Commission.

(c) ~~Separate Permits Required.~~ An applicant operating separate noncontiguous buildings or structures not connected directly with each other structures, except as permitted pursuant to G.S. 18B-1120, or businesses with separate trade names, shall obtain and hold separate permits for each building or business for which he or she wants permits, and shall pay the appropriate application fees as provided set forth in G.S. 18B-902(d). Where there are multiple buildings, and the Commission determines that the business is operated as one entity, the Commission may, in its discretion, issue one permit. An applicant operating contiguous buildings or structures over which the applicant has exclusive control over the buildings and the space between buildings, and the buildings are operated as one business as determined by the Commission, may obtain and hold a single permit for the business.

(d)(c) ~~Information Required on Application.~~ An Each individual required to qualify for an ABC permit under G.S. 18B-900(c) applicant for an ABC permit shall file a written application with the Commission and in the application shall state, under oath, the following information:

- (1) name and address of applicant; the name, address, email address, last four digits of social security number, and telephone number(s) of the applicant;
- (2) the name of the business and whether the business is a sole proprietorship, corporate, corporation, limited liability company, company, or partnership name; partnership;
- (3) the mailing address and location address of the business for which a permit is desired, and the

- ~~county in which~~ county, and city if applicable,
where the business is located;
- (4) the trade name of business;
- (5) ~~name and address of owner of premises;~~
- (6)(5) the applicant's date and place of birth;
- (7)(6) if the business is a corporation or limited liability company, the name and address of the agent or employee person authorized to serve as process agent (person upon whom accept service of process under G.S. 1A, Rule 4(j) legal service of Commission notices or orders can be made); orders;
- (8)(7) if the applicant is a non-resident, the name and address of person a resident of this State appointed as the applicant's attorney-in-fact in accordance with Chapter 32A of the General Statutes by a power of attorney; for purposes of G.S. 18B-900(a)(2)b.;
- (9)(8) a an actual diagram of the premises showing:
- (A) the entrances and exits;
- (B) the storage area for alcoholic beverages; and
- (C) the locations where alcoholic beverages will be served or consumed; and
- (D) the exterior areas under lease, authority, or control of the applicant;
- (10)(9) that the applicant is the actual and bona fide owner or lessee of the premises premises, or controls the premises pursuant to a management agreement to operate the premises with the actual owner or lessee, for which where a permit is sought and shall submit a copy or memorandum of the lease showing the applicant as tenant, or a copy of the deed showing the applicant as the grantee or owner; sought;
- (11) ~~that the applicant intends to carry on the business authorized by the permit himself or herself or under his or her immediate supervision and direction; and~~
- (12)(10) that the applicant is an actual and bona fide resident of the State of North Carolina or, as a non-resident, has appointed, by a power of attorney, a resident manager manager, who is an actual resident of this State, to serve as attorney-in-fact who will manage the business and accept service of process and official Commission notices or orders; orders; and
- (11) that the applicant is in compliance with G.S. 18B-900(a)(3) through (8).
- (d) The following documents completed, signed, notarized, and recorded, as applicable, shall be attached to and submitted with an application, and shall be incorporated as part of the application:
- (1) a Zoning and Compliance Form signed by the appropriate officials pursuant to G.S. 18B-901(c);
- (2) for applicants for retail permits, a Proof of Alcohol Seller/Server Training Form

- containing the applicant's name, business name, address, and telephone number, and a certification of completion of an approved Alcohol Seller/Server training class with training date issued by the approved course provider unique to the applicant;
- (3) the fingerprint card, Authority for Release of Information Form, and certified check, cashier check, money order, electronic payment, or credit card payment made payable to the North Carolina ABC Commission in the amount of thirty-eight dollars (\$38.00) for payment of a state and national fingerprint based check pursuant to 14B NCAC 18B .0405;
- (4) payment of applicable permit fees as authorized in 14B NCAC 15A .0104;
- (5) a certified copy of any recorded power of attorney registered in the county where the proposed licensed premises is located;
- (6) a Recycling Compliance Form for on-premise malt beverage, fortified wine, unfortified wine, and mixed beverage permits only;
- (7) for corporations not already holding a permit in this State, a copy of the Articles of Incorporation and notarized corporate certification of shareholders holding 25 percent or more of the shares of the corporation;
- (8) for limited liability companies not already holding a permit in this State, a copy of Articles of Organization and notarized organizational certification of members owning 25 percent or more interest in the company. Additionally, if manager managed, a copy of the Operating Agreement;
- (9) a black and white copy of applicant's current photo identification that bears a reasonable resemblance to the applicant;
- (10) a copy or memorandum of the lease showing the applicant as tenant, a copy of the deed showing the applicant as the grantee or owner, or a copy of a management agreement with the owner or lessee of the permitted property showing the applicant has the authority to operate the business at the permitted location;
- (11) a diagram of the premises including the details required pursuant to Subparagraph (c)(8) of this Rule; and
- (12) a Federal Employer Identification/Social Security Number Verification Form.

Authority 18B-100; 18B-206(a); 18B-207; 18B-900; 18B-901(d); 18B-901; 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1001; 18B-1008; 18B-1009.

Note: Paragraphs (e) through (l) of 15B .0102 will be recodified as 15B .0103, and the existing 15B .0103 will be recodified as 15B .0109.

14B NCAC 15B .0103 ADDITIONAL PERMIT LIMITATIONS AND REQUIREMENTS

~~(e)(a) General Restriction; Living Quarters.~~ No permit for the possession, ~~sale~~ sale, or consumption of alcoholic beverages shall be issued to any establishment when there are living quarters in or connected directly thereto, to, and no permittee shall establish or maintain living quarters in or connected to ~~his or her~~ the permittee's licensed premises.

~~(f)(b) General Restriction; Restrooms.~~ No permit for the on-premises possession, sale, or consumption of alcoholic beverages shall be issued to any establishment unless there are two restrooms in working order on the premises. The Commission shall waive ~~this the two-restroom~~ requirement upon a showing by the permittee that ~~he or she will suffer financial hardship or the safety of the employees will be jeopardized; it is not possible to have a~~ second restroom in the existing premises due to building restrictions under historical preservation or zoning laws, or building or fire codes.

~~(g)(c) Areas for Sales and Consumption.~~ In determining the areas where alcoholic beverages ~~will~~ may be sold and consumed, the Commission shall consider the convenience of the permittee and patrons, allowing the ~~fullest~~ maximum use of the premises consistent with the control of the sale and consumption of alcoholic ~~beverages, but the beverages.~~ Commission will attempt to avoid consumption Consumption shall not be allowed in areas open to the general public other than patrons. To be approved, any premises shall have delineated vertical boundaries that the consumer would recognize as indicating the boundaries that physically separate areas where consumption is allowed from areas open to the general public other than patrons.

~~(h) Temporary Permits for Continuation of Business.~~ The Commission may issue temporary permits to an applicant for the continuation of a business operation that holds current ABC permits when a change in ownership or location of a business has occurred. To obtain a temporary permit an applicant shall submit the appropriate ABC permit application form, all required fees, a lease or other proof of legal ownership or possession of the property on which the business is to be operated, and a written statement from the ALE agent in that area stating that there are no pending ABC violations against the business. An applicant for a temporary permit shall also submit the permits of the prior permittee for cancellation prior to the issuance of any temporary permit. No temporary permit shall be issued to any applicant unless all prior ABC permits issued for the premises have been cancelled by the Commission.

~~(i)(d) Retail Sales at Public Places Restricted.~~ The sale and delivery of alcoholic beverages by permitted retail outlets located on ~~fair grounds, fairgrounds,~~ golf courses, ball parks, race tracks, and other similar public places are restricted to an enclosed establishment in a designated place. No alcoholic beverages shall be sold, served, or delivered by these outlets outside the enclosed establishment, nor in grandstands, stadiums, or bleachers at public gatherings, except as provided in Paragraph ~~(h)(g)~~ of this Rule. As used in this Paragraph, the term "enclosed establishment" includes a temporary structure or structures constructed and used for the purpose of dispensing food and beverages at events to be held on fairgrounds, golf courses, ball parks, race tracks, and other similar places. Sales of alcoholic beverages may be made in box seats only under the following conditions:

- (1) table service of food and non-alcoholic beverages are available to patrons in box seats;
- (2) no alcoholic beverages are delivered to the box seats area until after orders have been taken; and
- (3) box seat areas have been designated as part of the permittee's premises on a diagram submitted by the permittee, and the Commission has granted written approval of alcoholic beverage sales in these seating areas.

~~(j)(e)~~ If one permittee has more than one location within a single terminal of an airport boarding at least 150,000 passengers annually and that permittee leases space from the airport authority, the permittee in such a situation may:

- (1) obtain a single permit for all its locations in the terminal;
- (2) use one central facility for storing the alcoholic beverages it sells at its locations; and
- (3) pool the gross receipts from all its locations for determining whether it meets the requirements of G.S. 18B-1000(6) and 14B NCAC 15B .0514.

~~(k)(f) Food Businesses.~~ Unless the business otherwise qualifies as a wine shop primarily engaged in selling wines for off-premise consumption, a food business qualifies for an off-premise fortified wine permit only if it maintains an inventory of staple foods worth at least one thousand five hundred dollars (\$1,500) at retail value. Staple foods include meat, poultry, fish, bread, cereals, vegetables, fruits, vegetable and fruit juices, and dairy products. Staple foods do not include coffee, tea, cocoa, soft drinks, candy, condiments, and ~~spices.~~ baked goods ingredients, except for ingredients also listed as staple foods in this Paragraph.

~~(l)(g) Professional Sporting Events.~~ Notwithstanding Paragraph ~~(i)(d)~~ of this Rule, holders of a retail permit pursuant to G.S. 18B-1001(1) may ~~sell malt beverages for consumption in the seating areas of stadiums, ball parks, and similar public places with a seating capacity of 3,000 or more during professional sporting events~~ have in-stand sales pursuant to G.S. 18B-1009, provided that:

- (1) the permittee or the permittee's employee shall not wear or display alcoholic beverage branded advertising;
- (2) the permittee or the permittee's employee shall not use branded carrying trays, coolers, or other equipment to transport malt beverage products;
- (3) the permittee or the permittee's employee may display the malt beverage product names and prices provided that all of the product names are displayed with the same font size and font style; and
- (4) in-stand sales shall cease, whichever is earlier, upon the cessation of other malt beverage sales otherwise in the sports facility or upon the commencement of:
 - (A) the eighth inning during baseball ~~games; — provided that~~ games. However, if a single ticket allows entry to more than one baseball game,

- then the eighth inning of the final game;
- (B) the fourth quarter during football and basketball games;
- (C) the sixtieth minute during soccer games;
- (D) the third period during hockey games;
- (E) the final 25 percent of the distance scheduled for automotive races; and
- (F) the final hour of the anticipated conclusion of a contest or event for all other events.

Authority G.S. 18B-100; 18B-207; 18B-900; 18B-901; 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1001; 18B-1008; 18B-1009.

14B NCAC 15B .0113 ALCOHOL SELLER/SERVER TRAINING

(a) All applicants applying for retail ABC permits shall submit as part of the application proof of responsible alcohol seller/server training prior to obtaining an ABC permit.

(b) The Commission shall accept documentation provided by an approved course provider or approved corporate, partnership or limited liability company business permittee, such as a certificate of training or transcript. In the event the approved course provider did not issue a document reflecting completion of training, the applicant may have the course provider sign a form provided by the ABC Commission attesting to completion of this training.

(c) Minimum course content requirements for an approved responsible alcohol seller/server training course shall include North Carolina-specific laws including:

- (1) age requirements for possessing, purchasing, and consuming alcoholic beverages;
- (2) age requirements for selling and serving alcoholic beverages;
- (3) acceptable forms of identification;
- (4) methods to detect fake, altered, and imposter forms of identification;
- (5) State Dram Shop laws;
- (6) sales to intoxicated persons, including:
 - (A) penalties;
 - (B) prevention;
 - (C) typical signs of intoxication; and
 - (D) methods of detecting intoxication in customers;
- (7) sales to underage persons, including:
 - (A) penalties;
 - (B) prevention; and
 - (C) methods of identifying potential underage customers;
- (8) hours of sale and consumption, including clearing of tables;
- (9) prohibited conduct on the ABC licensed premises, including:
 - (A) drug use; and
 - (B) gambling; and
- (10) amounts of alcohol that may be purchased by customers in accordance with G.S. 18B-303.

(d) Responsible alcohol seller/server training courses and providers shall be approved by the Commission before a certificate of training or transcript will be accepted by the Commission for purposes of this Rule. A person seeking to become an approved vendor for alcohol education in North Carolina and a business permittee that provides training for its own employees shall submit the course provider's name, mailing, physical and email addresses, telephone numbers and the contract person's name and contact information, together with a copy of its responsible alcohol seller/server training program course content, to the Commission for approval. The Commission shall approve courses and providers that meet the minimum course content requirements set forth in Paragraph (c) of this Rule. Course approval shall be valid for three years. A course provider's course content shall be submitted to the Commission for approval at least once every three years in order to maintain approved status.

(e) An approved course provider shall update their responsible alcohol seller/server training course content within 30 days of notice from the Commission to the course provider of changes needed in the alcohol education training curriculum to reflect changes in current ABC laws or rules.

Authority G.S. 18B-100; 18B-122; 18B-207.

SECTION .1100 - EFFECT OF ADMINISTRATIVE ACTION: FINES: OFFERS IN COMPROMISE

14B NCAC 15B .1104 ADMINISTRATIVE FINES: PAYMENT

~~Pursuant to G.S. 18B-104, the Commission may fine a permittee whenever the ABC law authorizes suspension or revocation of his permit.~~

When the Commission orders a permittee to pay a fine as part of a penalty, payment shall be received in Commission offices in Raleigh no later than ~~45~~ 21 days following the meeting at which the Commission orders the fine. The Commission shall include, as part of the order, what penalty will be imposed if the fine has not been received by the Commission by the prescribed deadline. Payment shall be ~~by certified check, cashier's check, or money order made payable to the North Carolina ABC Commission. in~~ accordance with 14B NCAC 15A .0104.

Authority G.S. 18B-100; 18B-104; 18B-207.

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Alcoholic Beverage Control Commission intends to readopt with substantive changes the rule cited as 14B NCAC 15B .1003.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.abc.nc.gov

Proposed Effective Date: *July 1, 2018*

Public Hearing:
Date: *April 18, 2018*
Time: *10:00 a.m.*

Location: ABC Commission Hearing Room, 400 East Tryon Road, Raleigh, NC 27610

Reason for Proposed Action: To readopt the permanent rule regulating prohibited statements in advertising and on labels.

Comments may be submitted to: Walker Reagan, 400 East Tryon Road, Raleigh, NC 27610; phone (919) 779-8367; fax (919) 661-6165; email walker.reagan@abc.nc.gov

Comment period ends: May 14, 2018

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
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 15 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 15B - RETAIL BEER: WINE: MIXED BEVERAGES: BROWNBAGGING: ADVERTISING: SPECIAL PERMITS

SECTION .1000 - ADVERTISING

14B NCAC 15B .1003 PROHIBITED STATEMENTS IN ADVERTISING OR ON LABELS

(a) General Restrictions. An advertisement or product label on any alcoholic product sold or distributed in this State shall not ~~contain~~ contain any statement, design, device, or representation that:

- (1) any statement, design, device or representation that is false or misleading in any material particular;
- (2) any statement that is disparaging of a competitor's products;

- ~~(3) any statement, design, device or representation which depicts nudity or is obscene or indecent;~~
- ~~(4) any statement, design, device or representation of or relating to analysis, standards or tests, irrespective of falsity, which is likely to mislead the consumer;~~
- ~~(5) any statement, design, device or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer. Nothing in this Section shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package";~~
- ~~(6) any statement that the product is produced, blended, made, bottled, packed or sold under or in accordance with any authorization, law or regulation of any municipality, county or state, federal or foreign government, unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal, county, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto;~~
- ~~(7)(1) any statement, picture or illustration implying that the consumption of alcoholic beverages enhances athletic prowess, or any statement, picture or illustration referring to any known athlete, if such statement, picture or illustration implies, or if the reader may reasonably infer, that the use of this product contributed to such athlete's athletic achievements; is contrary to the Federal Alcohol Administration Act, 27 C.F.R. Sections 4.39, 4.64, 5.42, 5.65, 7.29, or 7.54, as interpreted by the Commission. The provisions of 27 C.F.R. Sections 4.39, 4.64, 5.42, 5.65, 7.29, and 7.54 referenced in this Rule are hereby incorporated, including subsequent amendments and editions, and may be accessed for free at <https://www.gpo.gov>;~~
- ~~(8)(2) any picture or illustration depicting depicts the use of alcoholic beverages in a scene which is determined by the Commission to be undignified, immodest or in bad taste;~~
- ~~(9)(3) any offer of offers a prize or award upon the completion of any contest in which there is a requirement to purchase the advertised product, except as otherwise permitted pursuant to 14B NCAC 15C .0714, provided that, that no advertisement shall promote a game of chance or a lottery;~~
- ~~(10)(4) any subject matter or illustrations inducing persons under 21 years of age to drink; could lead a person under 21 years of age to believe that the product is suitable for consumption by that person;~~
- ~~(11)(5) any statement, picture or illustration is inconsistent with the spirit of safety or safe~~

driving programs; State laws of public safety or safe driving;

- ~~(12)(6)~~ any scene that would be is contrary to state laws and rules governing sale, storage ~~storage~~, and or consumption of alcoholic beverages; or
- ~~(13)~~ any statement concerning a brand that is inconsistent with any statement on the labeling thereof;
- ~~(14)~~ any statement, design or device representing that the use of a brand has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression;
- ~~(15)~~ any statement or representation that the product was manufactured in or imported from a place or country other than that of the actual origin, or was produced or processed by one who was not in fact the actual producer or processor;
- ~~(16)~~ any statement, design, device or pictorial representation of or relating to or capable of being construed as relating to the armed forces of the United States or the American Flag, state flag, or any emblem, seal, insignia or decoration associated with any such flag of armed forces of the United States; nor shall any advertisement contain any statement, device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer into believing that the product has been endorsed, made or used by, produced for or under the supervision of or in accordance with the specifications of the government, organizations, family or individual with whom the flag, seal, coat of arms, crest or insignia is associated; or
- ~~(17)~~ words such as "high test," "high proof," "full strength," "extra strong," or similar descriptive terms, or direct or indirect references to the intoxicating effect of the product.
- ~~(7)~~ is otherwise prohibited pursuant to a rule in this Chapter.

~~(b) Prohibited Statements in Regard to Wine.~~ In addition to the applicable prohibited statements as set forth in Paragraph (a) of this Rule, an advertisement or label for wine shall not contain:

- ~~(1)~~ any statement of bonded winecellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded winecellar and bonded winery numbers may be made in the following form:

"Bonded Winecellar No. _____," "B.W.C. No. _____."

"Bonded Winery No. _____," "B.W. No. _____."

No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under United States Government or any state government supervision or in

~~accordance with United States Government or any state government specifications or standards;~~

- ~~(2)~~ any statement, design or representation which relates to alcoholic content or which tends to create the impression that a wine is "unfortified" or has been "fortified" or has intoxicating qualities, or contains spirituous liquor (except for a reference to spirituous liquor in a statement of composition where such statement is required by these Rules to appear as part of the designation of the product); or
- ~~(3)~~ statement of age or dates, or any statement of age or representation relative to age (including words or devices in any brand name or trademark), except that:
 - ~~(A)~~ In the case of vintage wine, the year of vintage may be stated if it appears on the label; or
 - ~~(B)~~ Truthful references of a general and informative nature relating to methods of production involving storage or aging, such as "This wine has been mellowed in oak casks," "Stored in small barrels" or "Matured at regulated temperatures in our cellars" may be made.

The statement of any bottling date shall not be deemed to be representation relative to age, if such statement appears without undue emphasis in the following form: "Bottled in _____" (inserting the year in which the wine was bottled). No date, except as provided in this Section with respect to statement of vintage year and bottling date, shall be stated unless, in addition thereto and in direct conjunction therewith, in the same size and kind of printing there shall be stated an explanation of the significance of such date. Provided, that if any date refers to the date of establishment of any business, firm or corporation such date shall be stated without undue emphasis and in direct conjunction with the name of the person, firm or corporation to whom it refers.

~~(c) Prohibited Statements in Regard to Spirituous Liquor.~~ In addition to the applicable prohibited statements in Paragraph (a) of this Rule, an advertisement for spirituous liquor shall not contain:

- ~~(1)~~ words "bond," "bonded," etc.; any statement containing the words "bond," "bonded," or "bottled in bond," "aged in bond" or phrases containing these or synonymous terms, unless such words or phrases appear upon the labels of the spirituous liquor advertised, and are stated in the advertisement in the manner and form in which they appear upon the label;
- ~~(2)~~ statements of age; any statement, design or device directly or by implication concerning age or maturity of any brand or lot of spirituous liquor unless a statement of age appears on the

labels of the advertised product; When any such statement, design or device concerning age or maturity is contained in any advertisement, it shall include, in direct conjunction therewith and with substantially equal conspicuousness, all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whiskey or brandy which does not bear a statement of age on the label, or an advertisement for rum which is four years or more old, may contain general inconspicuous age, maturity or other similar representation, e.g., "aged in wood," "mellowed in fine oak casks";

- (3) the word "pure" except as part of the bona fide name of a permittee; or
- (4) the terms "double distilled," "triple distilled" or any other similar term.

Editor's Note: James L. Conner, II, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 4 NCAC 2S .1005(a)(3) void as applied in Daniel W. Shelton t/a Shelton Broers v. N.C. Alcoholic Beverage Control Commission (99 ABC 1641).

Authority G.S. 18B-100; ~~18B-105(b)~~; 18B-105; 18B-206; 18B-207.

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 07B .0802-.0803; 07H .0209, .0308; 07K .0103, and .0208.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/about/divisions/coastal-manangement/coastal-management-rules/proposed-rules>

Proposed Effective Date: September 1, 2018

Public Hearing:

Date: April 11, 2018

Time: 1:15 p.m.

Location: Dare County Administration Building, 954 Marshall C. Collins Drive, Manteo, NC 27954

Reason for Proposed Action:

15A NCAC 07B .0802, .0803 – The CRC is proposing amendments to the CAMA Land Use Plan certification process by allowing the CRC or a qualified employee of the Department to certify land use plans and plan amendments. These amendments are in response to Session Law 2017-209 which added a new subdivision to CAMA giving the CRC authority to delegate the power to approve land use plans.

15A NCAC 07H .0209 – Describes the Coastal Shorelines category of Areas of Environmental Concern (AECs) and also

includes Use Standards for development within the Coastal Shorelines AEC. The proposed amendments are needed to resolve a conflict between the CRC's standards and the Environmental Management Commission's standards.

15A NCAC 07H .0308; 07K .0103 – Contains guidelines for dune establishment and stabilization and the construction of structural accessways in the Ocean Hazard Area of Environmental Concern. 07K .0103 codifies activities under G.S. 113A-103(5)(b)(5) as exempt from the permitting requirements of CAMA. The proposed amendments will give necessary and beneficial flexibility to the ways that oceanfront sand dunes are maintained and managed and that structural beach accessways are constructed.

15A NCAC 07K .0208 – Allows for the construction of single-family residences within the Coastal Shorelines AEC. The proposed amendments would allow Local Permit Officers the ability to authorize this exemption. These amendments would also remove the prohibition of stormwater collection systems within Outstanding Resource Waters Coastal Shorelines, consistent with Environmental Management Commission standards.

Comments may be submitted to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557; phone (252) 808-2808

Comment period ends: May 14, 2018

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** 15A NCAC 07B .0802 and .0803
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☒ **Local funds affected** 15A NCAC 07B .0802 and .0803
- ☐ **Substantial economic impact (≥\$1,000,000)**
- ☐ **Approved by OSBM**
- ☒ **No fiscal note required by G.S. 150B-21.4** 15A NCAC 07H .0209, .0308; 07K .0103, and .0208

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07B – STATE GUIDELINES FOR LAND USE PLANNING

**SECTION .0800 –LAND USE PLAN AND AMENDMENT
REVIEW AND CERTIFICATION**

**15A NCAC 07B .0802 PUBLIC HEARING AND LOCAL
ADOPTION REQUIREMENTS**

(a) Notice of Public Hearing. The local government shall provide the Secretary or his or her designee written notice of the public hearing for local adoption and a copy of the proposed land use plan or comprehensive plan, hereinafter referred to as "the plan", or amendment no less than five business days prior to publication of a public hearing notice. The public hearing notice shall include, as set forth in Rule .0803(a)(2) of this Section, disclosure of the public's opportunity to provide written comment to the Secretary following local adoption of the plan.

(b) Final Plan Content. The final plan or amendment shall be adopted by the elected body of each participating local government.

(c) Transmittal to the Division for Certification. The local government shall provide the Executive Secretary of the CRC or his or her designee the locally adopted plan, a certified statement of the local government adoption action, and documentation that it has followed the public hearing process required in G.S. 113A-110. ~~The locally adopted plan or amendment shall be submitted at least 45 calendar days prior to the CRC meeting on which it will be considered for certification.~~

(d) For joint plans originally adopted by each participating jurisdiction, each government retains its sole and independent authority to make amendments to the plan as it affects its jurisdiction.

Authority G.S. 113A-107(a); 113A-110; 113A-124.

**15A NCAC 07B .0803 CERTIFICATION AND USE OF
THE PLAN**

(a) ~~CRC~~ Certification of Plans and Amendments: This Rule outlines the certification procedures and conditions for locally adopted land use plans or comprehensive plans, hereinafter referred to as "~~the plan~~", "the plan," or plan amendments. The procedures ~~are~~ shall be as follows:

(1) The Division District Planner shall submit a written report to the CRC, or qualified employee of the Department pursuant to G.S. 113A-124(c)(9), on the locally adopted plan or amendment and either recommend certification or identify how the plan or amendment does not meet the procedures and conditions for certification as set forth in Subparagraph (a)(3) of this Rule.

(2) The public shall have an opportunity to submit written objections or comments on the locally adopted plan or amendment prior to ~~action by the CRC~~; certification pursuant to G.S. 113A-110(e). Written objections or comments shall be received by the Division no more than 30 calendar days after local adoption of the plan or amendment. Written objections shall be limited to the criteria for certification as defined in Subparagraph (a)(3) of this Rule, and shall identify the specific plan elements that are

opposed. Written objections or comments shall be sent by the Division to the local government submitting the plan or amendment. Written objections or comments shall be considered ~~by the CRC~~ in the certification of the local plan or amendment.

(3) The CRC or qualified employee of the Department, pursuant to G.S. 113A-124(c)(9), shall certify plans and amendments following the procedures and conditions specified in this Rule. The CRC shall certify plans and amendments which: Rule, and that:

(A) are consistent with the ~~current~~ federally approved North Carolina Coastal Management Program; Coastal Area Management Act G.S. 113A-110;

(B) are consistent with the rules of the CRC;

(C) do not violate ~~state~~ State or federal law; and

(D) contain policies that address each management topic as set forth in Rule .0702(d)(2) of this Subchapter.

(4) If the plan or amendment does not meet certification requirements, ~~the CRC shall the~~ applicant shall be informed by the Division of Coastal Management within 45 calendar days ~~inform the local government~~ regarding how the plan or amendment does not meet the procedures and conditions for certification.

(b) Copies of the Plan. Within 90 calendar days of certification of the plan or an amendment, the local government shall provide one printed and one digital copy of the plan to the Division. Amendments shall be incorporated in all copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.

(c) Use of the Plan. Once certified, the plan shall be utilized in the review of the CAMA permits in accordance with G.S. 113A-111. Local governments shall have the option to exercise their enforcement responsibility by choosing from the following:

(1) Local administration: The local government reviews the CAMA permits for consistency with the plan;

(2) Joint administration: The local government identifies policies, including the future land use map and implementation actions that will be used by the Division for the CAMA permit consistency reviews or;

(3) Division administration: The Division reviews the CAMA permits for consistency with the plan policies, including the future land use map and implementation actions.

(d) Plan updates and Amendments. Local governments shall determine the scope, timing, and frequency of plan updates and amendments.

Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124.

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines. Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of ~~Environment and Natural Resources~~ Environmental Quality [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties. Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. The management objective is to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to ~~avoid, mitigate or reduce~~ avoid or minimize adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards for coastal shorelines, and where applicable, the general use and specific use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section. Development shall be compatible with the following standards:

- (1) All development projects, proposals, and designs shall preserve and not weaken or eliminate natural barriers to erosion including peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.
- (2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible.
- (3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:
 - (A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.
 - (B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other erosion-control devices or structures.
 - (C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant

- a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.
- (4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.
 - (5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
 - (6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" means a project that is paid for in any part by public funds.
 - (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Natural and Cultural Resources.
 - (8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
 - (9) Within the AECs for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.
 - (10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:
 - (A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);
 - (C) Post- or pile-supported fences;
 - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
 - (E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
 - (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
 - (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;
 - (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible;
 - (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
 - (i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and
 - (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired

- consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and
- (J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:
- (i) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
 - (iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
 - (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
 - (v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of ~~Environment and Natural Resources~~ Environmental Quality.
- (e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the Environmental Management Commission (EMC) has adopted rules that contain buffer standards, or to Coastal Shorelines where the EMC adopts such rules, upon the effective date of those rules.
- (f) Specific Use Standards for Outstanding Resource Waters (ORW) Coastal Shorelines.
- (1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
 - ~~(A) have no stormwater collection system;~~
 - ~~(B)~~ (A) provide a buffer zone of at least 30 feet from the normal high water line or normal water line;
 - ~~(C)~~ (B) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.
 - (2) Development (other than single-family residential lots) more than 75 feet from the normal high water line or normal water line but

within the AEC as of June 1, 1989 shall be permitted in accordance with rules and standards in effect as of June 1, 1989 if:

- (A) the development has a CAMA permit application in process, or
- (B) the development has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which financial resources have been invested in design or improvement.

(3) Single-family residential lots that would not be buildable under the low-density standards defined in Paragraph (f)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.

(4) For an ORW nominated subsequent to June 1, 1989, the effective date in Paragraph (f)(2) of this Rule shall be the dates of nomination by the EMC.

(g) Urban Waterfronts.

(1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:

- (A) The area lies wholly within the corporate limits of a municipality; and
- (B) the area has a central business district or similar commercial zoning classification where there is minimal undeveloped land, mixed land uses, and urban level services such as water, sewer, streets, solid waste management, roads, police and fire protection, or in an area with an industrial or similar zoning classification adjacent to a central business district.

(2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.

(3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts.

Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.

Use Standards:

(A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule is not required for development within Urban Waterfronts that meets the following standards:

- (i) The development must be consistent with the locally adopted land use plan;
- (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can effectively demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and
- (iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission;

(B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be allowed

only within Urban Waterfronts as set out below.

- (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for commercial non-water dependent purposes provided that the structure promotes, fosters, enhances or accommodates public benefit. Commercial, non-water dependent uses shall be limited to restaurants and retail services. Residential uses, lodging and new parking areas shall be prohibited.
- (ii) For the purposes of this Rule, existing enclosed structures may be replaced ~~and or~~ and/or expanded vertically provided that vertical expansion does not exceed the original footprint of the structure, is limited to one additional story over the life of the ~~structure~~ structure, and is consistent with local requirements or limitations.
- (iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and shall meet the following criteria:
 - (I) The proposed development shall provide for enhanced public access to the shoreline;
 - (II) Structures may be roofed but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind and shall be limited to a single story;
 - (III) Structures shall be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;

- (IV) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;
- (V) Structures shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
- (VI) Structures shall have no more than six feet of any dimension extending over coastal wetlands;
- (VII) Structures shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction

- of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;
- (VIII) Structures shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;
- (IX) Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts include the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;
- (X) Structures shall not degrade waters classified as SA or High Quality Waters or Outstanding Resource Waters as defined by the NC Environmental Management Commission;
- (XI) Structures shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and
- (XII) Structures shall not pose a threat to navigation.
- Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.*

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
- (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
- (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
- (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
- (D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
- (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.

- (F) Project construction shall be timed to minimize adverse effects on biological activity.
- (G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- (H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in provision (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects
- (J) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not adversely impact fisheries or other public trust resources; and
 - (v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (K) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1

- July 1995 if the Commission finds that:
- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
 - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- (L) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
 - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
 - (D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or their designee in accordance with Part (2)(A) of this Subparagraph.
 - (F) Temporary erosion control structures may remain in place for up to two years after the date of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less and its associated septic system, or, for up to five years for a building with a total floor area of more than 5000 sq. ft. and its associated septic system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.
 - (G) Temporary sandbag erosion control structures may remain in place for up to eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation or stabilization project in accordance with G.S. 113A-115.1. For purposes of this Rule, a community is considered to be actively pursuing a beach

nourishment, inlet relocation or stabilization project if it has:

- (i) an active CAMA permit, where necessary, approving such project; or
- (ii) been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
- (iii) received a favorable economic evaluation report on a federal project; or
- (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

- (H) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, an inlet relocation or stabilization project, it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management

regardless of the time limit placed on the temporary erosion control structure.

- (I) Removal of temporary erosion control structures is not required if they are covered by dunes with stable and natural vegetation.
- (J) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (K) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- (L) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (M) An imminently threatened structure may be protected only once, regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with (G) of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional ~~eight-year~~ eight-year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter and the community in which it is located is actively pursuing a beach nourishment, inlet relocation or stabilization project in accordance with Part (G) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:

- (i) a building and septic system shall be considered as separate structures.
 - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) or (G) of this Subparagraph.
- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with 15A NCAC 07H .0312.
- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
 - (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
 - (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
 - (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
 - (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
 - (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) ~~Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:~~
 - (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
 - (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
 - (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be immediately replanted or temporarily stabilized until planting can be successfully completed.
 - (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
 - (5) No new dunes shall be created in inlet hazard areas.
 - (6) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary ~~dune or landward toe dune, if present, or the crest~~ of a frontal dune.
 - (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid ~~unnecessary~~ dune impacts.
 - (c) Structural Accessways:
 - (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration ~~on of~~ the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
 - (2) An accessway shall be ~~conclusively presumed considered~~ to entail negligible alteration of a primary or frontal dune provided that:
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is ~~less than a maximum of~~ six feet in width;
 - (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the ~~frontal~~ dune. Where this is deemed impossible, the structure shall touch the dune only to the extent ~~absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; necessary; and~~

- (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers ~~shall not be deemed to be~~ are not prohibited by this Rule, provided all other applicable standards are met.
- (4) In order to ~~avoid weakening~~ preserve the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") ~~shall may~~ may be provided for ~~any~~ off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than ~~40~~ 15 feet in width and ~~shall may~~ may be constructed of wooden sections fastened ~~together together~~, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.
- (5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in 07H .0309(a).

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) and 07J .0210 shall comply with the following standards:

- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the

primary dune, the pilings shall extend to five feet below mean sea level.

- (4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124.

SUBCHAPTER 07K - ACTIVITIES IN AREAS OF ENVIRONMENTAL CONCERN WHICH DO NOT REQUIRE A COASTAL AREA MANAGEMENT ACT PERMIT

SECTION .0100 - ACTIVITIES NOT CONSIDERED DEVELOPMENT

15A NCAC 07K .0103 MAINTENANCE AND REPAIR

(a) ~~Maintenance and repairs~~ "Maintenance and "repairs" are specifically excluded from the definition of ~~development~~ "development" under the conditions and in the circumstances set out in G.S. 113A-103(5)(b)(5). Individuals required to take such measures within an AEC shall contact the local CAMA representative for consultation ~~and advice~~ before beginning work. ~~Property may be considered to be imminently threatened for the purpose of the exclusion for maintenance and repairs when it meets the criteria for an imminently threatened structure as set out in 15A NCAC 7H .0308(a), which provides that a structure will be considered to be imminently threatened by erosion when the foundation, septic system or right of way in the case of roads is less than 20 feet from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.~~

(b) Beach bulldozing, defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation, for the purpose of preventing damage to imminently threatened ~~structures~~, structures as defined in 15A NCAC 07H .0308(a), by the creation of protective sand dunes shall qualify for an exclusion under G.S. 113A-103(5)(b)(5) subject to the following limitations:

- (1) The area on which this activity is being performed must maintain a slope ~~of adequate grade so as not to endanger the public or the public's use of the beach and should follow the natural that follows the pre-emergency slope as closely as possible.~~ possible so as not to endanger the public or hinder the public's use of the beach. All mechanically disturbed areas must be graded smooth of ruts and spoil berms that are perpendicular to the shoreline. The movement of material utilizing a bulldozer, front-end loader, back hoe, scraper or any type

of earth moving or construction equipment shall not exceed one foot in depth measured from the ~~preactivity~~ surface elevation;

- (2) The activity must not exceed the lateral bounds of the applicant's property ~~unless he has~~ without written permission of adjoining landowners;
- (3) Movement of material from seaward of the mean low water line will not be permitted under this exemption;
- (4) The activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on important natural or cultural resources;
- (5) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(c) Redistribution of sand that results from storm overwash or aeolian transport around buildings, pools, roads, parking areas and associated structures is considered maintenance so long as the sand remains within the Ocean Hazard AEC. Individuals proposing ~~other~~ such activities must consult with the Division of Coastal Management or the local permit officer to determine whether the proposed activity qualifies for the exclusion under G.S. 113A-103(5)(b)(5).

Authority G.S. 113A-103(5)(b)(5); 113A-118(a).

SECTION .0200 - CLASSES OF MINOR MAINTENANCE AND IMPROVEMENTS WHICH SHALL BE EXEMPTED FROM THE CAMA MAJOR DEVELOPMENT PERMIT REQUIREMENT

15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED

(a) All single family residences constructed within the Coastal ~~Shoreline~~ Shorelines Area of Environmental Concern that are more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity within the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent with all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption is granted.

(b) This exemption allows for the construction of a generally shore perpendicular access to the water, provided that the access shall be no wider than six feet. The access may be constructed out of materials such as wood, composite material, gravel, paver stones, concrete, brick, or similar materials. Any access constructed over wetlands shall be elevated at least three feet above any wetland substrate as measured from the bottom of the decking.

(c) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW), no CAMA permit shall be required if the proposed development is a single-family residence that has a built upon area of 25 percent or less ~~and~~ and is at least 40 feet from waters classified as ORW.

- (1) ~~has no stormwater collection system; and~~
- (2) ~~is at least 40 feet from waters classified as ORW.~~

(d) Before beginning any work under this exemption, the CAMA local permit officer or the Department of ~~Environment and Natural Resources~~ Environmental Quality representative shall be notified of the proposed activity to allow on-site review. Notification may be by telephone at (252) 808-2808, in person, or in writing to the North Carolina Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557. Notification shall include:

- (1) the name, address, and telephone number of the landowner and the location of the work, including the county, nearest community, and water body; and
- (2) the dimensions of the proposed project, including proposed landscaping and the location of normal high water or normal water level.

(e) In eroding areas, this exemption shall apply only when the local permit officer has determined that the house has been located the maximum feasible distance back on the lot but not less than forty feet.

(f) Construction of the structure authorized by this exemption shall be completed by December 31 of the third year of the issuance date of this exemption.

Authority G.S. 113A-103(5)c.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Water Pollution Control Systems Operator Certification Commission intends to amend the rules cited as 15A NCAC 08F .0102, .0201, .0202, .0301, .0402-.0404; 08G .0205, .0305, .0404-.0407, .0410, .0501, .0802, readopt with substantive changes the rules cited as 15A NCAC 08F .0203, .0401, .0405, .0406, .0501-.0506; 08G .0102, .0201, .0204, .0301, .0302, .0307, .0505, .0701, .0801 .0803, and readopt without substantive changes the rules cited as 15A NCAC 08F .0407; 08G .0304, and .0306.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

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: August 1, 2018

Public Hearing:

Date: April 26, 2018

Time: 10:00 a.m.

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

Reason for Proposed Action: *The selected rules listed from 15A NCAC 08 were reviewed pursuant to SL 2013-413. Pending changes were initiated either from comment received or per*

recommendations from a Commission subcommittee that was tasked with improving the rules. The proposed amendments primarily include efforts to: (i) correct technical and typographical errors; (ii) to clarify the rules' understandability; and/or (iii) to reduce burden on the regulated community by becoming less restrictive and allowing greater flexibility in licensing eligibility. One rule in particular (08F .0406) was revised to lend consistency with similar rules that outline a disciplinary review process.

Comments may be submitted to: Steve Reid, 1618 Mail Service Center, Raleigh, NC 27699-1618; email steve.reid@ncdenr.gov

Comment period ends: May 14, 2018

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
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

**CHAPTER 08 - WATER POLLUTION CONTROL
SYSTEM OPERATORS CERTIFICATION COMMISSION**

**SUBCHAPTER 08F - CERTIFICATION OF OPERATORS
OF ANIMAL WASTEMANAGEMENT SYSTEMS**

SECTION .0100 - GENERAL PURPOSE/DEFINITIONS

15A NCAC 08F .0102 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "Active certification" means that all training and certification requirements pursuant to G.S. 90A- 47.3(b) and G.S. 90A-47.4 have been completed.
- (2) "Animal waste management plan" means a plan to collect, store, treat or apply animal waste to the land in an environmentally safe manner

developed in accordance with G.S. 143-215.10C.

~~(a)(3)~~ "Animal waste management system operator" means a person that has been certified by the ~~Certification~~ Commission as a Type A Animal Waste Management System Operator or as a Type B Animal Waste Management System Operator.

~~(b) "Appropriate examination" means an examination that has been approved by the Certification Commission.~~

~~(e)(4)~~ "Approved training ~~program~~" means any training required in order to be eligible for an examination or to meet continuing education requirements as established in accordance with 15A NCAC 08F .0400. The standards for approved training shall be developed by a committee consisting of representatives for training sponsors, DWR staff, NC State Extension staff, instructors, and certified operators. The standards shall be approved by the Commission and known as "Certification Training for Operators of Animal Waste Management Systems Course Standards" or "Needs to Know". These standards can be found at <https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification/downloads>. a training program that has been approved by the Certification Commission in cooperation with the Cooperative Extension Service.

(5) "Back-up Operator in Charge or Back-up OIC" means a person that holds an active certification to operate an animal waste management system and who has responsibility for the operation of the system as described in G.S. 90A-47.1(a)(4) when the OIC is absent from his or her duties.

~~(d)(6)~~ "Certified operator" means a person who holds ~~a currently valid~~ an active certification as an animal waste management system operator.

~~(e)(7)~~ " ~~Certification~~ Commission" means the Water Pollution Control System Operators Certification Commission (WPCSOCC) created by G.S. 143B-300. The Commission address is 1618 Mail Service Center, Raleigh, NC 27699-1618 and the website may be found at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification>. ~~The Certification Commission's mailing address is PO Box 29535, Raleigh, NC 27626-0535.~~

~~(f)(8)~~ "Contract animal waste management system operator" means any certified animal waste operator who contracts with the owner or person in control of an animal operation pursuant to G.S. 90A-47.2(b).

~~(g) "Currently valid certification" means that all training and certification requirements pursuant to G.S. 90A- 47.3(b) and G.S. 90A-47.4 have been completed.~~

~~(h) "Emergency circumstances" means any extraordinary meteorological event, natural catastrophe, or equipment failure that threatens the integrity of the animal waste management system.~~

(9) "Operator in Charge" (OIC) means a person who holds an active certification to operate an animal waste management system and who has responsibility for the operation of the system as described in G.S. 90A-47.1(a)(4).

~~(+)(10)~~ (10) "Person under the supervision of an Operator in Charge" means a person who takes directions from the Operator in Charge OIC and who may shall only land apply animal waste when the Operator in Charge OIC is available for consultation and advice at any time during the application of animal waste.

Authority ~~G.S. 90A-35; 90A-43; 90A-47; 90A-47.6; 143B-300.~~

SECTION .0200 - DUTIES AND REQUIREMENTS

15A NCAC 08F .0201 DUTIES AND REQUIREMENTS OF OWNERS

(a) The owner of each animal operation having an animal waste management system shall submit an Animal Waste Management System Operator Designation Form a letter to the Certification Commission which designates an Operator in Charge OIC. This ~~letter form~~ shall be signed by the owner and the certified operator and shall be submitted to the ~~Certification Commission~~ Commission via mail or email to certadmin@ncdenr.gov. The Operator in Charge OIC shall be designated:

- (1) before a new animal operation having an animal waste management system is placed in operation; or
- (2) within 30 days ~~after a new Operator in Charge is designated~~ following a vacancy in the position of OIC.

(b) An owner may voluntarily designate a back-up ~~Operator in Charge OIC~~ to operate the animal waste management system during the absence of the primary ~~Operator in Charge OIC~~.

(c) The Animal Waste Management System Operator Designation Form may be found on the Commission website at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification/downloads> and shall include:

- (1) owner's name, contact information and signature;
- (2) system name, location, permit number, type and classification;
- (3) OIC name, contact information, certification type, and signature; and
- (4) Back-up OIC's name, contact information, certificate type, and signature (if designated).

Authority ~~G.S. 90A-44; 90A-47; G.S. 90A-47.2; 143B-300.~~

15A NCAC 08F .0202 DUTIES AND REQUIREMENTS OF CERTIFIED OPERATORS

Certified ~~Operators operators~~ shall:

- (1) comply with all terms and conditions of their certification as set forth in these Rules;
- ~~(1)(2)~~ (2) notify the Certification Commission in writing, within 30 days of any change in address; and
- ~~(2)(3)~~ (3) pay an annual renewal fee of ten dollars (\$10.00) as specified at G.S. 90A-47.4(b) and complete all additional training requirements as specified at G.S. 90A-47.3(b).

Authority ~~G.S. 90A-47; G.S. 90A-47.4; 143B-300.~~

15A NCAC 08F .0203 DUTIES AND REQUIREMENTS OF AN OPERATOR IN CHARGE

(a) An ~~Operator in Charge OIC~~ of any animal waste management system shall:

- (1) possess a currently valid an active certification as an Animal Waste Management System Operator of the appropriate type; same type as the classification of the system;
- (2) ~~visit,~~ visit and inspect each animal waste management system at a frequency ~~sufficient to ensure proper operation of the system; to ensure compliance with the permit; and~~
- (3) be responsible for the ~~proper~~ application of the animal waste; ~~properly~~ manage, supervise ~~supervise,~~ and document ~~daily operation operation, and maintenance~~ maintenance, and visitation of the system; and certify by signature the monitoring and reporting information as prescribed in the permit.

(b) The ~~Operator in Charge OIC~~ or a designated ~~back-up Operator in Charge Back-up OIC~~ of a Type A Animal Waste Management System shall:

- (1) ensure that animal waste is applied in accordance with the animal waste management plan and the permit issued for the animal operation;
- (2) ~~inspect,~~ inspect or direct a person under the supervision of an ~~Operator in Charge OIC~~ or designated ~~back-up Operator in Charge Back-up OIC~~ shall to inspect, inspect the land application site at a frequency not to exceed every least every four hours 120 minutes during the application of animal waste; and
- (3) if the OIC was not present during the application of animal waste, inspect the land application site within 24 hours of the application of animal waste waste, if the Operator in Charge was not present during the application of animal waste.

(c) The ~~Operator in Charge OIC~~ or a designated ~~back-up Operator in Charge Back-up OIC~~ of a Type B Animal Waste Management System shall:

- (1) ensure that animal waste is applied in accordance with the animal waste management plan and the permit issued for the animal operation;
- (2) inspect, or a person under the supervision of an ~~Operator in Charge OIC~~ or designated ~~back-up~~

~~Operator in Charge~~ Back-up OIC shall inspect, the land application site at least every 120 minutes during the application of animal waste; and

- (3) inspect the land application site within 48 hours of the application of animal waste if the ~~Operator in Charge~~ OIC was not present during the application of animal waste.

~~(d) Any certified operator that contracts with an owner to serve as Operator in Charge shall submit an annual report to the Certification Commission in accordance with G.S. 90A-45(c). This report shall be submitted on or before January 15 of each year and shall include the following information:~~

- ~~(1) the name of the certified operator, mailing address, phone number, and certificate number(s); and~~
~~(2) the name, mailing address, county, and facility identification number, and type of each animal waste management system for which the certified operator has been designated as Operator in Charge.~~

Authority ~~G.S. 90A-47~~ G.S. 90A-47.6; 143B-300.

SECTION .0300 - CLASSIFICATION

15A NCAC 08F .0301 CLASSIFICATION OF ANIMAL WASTE MANAGEMENT SYSTEMS

(a) The ~~Certification~~ Commission shall classify animal waste management systems based on the types of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal ~~waste~~ waste as follows:

- (1) Type A: These animal waste management systems generally are used to treat waste generated by monogastric animals that produce a low fiber waste. They include any or all of the following structures and nonstructural components that provide for the collection, treatment, ~~storage storage~~, and land application of animal waste and primarily rely on an anaerobic lagoon and ~~soil/plant~~ soil and plant systems for the treatment of animal waste:

- (A) anaerobic lagoon;
(B) pumps, ~~pipes pipes~~, and associated appurtenances that convey the waste from point of generation to final treatment/disposal site;
(C) flushing systems;
(D) solids separation equipment;
(E) irrigation equipment; and
(F) land application site and crops; and
Type A animal waste management systems are generally used to treat waste generated by monogastric animals which produce a low fiber waste.
(G) anaerobic digester.

- (2) Type B: These animal waste management systems generally are used to treat waste generated by ruminants and other animals that produce a high fiber waste. They include any or all of the following structures and nonstructural components that provide for the collection, treatment, ~~storage storage~~, and land application of animal waste and primarily rely on ~~soil/plant~~ soil and plant systems for the treatment of animal waste:

- (A) dry stacks;
(B) solids and slurry collection equipment;
(C) storage ponds for the collection of solids and runoff;
(D) pumps, ~~pipes pipes~~, and associated appurtenances that convey the waste from point of generation to final treatment and disposal site;
(E) application equipment;
(F) land application site and crops; and
Type B animal waste management systems are generally used to treat waste generated by ruminants and other animals which produce a high fiber waste.
(G) anaerobic digester.

(b) Animal waste management systems ~~which that~~ include components that are ~~significantly~~ different than the system described in Subparagraph (a)(1) of this Rule shall be evaluated by the ~~Commission, or its designee,~~ Commission to determine if the system is subject to classification in accordance with 15A NCAC ~~08C-0102(b),~~ 08G .0302 through .0308.

Authority ~~G.S. 90A-37; 90A-47~~ 90A-47.2; 90A-47.6; 143B-300.

SECTION .0400 - CERTIFICATION OF OPERATORS

15A NCAC 08F .0401 QUALIFICATIONS FOR EXAMINATION

(a) An applicant for certification as a Type A or Type B Animal Waste Management System Operator shall be expected to meet the following criteria and possess the knowledge and abilities listed as they relate to the specific type of system for which certification is being sought and shall, at a minimum:

- (1) be at least 18 years of age;
(2) have completed an approved training program of the same type as the examination for which they are applying;
(3) possess knowledge of:
(A) animal operations, animal waste management systems, and animal waste management plans;
(B) the laws and rules that govern animal waste management operators and the operation of animal waste management systems;
(C) the equipment employed by these systems; and

- (4) have the ability to:
- (A) describe the maintenance requirements of such equipment;
 - (B) perform calibrations and calculations relating to the land application of the waste;
 - (C) read and complete the monitoring and reporting forms necessary to document the land application of animal waste as prescribed in the animal waste management plan and the permit.

(b) An applicant who fails to achieve a passing score on a specific type of examination after three consecutive attempts shall:

- (1) complete an approved training for the same type as the certification being sought before being eligible to retake the examination; and
- (2) provide verification, in the form of a certificate of completion or other such documentation, of the completion of the required training with any subsequent application made to the Commission to sit for the examination.

(a) Type A Animal Waste Management System Operator.

- (1) An applicant for certification as a Type A Animal Waste Management System Operator shall be expected to have a general knowledge of animal operations and Type A animal waste management systems. The applicant shall have knowledge of the laws and regulations related to the operation of Type A animal waste management systems, the equipment usually employed in Type A animal waste management systems, be able to describe the general maintenance requirements for such equipment, have the ability to perform calibrations and calculations relating to the land application of the waste, have an understanding of animal waste management plans, and be able to read and complete the forms necessary to document the proper land application of animal waste in accordance with the animal waste management plan. The applicant must submit an application to the Certification Commission showing that the following requirements have been met in order to take an examination for certification as a Type A Animal Waste Management System Operator:
 - (A) be at least 18 years of age;
 - (B) completion of a 10 hour training program on the operation of Type A animal waste management systems that provides instruction regarding the collection, storage, treatment, and land application of animal waste
- (2) An applicant who has failed to pass the appropriate examination after three attempts must attend and complete the approved training program before being eligible to retake the examination.

(b) Type B Animal Waste Management System Operator.

- (1) An applicant for certification as a Type B Animal Waste Management System Operator shall be expected to have a general knowledge of animal operations and Type B animal waste management systems. The applicant shall have knowledge of the laws and regulations related to the operation of Type B animal waste management systems, knowledge of the equipment usually employed in Type B animal waste management systems, be able to describe the general maintenance requirements for such equipment, have the ability to perform calibrations and calculations relating to the land application of the waste, have an understanding of animal waste management plans, and be able to read and complete the forms necessary to document the proper land application of animal waste in accordance with the animal waste management plan. The applicant must submit an application to the Certification Commission showing that the following requirements have been met in order to take an examination for certification as a Type B Animal Waste Management System Operator:
 - (A) be at least 18 years of age;
 - (B) completion of a 10 hour training program on the operation of Type B Animal Waste Management Systems that provides instruction regarding the collection, storage, treatment, and application of animal waste.
- (2) An applicant who has failed to pass the appropriate examination after three attempts must attend and complete the approved training program before being eligible to retake the examination.

Authority G.S. 90A-43; 90A-47; 90A-47.3; 90A-47.6; 143B-300.

15A NCAC 08F .0402 APPLICATION FORM

(a) An Animal Waste Management System Operator Certification Examination Application application which is designed for requesting certification as an Animal Waste Management System Operator by way of examination must shall be properly and accurately completed and submitted with the appropriate twenty-five dollar (\$25.00) examination fee as stipulated by G.S. 90A-47.4 to the Certification Commission.

(b) The Application may be found on the Commission website at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification/downloads> and shall include:

- (1) applicant's name, contact information, date of birth, and Social Security Number (if first-time applicant);
- (2) type of certification sought;
- (3) date and location of examination requested;
- (4) documentation of required training; and
- (5) applicant's signature.

(c) Applications for examination shall be postmarked by the United States Postal Service at least 30 days prior to the date upon which the examination is scheduled to be administered.

~~(b)(d)~~ Incomplete applications and applications not accompanied by the appropriate fee and attachments cannot be processed and will shall be returned to the applicant.

Authority G.S. 90A-39; 90A-47; 143B-300.

15A NCAC 08F .0403 APPLICATION PROCEDURES

~~(a) An application being filed for examination shall be postmarked by the United States Postal Service at least 30 days prior to the date upon which the examination is scheduled to be administered and the appropriate fee must accompany the application.~~

(b) Upon receipt of the application by the Certification Commission, ~~the application~~ it will be reviewed by the ~~designee(s) of the Certification Commission~~ for eligibility to take the examination. The applicant will be notified by ~~letter, letter~~ which will serve as the receipt for the examination fee, of his/her eligibility and will be advised of the date, time and place of the examination. Such notice will serve as a receipt for the examination fee. In cases where the applicant is ineligible for examination, the applicant ~~will shall~~ also be notified by letter and advised of the reason for ineligibility. The examination fee ~~will shall~~ be refunded in the event that the applicant is determined to be ineligible for the examination. Upon notification of ineligibility, the applicant may request a hearing ~~to be heard by the Certification~~ with the Commission at the next regularly scheduled meeting, relative to the ineligibility. Such requests ~~must shall~~ be in writing and shall be submitted postmarked at least 30 days prior to the next regularly scheduled meeting. Any applicant who intentionally supplies false information on the application for certification for the purpose of gaining eligibility, ~~will shall~~ be ineligible for the examination and ~~will shall~~ forfeit the examination fee. Applicants who have intentionally supplied false information and who have been determined to be ineligible who wish to reapply for certification shall follow the procedure set forth in Rule .0407(d) of this Section.

Authority G.S. 90A-39; 90A-47; 143B-300.

15A NCAC 08F .0404 EXAMINATION PROCEDURES

The ~~Certification Commission or its designee~~ shall conduct examinations for certification in accordance with the following:

- (1) The dates, times, and places of examination shall be ~~determined set~~ by the Certification Commission. Announcement Announcements of the dates, ~~times times~~, and places of examination shall be ~~distributed to the Cooperative Extension Service office in each county.~~ published annually on the Commission's webpage at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification/aw-operator-certification-exams>.
- (2) Each applicant ~~applying~~ for examination shall be notified in writing of the date, time, and place of the examination using the address

submitted upon application, in accordance with Rule .0403(b) of this Section.

(3) Examinations ~~approved by the Certification Commission~~ shall be given only to those who, after filing ~~proper~~ application, have been determined to be eligible.

(4) When each applicant receives ~~his/her~~ his or her examination paper, ~~he/she~~ he or she shall identify themselves by way of a valid driver's license or other form of photo ~~identification~~ identification, satisfactory to the proctor of the examination.

~~(5) Representatives of the Certification Commission or its designee(s), who are supervising the examinations may take appropriate action against applicants, including dismissal from the examination, if the examination policies and procedures are not followed.~~

~~(6)(5) An examination score of 70 percent or higher shall constitute a passing score. A passing score shall be answering 70 percent of the examination questions correctly.~~

~~(7)(6) The applicant shall be notified, notified in writing using the address submitted upon application, only, of the score achieved on the examination examination, by the Certification Commission or its designee. The Commission shall send written notification to the applicant of his or her score, using the address submitted upon application. The results of the examination shall be mailed to the address submitted with the application for examination. If a passing score is made, such notification shall constitutes constitute certification by the Certification Commission that the applicant is a qualified operator of the appropriate type of animal waste management systems systems, and shall be issued a certificate by the Certification Commission. After each examination, a list Certified Operator Listing of those certified shall be prepared and made part of the permanent records of the Certification Commission, published on the Commission webpage~~ at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification/animal-waste-operator-certification>.

(7) Any applicant who fails to make a passing score on an examination shall be allowed to review their exam at a date, time, and location specified by the Commission. Notification of the reviews shall be sent using the address submitted upon application and this shall be the only opportunity the applicant shall be allowed for reviewing the examination.

(8) An applicant shall not be allowed to review the examination within 30 days of an upcoming examination date.

- (9) All examinees shall receive a report that summarizes their performance on the exam, including the score, subject matter areas from which the questions were drawn, as well as correct and incorrect responses to each question. Specific questions from the exam shall not be included in this report.

Authority G.S. 90A-39; 90A-47 90A-47.3; 143B-300.

15A NCAC 08F .0405 RENEWAL OF CERTIFICATION

(a) A currently valid certification as an animal waste management system operator shall be maintained by:

- (1) the payment of ~~an~~ the annual renewal fee of ten dollars (\$10.00) set forth in G.S. 90A-47.4(b), prior to December 31 of the year of renewal; by the date established by the Certification Commission;
- (2) completion of a ~~minimum~~ of six hours of additional training approved by the Certification Commission during each ~~three~~ year three-year period following initial certification.

(b) A certified animal waste management system operator that fails to pay the annual renewal fee within 30 days of the due date, or fails to complete the approved ~~additional~~ training within 30 days of the end of the ~~three-year~~ three-year period, shall take and pass an examination approved by the ~~Certification~~ Commission ~~in order~~ to renew the certificate.

(c) 60 days prior to the renewal due date, the Commission shall mail renewal notices to each certified operator at the last address on file with the Commission. Failure to receive a renewal notice does not relieve a certified operator of the responsibility to renew the certificate by the renewal due date.

Authority G.S. 90A-47; G.S. 90A-47.3; 90A-47.4; and 143B-300.

15A NCAC 08F .0406 REVOCATION, RELINQUISHMENT OR INVALIDATION OF CERTIFICATION DISCIPLINARY ACTIONS

(a) ~~The Certification Commission, in accordance with the provisions of G.S. 150B G.S. 150B-38 and G.S. 90A-41 G.S. 90A-47.5, may suspend or revoke the certificate of a certified operator, operator or issue a written reprimand to an operator if it finds that the operator:~~

- (1) engages in fraud or deceit in obtaining certification; or
- (2) fails to exercise reasonable care, judgment, or use of the operator's knowledge and ability in the performance of the duties of an ~~operator in charge~~ OIC; or
- (3) is incompetent or otherwise unable to properly perform the duties of an ~~operator in charge~~ OIC.

~~(b) Prior to the Certification Commission taking action on a proposed revocation, suspension, or civil penalty assessment, the operator shall be given an opportunity to submit a written statement and present oral argument before the Certification Commission at a regularly scheduled meeting. The operator shall~~

~~be notified by the Certification Commission in writing at least 15 days prior to the meeting. This notification shall be delivered by first class mail to the operator's address that the Certification Commission has on file.~~

~~(e) The Certification Commission may issue a written reprimand to an operator in accordance with G.S. 90A-41. The reprimand shall be delivered personally or by certified mail. A copy of the letter will be kept in the operator's file and a copy will be sent to the operator's employer. The operator will be given the opportunity to put a letter of rebuttal into the file when a reprimand has been issued.~~

(b) The Chairman of the Commission may issue notification of summary suspension in accordance with the provisions of G.S. 150B-3, the intention to revoke or suspend the certification of an operator.

(c) The Chairman shall convene a disciplinary committee to review the circumstances of the proposed disciplinary action(s).

(1) The disciplinary committee shall include at least:

- (A) the Chairman of the Commission;
- (B) the Vice Chairman of the Commission;
- (C) both members of the Commission appointed by the Commissioner of Agriculture; and
- (D) a certified operator, appointed by the Chairman, representing the same type of certification considered for disciplinary action.

(2) The members of the disciplinary committee shall offer guidance to the Commission Chairman regarding the actions that should be taken against an operator.

(d) Notification of the disciplinary committee meeting shall be sent by certified mail at least 15 days prior to the date of the meeting, to the last known address of the operator. This notification shall contain the alleged facts or conduct upon which the proposed revocation or suspension of the certification is based.

(e) The operator shall have an opportunity to submit a written response to the Chairman prior to the date of the disciplinary committee meeting. The operator shall also be given the opportunity to make an oral statement before the disciplinary committee.

(f) Within 10 business days of the conclusion of the disciplinary committee meeting, the Chairman shall issue the decision of the disciplinary committee. If this decision is to issue a revocation or suspension, the Chairman shall advise the operator of the effective date of the action and the facts or conduct upon which the action is based. The revocation or suspension of a certification shall be delivered to the affected operator and the owner of the system(s) at which the operator works by certified mail, at the last known address for the operator and owner on file with the Commission, at least 20 days prior to the effective date of the revocation or suspension.

(g) The revocation or suspension becomes a final Commission action if the operator does not file a petition for a contested case hearing in the Office of Administrative Hearings as provided in the Administrative Procedure Act, G.S. 150B.

(h) If an applicant is caught cheating on an examination by a proctor of the examination, the applicant shall be excused from the examination, the examination shall not be graded, the fee for the examination shall be forfeited by the applicant and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set forth in G.S. 90A-47 and in this Rule.

(i) If the Commission determines, after the examination has been graded, that an applicant cheated on an examination and certification has been conveyed to the applicant, the certification obtained through the examination shall be revoked and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set forth in G.S. 90A-47 and in this Rule.

Authority G.S. 90A-41; 90A-47; 143B-300; 150B-3; 150B-23; 150B-38; 150B-52.

15A NCAC 08F .0407 (RECERTIFICATION FOLLOWING REVOCATION OR RELINQUISHMENT (READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)

SECTION .0500 - CIVIL PENALTIES

15A NCAC 08F .0501 WHO MAY ASSESS

~~Civil penalties may be assessed by the Secretary of the Department of Environment and Natural Resources or his designee, for willful violation of the requirements of G.S. 90A-47 and this Subchapter.~~

Authority G.S. 90A-47; 90A-47.5; 143B-300.

15A NCAC 08F .0502 WHEN ASSESSABLE

~~Civil penalties may be assessed whenever the Secretary, or his designee, has determined~~ The Commission may assess civil penalties whenever it determines that an owner of an animal operation with an animal waste management system, or an ~~Operator in Charge OIC~~ of an animal waste management ~~system,~~ system willfully violates the requirements of ~~G.S. 90A-47 G.S. 90A-47,~~ and this Subchapter. ~~Violations that may result in the assessment of civil penalties include, in addition to matters specially referenced in~~ In addition to violations in G.S. 90A-47.5(a), a failure to designate a properly certified ~~Operator In Charge OIC~~ of the animal waste management system as required by G.S. 90A-47.2(a), may result in the assessment of civil penalties. G.S. 90A-47.2(a).

Authority G.S. 90A-47; 90A-47.5; 143B-300.

15A NCAC 08F .0503 STANDARDS

~~In determining the amount of the assessment, assessment the Secretary, or his designee, Commission~~ shall consider the following standards:

- (1) the duration of the violation;
- (2) any other violations of this Subchapter or G.S. 143-215.6(a); G.S. 143-215.6A;
- (3) the effectiveness of preventive or responsive measures taken by the violator;

(4) the cost to the violator or others of rectifying any damage damages caused by the violation; and

(5) the violator's previous record in complying or not complying with the requirements of Part 1A, G.S. 143, Article 24, 21, titled "Animal Waste Management Systems".

Authority G.S. 90A-47; 90A-47.5; 143B-300.

15A NCAC 08F .0504 ASSESSMENT

~~(a) For all violations for which~~ Whenever a penalty is assessed ~~assessed, the Commission shall send a notice of such action shall be sent~~ to the respondent by certified mail. The notice will describe the violation, advise state that the penalty is due, and advise the respondent of the rights of appeals as specified in Rule .0505 of this Section.

(b) The Commission may modify a penalty to a lower amount, upon receipt of a request for remission or reduction of the penalty as allowed in Rule .0505(a) of this Section, if it finds that additional or different facts should be or should have been considered in determining the amount of assessment. The Secretary, or his designee, may modify a penalty to a lower amount upon finding that additional or different facts should be or should have been considered in determining the amount of assessment.

(c) Requests for remission or reduction of the penalty will be presented to the Commission and the respondent shall be allowed the opportunity to present its request only when the respondent and Chairman stipulate that no facts are in dispute, or where the respondent waives his right to an administrative hearing.

Authority G.S. 90A-47; 90A-47.5; 143B-300.

15A NCAC 08F .0505 PAYMENT AND HEARING

(a) Within 30 days after receipt of notification of an assessment, the assessed person must tender ~~payment, payment~~ or submit in writing a request for remission or reduction of the penalty, or file a petition with the Office of Administrative Hearings in accordance with the procedures found in G.S. 150B, Article 3A.

(b) ~~The Secretary, or his designee, Commission will shall accept and acknowledge in writing to the respondent, all tenders of payment payment, on behalf of the Certification Commission. Requests for remission or reduction of the penalty will be presented to the Certification Commission and the respondent will be allowed the opportunity to present its request only when the respondent and Chairman stipulate that no facts are in dispute, or where the respondent waives his right to an administrative hearing.~~

Authority G.S. 90A-47; 90A-47.5; 143B-300.

15A NCAC 08F .0506 REFERRALS

~~If any civil penalty as finally assessed is not paid, the Secretary, or his designee, on behalf of the Certification Commission~~ shall request the Attorney General to commence action to recover the amount of assessment.

Authority G.S. 90A-47.

**SUBCHAPTER 08G - AUTHORITY: ORGANIZATION:
STRUCTURE: DEFINITIONS**

**SECTION .0100 - GENERAL PURPOSE AND
DEFINITIONS**

15A NCAC 08G .0102 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- ~~(a)~~(1) "Activated sludge" means a biological wastewater treatment process in which ~~predominantly~~ biodegradable pollutants in wastewater are absorbed, or adsorbed, by living aerobic organisms and bacteria in an aerated suspension which is separated from the treated ~~wastewater wastewater, gravimetrically.~~
- ~~(b)~~(2) "Actual experience" means the time working as a water pollution control system operator or operator in responsible charge. An operator is an individual whose ~~principal~~ job responsibility is the ~~actual~~ physical operation of process equipment and systems at a water pollution control system. ~~Primary job~~ Job responsibilities such as laboratory testing, facility and equipment maintenance, administrative support, or direct or indirect supervision do not qualify as actual experience.
- (3) "ATU" means aerobic treatment unit and refers to a treatment component that utilizes oxygen to degrade or decompose wastewater with or without mechanical means. The term is used to describe proprietary devices that use direct introduction of air into wastewater by mechanical means to maintain aerobic conditions.
- ~~(c)~~(4) "Approved training" means any training required for examination eligibility or to meet continuing education requirements as established in accordance with 15A NCAC 08G .0400 and 15A NCAC 08G .0701. The standards for approved training shall be developed by a committee consisting of representatives for training sponsors, DEQ staff, instructors and certified operators. The standards shall be approved by the Commission and shall be known as "Water Pollution Control System Operator Certification Commission Training Course Standards" or "Needs to Know". The standards may be found on the Commission website at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-certification/wastewater-operator-certification-downloads>. ~~"Approved training" means any training, required in order to be eligible for an examination or to meet continuing education requirements as established in accordance with 15A NCAC 08G .0400 and 15A NCAC 08G .0701. The~~

~~standards for approved training shall be developed by a committee consisting of representatives for training sponsors, DWQ staff, instructors and certified operators. The standards must be approved by the Commission and shall be known as "Water Pollution Control System Operator Certification Commission Training Course Standards" or "Needs to Know". These standards can be found at <http://h2o.enr.state.nc.us/tacu>.~~

- ~~(d)~~(5) "Back-up ORC" means Back-up Operator in Responsible Charge and refers to the operator who is designated to act as surrogate for the Operator in Responsible Charge (ORC) when the ORC is absent from his or her professional duties as set forth in G.S. 90A-44.
- ~~(e)~~(6) "Basic sciences" means courses in agronomy, biology, botany, chemistry, engineering, environmental health and sciences, geology, math, physics, soil science, and zoology offered by ~~an a~~ an accredited college or university.
- ~~(f)~~(7) "Chemical process" means a water pollution control system process consisting ~~exclusively~~ of the addition of chemicals to treat wastewaters.
- ~~(g)~~(8) "Collection system" means a ~~continuous~~ connection of pipelines, conduits, pumping stations and other related constructions or devices used to conduct wastewater to a water pollution control system.
- ~~(h)~~(9) "Commission" means the Water Pollution Control System Operators Certification Commission created by G.S. 143B-300.
- ~~(i)~~(10) "Contact Hour" means one hour of Commission approved operator instruction in accordance with 15A NCAC 08G .0701.
- ~~(j)~~(11) "Contract operations firm" means any commercial water pollution control system operations firm ~~which that~~ contracts with the owner of a water pollution control system to provide operational services for the system pursuant to G.S. 90A-45(a).
- ~~(k)~~(12) "Contract operator" means any certified water pollution control system operator who contracts with the owner of a water pollution control system to provide operational and other services for the system pursuant to G.S. 90A-45(a).
- ~~(l)~~(13) "Electrodialysis system" means a system utilizing a selective separation of dissolved solids process that is based on electrical charge and diffusion through a semipermeable membrane.
- (m) ~~"Fixed growth" means a biological wastewater treatment system in which the wastewater is treated by contact with a biological growth that is affixed to support media and includes systems such as trickling filters, rotating biological contactors, and biological tower treatment systems.~~

- (~~h~~)(14) "GED" means general educational development in reference to a high school diploma equivalency.
- (~~g~~) "~~Nutrient Reduction~~" means ~~the reduction of total nitrogen or total phosphorous by an activated sludge or fixed growth process.~~
- (15) "Media filter" means a device that uses materials designed to treat effluent by reducing biochemical oxygen demand and removing suspended solids in an unsaturated environment. Biological treatment is facilitated via microbial growth on the surface of the media.
- (~~h~~)(16) "Operator in Training (OIT)" means the certificate issued with Commission approval to an individual prior to the completion of the experience requirements for that level of certification.
- (~~g~~)(17) "Operator in Responsible Charge (ORC)" means the individual designated by a person, firm, or corporation (municipal or private) owning or having control of a water pollution control system as the operator of record of the water pollution control system and who has primary responsibility for the operation of such system as defined in G.S. 90A-46.
- (~~h~~)(18) "Owner" means the person, firm, or corporation (municipal or private) owning or having control of a water pollution control system as described in G.S. 90A-44.
- (~~s~~)(19) "Passing score" means earning 70 percent of the available points on an examination administered by the Commission.
- (~~t~~) "~~Permanent certificate~~" means ~~the certificate of competency issued by the Commission to an individual as the result of the individual obtaining a passing score on an examination administered by the Commission, or a certificate issued by reciprocity agreement by the Commission, and is subject to the provisions of G.S. 90A-40(a).~~
- (~~u~~)(20) "Physical/Chemical system" means any water pollution control system which utilizes a physical or a chemical process or both.
- (~~v~~)(21) "Physical process" means any water pollution control system process consisting of electrodialysis, adsorption, absorption, air stripping, gravimetric sedimentation, flotation or filtration as the means of treatment.
- (~~w~~)(22) "Reciprocity certificate" means a certificate issued of the appropriate type and grade ~~without examination to any person who is properly registered on the "National Association of Boards of Certification" Reciprocity Register and who meets all other requirements of these Rules as set forth in G.S. 90A-40(b).~~ to an applicant certified in another state and who meets all other requirements set forth in Rule .0410 of this Section.
- (~~x~~)(23) "Regional office" means one of the seven local offices of the ~~Division of Water~~ Department of Environmental Quality located across the State.

- (~~y~~)(24) "Residuals" means any ~~solid solid, or semisolid semisolid, or liquid waste, other than effluent or residues from agricultural products and processing, generated from a water pollution control facility, water supply treatment facility, or air pollution control facility permitted under the authority of the Environmental Management Commission or the Commission for Public Health, byproduct that is produced by the treatment of wastewater in a water pollution control system.~~
- (~~z~~)(25) "Reverse osmosis system" means a system which utilizes solutions and semipermeable membranes to separate and treat wastewaters.
- (26) "Submerged fixed growth" means a biological wastewater treatment system in which the wastewater is treated by contact with a biological growth that is fixed to submerged support media and includes systems such as rotating biological contactors and sequencing batch reactors.
- (~~aa~~)(27) "Successful completion" means the attendance of ~~at least~~ 80 percent of the approved training for examination eligibility and 100 percent of training for continuing education.
- (~~bb~~)(28) "Temporary certificate" means a certificate issued of an appropriate type and grade, without examination, to any person employed as a water pollution control system operator when the Commission finds that the supply of certified operators, or persons with the training and experience necessary for certification, is inadequate and the situation meets the requirements set forth in G.S. 90A-40(e).
- (~~cc~~)(29) "Ultrafiltration system" means a system which utilizes a membrane filter process to remove pollutants from wastewater.
- (~~dd~~)(30) "Valid certificate" means the certificate of an operator that has all required renewal fees paid, all required continuing education training completed, and has not been ~~revoked~~ revoked, relinquished, invalidated, or suspended.
- (~~ee~~)(31) "Water pollution control system" means any system for the collection, treatment, or disposal of wastewater and is classified under the provisions of G.S. 90A-37.

Authority G.S. 143B-300.

SECTION .0200 - DUTIES AND RESPONSIBILITIES

15A NCAC 08G .0201 RESPONSIBILITY OF SYSTEM OWNERS TO DESIGNATE CERTIFIED OPERATORS

Owners of classified water pollution control systems ~~must~~ shall designate operators certified by ~~the Water Pollution Control System Operators Certification Commission (WPCSOC), Commission of the appropriate same type and grade as the classification for the system, system and, and~~ for each classification must: shall:

- (1) designate one ~~Operator in Responsible Charge (ORC)~~ ORC who possesses a valid certificate of the type and grade at least equivalent to the type and grade of the system;
- (2) designate one or more ~~Back-up Operator(s) in Responsible Charge (Back-up ORCs)~~ Back-up ORC who possesses a valid certificate of the type of the system and no more than one grade less than the grade of the system, with the exception of no ~~backup operator in responsible charge~~ Back-up ORC is required for systems whose minimum visitation requirements are twice per year; and
- (3) submit a signed completed "Water Pollution Control System Operator Designation Form" to the Commission (or to the local health department for owners of subsurface systems) countersigned by the designated certified operators, designating the ~~Operator in Responsible Charge (ORC) ORC~~ and the ~~Back-up Operator in Responsible Charge (Back-up ORC) Back-up ORC~~:
 - (a) 60 days prior to wastewater or residuals being introduced into a new system; or
 - (b) within 120 days following:
 - (i) ~~receiving~~ notification of a change in the classification of the system requiring the designation of a new ~~Operator in Responsible Charge (ORC) ORC~~ and ~~Back-up Operator in Responsible Charge (Back-up ORC) Back-up ORC~~ of the proper type and grade; or
 - (ii) a vacancy in the position of ~~Operator in Responsible Charge (ORC) ORC~~ or ~~Back-up Operator in Responsible Charge (Back-up ORC) Back-up ORC~~.
 - (c) within seven days of vacancies in both ORC and Back-up ORC positions replacing or designating ~~at least~~ one of the responsibilities.
 - (d) the Operator Designation Form may be found on the Commission website at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-certification/wastewater-operator-certification-downloads> and shall include:
 - (i) owner's name, contact information and signature;

- (ii) system name, location, permit number, type and classification;
- (iii) ORC name, contact information, certification type and grade and signature;
- (iv) Back-up ORC names, contact information, certification types and grades and signatures.

Authority G.S. 90A-37; 90A-38; 90A-39; 90A-40; ~~90A-41; 90A-42; 90A-43; 90A-44; 90A-45.~~

15A NCAC 08G .0204 RESPONSIBILITIES OF AN OPERATOR IN RESPONSIBLE CHARGE (ORC)

An ~~Operator in Responsible Charge (ORC)~~ ORC of a water pollution control system ~~must~~ shall:

- (1) possess a valid certificate of the appropriate type and grade for the system;
- (2) visit the system as often as is necessary to ~~insure~~ ensure the proper operation of the system but in no case less frequently than specified in the following schedule, unless otherwise specified in permit:
 - (a) biological ~~grade~~ Grade I systems with the exception of Sub-item (2)(e) of this ~~Rule; Rule~~; Rule; weekly;
 - (b) biological ~~grade~~ Grade II, III, and IV systems, other than those systems specified in Sub-item (2)(f) of this ~~Rule; Rule~~; Rule; five days per week, excluding holidays;
 - (c) surface irrigation systems with the exception of Sub-item (2)(e) of this ~~Rule; Rule~~; Rule; weekly;
 - (d) collection ~~systems; systems~~; systems: within 24 hours of knowledge of a bypass, spill, or overflow of wastewater from the ~~system system~~, unless visited by a collection system Back-up ~~Operator in Responsible Charge; ORC~~;
 - (e) domestic wastewater systems with a treatment capacity of 1500 gallons per day or ~~less; less~~; twice per year with a six-month six-month interval between visits;
 - (f) domestic wastewater ~~aerobic treatment units (ATUs) ATUs~~ with a treatment capacity of 1500 gallons per day or ~~less; less~~; weekly;
 - (g) systems permitted under rules adopted by the Commission for Public ~~Health; Health~~; as required by 15A NCAC 18A .1961; 15A NCAC 18A .1961, which is hereby incorporated by reference, including subsequent amendments and editions;
 - (h) physical/chemical systems:

- (i) ~~grade~~ Grade I systems, including groundwater remediation ~~systems;~~ systems; weekly;
- (ii) ~~grade~~ Grade II ~~systems;~~ systems; five days per week, excluding ~~holidays~~ holidays;
- (i) land application ~~systems~~ systems; during or within 48 hours after application of residuals;
- (j) systems not otherwise ~~classified;~~ classified; as specified by the Commission based on the complexity of the system;
- (3) operate and maintain the system ~~efficiently~~ and attempt to ~~insure~~ ensure the compliance of the system with any ~~permit(s)~~ permits issued for the system as well as any other applicable local, ~~state,~~ State, and federal environmental permitting and regulatory requirements;
- (4) ~~certify,~~ certify by ~~signature,~~ signature as to the validity of all monitoring and reporting information performed on the system as prescribed in any permit issued for the system and provide the owner a ~~copy;~~ copy of monitoring and reporting forms;
- (5) document the operation, maintenance, and all visitation of the system in a ~~daily~~ log that ~~must~~ shall be maintained at the system;
- (6) notify the owner of the ~~system~~ system, as soon as possible, and in writing within five days of first knowledge, of any:
 - (a) overflows from the system or any treatment process unit;
 - (b) bypasses of the system or any treatment process unit; or
 - (c) violations of any limits or conditions of the ~~permit.~~ permit;
- (7) notify the ~~owner,~~ owner in ~~writing,~~ writing of the need for any system repairs and modifications that may be necessary to ~~insure~~ ensure the compliance of the system with all local, ~~state,~~ State, and federal environmental permitting and regulatory requirements;
- (8) be ~~available;~~ available on call, in person:
 - (a) for consultations with the system owner and regulatory officials;
 - (b) to handle emergency situations; and
 - (c) to provide access to the facility ~~by~~ to regulatory agencies; and
- (9) upon vacating an ORC position, ~~notify, in writing, the Commission and the appropriate regional office of the Division of Water Quality (or the local health department for owners of subsurface systems) of the vacancy within 14 days.~~ send the Commission and the appropriate regional office, or the local health department for subsurface system owners, written notice within 14 days of the vacancy.

Authority ~~G.S. 90A-37 through 90A-40;~~ G.S. 90A-38; 90A-39; 90A-44.

15A NCAC 08G .0205 RESPONSIBILITIES OF A BACK-UP OPERATOR IN RESPONSIBLE CHARGE (BACK-UP ORC)

~~The Back-up Operator in Responsible Charge (Back-up ORC):~~
Back-up ORC:

- (1) may act as surrogate for the ~~Operator in Responsible Charge (ORC), ORC,~~ if ~~he/she~~ he or she possesses a valid certificate of the appropriate type and grade for the system, for a period:
 - (a) not to exceed 40 percent of the system visitations required per calendar year under Rule .0204(2) of this Section; or
 - (b) not to exceed 120 consecutive days when the ~~Operator in Responsible Charge (ORC)~~ ORC is absent due to:
 - (i) the vacancy of the ~~Operator in Responsible Charge (ORC)~~ ORC position; or
 - (ii) personal or familial illness; and
- (2) ~~must~~ shall fulfill all of the requirements of Rule .0204 of this Section when acting as surrogate for the ~~Operator in Responsible Charge (ORC);~~ ORC; and
- (3) upon vacating a ~~Backup~~ Back-up ORC position, ~~notify, in writing, the Commission and the appropriate regional office of the Division of Water Quality (or the local health department for owners of subsurface systems) of the vacancy within 14 days.~~ send the Commission and the appropriate regional office, or the local health department for owners of subsurface systems, written notice within 14 days of the vacancy.

Authority ~~G.S. 90A-37;~~ G.S. 90A-38; 90A-39; 90A-44.

SECTION .0300 - CLASSIFICATION OF WATER POLLUTION CONTROL SYSTEMS

15A NCAC 08G .0301 APPLICABILITY

~~(a) The purpose of this Section is to establish procedures for the classification of water pollution control systems.~~

~~(b)(a) Notwithstanding~~ Notwithstanding the requirements in Rules .0302 through .0307 of this Section, the Commission ~~may~~ shall modify the classification of a water pollution control system when:

- (1) conditions created by system design features, or inherent operational requirements exist ~~which~~ that make ~~normal~~ operation of the system more or less ~~complex;~~ complex than when the system was first permitted;

- (2) upgrades or other modifications to a system are completed; or
- (3) changes in Commission classification rules are made.

~~(e)(b)~~ In-plant processes and related water pollution control equipment which are integral parts of direct industrial production, are not considered water pollution control systems for the purpose of this Section.

~~(d)(c)~~ Water Pollution Control Systems permitted under rules adopted by the Commission for Public Health shall be classified pursuant to Rule .0307 of this Section.

~~(e)(d)~~ Water Pollution Control Systems permitted under rules adopted by the Environmental Management Commission shall be classified pursuant to Rules .0302 through .0308 of this Section.

~~(f)(e)~~ Reservoirs, settling ponds and associated pumps and piping which are an integral part of closed-loop water recycle systems for the non-biological and non-toxic treatment of process water at sand, gravel, crushed stone and similar operations shall not be subject to the requirements of these Rules unless the Commission determines that the system is not being properly operated or maintained in accordance with permit conditions.

~~(g)(f)~~ Any water pollution control system, regardless of type or ownership, may be classified and required to designate an ~~Operator in Responsible Charge (ORC)~~ ORC and a ~~Back-up Operator in Responsible Charge (Back-up ORC)~~ Back-up ORC, in the event that the Commission determines that the system is not being properly operated or maintained.

Authority G.S. 90A-37.

15A NCAC 08G .0302 CLASSIFICATION OF BIOLOGICAL WATER POLLUTION CONTROL TREATMENT SYSTEMS

(a) The following discharging systems ~~are~~ shall be assigned a classification of Grade I Biological Water Pollution Control System unless the permitted design flow, or operational complexity of the system requires a higher classification:

- (1) septic tank/ ~~sand~~ media filter systems;
- (2) biological lagoon systems; and
- (3) constructed wetlands and associated appurtenances.

(b) Systems that utilize an activated sludge or submerged fixed growth process with a permitted flow less than or equal to 0.5 million gallons per day (mgd) ~~are~~ shall be assigned the classification of Grade II Biological Water Pollution Control System.

(c) Systems utilizing an activated sludge or submerged fixed growth process with permitted flows of greater than 0.5 through 2.5 ~~million gallons per day (mgd)~~ mgd ~~are~~ shall be assigned the classification of Grade III Biological Water Pollution Control System.

(d) Systems utilizing an activated sludge or submerged fixed growth process with a permitted flow greater than 2.5 ~~million gallons per day (mgd)~~ mgd ~~are~~ shall be assigned a classification of Grade IV Biological Water Pollution Control System.

(e) Any system receiving a classification of Grade II Biological Water Pollution Control System that is required to ~~achieve nutrient reduction~~ comply with a permit limit for Total Nitrogen

~~or Total Phosphorus~~ is ~~shall be~~ assigned the classification of Grade III Biological Water Pollution Control System.

(f) Any system receiving a classification of Grade III Biological Water Pollution Control System that is required to ~~achieve nutrient reduction~~ comply with a permit limit for Total Nitrogen ~~or Total Phosphorus~~ is ~~shall be~~ assigned the classification of Grade IV Biological Water Pollution Control System.

Authority G.S. 90A-37.

15A NCAC 08G .0304 CLASSIFICATION OF SURFACE IRRIGATION WATER POLLUTION CONTROL SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 08G .0305 CLASSIFICATION OF LAND APPLICATION OF RESIDUALS SYSTEMS

Systems permitted for the land application of:

- (1) residuals that are produced by a water pollution control ~~system;~~ system, water supply treatment facility or air pollution control facility; or
- (2) contaminated soils;

~~are~~ shall be classified as a land application of residuals system.

Authority G.S. 90A-3; G.S. 90A-37.

15A NCAC 08G .0306 CLASSIFICATION OF PHYSICAL/CHEMICAL WATER POLLUTION CONTROL TREATMENT SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 08G .0307 CLASSIFICATION OF SUBSURFACE WATER POLLUTION CONTROL SYSTEMS

(a) Systems permitted under rules adopted by the Environmental Management Commission ~~which~~ that utilize the soil for the subsurface treatment and disposal of wastewater shall be classified as subsurface water pollution control systems.

(b) Any subsurface water pollution control system that is required to have a certified operator under 15A NCAC 18A .1961 shall be deemed classified as a subsurface water pollution control system.

(c) Any subsurface water pollution control system that has as part of its treatment process a water pollution control system that may be classified under Rules .0302 through ~~.0307~~ .0306 of this Section shall be subject to additional ~~classification.~~ classification if required by rules for wastewater systems adopted by the Commission for Public Health based upon system complexity and the designated treatment standard. If the subsurface system consists only of septic tanks, pump tanks, siphon or pump dosing systems, ~~sand~~ media filters, grease traps or grease interceptors, or oil/water separators, and subsurface disposal of the wastewater, ~~no~~ additional classification will shall not be required.

Authority G.S. 90A-37.

SECTION .0400 - ELIGIBILITY REQUIREMENTS FOR EXAMINATIONS

15A NCAC 08G .0404 ELIGIBILITY REQUIREMENTS FOR LAND APPLICATION OF RESIDUALS OPERATORS

An applicant for certification as a Land Application of Residuals Operator ~~must~~ shall have successfully completed approved training for land application of residuals operators and:

- (1) have one year of actual experience in the land application of residuals;
- (2) be a graduate of a two or ~~four-year~~ four-year college or university and have taken and passed ~~a minimum of~~ six courses in the basic sciences; or
- (3) hold a valid ~~grade-III~~ Grade II or higher biological water pollution control system operator certification.

Authority G.S. 90A-39.

15A NCAC 08G .0405 ELIGIBILITY REQUIREMENTS FOR PHYSICAL/CHEMICAL WATER POLLUTION CONTROL SYSTEM OPERATORS

Eligibility for certification as a Physical/Chemical Water Pollution Control System Operator ~~is~~ shall be based on the following qualifications:

- (1) for the ~~Grade I~~ Grade I, the individual shall have successfully completed approved training for Grade I Physical/Chemical Water Pollution Control System Operators.
- (2) for the ~~Grade II~~, the individual shall: ~~Grade II:~~
 - (a) possess a valid Grade I Physical/Chemical Water Pollution Control System Operator certificate;
 - (b) have one year of actual experience at a Grade II Physical/Chemical Water Pollution Control System; System or at an industrial pretreatment or indirect discharge permitted facility; and
 - (c) have successfully completed approved training for Grade II Physical/Chemical Water Pollution Control System Operators.

Authority G.S. 90A-39.

15A NCAC 08G .0406 ELIGIBILITY REQUIREMENTS FOR SURFACE IRRIGATION WATER POLLUTION CONTROL SYSTEM OPERATORS

An applicant for certification as a Surface Irrigation Water Pollution Control System Operator ~~must~~ shall have successfully completed approved training for surface irrigation water pollution control system operators ~~and:~~ and shall have met one of the following:

- (1) have one year of actual experience in the operation of a surface irrigation water pollution control system;
- (2) be a graduate of a two or ~~four-year~~ four-year college or university and have taken and passed ~~a minimum of~~ six courses in the basic sciences;

- (3) be a private homeowner who intends to operate only ~~his/her~~ his or her own domestic surface ~~spray~~ irrigation water pollution control system; or
- (4) hold a valid ~~grade-III~~ Grade II or higher biological water pollution control system operator certification.

Authority G.S. 90A-39.

15A NCAC 08G .0407 ELIGIBILITY REQUIREMENTS FOR SUBSURFACE WATER POLLUTION CONTROL SYSTEM OPERATORS

An applicant for certification as a Subsurface Water Pollution Control System Operator ~~must~~ shall have successfully completed approved training for subsurface water pollution controls system operator and shall have met one of the following: ~~and:~~

- (1) have one year of actual experience in the operation of a subsurface water pollution control system;
- (2) be a graduate of a two or ~~four-year~~ four-year college or university and have taken and passed ~~a minimum of~~ six courses in the basic sciences;
- (3) be a private homeowner who intends to operate only ~~his/her~~ his or her own domestic subsurface water pollution control system; or
- (4) hold a valid ~~grade-III~~ Grade II or higher biological water pollution control system operator certification.

Authority G.S. 90A-39.

15A NCAC 08G .0410 RECIPROCITY CERTIFICATION

(a) The Commission shall issue certification(s) to ~~an individual~~ individual certified in other ~~States~~ states or legal jurisdictions if the ~~individuals:~~ individual:

- (1) ~~meet~~ meets or ~~exceed~~ exceeds all eligibility requirements or the equivalent thereof as determined by the Commission as found in Rules ~~.0302 to .0308~~ .0402 to .0408 of the Section, with the exception of completion of approved ~~training;~~ training;
- (2) ~~complete~~ submits an Application for Reciprocity Form ~~and submit it~~ with the ~~appropriate non-refundable one hundred dollar (\$100.00) Reciprocity Certificate fee as specified in G.S. 90A-42, G.S. 90A-42(a)(6).~~ The Application for Reciprocity Form may be found at: <https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-certification/wastewater-operator-certification-exams>;
- (3) provide a letter of verification from the certifying ~~State~~ state agency that applicant is certified at the stated level and that no disciplinary actions are outstanding against the ~~applicant;~~ applicant; and

- (4) ~~apply for and~~ achieve a passing score on a Commission-administered examination of the same type and grade as that for which reciprocity certification is being requested. The requirement for completion of approved training is waived in the case of applicants pursuant to this Rule.

(b) Applicants pursuant to this Rule ~~must~~ shall not have taken and failed to achieve a passing score on a Commission –administered examination of the same type and grade as that for which reciprocity certification is being requested, within the previous ~~two-year~~ two-year period prior to the date of application for reciprocity.

(c) Applicants that fail to achieve a passing score on three examinations shall be required to successfully complete the approved training for that certification before becoming eligible to take the examination again.

~~(e) Applicants failing to achieve a passing score on three or more examinations of the same type and grade as that for which certification is being requested, must successfully complete approved training for that certification before being eligible for that examination.~~

(d) Applicants who obtain certification by providing false information to the Commission shall be subject to disciplinary actions as set forth in Section .0800 of this Subchapter.

Authority G.S. 90A-4; 90A-40; G.S. 90A-40.

SECTION .0500 - CERTIFICATION BY EXAMINATION

15A NCAC 08G .0501 APPLYING FOR EXAMINATION

(a) All applications for examination submitted to the Commission ~~must~~ shall be:

- (1) submitted on ~~an~~ a WPCSOCC Examination ~~Application~~; Application found at <https://deq.nc.gov/about/divisions/water-resources/operator-certification/wastewater-operator-certification-downloads>. The Application Form shall include the following:
 - (A) applicant's name, contact information;
 - (B) Social Security number (if a first-time applicant) or certification number;
 - (C) type and grade of certification sought;
 - (D) date and location of exam requested;
 - (E) approved training and educational information;
 - (F) employment information;
 - (G) operational experience;
 - (H) supervisor's signature; and
 - (I) applicant's signature.
- (2) accompanied by the eighty-five dollar (\$85.00) appropriate non-refundable application fee per G.S. 90A-42; G.S. 90A-42(a)(1);
- (3) completed ~~in entirety~~ with all required information, documentation, and signatures provided; and

- (4) postmarked at least 30 days prior to the scheduled date of the examination if an examination is scheduled.

(b) Upon receipt ~~of an application~~ by the Commission, the application shall be reviewed for completeness and a determination as to the eligibility of the applicant to sit for the requested examination shall be made. Incomplete applications shall be returned to the applicant.

(c) Each applicant shall be notified, in writing, of the applicant's eligibility to sit for the requested examination. Individuals determined to be eligible for an examination shall be sent written notification containing information concerning the date, time and location of the examination. This written notification shall be considered a receipt from the Commission to the applicant for the examination fee. Applicants found to be ineligible for an examination shall be sent written notification of the ineligibility determination.

(d) Any applicant who obtains certification by supplying false information to the Commission shall be subject to disciplinary ~~action(s)~~ action as set forth in Section .0800 of this Subchapter.

Authority G.S. 90A-39; 90A-41; 90A-42.

15A NCAC 08G .0505 EXAMINATION REVIEWS

(a) Any applicant who fails to make a passing score on an examination shall be allowed to review their exam at a date, time, and location specified by the Commission. Notification of the reviews shall be sent using the address submitted upon application and this shall be the only opportunity the applicant shall be allowed for reviewing the examination.

~~(a) Any applicant who fails to make a passing score on an examination may request to review the examination. All requests to review an examination must be received by the Commission in writing within 15 calendar days of receiving notification of failing to make a passing score on an examination.~~

(b) An applicant shall not be allowed to review the examination within 30 days of an upcoming examination date.

~~(b) Applicants who submit a written request to review an examination shall be notified of a date, time, and location at which the applicant shall be given the opportunity to review the examination. This shall be the only opportunity the applicant will be allowed for reviewing the examination.~~

~~(c) An applicant shall not be allowed to review the examination within 30 calendar days of an upcoming examination date.~~

(c) All examinees shall receive a report that summarizes their performance on the exam, including the score, subject matter areas from which the questions were drawn, as well as correct and incorrect responses to each question. Specific questions from the exam shall not be included in this report.

Authority G.S. 90A-39.

SECTION .0700 - RENEWAL OF CERTIFICATION

15A NCAC 08G .0701 REQUIREMENTS

~~(a) In order to maintain a valid certificate, the certificate must be renewed annually. The holder of the certificate shall annually renew the certificate by:~~

- (1) Submitting payment of the ~~appropriate~~ required annual renewal fee, as set forth in G.S. 90A-42, ~~fee by the end December 31 of the effective year, as set forth in G.S. 90A-40 and G.S. 90A-46.1, and~~
- (2) Each operator ~~must~~ shall provide documentation of ~~a minimum of~~ six contact hours of Commission approved training during each year following the year of initial certification.

(b) ~~Certificate(s)~~ Certificates that are not renewed when due shall be ~~considered~~ invalid. ~~In order to~~ To renew a certificate that has been invalid for up to two years, all outstanding renewal fees and ~~supplemental processing fees and~~ penalties that have accrued since the certificate was last renewed ~~must~~ shall be paid and all accrued continuing education requirements shall be met. ~~In order to~~ To renew a certificate that has been invalid for two or more consecutive ~~years~~ years, the operator shall be required ~~to take and~~ make a passing score on an examination of the same type and grade as the former certificate. ~~In order to~~ To qualify for the examination, all relevant requirements of Section .0400 of this Subchapter ~~must~~ shall be met. Any requirements in Section .0400 of this Subchapter for Commission approved training ~~must~~ shall have been met within the previous ~~12-month~~ 12-month period. Invalid Conditional Certificates are not renewable.

(c) The Commission shall send renewal notices to each certified operator, using the last known address on file for that individual, 60 days prior to the renewal date. Renewal notices shall be mailed to each certified operator, at the last known address for the operator on file with the Commission, 60 days prior to the renewal due date. Failure to receive a renewal notice does not relieve a certified operator of the responsibility to renew the certificate by the renewal due date.

Authority G.S. 90A-40; 90A-42; ~~90A-44~~; 90A-46.1.

SECTION .0800 - DISCIPLINARY ACTIONS

15A NCAC 08G .0801 GROUND S FOR DISCIPLINARY ACTIONS

The Commission may take disciplinary actions, in accordance with Rule .0802 of this Section, against a certified operator for:

- (1) practicing fraud or deception in the performance of duties;
- (2) failure to use reasonable care or judgment in the performance of duties;
- (3) failure to apply their knowledge or ability in the performance of duties; or
- (4) incompetence or the inability to perform ~~duties~~ duties;
- (5) ~~supplying false information in order to obtain or maintain certification; or~~
- (6) ~~cheating on a certification examination.~~

Authority G.S. 90A-41.

15A NCAC 08G .0802 DISCIPLINARY ACTIONS

(a) The Commission shall revoke or suspend the certification of an operator or issue a letter of reprimand to an operator in

accordance with the provisions of G.S. 90A-41, ~~150B-3~~ 150B, Article 3 and this Rule.

(b) The Chairman of the Commission may issue notification of summary suspension, in accordance with the provisions of G.S. 150B, Article 3, the intention to revoke or suspend the certification of an operator or the intent to issue a letter of reprimand.

(c) The Chairman shall convene a ~~n advisory committee~~ disciplinary committee to review the circumstances of the proposed disciplinary action(s).

(1) The ~~advisory committee~~ disciplinary committee shall include at least:

- (A) the Chairman of the Commission;
- (B) the Vice Chairman of the Commission;
- (C) the member of the Commission who represents the type of system at which the operator is employed or another member of the Commission appointed by the Chairman of the Commission; and
- (D) a certified operator appointed by the Chairman.

(2) The members of the ~~advisory committee~~ disciplinary committee shall offer guidance to the Commission chairman in regards to the actions that should be taken against an operator.

(d) Notification of the ~~advisory committee~~ disciplinary committee meeting shall be sent by certified mail at least 15 days prior to the date of the meeting, to the last known address of the operator. This notification shall contain the alleged facts or conduct upon which the proposed revocation or suspension of the certification or letter of reprimand is based.

(e) The operator shall have an opportunity to submit a written response to the Chairman prior to the date of the ~~advisory committee~~ disciplinary committee meeting. The operator shall also be given the opportunity to make an oral statement before the ~~advisory committee~~ disciplinary committee.

(f) Within 10 ~~working~~ business days of the conclusion of the ~~advisory committee~~ disciplinary committee meeting, the Chairman shall issue ~~a decision~~ the decision of the disciplinary committee. If this decision is to issue a revocation or suspension or a letter of reprimand, the Chairman shall advise the operator of the effective date of the action and the facts or conduct upon which the action is based. The revocation or suspension of a certification or the letter of reprimand shall be delivered to the affected operator and the owner of the system(s) at which the operator works by certified mail, at the last known address for the operator and owner on file with the Commission, at least 20 days prior to the effective date of the revocation or suspension or letter of reprimand.

(g) The revocation, suspension or letter of reprimand becomes a final Commission action if the operator does not file a petition for a contested case hearing in the Office of Administrative Hearings as provided in the Administrative Procedure Act, G.S. 150B.

(h) If an applicant is caught cheating on an examination by a proctor of the examination, the applicant shall be excused from the examination, the examination shall not be graded, the fee for the examination shall be forfeited by the applicant and any other

certification(s) held by the applicant with the Commission shall be subject to revocation as set forth in G.S. 90A-41 and in ~~this Rule.~~ Rule .0801 of this Section.

(i) If the Commission determines, after the examination has been graded, that an applicant cheated on an examination and certification has been conveyed to the applicant, the certification obtained through the examination shall be revoked and any other certification(s) held by the applicant with the Commission shall be subject to revocation as set forth in G.S. 90A-41 and in ~~this Rule.~~ Rule .0801 of this Section.

Authority G.S. 90A-40; 90A-41; 143B-300; 150B, Article 3A; 150B-23.

15A NCAC 08G .0803 CERTIFICATION FOLLOWING DISCIPLINARY ACTIONS

(a) ~~An individual who has had certification revoked by the Commission shall petition the Commission for any new certification sought, but no sooner than two years from the effective date of the revocation. An individual who has had certification revoked by the Commission shall petition the Commission for any new certification sought and may not petition the Commission for such new certification sooner than two years after the effective date of the revocation. An individual shall wait one year to reapply for certification. Following the denial of eligibility for re-certification after relinquishment or revocation, an operator shall wait one year before reapplying for certification.~~

(b) The following information ~~must~~ shall be included in the petition for certification:

- (1) a written statement explaining the actions that the individual has taken to correct those problems that lead to the revocation of the certification previously held with the Commission; and
- (2) a statement that attests to the Commission that, upon obtaining certification, the individual shall comply with all laws governing the proper operation of water pollution control systems.

(c) After submittal of the petition for certification, the petitioner may be required to appear before the Commission at a regularly scheduled meeting. The petitioner shall be notified, by certified mail, of the date, time and location of the meeting at least 15 days prior to the meeting.

(d) ~~The Commission shall send written notification to the individual within 120 days following receipt of the petition of its decision. Within 120 days following receipt of a petition for certification, the Commission shall notify the individual, in writing, of its decision to deny or grant examination eligibility in accordance with the procedures set forth in Section .0500 of this Subchapter. Eligibility for certification shall be granted only if there is substantial evidence that those conditions that lead to the revocation of previous certification held by the petitioner have been corrected.~~

(e) Certification of an individual whose previous certification has been revoked shall occur only after the individual ~~sits for, and obtains a passing score on, on~~ an examination. After the Commission approves the petition for certification, the individual ~~Once approval is granted by the Commission for certification after~~

~~reviewing the petition for certification, the individual must~~ shall submit an application, accompanied by the ~~appropriate examination fee, fee of eighty-five dollars (\$85.00) set forth in G.S. 90A-42(a)(1), and meet the examination eligibility requirements for the type of certification being sought as set forth in Section .0400 of this Subchapter. The individual shall begin the certification process at the lowest grade level offered for the type of certification sought. Operational experience accrued by the individual prior to the revocation of any previously held certification(s) shall not be considered when determining the eligibility of the individual for the examination.~~

(f) Applicants for certification who were previously determined to be ineligible for certification due to supplying false information to the Commission ~~must~~ shall follow the procedures set forth in Paragraphs (a) through (e) of this Rule in order to obtain certification.

Authority G.S. 90A-39; 90A-41; 90A-42; 150B-23.

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Water Treatment Facility Operator Certification Board intends to readopt with substantive changes the rules cited as 15A NCAC 18D .0105, .0201, .0203, .0205, .0307-.0309 and .0701.

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: September 1, 2018

Public Hearing:

Date: April 24, 2018

Time: 10:00 a.m.

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

Reason for Proposed Action: *The selected rules listed in the Register are from 15A NCAC 18D and were reviewed/revised pursuant to S.L 2013-413. Draft changes were initiated either from comments received or per recommendations from a Board subcommittee that was tasked with improving the rule language. Changes to the operator certification rules listed above represent clarification, and in some cases, provide additional flexibility to the regulated community. Additionally, making the language more specific and reorganizing information makes the rules easier to interpret by the operators. The rules reviewed and revised in this package contain language that (i) corrects technical errors, (ii) is easier to understand, (iii) better reflect established processes of the Board, (iv) and provide more options for the regulated community.*

Comments may be submitted to: Jay Frick, 1634 Mail Service Center, Raleigh, NC 27699; email jay.frick@ncdenr.gov

Comment period ends: May 14, 2018

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
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

SECTION .0100 - GENERAL POLICIES

15A NCAC 18D .0105 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "Acceptable Experience"
 - (a) For all surface ~~grades~~ grade certifications, 'acceptable experience' means at least 50 percent of the duties ~~shall~~ consist of active on-site performance of operational duties, including on-site water facility laboratory duties, at a surface water treatment facility. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, ~~cross-connection-control~~ cross-connection-control, and other skills necessary for maintaining and operating a surface water treatment facility. The remaining duties shall be in related fields ~~such~~ such, as wastewater facility operation, ~~water/wastewater~~ water or wastewater laboratory, water pumping stations, water system design and engineering, wells, distribution systems, or cross-

connection-control. The experience of ~~Division of Environmental Health~~, Public Water Supply Section personnel shall be acceptable if at least 50 percent of their job duties include inspection or on-site technical assistance of public water systems.

- (b) For all well ~~grades~~ grade certifications, 'acceptable experience' means at least 50 percent of the duties ~~shall~~ consist of active on-site performance of operational duties for public water systems with chemical treatment having one or more wells. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, ~~cross-connection-control~~ cross-connection-control, and other skills necessary for maintaining and operating a treated well water system. The remaining duties shall be in related ~~fields~~ fields, such as wastewater facility operation, ~~water/wastewater~~ water or wastewater laboratory, water pumping stations, water system design and engineering, surface facilities, distribution systems, or cross-connection-control. The experience of ~~Division of Environmental Health~~, Public Water Supply Section personnel shall be acceptable if at least 50 percent of their job duties include inspection or on-site technical assistance of public water systems.

- (c) For all distribution ~~grades~~ grade certifications, 'acceptable experience' means at least 50 percent of the duties ~~shall~~ consist of active on-site performance of operational duties for distribution systems within public water systems. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, ~~cross-connection-control~~ cross-connection-control, and other skills necessary for maintaining and operating a water distribution system. The remaining duties shall be in related ~~fields~~ fields, such as wastewater facility operation, ~~water/wastewater~~ water or wastewater laboratory, water pumping stations, water system design and engineering, surface facilities, wells, or cross-connection-control. The experience of ~~Division of Environmental Health~~,

- Public Water Supply Section personnel shall be acceptable if at least 50 percent of their job duties include inspection or on-site technical assistance of public water systems.
- (d) For all cross-connection-control grade certifications, 'acceptable experience' means the duties ~~shall~~ consist of on-site performance of cross-connection-control duties for a public water system. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, back flow ~~prevention~~ prevention, and other skills necessary for maintaining and operating a cross-connection-control program for a public water system. The remaining duties shall be in related ~~fields~~ fields, such as wastewater facility operation, ~~water/wastewater~~ water or wastewater laboratory, water pumping stations, water system design and engineering, surface facilities, or wells. The experience of ~~Division of Environmental Health~~ Division of Environmental Health, Public Water Supply Section personnel shall be acceptable if at least 50 percent of their job duties include inspection or on-site technical assistance of public water systems.
- (2) "Certified Operator" means any holder of a certificate issued by the Board in accordance with the provisions of G.S. ~~90A-25, 90A-29 to 29.~~
- (3) "College Graduate" means a graduate of a ~~regionally-accredited~~ regionally-accredited four-year institution awarding degrees on the bachelor level.
- (4) ~~"Licensee" means any person who holds a current certificate issued by the Water Treatment Facility Operators Board of Certification.~~ "Fire Protection System" means dry or wet sprinkler systems or fire hydrant connections to the water distribution system.
- (5) "Owner" ~~shall mean~~ means the person, unit of local government ~~political subdivision~~, firm, corporation, association, ~~partnership~~ partnership, or non-profit corporation formed to operate a public water supply facility.
- (6) "Political Subdivision" means any city, town, county, sanitary district, or other governmental agency or privately owned public water supply operating a water treatment facility. "Satisfactorily Completed" means the attendance of at least 70 percent of the training required for examination eligibility and 100

percent of the training required for professional growth hours.

- (7) "Secretary" ~~shall mean~~ means the Secretary of the Department of ~~Environment and Natural Resources~~ Environmental Quality.
- (8) "Service Connection" means a water tap made to provide a water connection to ~~the~~ a water distribution system.
- (9) ~~"Fire Protection System" means dry or wet sprinkler systems or fire hydrant connection to the water distribution system.~~

Authority G.S. 90A-21(c).

SECTION .0200 – QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES

15A NCAC 18D .0201 GRADES OF CERTIFICATION

(a) Applicants for ~~the various grades of~~ certification shall be at least 18 ~~years~~ years' old, possess a high school diploma or general educational development equivalent (GED), and meet the following educational and experience requirements:

- (1) GRADE ~~A-SURFACE~~ C-SURFACE applicants shall have ~~one year~~ six months of acceptable experience at a surface water facility ~~while holding a Grade B-Surface certificate~~ and have satisfactorily completed ~~an a~~ A-Surface C -Surface school ~~conducted~~ approved by the Board.
- (2) GRADE B-SURFACE applicants shall:
- (A) be ~~Be~~ a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two-year ~~two-year~~ technical program with a diploma in water and wastewater technology, have six months of acceptable experience at a surface water facility, and have satisfactorily completed a B-Surface school ~~conducted~~ approved by the Board; or
- (B) have ~~Have~~ one year of acceptable experience at a surface water facility while holding a Grade C-Surface certificate and have satisfactorily completed a B-Surface school ~~conducted~~ approved by the Board.
- (3) GRADE ~~C-SURFACE~~ A-SURFACE applicants shall have one year of acceptable experience at a surface water facility ~~while holding a Grade B-Surface certificate~~ and have satisfactorily completed an A-Surface school approved by the Board.
- (A) ~~Be~~ a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, have six months of acceptable

- ~~experience at a surface water facility, and have satisfactorily completed a C-Surface school conducted by the Board; or~~
- (B) ~~Be a high school graduate or equivalent, have six months acceptable experience at a surface water facility and have satisfactorily completed a C-Surface school conducted by the Board.~~
- (4) ~~GRADE A-WELL D-WELL applicants shall have one year three months of acceptable experience at a well water facility while holding Grade B-Well certificate and have satisfactorily completed an A-Well a C-Well or D-Well school conducted approved by the Board.~~
- (5) ~~GRADE B-Well C-WELL applicants shall:~~
- (A) ~~be Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two-year two-year technical program with a diploma in water and wastewater technology, have six three months of acceptable experience at a well water facility, and have satisfactorily completed a B C -Well school conducted approved by the Board; or~~
- (B) ~~have Have one year six months of acceptable experience at a well water facility while holding a Grade C-Well certificate and have satisfactorily completed a B-Well C-WELL school conducted approved by the Board; or~~
- (C) ~~hold either a Grade A-Surface certification or a Grade A-Distribution certificate and have satisfactorily completed a C-Well school approved by the Board.~~
- (6) ~~GRADE C-WELL B-WELL applicants shall:~~
- (A) ~~be Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two-year two-year technical program with a diploma in water and wastewater technology, have three six months of acceptable experience at a well water facility, and have satisfactorily completed a C-Well B-WELL school conducted approved by the Board; or~~
- (B) ~~Be a high school graduate or equivalent, have six months one year of acceptable experience at a well water facility, facility while holding a Grade C-Well certificate and have satisfactorily completed a C-WELL B-WELL school conducted approved by the Board. Board; or~~
- (C) ~~Hold a Grade A-Surface certification and have satisfactorily completed a C-Well school conducted by the Board.~~
- (7) ~~GRADE D-WELL A-WELL applicants shall be a high school graduate or equivalent, have three months one year of acceptable experience at a well water facility, facility while holding a Grade B-Well certificate and have satisfactorily completed a C-Well or an D-Well A-WELL school conducted approved by the Board.~~
- (8) ~~GRADE A-DISTRIBUTION shall: D-DISTRIBUTION applicants shall have one year three months of acceptable experience at Class B or higher a distribution system while holding a Grade B-Distribution certificate and have satisfactorily completed an a A-Distribution C-Distribution or D-Distribution school conducted approved by the Board.~~
- (9) ~~GRADE B-DISTRIBUTION shall: C-DISTRIBUTION applicants shall hold a certificate of completion of trench shoring training from a school approved by the Board and shall:~~
- (A) ~~be Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two-year two-year technical program with a diploma in water and wastewater technology, have six three months of acceptable experience at a Class B C or higher distribution system, and have satisfactorily completed a B-Distribution C-Distribution school conducted approved by the Board, and shall hold a certificate of completion of trench shoring training conducted by the Board; Board; or~~
- (B) ~~have Have one year six months of acceptable experience at a Class C D or higher distribution system while holding a Grade C-Distribution certificate and have satisfactorily completed a B-Distribution C-Distribution school conducted approved by the Board.~~
- (10) ~~GRADE C-DISTRIBUTION B-DISTRIBUTION applicants shall: shall hold a certificate of completion of trench shoring training conducted by the Board and shall:~~
- (A) ~~be Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two-year two-year technical program with a diploma in water and wastewater technology, have three six months of acceptable experience at a Class C B or higher distribution~~

- system, ~~and~~ have satisfactorily completed a ~~C-Distribution B-Distribution~~ school ~~conducted~~ approved by the ~~Board; Board,~~ and shall hold a certificate of completion of trench shoring training from a school approved by the Board; or
- (B) ~~Be a high school graduate or equivalent,~~ have six months ~~one year~~ of acceptable experience at a Class ~~D~~ C or higher distribution system ~~while holding a Grade C-Distribution certificate~~ and have satisfactorily completed a ~~C-Distribution B-Distribution~~ school ~~conducted~~ approved by the Board.
- (11) GRADE ~~D-DISTRIBUTION~~ A-DISTRIBUTION applicants shall ~~be a high school graduate or equivalent,~~ have ~~three months~~ one year of acceptable experience at a Class B or higher distribution system, ~~system~~ while holding a Grade B-Distribution certificate and have satisfactorily completed a ~~an D-Distribution A-Distribution~~ school ~~conducted~~ approved by the Board.
- (12) GRADE CROSS-CONNECTION-CONTROL applicants shall:
- (A) ~~be~~ Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two-year technical program with a degree in water and wastewater or civil engineering technology, and have satisfactorily completed a cross connection control school ~~conducted~~ approved by the Board; or
- (B) ~~Be a high school graduate or equivalent,~~ have six months of acceptable experience at Class D-Distribution or higher system or have one year experience in the operations of cross connection control devices, and have satisfactorily completed a ~~cross-connection-control~~ cross-connection-control school ~~conducted~~ approved by the Board; or
- (C) ~~Be~~ be a plumbing contractor licensed by the State of North Carolina and have satisfactorily completed a ~~cross-connection-control~~ cross-connection-control school conducted by the Board.
- (13) APPRENTICE ~~shall be a high school graduate or equivalent.~~ The ~~apprentice~~ applicants shall have met the education requirement and satisfactorily completed a Grade B, Grade C, Grade D, or ~~CC~~ Cross-Connection-Control school ~~conducted~~ approved by the Board and shall have correctly answered at least 70 percent of the questions on successfully passed an examination designed for the class of certification for which the applicant is applying. The apprentice certification may be renewed annually for a maximum of five years, pursuant to the continuing education and renewal requirements of this Subchapter. An apprentice shall not act as a certified operator or an ~~ORC~~ Operator in Responsible Charge for a facility. An apprentice is eligible for Grade B, Grade C, Grade D, or ~~CC~~ Cross-Connection-Control certification after meeting the applicable experience requirements as set forth in this Rule and making application to the Board.
- (b) Applications for certification of an operator certified in a state other than North Carolina shall be submitted to the Board for review. ~~on the Board's form.~~ The application shall supply information to assist the Board in determining whether ~~or not~~ the requirements under which the out-of-state certification was obtained are equivalent to those required by ~~the rules of~~ the Water Treatment Facility Operators Board of Certification.

Authority G.S. 90A-21(c); 90A-22; 90A-23; 90A-24.

15A NCAC 18D .0203 RATING VALUES TO DETERMINE ~~DETERMINATION OF VARIOUS CLASSES OF~~ CERTIFICATION

(a) ~~Determination of various classes of certification shall be based on the classification of water treatment facilities to be operated.~~

(b) The designation of public water system treatment classifications ~~plant classification~~ shall be based on the following rating values: ~~point system:~~

| | PARAMETER | RATING VALUE |
|-----|--|--------------|
| (1) | Surface Water Source | |
| | (A) flowing stream | 5 |
| | (B) flowing stream with impoundment | 7 |
| | (C) raw water treatment | 3 |
| (2) | Ground Water Source | |
| | (A) first five wells | 5 |
| | (B) add 1 point per 5 wells or fraction thereof over 5 | 1 |
| (3) | Coagulation | |
| | (A) aluminum sulfate, ferric chloride | 10 |
| | (B) polymer | 5 |
| (4) | Mixing | |

PROPOSED RULES

| | | |
|------|--|-----------------|
| | (A) baffle | 2 |
| | (B) mechanical | 4 |
| | (C) air | 3 |
| (5) | Oxidation (pre-treatment) | |
| | (A) Cl_2O_2 | 5 |
| | (B) ozone | 5 |
| | (C) KMnO_4 | 3 |
| | (D) Cl_2 | 3 |
| (6) | Carbon Treatment | 2 |
| (7) | Aeration | |
| | (A) mechanical draft | 3 |
| | (B) coke tray tray or splash tray | 2 |
| | (C) diffused | 3 |
| | (D) packed tower (VOC reduction) | 10 |
| (8) | pH Adjustment (primary) | |
| | (A) caustic (NaOH) | 10 |
| | (B) lime/soda ash | 3 |
| | (C) acid | 10 |
| (9) | Sedimentation | |
| | (A) standard rate | 5 |
| | (B) tube settlers | 3 |
| | (C) upflow | 8 |
| | (D) pulsators and plates | 5 |
| (10) | Contact Tank | 1 |
| (11) | Filtration | |
| | (A) pressure | |
| | (i) sand/anthracite sand or anthracite | 8 |
| | (ii) synthetic media (birm) | 8 |
| | (iii) granular activated carbon (GAC) | 9 40 |
| | (B) gravity | |
| | (i) sand | 10 |
| | (ii) anthracite (mixed) GAC <u>(mixed) or GAC</u> | 12 |
| | (iii) with surface wash or air scour | 2 |
| | (C) membrane | 10 |
| (12) | Ion Exchange | |
| | (A) softener, Na cycle | 5 |
| | (B) softener, H cycle | 7 |
| | (C) Fe and Mn (greensand) | 9 40 |
| | (D) mixed bed or split stream | 9 42 |
| (13) | Lime Softening | |
| | (A) spiractors | 10 |
| | (B) clarifier with coagulation | 12 |
| | (C) fuel burner (recarbonation) | 5 |
| (14) | Phosphate (sequestering agent) | 5 |
| (15) | Stabilization | |
| | (A) acid feed | 10 |
| | (B) phosphate | 2 |
| | (C) caustic (NaOH) | 10 |
| | (D) lime/soda ash | 3 |
| | (E) contact units | 5 |
| (16) | Reverse Osmosis, Electrodialysis | 15 |
| (17) | Disinfection | |
| | (A) gas Cl_2 | 10 |
| | (B) hypochlorite solution | 7 |
| | (C) Cl_2O_2 (sodium chlorite and Cl_2) | 13 |
| | (D) ozone | 13 |
| | (E) ammonia and Cl_2 | 12 |
| | (F) ultraviolet light (uv) | 5 |
| (18) | Fluoridation | |

| | | | |
|------|-------|--|---------|
| | (A) | saturator | 8 |
| | (B) | dry feed | 8 |
| | (C) | solution (acid) | 10 |
| (19) | | Pumping | |
| | (A) | raw | 3 |
| | (B) | intermediate | 1 |
| | (C) | finished | 3 |
| | (D) | system booster | 2 |
| (20) | | Storage | |
| | (A) | raw | 1 |
| | (B) | treated ground level tank | 1 |
| | (C) | elevated in system (each extra tank 1 pt) | 2 |
| | (D) | hydropneumatic | 2 |
| (21) | | Population Served 1 point per 1,000 persons served | 50 max. |
| (22) | | Plant Capacity 1 point per 1 MGD capacity | 25 max. |
| (23) | | On-Site Quality Control | |
| | (A) | bacteriological | |
| | (i) | MPN/MF | 5 |
| | (ii) | HPC | 2 |
| | (iii) | MMO-MUG (Colilert) | 2 |
| | (B) | pH | |
| | (i) | meter | 2 |
| | (ii) | test kit | 1 |
| | (C) | fluoride | |
| | (i) | meter | 3 |
| | (ii) | colorimetric | 3 |
| | (D) | chlorine | |
| | (i) | titrator | 3 |
| | (ii) | colorimeter/spec. | 2 |
| | (iii) | test kit | 1 |
| | (E) | iron | 1 |
| | (F) | hardness | 1 |
| | (G) | alkalinity | 1 |
| | (H) | turbidity | 1 |
| | (I) | manganese | 1 |
| | (J) | others (1 pt. each) | 1 |
| | (K) | A.A. Spec, or G.C. Unit | 5 each |

~~(c) The designation of distribution system classifications shall be based on system characteristics as outlined in Rule .0205 of this Section.~~

Authority G.S. 90A-21(c); 90A-22.

**15A NCAC 18D .0205 PUBLIC WATER SYSTEM
TREATMENT, DISTRIBUTION, AND CROSS-
CONNECTION-CONTROL CLASSIFICATIONS
~~CLASSIFICATION OF WATER TREATMENT
FACILITIES~~**

~~(a) Public water system treatment facilities, except for Class D-Well systems, shall be classified based on the sources of water and the number of points assigned to the facilities pursuant to Rule .0203(b) of this Section, as follows: With the exception of Class D-Well, the public water system treatment classification shall be based on the source of water and the number of points assigned to each facility as taken from the table in Rule .0203(b) of this Section. Classifications are as follows:~~

| | |
|---------|-----------------|
| Class C | 1-50 points |
| Class B | 51-110 points |
| Class A | over 110 points |

~~Class D-Well is any non~~ Non -community public water system systems with hypochlorite solution as the only treatment applied to the ~~water~~. water shall be classified as Class D-Well.

(b) The classification of distribution systems shall apply to all community and non-transient non-community public water systems. The distribution system class level shall be the greater of the treatment plant class level from Paragraph (a) of this Rule or the following class level based on the number of service connections and fire protection:

- (1) Class D-DISTRIBUTION is any system with 100 or fewer service connections with no fire protection system;
- (2) Class C-DISTRIBUTION is any system with more than 100 service connections but not exceeding 1,000 service ~~connections~~ connections, with no fire protection system;

- (3) Class B-DISTRIBUTION is any system with more than 1,000 service connections but not exceeding 3,300 service connections or any system not exceeding 1,000 service connections with a fire protection system; and
- (4) Class A-DISTRIBUTION is any system with more than 3,300 service connections.

(c) The classification CROSS-CONNECTION-CONTROL is ~~also~~ applied to any distribution system with requirement for the installation of five or more testable backflow prevention assemblies to be installed in accordance with 15A NCAC 18C .0406(b), within the water distribution system.

Authority G.S. 90A-21(c); 90A-22.

SECTION .0300 - APPLICATIONS AND FEES

15A NCAC 18D .0307 EXPIRATION AND REVOCATION OF CERTIFICATE

(a) If ~~the~~ an operator fails to pay the renewal fee or meet the continuing education requirements of Rule .0308(a) of this Section, the certificate shall expire.

(b) If an operator in responsible charge fails to meet the requirements of 15A NCAC 18D .0701, ~~his/her~~ his or her operator's certificate may be revoked.

(c) An individual who has had certification revoked by the Board shall may petition the Board for any ~~new~~ certification sought if: ~~and may not petition the Board for such new certification sooner than two years after the effective date of the revocation.~~

- (1) two years have elapsed since the effective date of the revocation; and
- (2) the individual has completed a school approved by the Board and passed an exam corresponding to the certification being sought.

~~(d) An operator who has a certificate that has been expired less than two years shall pay any renewal fees in arrears and late fees before receiving an upgrade or a certificate in another area.~~

Authority G.S. 90A-25.1; 90A-26.

15A NCAC 18D .0308 PROFESSIONAL GROWTH HOURS

(a) All certified operators shall complete six contact hours of ~~Board approved~~ Board-approved training each year following the year of initial certification. ~~The Board shall approve training if it determines that the subject matter of the training is relevant to water treatment facility operation, and to the professional growth of operators. Training providers shall submit an attendance roster to the Board after completion of the training event. Ultimately proof~~ Proof of professional growth contact hours is shall be the responsibility of the operator. Failure to complete the six contact hours shall result in expiration of the operator's certificates. The roster shall contain the operator's certification ID number or the last four digits of the Social Security number.

(b) Training providers shall seek Board approval prior to offering events that provide professional growth contact hours. Training providers shall submit an attendance roster to the Board within ten business days after completion of the training event. The roster shall contain each attendee's full name and certification ID

number, or the last four digits of the Social Security number. The organization providing the training shall give each participant a certificate or other proof of completion ~~which that~~ includes the name of the provider, the provider's address, and contact person with telephone number. The proof of completion shall identify the name of the participant, the number of contact hours completed, the course name, the course number the instructor's name, and the date of the training received. For in-house training, an instructor from outside of the organization shall provide the training.

(c) The Board shall mail renewal notices to operators prior to the renewal date and shall state whether the Board has a record of their professional growth hours for the preceding year. If the Board does not have a record of professional growth for an operator, the operator shall provide proof of the required six contact hours of training prior to renewal at of any the time of annual certification issued by the Board. ~~renewal.~~ Failure to receive a renewal notice does not relieve a certified operator of the responsibility to renew the certificate by the renewal due date.

Authority G.S. 90A-25.1; 90A-26.

15A NCAC 18D .0309 CERTIFICATION REINSTATEMENT

(a) An operator whose certification has expired may seek reinstatement within two years of expiration by paying any renewal fees in arrears, including late ~~fees fees,~~ and either providing proof of continuing education for each calendar year as required in Rule .0308 of this ~~Section,~~ Section or passing another examination of that grade.

(b) An operator whose certificate has been expired for less than two years must pay any renewal fees in arrears and late fees before seeking an upgrade from the certificate type that has expired. Any person having a certification expired for more than two years or revoked shall apply to the Board for approval to be eligible for any further certification or reinstatement of certificate.

(c) Any person whose certification has been expired for more than two years may apply to the Board for reinstatement of the certificate type that was expired.

Authority G.S. 90A-25.1; 90A-26.

SECTION .0700 - OPERATIONS AND MANAGEMENT

15A NCAC 18D .0701 OPERATOR IN RESPONSIBLE CHARGE

(a) The owner shall ensure that the public water system facilities are managed by an operator in responsible charge who possesses a certificate equivalent to or exceeding the requirements in this Subchapter. An operator in responsible charge shall possess a valid certificate issued by the Board equivalent to or exceeding the classification for which he or she is designated.

(b) The operator in responsible charge ~~is actually in charge of~~ shall manage the daily operation and maintenance of the facility. ~~facility and shall not reside more than 50 miles from the facility without written permission from the Board. The operator in responsible charge shall be readily available for consultation on the premises of the facility in case of an emergency, malfunction or breakdown of equipment or other needs. No person shall be in~~

responsible charge of more than ~~any~~ one of the following without written permission from the Board:

- (1) ~~One~~ one surface water treatment facility;
- (2) ~~Five~~ five community public water systems with well water facilities;
- (3) ~~10~~ ten non-community public water systems with well water facilities;
- (4) ~~One~~ one distribution system serving over 3,300 service connections;
- (5) ~~Five~~ five distribution systems serving over 500 service connections and less than 3,300 service connections;
- (6) ~~10~~ ten total distribution systems; ~~or~~
- (7) ~~10~~ ten total cross-connection control ~~systems-~~ systems; or
- (8) any facility located more than a 50-mile radius from where the operator resides.

No person shall be in responsible charge of any combination of a surface water treatment facility, a community public water system with well water facilities, a non-community public water system with well water facilities, a distribution system, and a cross-connection control facility without written permission from the Board.

(c) ~~When A request for permission from the Board is required, the request~~ shall include sufficient documentation demonstrating ~~to satisfy the Board~~ that the facilities in question ~~can~~ will be managed in compliance with the requirements of 15A NCAC 18C.

(d) The operator in responsible charge shall ~~report~~ report, with annual certification ~~renewal~~ renewal, the names ~~name(s)~~ and public water system identification numbers ~~number(s)~~ for all systems for which the operator is the operator in responsible charge.

(e) If an operator in responsible charge takes responsibility for an additional system or relinquishes responsibility for any system, the operator shall notify the Board in writing within ~~30~~ 10 days of this change.

(f) The operator in responsible charge shall establish standard operating procedures for each facility for which ~~he or she~~ he/she is responsible. These procedures shall ~~provide sufficient instruction to ensure that his or her~~ provide sufficient instruction to ensure that his/her decisions about water quality or quantity that affect public health are carried out, ~~out properly~~. The procedures shall instruct persons lacking proper certification to refer all the ~~such~~ decisions affecting public health to the certified operator on duty or to the operator in responsible charge.

(g) The operator in responsible charge shall be available for consultation on the premises of the facility in case of an emergency, equipment malfunction, or breakdown of equipment. The operator in responsible charge may designate a temporary operator in responsible charge during times when it is impossible for the operator in responsible charge to be on the premises. The temporary operator in responsible charge shall be familiar with the water system and have access to standard operating procedures developed under Paragraph (f) of this Rule. The temporary operator in responsible charge shall possess a certification equivalent to or exceeding that required by the water system treatment classification. The operator in responsible

charge shall notify the Board for any temporary operator in responsible charge designation lasting longer than 14 days.

Authority G.S. 90A-21(c); 90A-31.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 30 – BOARD OF MASSAGE AND BODYWORK THERAPY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Massage and Bodywork Therapy intends to adopt the rules cited as 21 NCAC 30 .0405, .0703, .1001-.1014 and amend the rules cited as 21 NCAC 30 .0302, .0401, .0701, .0702, .0902, and .0905.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://bmbt.org/pages/news.html>

Proposed Effective Date: *September 1, 2018*

Public Hearing:

Date: *April 19, 2018*

Time: *1:00 p.m.*

Location: *Wells Fargo Capitol Center, 13th Floor Conference Room, 150 Fayetteville Street, Raleigh, NC 27601*

Reason for Proposed Action: *The amendment to Rule .0302 is being submitted to clarify what is required in order to display the license. The amendment to Rule .0401 is being submitted to clarify the term "practice" instead of "business" and to clarify the information the Board is requesting to be on file. The adoption of Rule .0405 is being submitted to define the term "practice". The amendments to Rule .0701 and .0702 and adoption of Rule .0703 are being submitted to clarify continuing competence and continuing education requirements. The amendments to Rule .0902 and .0905 are being submitted to clarify the complaint and disciplinary sanction process. The adoptions of Rule .1001-.1014 are being submitted to clarify requirements for massage and bodywork therapy establishments.*

Comments may be submitted to: *Charles P. Wilkins, PO Box 2539, Raleigh, NC 27602; phone (919) 546-0050; email cwilkins@bws-law.com*

Comment period ends: *May 14, 2018*

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

SECTION .0300 - LICENSING

21 NCAC 30 .0302 DISPLAY OF LICENSE

A licensee shall display the license in a prominent place at the licensee's primary place of business so as to be visible for inspection. Licensees providing massage and bodywork therapy outside their primary business location, or at the location of clients, shall have a ~~copy of their~~ Board issued original license available for inspection upon request.

Authority G.S. 90-626(9).

SECTION .0400 - BUSINESS PRACTICES

21 NCAC 30 .0401 ADDRESS OF RECORD

Each licensee shall notify the Board in writing of the licensee's current residence street address and primary place of ~~business practice~~. The licensee shall ~~indicate~~ provide in writing to the Board ~~his/her his or her mailing address address, email address,~~ and telephone number for the purposes of receiving communication from the Board and for listing in the registry of licensees.

Authority G.S. 90-626(9).

21 NCAC 30 .0405 PLACE OF PRACTICE

(a) Licensees may only engage in the practice of massage and bodywork therapy at a massage and bodywork therapy establishment that is licensed by the Board or at a location that is exempt from establishment licensure as set forth in G.S. 90-622(3a).

(b) "Primary place of practice" shall mean:

- (1) a licensed establishment owned by the licensee;
- (2) a licensed establishment at which the licensee provides massage and bodywork therapy, whether as an employee or independent contractor;
- (3) an exempt medical office at which the licensee provides massage and bodywork therapy;
- (4) if the licensee practices at more than one location, the location where the greatest number of hours per week are worked shall be the one reported to the Board; or

- (5) if the licensee provides massage and bodywork therapy only at the location of clients, the place of practice is the residence address of the licensee.

Authority G.S. 90-626(9)b.2.

SECTION .0700 - CONTINUING EDUCATION

**21 NCAC 30 .0701 ~~CONTINUING EDUCATION~~
CONTINUING COMPETENCE ACTIVITY
REQUIREMENTS**

(a) Pursuant to G.S. 90-632, a licensee, when renewing a license, shall document that they have completed at least 24 contact hours of approved ~~continuing education~~ continuing competence activities during the immediately preceding licensure period, provided the licensure period is two years or more. If the licensure period is less than two years, but more than one year, the licensee shall document that they have completed at least 12 contact hours of approved ~~continuing education~~ continuing competence activities.

(b) For the purposes of this Section, "approved ~~continuing education~~ continuing competence activities" means a course offered as follows:

- (1) ~~by an approved provider as defined in Rule .0702 of this Section; or Continuing Education:~~
 - (A) Includes attendance and participation at a live presentation by an approved provider pursuant to Rule .0702(8) of this Chapter such as a workshop, seminar, conference, or in-service educational program. May also include participation in other continuing education activities that require a formal assessment of learning. Examples include distance learning, electronic, or Web-based courses;
 - (B) A licensee may earn one point for each contact hour or equivalent unit that is awarded by the provider. There are no maximum hours in this category however, distance learning shall not comprise more than 12 hours in this category; and
 - (C) Documentation shall include a certificate of completion or similar documentation including name of course, date, author/instructor, sponsoring organization, location, and number of hours attended.
- (2) ~~a course in anatomy, physiology, pathology, psychology, pharmacology, massage and bodywork therapy or business management taken at a post secondary institution of higher learning. Academic Coursework:~~
 - (A) Includes participation in on-site or distance learning academic courses from a university, college, or

- vocational technical adult education course in anatomy, physiology, pathology, psychology, pharmacology, massage and bodywork therapy or business management;
- (B) A licensee may earn one point for each contact hour. There are no maximum hours in this category; and
- (C) Documentation shall include an original official transcript indicating successful completion of the course, date, and a description of the course from the school catalogue or course syllabus.
- (3) Small Group Study:
- (A) Includes review and discussion of journal articles, clinical videotapes or audiotapes by at least two licensed practitioners;
- (B) A licensee may earn one point for one hour spent in an independent study activity, up to a maximum of three contact hours; and
- (C) Documentation shall include title, author, publisher, time spent, and date of completion. Licensee must complete the Small Group Study Form provided by the Board and include a statement that describes how the activity relates to a licensee's current or anticipated roles and responsibilities.
- (4) Mentorship Agreement:
- (A) Participation as a Mentee:
- (i) Participation in a formalized mentorship agreement with a mentor as defined by a signed contract between the mentor and mentee provided by or approved by the Board that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee. These activities must be related to the development of new massage and bodywork therapy skills outside current required job performance;
- (ii) A licensee may earn one contact hour for each hour spent in activities directly related to achievement of goals and objectives up to a maximum of five contact hours; and
- (iii) Documentation shall include name of mentor and mentee,
- copy of signed contract, dates, hours spent and focus of mentorship activities, and outcomes of mentorship agreement.
- (B) Participation as Mentor:
- (i) Participation in a formalized mentorship agreement with a mentee as defined by a signed contract between the mentor and mentee that designates the responsibilities of the mentor and specific goals and objectives that are to be met by the mentee. These activities must be related to the development of new massage and bodywork therapy skills for the mentee that are outside current required job performance;
- (ii) A licensee may earn one contact hour for each hour spent in mentorship activities as a mentor up to a maximum of five contact hours; and
- (iii) Documentation shall include name of mentor and mentee, copy of signed contract, dates, hours spent and focus of mentorship activities, and outcomes of mentorship agreement.
- (5) Professional Writing:
- (A) Publication of a peer-reviewed book, chapter, article or contracted review of massage and bodywork therapy resource material;
- (B) During the year written, edited or reviewed a licensee may earn;
- (i) 15 hours as author of a book;
- (ii) 10 hours as author of a chapter;
- (iii) Five hours as author of a peer-reviewed article;
- (iv) Five hours as a contracted reviewer of a print or multimedia massage and bodywork therapy resource; or
- (v) 10 hours as listed editor of a book.
- (C) Documentation shall consist of full reference for publication including title, author, editor, and date of publication; or copy of acceptance letter, if not yet published; and

- (D) Credit for submitted items shall be given for one licensure period only.
- (6) Presentation and Instruction:
- (A) Presentation of an academic course or peer-reviewed or non peer-reviewed workshop, seminar, in-service, electronic or Web-based course for the first time or for which more than 50 percent of the material has been revised;
- (B) A licensee may earn one contact hour of credit that is awarded for an activity, up to a maximum of six contact hours; and
- (C) Documentation shall include a copy of official program, schedule, or syllabus including presentation title, date, hours of presentation, and type of audience or verification of such, signed by the sponsor.
- (7) Professional Meetings and Activities:
- (A) Consistent with Rule .0804 of this Section, participation in board or committee work with agencies or organizations to promote and enhance the practice of massage and bodywork therapy;
- (B) A licensee may earn one contact hour for five hours or two contact hours for 10 or more hours for participation on committees or boards; and
- (C) Documentation must include name of committee or board, name of agency or organization, purpose of service, and description of licensee's role. Participation and hours must be validated by an officer or representative of the organization or committee.
- (8) Board Certification:
- (A) The Board shall recognize completion of activities that result in board certification by an approved provider during the current licensure period;
- (B) A licensee may earn 15 hours for each board certification credential earned or re-certified during the current licensure period; and
- (C) Documentation shall include certificate of completion or other documentation from the recognized certifying body that identifies satisfactory completion of requirements for obtaining board certification.
- (9) Research and Grants:
- (A) Development of or participation in a research project or grant proposal;

(B) A licensee may earn one contact hour for each three hours spent working on a research project or grant proposal, up to a maximum of five contact hours; and

(C) Documentation includes verification from the primary investigator indicating the name of the research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project or name of grant proposal, name of grant source, purpose and objectives of the project, and verification from the grant author regarding licensee's role in the development of the grant if not the author.

(c) Distance learning, as defined in Rule .0702 of this Section, shall not comprise more than 12 hours of the required ~~continuing education hours~~ continuing competence activities per licensure period.

(d) Licensees shall document that they have completed at least three contact hours of ~~continuing education~~ continuing competence activities in professional ethics as defined in Rule .0702 of this Section, out of the minimum of 24 hours of approved ~~continuing education~~ continuing competence activities required for license renewal. This may be obtained through supervised classroom instruction or distance learning.

(e) Business management, as defined in Rule .0702 of this Section, shall not comprise more than eight hours of the minimum 24 hours of approved ~~continuing education~~ continuing competence activities required for license renewal.

(f) Licensees shall ensure that each ~~continuing education course~~ continuing competence activity for which they claim credit on their application for renewal of licensure is consistent with the definitions and requirements set forth in this Section.

(g) The Board may audit licensees at random to assure compliance with these requirements.

Authority G.S. 90-626(9); 90-632(a)(1).

21 NCAC 30 .0702 CONTINUING EDUCATION DEFINITIONS

The following definitions apply to this Section:

(1) Continuing Competence. -- A process in which a massage and bodywork therapist develops and maintains the knowledge, performance skills, interpersonal abilities, critical reasoning skills, and ethical reasoning skills necessary to perform his or her professional responsibilities.

(4)(2) Continuing education. -- Learning experiences that enhance and expand the skills, knowledge, and attitudes of massage and bodywork therapists that enable them to render competent professional service to clients, the profession and the public.

(2)(3) Distance learning. -- Courses taken by home study that are produced by an approved

provider, whether delivered by videotape, audiotape, printed materials, or computer-based means. The licensee shall demonstrate achievement of learning objectives and completion of course requirements to the provider before credit is given.

~~(3)~~(4) One "contact hour" of ~~continuing education~~, a continuing competence activity -- At least 50 minutes of any one clock hour during which the student participates in a learning activity in the physical presence of an instructor, or in a distance learning activity designed by an approved provider. One semester credit hour at a post-secondary institution shall be equivalent to 21 contact hours.

~~(4)~~(5) Professional ethics. -- A system of conduct guided by principles that are intended to ensure the safe and effective practice of massage and bodywork therapy. Acceptable subject matter for required professional ethics courses may include: compliance with Practice Act and Rules of the Board, management of the client/therapist relationship, boundary functions, professional communication skills, conflict resolution, cultural diversity issues, and standards of practice.

~~(5)~~(6) Business management. -- Courses that enable the licensee to learn and apply business skills to create a successful professional practice.

~~(6)~~(7) Post secondary institution of higher learning -- A degree granting institution accredited by an accrediting agency recognized by the United States Department of Education.

~~(7)~~(8) Approved provider. -- One that has been approved by any entity with which the Board has reached a contractual agreement for the approval of continuing education providers and courses. A list of accrediting entities with which the Board has entered into a contractual agreement is available on the Board's website at www.bmbt.org. The provider shall have this designation when the course begins and shall maintain this designation continuously until the course is completed. The Board does not recognize any retroactive designation of provider approval. Except as herein stated, the provider shall follow all regulations set forth by its accrediting agency. The Board may also recognize a continuing education provider outside the United States or its territories that is a post-secondary institution of higher learning approved by the educational regulation authority of that foreign country.

Authority G.S. 90-626(9); 90-632.

21 NCAC 30 .0703 SCOPE OF QUALIFIED ACTIVITIES FOR MAINTAINING CONTINUING COMPETENCE

(a) To be approved by the Board, activities must be related to roles and responsibilities in massage and bodywork therapy and must serve to protect the public by enhancing the licensee's continuing competence.

(b) Subject matter for approved activities include research; theoretical or practical content related to the practice of massage and bodywork therapy; or the development, administration, supervision, and teaching of clinical practice or service delivery programs by massage and bodywork therapists.

Authority G.S. 90-626(9); 90-630.5.

SECTION .0900 - COMPLAINTS, DISCIPLINARY ACTION AND HEARINGS

21 NCAC 30 .0902 COMPLAINTS

~~(a)~~ A complaint regarding a violation of the Practice Act or the rules in this Chapter shall be submitted in writing and shall document:

- (1) ~~The the~~ name of the licensee, licensed massage and bodywork therapist, licensed establishment, school, person person, or other entity involved;
- (2) ~~A a~~ description of the alleged behavior or incident; and
- (3) ~~The the~~ name, mailing ~~address~~ address, and phone number of the person filing the complaint.

~~(b) The complaint shall be delivered to the Board administrative offices by mail, private carrier or in person. Complaints transmitted by facsimile or electronic mail shall not be accepted.~~

~~(c) An incomplete complaint may be corrected and resubmitted.~~

Authority G.S. 90-626(13).

21 NCAC 30 .0905 DISCIPLINARY SANCTIONS

(a) The following types of disciplinary sanctions regarding licensed massage and bodywork therapists and massage and bodywork therapy establishments (licensees) ~~may, among others,~~ may be utilized by the Board:

- (1) Denial of Application: Refusal to license the applicant;
- (2) Letter of Reprimand: An expression of displeasure. The mildest form of administrative action. This formal expression of disapproval will be retained in the licensee's file but shall not be publicly announced. It is not published, but is released upon request;
- (3) Probation: A period of time where restrictions or conditions are imposed on a licensee. Continued licensure is subject to fulfillment of specified conditions;
- (4) Suspension of license: A condition of probation. Loss of license for a period after which the ~~individual~~ licensee shall be required to reapply for licensure or remain on probation;

- (5) Refusal of License Renewal: A refusal to reinstate or renew a license;
 - (6) Revocation of license: An involuntary termination of a license;
 - (7) Injunction: A court action prohibiting or compelling conduct by a licensee; and or
 - (8) Assessment of a civil penalty.
- (b) The following types of disciplinary sanctions regarding schools of massage and bodywork therapy ~~may, among others,~~ may be utilized by the Board:
- (1) Denial of Application: Refusal to grant approval to the applicant school;
 - (2) Letter of Reprimand: An expression of displeasure. A formal expression of disapproval will be retained in the school's file but shall not be publicly announced. It is not published, but is released upon request;
 - (3) Probation: A period of time where restrictions or conditions are imposed on an approved school. Continued approval is subject to fulfillment of specified conditions;
 - (4) Suspension of approval: A condition of probation. Loss of approval status for a period after which the school shall be required to reapply for approval or remain on probation;
 - (5) Refusal of Approval: A refusal to reinstate or renew a school's approval status;
 - (6) Revocation of Approval: An involuntary termination of school's approval status;
 - (7) Injunction: A court action prohibiting or compelling conduct by a school; and or
 - (8) Assessment of a civil penalty.
- (c) ~~The~~ During an investigation, the Board may request information from professional associations, professional review organizations (PROs), hospitals, clinics or other institutions in which a licensee performs professional services, regarding chemical abuse, or incompetent or unethical behavior.
- (d) ~~The~~ During an investigation, the Board may request information from state regulatory agencies, accrediting commissions, or other institutions that oversee the activities of a school.
- (e) The Board shall provide notice of sanction taken by it to other public entities as necessary to ensure that other state boards, national certification boards, professional associations, enforcement authorities, and accrediting agencies receive the names of licensees and schools disciplined.

Authority G.S. 90-626(4), (14); 90-634.1.

SECTION .1000 – MASSAGE AND BODYWORK THERAPY ESTABLISHMENT LICENSURE

21 NCAC 30 .1001 ESTABLISHMENT LICENSE REQUIRED

(a) Unless exempt pursuant to G.S. 90-622(3a) from the Board licensure process, no individual, association, partnership, corporation, or other entity shall open, operate, or advertise a massage and bodywork therapy establishment in this State unless it has been licensed by the Board. For purposes of the rules in this

Chapter, "establishment" means "massage and bodywork therapy establishment" as defined in G.S. 90-622.

(b) An establishment license granted by the Board shall be for a single location. An owner who intends to operate additional locations shall submit an application for licensure for each location.

(c) Establishments already in operation on the date this Section becomes effective shall have 60 days from the effective date to submit an application for licensure to the Board.

Authority G.S. 90-626(9)b.2; 90-632.10.

21 NCAC 30 .1002 TERM OF LICENSE

(a) Initial establishment license applications submitted between October 1 and December 31 shall be granted for two years, plus an additional period of up to three months. Initial establishment license applications submitted between January 1 and September 30 shall be granted for two years, minus the period following January 1.

(b) Pursuant to G.S. 90-630.5, an establishment license shall be renewed for a term of two years, beginning on January 1 following the initial expiration date.

Authority G.S. 90-630.5(a).

21 NCAC 30 .1003 EXEMPTION FROM LICENSURE

In addition to the exemptions set forth in G.S. 90-622(3a), the following are exempt from establishment licensure:

(1) Massage and bodywork therapy provided by a sole practitioner, which is defined as a single licensed massage and bodywork therapist (hereinafter referred to as "LMBT") offering massage or bodywork therapy services from a space the LMBT controls and from which only the LMBT offers and provides the services. This category of exemption does not include the following:

(a) businesses such as a salon, spa or fitness center where the LMBT is an employee or independent contractor using treatment space provided by the host business;

(b) a space controlled by the LMBT which is also used by other LMBTs; or a group practice structure, where more than one LMBT provides services, whether under a shared business name, or the name of the LMBT owner; and

(2) Offices of licensed medical doctors, osteopathic physicians, chiropractic physicians, dentists, physical therapists or acupuncturists, where massage and bodywork therapy is provided by LMBTs currently licensed in North Carolina.

Authority G.S. 90-622(3a); 90-624(1).

21 NCAC 30 .1004 INITIAL APPLICATION FOR LICENSURE

A massage and bodywork therapy establishment seeking initial licensure shall submit an application on a form provided by the Board containing the information set forth in G.S. 90-632.11 and the following additional information:

- (1) Ownership information, including all of the following:
 - (a) type of ownership structure;
 - (b) names, residence addresses, phone numbers and email addresses of all persons who have an ownership interest in the establishment, including parent corporations;
- (2) Location information, including all of the following:
 - (a) Physical address of the establishment, and mailing address if different;
 - (b) Website address; and
 - (c) Business phone number.
- (3) Trade name of establishment, if different from owner's name;
- (4) List of all LMBTs hired as employees or contracted with as independent contractors to provide treatment to clients, or signed letters of intent from LMBTs with a projected start date of work pending the opening of the establishment following granting of a license to operate;
- (5) Facility plan, including floor plans with dimensions and fixtures, uses of each room, specifications on lighting, ventilation and temperature control, location of lavatories for hand washing and toilet facilities;
- (6) Equipment list, including furniture, office equipment, and equipment used for massage and bodywork therapy treatment;
- (7) Copy of deed if establishment owns its facility, or copy of lease if establishment does not own its facility;
- (8) Copies of reports from city or county inspections for fire, safety, health, and sanitation, made within the three months prior to submission of application for approval;
- (9) Copy of city or county business license, if required; and
- (10) A completed self-evaluation inspection report demonstrating compliance with this section.

Authority G.S. 90-632.11; 90-632.13.

21 NCAC 30 .1005 ESTABLISHMENT OPERATIONS

Licensed establishments shall comply with the following requirements:

- (1) Facility requirements:
 - (a) comply with State and local building code requirements, State fire safety

- (b) provide for the use of clients and therapists a restroom with at least one toilet and one sink with running water. The facilities shall be equipped with toilet tissue, soap dispenser with soap or other hand cleaning materials, sanitary towels or other hand drying device such as a wall-mounted electric blow dryer, and waste receptacle. Restroom and shower facilities shall be lighted, ventilated and maintained in good repair. Establishments located in buildings housing multiple businesses under one roof, such as shopping malls, terminals, or hotels, may substitute centralized toilet facilities;
- (c) if equipped with a whirlpool bath, sauna, steam cabinet, or steam room, maintain clean shower facilities on the premises;
- (d) provide treatment rooms for massage and bodywork therapy that are least 10 feet by 12 feet in size, with a minimum of three linear feet of open floor space around all sides of the massage treatment table; and
- (e) display the Massage and Bodywork Therapy Establishment License, and the licenses of all LMBTs in a prominent place at the establishment so as to be visible for inspection.
- (2) Safety and sanitary requirements:
 - (a) provide for safe and unobstructed human passage in the public areas of the premises;
 - (b) provide for removal of garbage and refuse;
 - (c) provide for safe storage or removal of flammable materials;
 - (d) exterminate all vermin, insects, termites, and rodents on the premises;
 - (e) maintain all equipment used to perform massage and bodywork therapy services on the premises in a safe and sanitary condition, including the application of cleansers and bactericidal agents to the massage table. Clean sheets, towels, or other coverings shall be used for each client and to cover the massage table for each client; and
 - (f) maintain a supply of clean drapes, towels, gowns, or sheets, for the purpose of draping each client while the client is being massaged, and launder before reuse all linens

- furnished for the personal use of the client.
- (3) Treatment requirements:
- (a) All massage and bodywork therapy treatments shall be administered by LMBTs licensed in North Carolina;
- (b) The establishment is responsible for ensuring that the Standards of Professional Conduct set forth in Section .0500 of this Chapter are maintained in its facility by all owners, employees and independent contractors.
- (4) Business and ethical requirements:
- (a) notify the Board in writing of all assumed name certificates filed with any county register of deeds pursuant to the requirements of G.S. 66-68;
- (b) notify the Board within 10 days of changes to the LMBT staff who provide massage and bodywork therapy services at the establishment, including employees and independent contractors; and
- (5) Advertising requirements:
- (a) any advertisement of massage and bodywork therapy services in any "advertising medium" as defined herein shall comply with Rule .0404 and shall include the establishment's name and license number; and
- (b) a licensed establishment that employs or contracts with LMBTs may advertise on behalf of those licensees, by complying with the requirements of this Rule.

Authority G.S. 90-632.13.

21 NCAC 30 .1006 CLIENT RECORDS RETENTION AND OWNERSHIP

- (a) Records shall be maintained by the establishment or the LMBT in compliance with Rules .0504 and .0505 of this Chapter.
- (b) Records stored electronically shall be maintained with a weekly back-up system;
- (c) Client records are the property of the:
- (1) Establishment; or
- (2) LMBT, when working as a sole practitioner.
- (d) Release of Records:
- (1) Client records shall be released within 30 days from being requested and authorized by the client in writing or when compelled by law or regulation; and
- (2) The establishment or LMBT may charge cost for duplicating client records pursuant to G.S. 90-411.

Authority G.S. 90-632.13(3).

21 NCAC 30 .1007 INSPECTIONS

- (a) Upon receipt of an application for a massage and bodywork therapy establishment license, employees or representatives of the Board may inspect the location to verify Rules .1004 and .1005 of this Chapter are satisfied.
- (b) The Board may inspect all licensed establishments to ensure compliance with the rules in this Chapter and Article 36 of G.S. Chapter 90.
- (c) During any inspection, if the posted establishment license is not current and valid, the establishment license shall be removed from the establishment and returned to the Board, and the owner whose license was not current and valid shall be notified. During any inspection, should it be determined that any license for a massage and bodywork therapist posted in the establishment is not current and valid, the massage and bodywork therapist license shall be removed from the establishment by the inspector and shall be returned to the Board by the inspector and the person whose license was not current and valid shall be notified.

Authority G.S. 90-632.13(5).

21 NCAC 30 .1008 CHANGE OF TRADE NAME

When there is no change of owner or location, the owner may change the trade name of the establishment in compliance with Rules .0402 and .0403 of this Chapter. The owner shall apply for a change of name by submitting to the Board a written change of name request. A new trade name shall not be used or approved by the Board until the establishment is in compliance with this Rule. When an establishment trade name is changed without a change in owner or location, a new establishment facility inspection shall not be required.

Authority G.S. 90-632.12; 90-632.13(6).

21 NCAC 30 .1009 CHANGE OF LOCATION

An establishment license shall not be transferable when there is a change in the physical location of the establishment. The new owner shall submit a new application for licensure. The Board may issue temporary operating approval to the owner for the new location for a period of 90 days if the establishment held a valid license prior to the change, and if the Board finds that the new location will qualify for licensure upon preliminary review of the application.

Authority G.S. 90-632.13(6).

21 NCAC 30 .1010 CHANGE OF OWNERSHIP

- (a) An establishment license shall not be transferable when there is a change in the majority ownership interest of the business. The new owner shall submit a new application for licensure. The Board may issue temporary operating approval to the new owner for a period of 90 days if the establishment held a valid license prior to the change, and if the Board finds that the new owner will qualify for licensure upon preliminary review of the application.
- (b) In the case of a change of ownership that does not involve a change in the majority ownership interest in the business, or a change in the ownership structure, the owner shall notify the Board of the changes within 30 days, and submit fingerprint cards

as required by G.S. 90-632.11 for new persons with ownership interests.

Authority G.S. 90-632.13(6).

21 NCAC 30 .1011 INFORMING BOARD OF VIOLATIONS

(a) Establishment licensees with knowledge of violations of the rules of this Chapter or the Practice Act shall inform the Board within two business days, whether or not the violations are also reported to a law enforcement agency. This shall include the following violations:

- (1) An LMBT or other employee or contractor of the establishment who has violated the prohibition on sexual activity, as defined in Rules .0508 and .0509 of this Chapter;
- (2) An LMBT who has engaged in behavior where there is a potential for malpractice as defined in Rule .0102(6) of this Chapter; or
- (3) Any person practicing massage and bodywork therapy without a license.

(b) Establishment licensees that have discharged an LMBT for cause, related to failure to uphold the Standards of Professional Conduct set forth in Section .0500 of this Chapter shall inform the Board within 10 business days of the action.

Authority G.S. 90-626(9); 90-626(9)b.2; 90-632.10; 90-632.15(5); 90-632.17; 90-632.18; 90-633(6); 90-634(b3).

21 NCAC 30 .1012 CONTINUING DUTY TO REPORT CERTAIN CRIMES AND CIVIL SUITS

(a) Establishment licensees with knowledge shall report to the Board any charges, convictions of, or pleas of guilty or no contest to the following criminal offenses, whether committed by themselves, employees, independent contractors or by other licensees:

- (1) felonies;
- (2) crimes that involve moral turpitude;
- (3) alcohol or drug-related offenses;
- (4) sexual-related offenses; and
- (5) assault.

(b) Establishment licensees shall report to the Board if they are named as a defendant in a civil suit arising out of a licensee's

practice of massage and bodywork therapy or out of the practice of massage and bodywork therapy by any employee or independent contractor.

(c) Establishment licensees shall report a charge, conviction, plea in a criminal case, or involvement as a defendant in a civil suit, as set forth in Paragraphs (a) or (b) of this Rule, within 30 days after it occurs.

Authority G.S. 90-626(9); 90-626(9)b.2; 90-632.10; 90-632.15(5); 90-632.17; 90-632.18; 90-633(6); 90-634(b3).

21 NCAC 30 .1013 LICENSE RENEWAL

(a) Any establishment licensee renewing a license shall comply with all requirements for licensure and shall submit the required renewal fee of one hundred dollars (\$100.00) pursuant to G.S. 90-632.14.

(b) An establishment license that has not been renewed prior to its expiration date is expired and shall submit an initial application for licensure pursuant to Rule .1004 of this Chapter.

(c) Any owner whose establishment license has expired and who engages in any massage and bodywork therapy activities governed by the Practice Act will be subject to the penalties prescribed in G.S. 90-634 and G.S. 90-634.1.

(d) Members of the armed forces whose establishment licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall be granted that same extension of time to pay the establishment license renewal fee. A copy of military orders and the extension approval by the Internal Revenue Service must be furnished to the Board to be granted the extension of time to pay the renewal fee.

Authority G.S. 90-630.5.

21 NCAC 30 .1014 ADDRESS OF RECORD

Each licensed establishment shall notify the Board in writing of the street address of the licensee's current place of business and owner's residence or business address. The establishment shall provide to the Board the mailing address and telephone number of the owner for the purposes of receiving communication from the Board and for listing in the registry of licensed establishments.

Authority G.S. 90-632.11(5).

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.
This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Rule-making Agency: Alcoholic Beverage Control Commission

Rule Citation: 14B NCAC 15A .2201-.2205

Effective Date: February 23, 2018

Date Approved by the Rules Review Commission: February 15, 2018

Reason for Action: The General Assembly enacted a new law creating a special auction permit to allow licensed auctioneers to sell certain alcoholic beverages at auction. Section 19(a) of S.L. 2017-87 directed the ABC Commission to adopt temporary rules to implement the provisions of this act. The temporary rules being proposed for adoption are required to comply with Section 19(a) of S.L. 2017-87.

CHAPTER 15 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 15A - ORGANIZATIONAL RULES: POLICIES AND PROCEDURES

SECTION .2200 – SPECIAL ONE-TIME PERMITS

14B NCAC 15A .2201 DEFINITIONS

The following definitions apply to this Section:

- (1) "Collector" means a person, other than an industry member, engaged in the collection of one or more wines, decorative decanters of spirituous liquor, or antique spirituous liquors.
- (2) "Decorative decanters of spirituous liquor" means the manufacturer's original sealed decanters, limited in quantities as a specialized limited run or as a limited edition, filled with spirituous liquor by a person issued a permit pursuant to state or federal law.
- (3) "Private sale" means a sale between two collectors, neither of who are required to hold permits pursuant to Chapter 18B of the General Statutes, except for permits issued pursuant to G.S. 18B-1002(a)(4).

History Note: Authority G.S. 18B-100; 18B-207; 18B-1002; Temporary Adoption Eff. February 23, 2018. (Codifier's Note: This Rule shall remain in effect until the permanent rule that replaces the temporary rule is effective. (See S.L. 2017-87, s. 19(a)).

14B NCAC 15A .2202 COLLECTOR TRANSPORT OR SALE PERMITS

To qualify for a permit issued pursuant to G.S. 18B-1002(a)(4), in addition to the applicable information required pursuant to G.S. 18B-900, a collector shall submit an application to the Commission that requires the following information:

- (1) the basis for qualification as a collector;
- (2) whether the application is for the transportation or sale of wine or spirituous liquors;
- (3) a list of the specific wine or spirituous liquors being transported, possessed, or sold, including the name, brand, quantity, and volume of each bottle or decanter;
- (4) pictures of the containers of spirituous liquors to be transported, possessed, or sold in sufficient clarity for the content of the labels to be legible;
- (5) if the application is for a sale, the details of the method of sale including whether the sale will be as a special order pursuant to 14B NCAC 15A .1403, by auction, or by private sale, including the name of the buyer if by special order or private sale, or the name of the auctioneer if by auction; and
- (6) certification under oath to the conditions for permits pursuant to G.S. 18B-900.

History Note: Authority G.S. 18B-100; 18B-207; 18B-900; 18B-1002; Temporary Adoption Eff. February 23, 2018. (Codifier's Note: This Rule shall remain in effect until the permanent rule that replaces the temporary rule is effective. (See S.L. 2017-87, s. 19(a)).

14B NCAC 15A .2203 PERMISSIBLE SALES UNDER COLLECTOR TRANSPORT OR SALE PERMIT

(a) Sales of wine or spirituous liquor by the holder of a permit issued pursuant to Rule .2202 of this Section shall be subject to the following conditions:

- (1) sales shall only be made to persons at least 21 years of age;
- (2) sales shall only be made as a special order pursuant to 14B NCAC 15A .1403, by auction, or by private sale;
- (3) sales shall be conducted subject to the dates, time, place, and manner specified in the permit;
- (4) no sales shall be made to a person who is intoxicated as defined in 14B NCAC 15B .0101(2); and
- (5) the quantity of wine or spirituous liquor sold to a single buyer shall not be in excess of the limits set forth in G.S. 18B-303, unless the buyer of

the wine or spirituous liquor has a valid permit issued pursuant to G.S. 18B-1002(a)(4).

(b) The wine or spirituous liquor sold pursuant to a permit issued pursuant to this Rule shall remain in the possession of the collector until transferred to the buyer.

(c) A permit issued pursuant to G.S. 18B-1002(a)(4) is not required for sales of wine or spirituous liquors by auction pursuant to G.S. 18B-1002.1.

History Note: Authority G.S. 18B-100; 18B-207; 18B-1002; Temporary Adoption Eff. February 23, 2018. (Codifier's Note: This Rule shall remain in effect until the permanent rule that replaces the temporary rule is effective. (See S.L. 2017-87, s. 19.(a)).

14B NCAC 15A .2204 SPECIAL AUCTION PERMITS

(a) To qualify for a permit issued pursuant to G.S. 18B-1002.1, in addition to the applicable information required pursuant to G.S. 18B-900, an auction firm or auctioneer licensed pursuant to Chapter 85B of the General Statutes shall submit an application to the Commission that requires the following information:

- (1) a copy of the applicable active license issued by the North Carolina Auctioneers Commission;
- (2) the details of the date, time, duration, place, and manner of the auction;
- (3) a list of the specific wine or spirituous liquors which may be subject to auction, including the name, brand, quantity, and volume of each bottle or decanter; and
- (4) pictures of the containers of spirituous liquors to be sold in sufficient clarity for the content of the labels to be legible.

(b) No permit is required pursuant to G.S. 18B-1002.1 for sale at auction of alcoholic beverages pursuant to a permit issued pursuant to G.S. 18B-1002(a)(1), (2) or (3), or a permit issued pursuant to G.S. 18B-1002(a)(4) when the auction is conducted on the collector's premises and the alcoholic beverages remain in the possession of the collector until transferred to the buyer.

History Note: Authority G.S. 18B-100; 18B-207; 18B-900; 18B-1002.1; Temporary Adoption Eff. February 23, 2018. (Codifier's Note: This Rule shall remain in effect until the permanent rule that replaces the temporary rule is effective. (See S.L. 2017-87, s. 19.(a)).

14B NCAC 15A .2205 CONDITIONS OF SALE UNDER SPECIAL AUCTION PERMITS

Sales at auction of wine or spirituous liquor by the holder of a permit issued pursuant to Rule .2204 of this Section shall be subject to the following conditions:

- (1) the auctioneer shall be in physical possession of the wine or spirituous liquor subject to sale at auction;
- (2) sales shall only be made to persons at least 21 years of age;
- (3) sales shall be conducted subject to the date, time, place, and manner specified in the permit;

(4) no sales shall be made to a person who is intoxicated as defined in 14B NCAC 15B .0101(2);

(5) delivery of possession of a quantity of wine or spirituous liquor sold pursuant to this Rule to a single buyer in excess of the limits set forth in G.S. 18B-303 shall not be permitted unless the buyer at auction of the wine or spirituous liquor has a valid permit issued pursuant to G.S. 18B-1002(a)(4) or otherwise complies with the provisions of G.S. 18B-303;

(6) records of sales maintained in accordance with G.S. 85B-7(d) of an auction conducted pursuant to Rule .2204 of this Section shall be open to inspection by the Commission and law enforcement agents in accordance with G.S. 18B-502; and

(7) purchases by the holder of a permit issued pursuant to Rule .2204 of this Section who bids on and purchases at auction wine or spirituous liquor shall be subject to the conditions, limitations, and requirements of Items (2), (4), and (5) of this Rule.

History Note: Authority G.S. 18B-100; 18B-207; 18B-303; 18B-502; 18B-1002; Temporary Adoption Eff. February 23, 2018. (Codifier's Note: This Rule shall remain in effect until the permanent rule that replaces the temporary rule is effective. (See S.L. 2017-87, s. 19.(a)).

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Rule-making Agency: *Department of Transportation*

Rule Citation: *19A NCAC 02C .0116*

Effective Date: *February 23, 2018*

Date Approved by the Rules Review Commission: *February 15, 2018*

Reason for Action:

Per S.L. 2017-57 Section 34.A(a) – Road Improvements Adjacent to Schools which amends G.S. 136-148(29a), and Section 34.6A(b), which adds G.S. 160A-307.1 to Article 15 of Chapter 160 of the General Statutes, the agency is adopting temporary rules to implement the new directives.

CHAPTER 02 - DIVISION OF HIGHWAYS

SUBCHAPTER 02C - SECONDARY ROADS SECTION

SECTION .0100 - SECONDARY ROADS

19A NCAC 02C .0116 REIMBURSEMENT OF SCHOOLS FOR TRANSPORTATION IMPROVEMENTS COMPLETED ON THE STATE HIGHWAY SYSTEM

(a) The school shall consult with the Department by contacting the Division of ~~Highway~~, Highways, Division Office, District Engineer governing the specific area in which the school is located to initiate reimbursement for transportation improvements. Reimbursement of all costs associated with the Department's required transportation improvements, approved school and transportation improvements, including costs of materials, equipment, and labor, improvements shall be assessed for value consistent with similar Department transportation improvement projects of the same type and size, projects. ~~At no cost to the public, contact~~ Contact information for each Division Office may be accessed at <https://www.ncdot.gov/doh/divisions/>. Criteria for reimbursement are as follows:

- (1) The school shall comply with all of the notification provisions to the Department set forth in ~~be in compliance with~~ G.S. 136-18(29a);
- (2) The school shall be open for the general instruction, specialized instruction, administration, or student services and support of children in any grade or combination of grades, from kindergarten through the 12th grade;
- (2)(3) The school shall provide the paid itemized invoices from the contractor of the work completed for which it the school is requesting reimbursement; ~~reimbursement, and the school shall be open for the general instruction, specialized instruction, administration, or student services and support of children in any grade or combination of grades, from kindergarten, or any other early childhood program, kindergarten through the twelfth grade;~~
- (3)(4) The Department shall provide to the school the option of securing the a written evaluation and written recommendations from the Department within 60 days, days, and pursuant to G.S. 136-18(1) and G.S. 136-28.1, days and in In fulfilling this option, option the Department may engage a prequalified traffic engineer to provide this the written evaluation evaluation, and for the school however However nothing herein shall preclude the school from securing its own prequalified engineer, engineer, Regardless of the option chosen, the written evaluation and recommendations shall be prepared in compliance with G.S. 136-93.1A; G.S. 136-93.1A.; recommendation;
- (4)(5) The school may request the Department to contract with and fund a specific, specific independent traffic ~~engineer, engineer~~ engineer of the choosing of chosen by the school, but any such engagement shall be considered for approval on an individual basis and according to the Department's prequalification process.

~~standards; [standards. If the requested engineer being requested is not on the prequalified list, list the Department may take the required time to properly qualify that engineer and add him or her to the prequalified list prior to the commencing of work on the evaluation. The process to qualify an engineer in this the manner will occur when requested in writing by the school, acknowledging that the evaluation period will not start until the requested engineer is qualified; extend the time period for the evaluation process;~~

- (5)(6) If the school ~~independently~~ hires a prequalified traffic engineer in lieu of an evaluation by the Department, the Department shall only reimburse the costs of a completed independent traffic study that quantifies the extent of a transportation problem or provides an analysis of a proposed transportation solution for the selected school ~~site;~~ site where the scope of the study is set by the Department prior to commencing work on the study;
- (6)(7) Reimbursement requests ~~regarding the independently hired traffic engineer~~ that exceed 10 percent of the estimated costs of the improvements as determined by the Department based upon the scope of the requirements for the specific project and average bid costs for work of similar type and scope shall require written justification from the school for the increased cost;
- (7)(8) Reimbursement requests for costs associated with the engineering design and independent traffic engineering evaluation analytics utilized to ~~determine the need for or execution of transportation improvements~~ that exceed 15 percent of the construction costs reimbursement request as estimated by the Department based on the costs average construction cost for work of similar type and scope shall require written justification from the school for the increased cost; and
- (8)(9) The Department shall only provide reimbursement for those transportation improvements on a State maintained roadway that are required by the Department. The requirements may include those requested by any other approving reviewing authority so long as they the improvements are confirmed as necessary requirements by the Department. Schools may agree to install improvements that exceed those required by the Department but in so doing Department. However, the school shall agree to pay for the costs of those additional improvements. Nothing herein requires the school to agree to make any improvements beyond those that are required by the Department, that the Department requires and any improvements completed on State

~~maintained roadways required or requested by entities other than the Department (neighborhoods, municipalities, counties) shall not be subject to reimbursement by the Department. The school may request that the Department review such transportation improvements to determine if they are within the allowances of G.S. 136-29 or G.S. 136-29(a).~~

(b) Any independent traffic engineer who is completing this work for the Department or for a school shall be prequalified by the Department in Work Codes 205 – School and Traffic Operations Studies and 252 – Traffic Impact Studies. ~~At no cost to the public, information~~ Information on Department Work Codes and prequalification may be accessed at <https://connect.ncdot.gov/business/Prequal/PrequalApp/Work%20Code%20Descriptions.pdf> and <https://connect.ncdot.gov/business/Prequal/Pages/default.aspx>. The independent traffic engineer must follow all written guidelines and standards for school studies and traffic impact analysis, and any deviation from such standards shall be subject to the review and written approval of the Department's State Traffic Engineer or his or her designee prior to completion of the study. The traffic study shall assess on-campus loading and unloading of both carpoolers ~~and, if in operation, and~~ school buses. The study shall have recommendations to manage the school's on-campus traffic queues at the entrance(s) to the school, and locations within the selected school site that impact the State highway system. The independent traffic engineer shall have the scope of the study approved by the Department's District Engineer prior to initiating the study. Pursuant to G.S. 160A-307.1, ~~160A-307.1~~ the independent traffic engineer shall study those improvements that are eligible for reimbursement by the Department or municipalities. The independent traffic engineer shall prepare the study in compliance with the time periods set forth in G.S. 136-93.1A. Any traffic data collection activities will be conducted by a firm who is prequalified in Work Code 309 – Traffic Data Collection. This work may be subcontracted to a qualified firm if the independent traffic engineer is not prequalified in this area.

(c) Any new, relocated, or expanded schools that opened on or after August 1, 2017, and prior to the adoption of this temporary rule, shall contact their respective District ~~Engineer~~ Engineer's Office to facilitate the request for reimbursement for transportation improvements to the State highway system.

(d) A "temporary classroom facility" means any facility used for the general instruction, specialized instruction, administration, or student services and support of children in any grade or combination of grades from kindergarten through 12th grade on a temporary basis while awaiting completion of a school facilities project that will permanently house students. Any school that must open a temporary classroom facility shall consult with the District Engineer governing the specific area ~~in which~~ where the school is located. ~~Pursuant to G.S. 136-18(29a), the~~ The District Engineer shall provide a written evaluation and recommendation on whether the selected school site ~~and its~~ access points to the State highway system are in compliance with G.S. 136-18(29a). ~~State law.~~ Prior to selecting a temporary classroom facility, the school may request ~~and, at no cost, and~~ the Department may

review each of the prospective temporary classroom facility sites to determine the transportation impacts to off-campus activities, ~~activities in view of factors that may influence the project's design or construction. The Department is charged to minimize the improvements needed for temporary classroom facility sites. Preliminary analysis and review of each site ensures minimal transportation impacts to off campus activities at the selected school site.~~ Any analysis performed of the proposed temporary classroom facility sites shall not include transportation impacts associated with on-campus activities.

(e) The Department shall consider the following ~~not to be reimbursable~~ non-reimbursable improvement expenses pursuant to ~~G.S. 136-18(29a);~~ G.S. 136-18(29a):

- (1) Improvements that exceed the Department's requirements, ~~requirements and standards.~~
- (2) Any connection not on the State's right-of-way but instead on the school's property.
- (3) Any improvements that the Department would not require as part of G.S. 136-18(29) or G.S. 136-18(29a), such as sidewalks that do not connect to other networks or curb and gutter where the Department has curb and gutter, ~~unless the Department requires such improvements~~ required by the Department on the driveway permit.
- (4) Any on-campus transportation improvements required to manage traffic flow, parking, and routing within the property limits of the ~~school, including, but not limited to,~~ school drop-off and pick-up queuing, student and teacher parking, and loading dock expansions or relocations.
- (5) New utilities required for the selected school site that are not directly associated with and impacting its access points to the State highway ~~system, system and their compliance with State law.~~ The school shall coordinate with the Department prior to the placement of any utilities in the State right-of-way. ~~If, upon the school's own discretion, choice, or convenience, a new utility is placed at the selected school site and~~ If the school chooses to place a new utility at the school site that must be moved for a transportation improvements, the Department shall not reimburse for the movement of those utilities. The Department shall only provide reimbursements for existing utilities that require relocation for transportation improvements.
- (6) Any improvements to the State highway system that are part of a mixed-use development site that also include a school where such improvements would be required if a school were not part of the development. The Department shall first analyze the site without considering the ~~temporary classroom facility~~ school facilities and then analyze the site with the ~~temporary classroom facility~~ school facilities included. Any improvements that are

not ~~directly associated~~ necessitated by traffic from with the ~~temporary classroom facility school facilities~~ shall not be reimbursable.

- (7) Improvements made to the State highway system for developments planned for purposes other than a school. Any additional improvement to the State highway system required by the conversion of property to a school ~~may~~ shall be eligible; however, an additional school study may be required if the Department has previously been approached and analyzed the site according to a non-school or non-educational land use.

(f) Where a new, relocated, or expanded school is located on a property that is only served by a municipal street that is not State-maintained, the school may request a review and final determination by the Department pursuant to G.S. 160A-307.1 to

assess whether the improvements required by the municipality exceed those required by G.S. 136-18(29).

~~{(f) Where a new, relocated, or expanded school is located on a property that is only served by municipal street (non state maintained), per G.S. 160A 307.1 if a school wishes to have the Department assess if the required improvements by a municipality exceed those required by G.S. 136 18(29) they may request a review and final determination from the Department. In these cases, the Department will review the traffic study, the location and determine what the Department would require for the school. Based up G.S. 136 18(29a) and G.S. 160A 307.1, the Department requirements are final for all roadways state maintained as well as municipal maintained, and reimbursement is required to be paid by the entity maintaining the road.}~~

History Note: Authority G.S. 136-18(1); 136-18(29); 136-18(29a); 136-28.1; 136-93.1A; 160A-307.1; Temporary Adoption Eff. February 23, 2018.

This Section contains information for the meeting of the Rules Review Commission February 15, 2018 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)
Andrew P. Atkins
Anna Baird Choi
Paul Powell
Jeanette Doran (2nd Vice Chair)

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

| | |
|----------------|---------------|
| April 19, 2018 | May 17, 2018 |
| June 21, 2018 | July 19, 2018 |

**RULES REVIEW COMMISSION MEETING
MINUTES
February 15, 2018**

The Rules Review Commission met on Thursday, February 15, 2018, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, and Jeff Poley.

Staff members present were Commission Counsels Amanda Reeder, Abigail Hammond, Amber Cronk May, and Jason Thomas; and Julie Brincefield and Alex Burgos.

The meeting was called to order at 10:01 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the January 25, 2018 meeting. There were none and the minutes were approved as distributed.

LOG OF FILINGS (PERMANENT RULES)

Pre-Reviewed Rules

Alcoholic Beverage Control Commission

14B NCAC 15C .0505 was unanimously approved.

Environmental Management Commission 15A NCAC 02D, 02R

All rules were unanimously approved.

Environmental Management Commission 15A NCAC 13A

All rules were unanimously approved.

Licensing Board for General Contractors

All rules were unanimously approved with the following exceptions:

The Commission objected to 21 NCAC 12 .0204, .0503, and .0504 in accordance with G.S. 150B-21.10.

Specifically, the Commission objected to the rules finding that the Board lacked the statutory authority to require financial statements be prepared by certified public accountants.

Prior to the review of the rules from the Licensing Board for General Contractors, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a conflict.

Henry Jones from the Jordan Price Law Firm, representing the NC Society of Accountants, addressed the Commission. Eva Frongello from the Smith Anderson Law Firm, representing the NC Association of Certified Public Accountants, addressed the Commission.

Anna Baird Choi of Nichols, Choi & Lee, PLLC, the rulemaking coordinator for the agency, addressed the Commission.

Frank Weisner, the Executive Director with the agency, addressed the Commission.

Following the discussion of the rules from the Licensing Board for General Contractors, Commissioner Choi joined the meeting. She did not participate in any of the prior Commission discussions or votes on the agenda.

Hearing Aid Dealers and Fitters Board

All rules were unanimously approved.

*Non Pre-Reviewed Rules***Board of Agriculture**

The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to complete requested technical changes and submit the rewritten rules at a later meeting.

Social Services Commission

10A NCAC 10 .0308 was unanimously approved.

The Commission received over 10 letters of objection in accordance with G.S. 150B-21.3(b2), requesting a delayed effective date and legislative review of 10A NCAC 10 .0308.

Environmental Management Commission 15A NCAC 02Q

The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to complete requested technical changes and submit the rewritten rules at a later meeting.

Board of Cosmetic Art Examiners

All rules were unanimously approved.

Prior to the review of the Rules from the Board of Cosmetic Art Examiners, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the Rules because of a conflict.

Building Code Council

The 2017 NC Electrical Code was unanimously approved.

Commissioner Poley left the meeting after the Electrical Code rules were approved by the Commission, and did not participate in any discussion or votes for the remainder of the agenda.

All other Building Code Council rules were unanimously approved with the following exceptions:

The Commission objected to the 2018 Residential Code Tables N1102.1.2, N1102.1.4, and the 2018 Energy Conservation Code Tables R402.1.2, and R402.1.4 in accordance with G.S. 150B-21.10.

The Commission objected to the 2018 Residential Code Table N1102.1.4 and the 2018 Energy Conservation Code Table R402.1.4 for failure to comply with the APA, as the agency did not publish these Rules in the NC Register as required by G.S. 150B-21.2. The Commission objected to the 2018 Residential Code Table N1102.1.2 and the 2018 Energy Conservation Code Table R402.1.2 based upon ambiguity, as it agreed with the agency's contention that these Rules are interconnected to Tables N1102.1.4 and R402.1.4. Therefore, without approving the corresponding changes to Tables N1102.1.4 and R402.1.4, these Rules are unclear as written.

Barry Gupton, the rulemaking coordinator for the agency, addressed the Commission.

Terence Friedman with the Attorney General's office, representing the agency, addressed the Commission.

LOG OF RULES (TEMPORARY RULES)

Alcoholic Beverage Control Commission

All rules were unanimously approved.

Department of Transportation

19A NCAC 02C .0116 was unanimously approved.

EXISTING RULES REVIEW

Department of Administration

01 NCAC 38 - The Commission unanimously approved the report as submitted by the agency.

01 NCAC 39 - The Commission unanimously approved the report as submitted by the agency.

01 NCAC 40 - The Commission unanimously approved the report as submitted by the agency.

01 NCAC 41B - The Commission unanimously approved the report as submitted by the agency.

01 NCAC 43 - The Commission unanimously approved the report as submitted by the agency.

01 NCAC 44 - The Commission unanimously approved the report as submitted by the agency.

Department of Commerce

04 NCAC 19L - The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the Department of Commerce, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the report because she works at DES in the Department of Commerce.

Sheriffs Education and Training Standards Commission

12 NCAC 10 - The Commission unanimously approved the report as submitted by the agency.

Environmental Management Commission

15A NCAC 02L - The Commission unanimously approved the report as submitted by the agency.

15A NCAC 02N - The Commission unanimously approved the report as submitted by the agency.

15A NCAC 02O - The Commission unanimously approved the report as submitted by the agency.

15A NCAC 02P - The Commission unanimously approved the report as submitted by the agency.

Environmental Management Commission

15A NCAC 02K - As reflected in the attached letter, the Commission voted to schedule readoption of the rule no later than November 30, 2018 pursuant to G.S. 150B-21.3A(d)(2).

Department of Environment Quality

15A NCAC 13B Section .1500 – As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than April 30, 2021 pursuant to G.S. 150B-21.3A(d)(2).

Board of Dental Examiners

21 NCAC 16 - As reflected in the attached letter, the Commission voted to schedule readoption of these Rules no later than May 31, 2019 pursuant to G.S. 150B-21.3A(d)(2).

Board of Physical Therapy Examiners

21 NCAC 48 - The agency requested a waiver of Rule 26 NCAC 05 .0211 for the report for 21 NCAC 48.

The waiver request was approved. The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211.

The Commission will review the Board's report at its March 15, 2018 meeting.

COMMISSION BUSINESS

Staff gave a brief discussion on the Court of Appeals decision in the Ambulatory Surgical Center Association v. Industrial Commission.

The meeting adjourned at 11:37 a.m.

The next regularly scheduled meeting of the Commission is Thursday, March 15th at 10:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Garth Dunklin, Chair

February 15, 2018

Rules Review Commission
Meeting
Please Print Legibly

| Name | Agency |
|------------------|-------------------------------|
| Terence Friedman | NC DOJ |
| BARRY GUSTAV | NC DOI / BEC |
| Jennifer Everett | DEQ |
| Diane Konopka | NC DOT |
| Ellen Landi | NC DOT |
| Jim Stanfill | NC DMS |
| JOHN F. MADDREY | DEPT. OF ADMINISTRATION |
| Tien Cheng | NC DA & CS |
| Henry Jones | Jordan Price, et al. |
| D. Rawn | NC RTE |
| Patrick GRANSON | Mecklenburg County Code |
| Frank Wiesner | NCLBEC |
| Charlie Diehl | NC ALB |
| DEBRA ALLEN | NC DEPEC |
| Alexi Gruber | DOJ |
| Laurey Eamhardt | NC Sheriff's |
| Ms. Payer | NC Commerce |
| Lynda Elliott | NC State Bd of Cosmetology |
| Jenny Patterson | NC DEQ |
| Tim Baumgarten | NC DMS |
| Doug Howey | NC Petroleum Marketers Assoc. |

RULES REVIEW COMMISSION

February 15, 2018

Rules Review Commission
Meeting
Please **Print** Legibly

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STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

February 15, 2018

Jennifer Everett, Rulemaking Coordinator
Department of Environment Quality
Environmental Management Commission
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 15A NCAC 02K

Dear Ms. Everett:

Attached to this letter is the rule subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this rule was discussed at the February 15, 2018 Rules Review Commission meeting regarding the scheduling of this rule for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rule identified on the attached printout shall be readopted by the agency no later than November 30, 2018.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, reading "Abigail M. Hammond". The signature is fluid and cursive.

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
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Clerk's Office
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Rules Review
Commission
919/431-3000
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Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
October 19, 2017
APO Review: December 16, 2017
Environmental Management Commission
Total: 1**

RRC Determination: Necessary with substantive public interest

| Rule | Determination |
|--|--|
| <u>15A</u> <u>NCAC</u> <u>02K</u> <u>.0212</u> | Necessary with substantive public interest |



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

February 15, 2018

Jennifer Everett, Rulemaking Coordinator
Department of Environment Quality
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 13B Section .1500**

Dear Ms. Everett:

Attached to this letter is the rule subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this rule was discussed at the February 15, 2018 Rules Review Commission meeting regarding the scheduling of this rule for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rule identified on the attached printout shall be readopted by the agency no later than April 30, 2021.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
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An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
December 14, 2017
APO Review: January 09, 2018
Environmental Quality, Department of
Total: 11**

RRC Determination: Necessary with substantive public interest

| Rule | Determination |
|---------------------------|--|
| <u>15A NCAC 13B .1501</u> | Necessary with substantive public interest |
| <u>15A NCAC 13B .1502</u> | Necessary with substantive public interest |
| <u>15A NCAC 13B .1503</u> | Necessary with substantive public interest |
| <u>15A NCAC 13B .1504</u> | Necessary with substantive public interest |
| <u>15A NCAC 13B .1505</u> | Necessary with substantive public interest |
| <u>15A NCAC 13B .1506</u> | Necessary with substantive public interest |
| <u>15A NCAC 13B .1507</u> | Necessary with substantive public interest |
| <u>15A NCAC 13B .1508</u> | Necessary with substantive public interest |
| <u>15A NCAC 13B .1512</u> | Necessary with substantive public interest |
| <u>15A NCAC 13B .1513</u> | Necessary with substantive public interest |
| <u>15A NCAC 13B .1514</u> | Necessary with substantive public interest |



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

February 15, 2018

Doug Brocker, Rulemaking Coordinator
Whitney Waldenberg, Rulemaking Coordinator
Board of Dental Examiners
5540 Centerview Drive, Suite 200
Raleigh, North Carolina 27606-3363

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of 21 NCAC 16

Dear Mr. Brocker and Mrs. Waldenberg:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the February 15, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than May 31, 2019.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, reading "Abigail M. Hammond". The signature is fluid and cursive, with the first name "Abigail" being the most prominent.

Abigail M. Hammond
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
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Judges and
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Rules Review
Commission
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Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
November 16, 2017
APO Review: January 20, 2018
Dental Examiners, Board of
Total: 4**

RRC Determination: Necessary with substantive public interest

| Rule | Determination |
|---|--|
| <u>21</u> <u>NCAC</u> <u>16H</u> <u>.0207</u> | Necessary with substantive public interest |
| <u>21</u> <u>NCAC</u> <u>16P</u> <u>.0105</u> | Necessary with substantive public interest |
| <u>21</u> <u>NCAC</u> <u>16Q</u> <u>.0402</u> | Necessary with substantive public interest |
| <u>21</u> <u>NCAC</u> <u>16T</u> <u>.0101</u> | Necessary with substantive public interest |

LIST OF APPROVED PERMANENT RULES
February 15, 2018 Meeting

SOCIAL SERVICES COMMISSION

| | | | |
|---|----------|----|-------|
| <u>Sanctions and Appeals for Fraudulent Misrepresentation</u> | 10A NCAC | 10 | .0308 |
|---|----------|----|-------|

ALCOHOLIC BEVERAGE CONTROL COMMISSION

| | | | |
|----------------------------------|----------|-----|-------|
| <u>Off-Site Storage Location</u> | 14B NCAC | 15C | .0505 |
|----------------------------------|----------|-----|-------|

ENVIRONMENTAL MANAGEMENT COMMISSION

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|---|----------|-----|-------|
| <u>Sewage Sludge Incineration Units</u> | 15A NCAC | 02D | .1204 |
|---|----------|-----|-------|

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| <u>Purpose</u> | 15A NCAC | 02R | .0101 |
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| <u>Definitions</u> | 15A NCAC | 02R | .0102 |
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| <u>Purpose</u> | 15A NCAC | 02R | .0201 |
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| <u>Components</u> | 15A NCAC | 02R | .0202 |
|-------------------|----------|-----|-------|

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| <u>Public Involvement, Availability</u> | 15A NCAC | 02R | .0203 |
|---|----------|-----|-------|

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| <u>General</u> | 15A NCAC | 02R | .0301 |
|----------------|----------|-----|-------|

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| <u>Mitigation Banks</u> | 15A NCAC | 02R | .0302 |
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| <u>Purpose</u> | 15A NCAC | 02R | .0401 |
|----------------|----------|-----|-------|

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| <u>Schedule of Fees</u> | 15A NCAC | 02R | .0402 |
|-------------------------|----------|-----|-------|

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|-----------------------------|----------|-----|-------|
| <u>Donation of Property</u> | 15A NCAC | 02R | .0403 |
|-----------------------------|----------|-----|-------|

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|---|----------|-----|-------|
| <u>Riparian Buffer Mitigation Fees to the NC Ecosystem Enhan...</u> | 15A NCAC | 02R | .0601 |
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| <u>Nutrient Offset Payment Rates for the NC Ecosystem Enhanc...</u> | 15A NCAC | 02R | .0602 |
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| <u>General</u> | 15A NCAC | 13A | .0101 |
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| <u>Definitions</u> | 15A NCAC | 13A | .0102 |
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| <u>Petitions - Part 260</u> | 15A NCAC | 13A | .0103 |
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| <u>Public Information - Part 2</u> | 15A NCAC | 13A | .0104 |
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| <u>RCRA/Hazardous Waste Permit Requirements - Part 124</u> | 15A NCAC | 13A | .0105 |
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| <u>Identification and Listing of Hazardous Wastes - Part 261</u> | 15A NCAC | 13A | .0106 |
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| <u>Standards Applicable to Generators of Hazardous Waste - P...</u> | 15A NCAC | 13A | .0107 |
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| <u>Standards Applicable to Transporters of Hazardous Waste -...</u> | 15A NCAC | 13A | .0108 |
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| <u>Standards for Owners and Operators of Hazardous Treatment...</u> | 15A NCAC | 13A | .0109 |
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| <u>Interim Status Standards for Owners and Operators of Haza...</u> | 15A NCAC | 13A | .0110 |
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| <u>Standards for the Management of Specific Hazardous Wastes...</u> | 15A NCAC | 13A | .0111 |
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| <u>Land Disposal Restrictions - Part 268</u> | 15A NCAC | 13A | .0112 |
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| <u>The Hazardous Waste Permit Program - Part 270</u> | 15A NCAC | 13A | .0113 |
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| <u>Requirements for Authorization of State Hazardous Waste P...</u> | 15A NCAC | 13A | .0114 |
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| <u>Commercial Hazardous Waste Facility Scoring For Category ...</u> | 15A NCAC | 13A | .0116 |
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| <u>Fee Schedule for Commercial Hazardous Waste Treatment, St...</u> | 15A NCAC | 13A | .0117 |
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| <u>Standards for the Management of Used Oil</u> | 15A NCAC | 13A | .0118 |
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| <u>Standards For Universal Waste Management - Part 273</u> | 15A NCAC | 13A | .0119 |
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GENERAL CONTRACTORS, LICENSING BOARD FOR

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| <u>Identification</u> | 21 NCAC | 12 | .0101 |
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| <u>Structure of Board</u> | 21 NCAC | 12 | .0103 |
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| <u>Classification</u> | 21 NCAC | 12 | .0202 |
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| <u>Qualifier</u> | 21 NCAC | 12 | .0205 |
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| <u>Joint Venture</u> | 21 NCAC | 12 | .0207 |
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| <u>Construction Management</u> | 21 NCAC | 12 | .0208 |
| <u>Multunit Buildings</u> | 21 NCAC | 12 | .0211 |
| <u>General</u> | 21 NCAC | 12 | .0301 |
| <u>Request</u> | 21 NCAC | 12 | .0302 |
| <u>Application for Licensure</u> | 21 NCAC | 12 | .0303 |
| <u>Fees</u> | 21 NCAC | 12 | .0304 |
| <u>Filing Address</u> | 21 NCAC | 12 | .0305 |
| <u>Subject Matter</u> | 21 NCAC | 12 | .0402 |
| <u>Passing Grade</u> | 21 NCAC | 12 | .0404 |
| <u>Person Taking Examination</u> | 21 NCAC | 12 | .0408 |
| <u>Failing Examination</u> | 21 NCAC | 12 | .0410 |
| <u>License Granted</u> | 21 NCAC | 12 | .0501 |
| <u>Temporary License</u> | 21 NCAC | 12 | .0502 |
| <u>Maintaining Current Address; Notification</u> | 21 NCAC | 12 | .0505 |
| <u>Charge for Status of Licensure</u> | 21 NCAC | 12 | .0506 |
| <u>Improper Practice</u> | 21 NCAC | 12 | .0701 |
| <u>Unlicensed Practice</u> | 21 NCAC | 12 | .0702 |
| <u>Fee for Submittal of Bad Check</u> | 21 NCAC | 12 | .0703 |
| <u>Right to Hearing</u> | 21 NCAC | 12 | .0817 |
| <u>Request for Hearing</u> | 21 NCAC | 12 | .0818 |
| <u>Notice of Hearing</u> | 21 NCAC | 12 | .0820 |
| <u>Failure to Appear</u> | 21 NCAC | 12 | .0826 |
| <u>Subpoenas</u> | 21 NCAC | 12 | .0827 |
| <u>Final Decision</u> | 21 NCAC | 12 | .0829 |
| <u>Proposals for Decisions</u> | 21 NCAC | 12 | .0830 |

COSMETIC ART EXAMINERS, BOARD OF

| | | | |
|---|---------|-----|-------|
| <u>Definitions</u> | 21 NCAC | 14A | .0101 |
| <u>Water</u> | 21 NCAC | 14H | .0301 |
| <u>Ventilation and Light</u> | 21 NCAC | 14H | .0302 |
| <u>Bathroom Facilities</u> | 21 NCAC | 14H | .0303 |
| <u>Licensees and Students</u> | 21 NCAC | 14H | .0401 |
| <u>Disinfection Procedures</u> | 21 NCAC | 14H | .0403 |
| <u>First Aid</u> | 21 NCAC | 14H | .0404 |
| <u>Rule Compliance and Enforcement Measures</u> | 21 NCAC | 14H | .0505 |
| <u>Application/Licensure/Individuals Who Have Been Convicted...</u> | 21 NCAC | 14I | .0401 |

HEARING AID DEALERS AND FITTERS BOARD

| | | | |
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| <u>Abbreviations</u> | 21 NCAC | 22A | .0402 |
| <u>Forms</u> | 21 NCAC | 22A | .0403 |
| <u>Affidavits</u> | 21 NCAC | 22A | .0404 |
| <u>Fee Schedule</u> | 21 NCAC | 22A | .0501 |
| <u>Submission of Applications and Fees</u> | 21 NCAC | 22A | .0503 |
| <u>Qualifications for Licensure</u> | 21 NCAC | 22F | .0104 |
| <u>Examination</u> | 21 NCAC | 22F | .0105 |
| <u>Examination Results</u> | 21 NCAC | 22F | .0107 |
| <u>Review of Examination</u> | 21 NCAC | 22F | .0108 |
| <u>Reciprocity</u> | 21 NCAC | 22F | .0122 |

RULES REVIEW COMMISSION

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|---|---------|-----|-------|
| <u>Military Licensure</u> | 21 NCAC | 22F | .0123 |
| <u>Continuing Education Definitions</u> | 21 NCAC | 22F | .0201 |
| <u>Annual Continuing Education Requirements</u> | 21 NCAC | 22F | .0202 |
| <u>Content Categories</u> | 21 NCAC | 22F | .0203 |
| <u>Self-Study</u> | 21 NCAC | 22F | .0208 |
| <u>Apprenticeship Requirements</u> | 21 NCAC | 22F | .0301 |
| <u>Certificate Expiration and Renewal</u> | 21 NCAC | 22F | .0303 |

BUILDING CODE COUNCIL

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| <u>2017 NC Electrical Code</u> | 2017 National Electrical Code with NC Amendments |
| <u>2017 (and 2014) NC Electrical Code/Motors GFCI Protection</u> | 680.21(C)(2) |
| <u>2012 NC Building Code/Criteria</u> | 1301.1.1 |
| <u>2012 NC Energy Conservation Code/Scope</u> | 101.2 |
| <u>2015 NC Existing Building Code/Energy Conservation</u> | 101.12 |
| <u>2018 NC Building Code/Criteria</u> | 1301.1.1 |
| <u>2018 NC Existing Building Code/Energy Conservation</u> | 101.12 |
| <u>2018 NC Energy Conservation Code/Scope</u> | C101.2 |
| <u>2018 NC Residential Code/Definitions</u> | R202 |
| <u>2018 NC Plumbing Code/General Definitions</u> | 202 |
| <u>2018 NC Plumbing Code/Water Service Pipe</u> | 605.3 |

LIST OF APPROVED TEMPORARY RULES**February 15, 2018 Meeting****ALCOHOLIC BEVERAGE CONTROL COMMISSION**

| | | | |
|---|----------|-----|-------|
| <u>Definitions</u> | 14B NCAC | 15A | .2201 |
| <u>Collector Transport or Sale Permits</u> | 14B NCAC | 15A | .2202 |
| <u>Permissible Sales Under Collector Transport or Sale Permit</u> | 14B NCAC | 15A | .2203 |
| <u>Special Auction Permits</u> | 14B NCAC | 15A | .2204 |
| <u>Conditions of Sale Under Special Auction Permits</u> | 14B NCAC | 15A | .2205 |

TRANSPORTATION, DEPARTMENT OF

| | | | |
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| <u>Reimbursement of Schools for Transportation Improvements ...</u> | 19A NCAC | 02C | .0116 |
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**RRC Determination
Periodic Rule Review
February 15, 2018****Necessary with substantive public interest**

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| Administration, Department of | 01 NCAC 43A .0308 | 01 NCAC 43A .0317 |
| 01 NCAC 38 .0103 | 01 NCAC 43A .0309 | 01 NCAC 43A .0318 |
| 01 NCAC 38 .0201 | 01 NCAC 43A .0310 | 01 NCAC 43A .0319 |
| 01 NCAC 38 .0205 | 01 NCAC 43A .0311 | 01 NCAC 43A .0320 |
| 01 NCAC 38 .0302 | 01 NCAC 43A .0312 | |
| 01 NCAC 38 .0305 | 01 NCAC 43A .0313 | Sheriffs Education and Training Standards Commission |
| 01 NCAC 38 .0308 | 01 NCAC 43A .0314 | 12 NCAC 10B .0302 |
| 01 NCAC 38 .0407 | 01 NCAC 43A .0315 | |
| 01 NCAC 43A .0307 | 01 NCAC 43A .0316 | |

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|-------------------------------------|-------------------|---------------------------|---------------------------|
| Environmental Commission | Management | <u>15A NCAC 02L .0511</u> | <u>15A NCAC 02N .0901</u> |
| <u>15A NCAC 02L .0101</u> | | <u>15A NCAC 02L .0512</u> | <u>15A NCAC 02N .0902</u> |
| <u>15A NCAC 02L .0102</u> | | <u>15A NCAC 02L .0513</u> | <u>15A NCAC 02N .0903</u> |
| <u>15A NCAC 02L .0103</u> | | <u>15A NCAC 02L .0514</u> | <u>15A NCAC 02N .0904</u> |
| <u>15A NCAC 02L .0104</u> | | <u>15A NCAC 02L .0515</u> | <u>15A NCAC 02N .0905</u> |
| <u>15A NCAC 02L .0106</u> | | <u>15A NCAC 02N .0201</u> | <u>15A NCAC 02N .0906</u> |
| <u>15A NCAC 02L .0107</u> | | <u>15A NCAC 02N .0202</u> | <u>15A NCAC 02N .0907</u> |
| <u>15A NCAC 02L .0108</u> | | <u>15A NCAC 02N .0203</u> | <u>15A NCAC 02O .0201</u> |
| <u>15A NCAC 02L .0109</u> | | <u>15A NCAC 02N .0301</u> | <u>15A NCAC 02O .0202</u> |
| <u>15A NCAC 02L .0110</u> | | <u>15A NCAC 02N .0302</u> | <u>15A NCAC 02O .0203</u> |
| <u>15A NCAC 02L .0111</u> | | <u>15A NCAC 02N .0303</u> | <u>15A NCAC 02O .0204</u> |
| <u>15A NCAC 02L .0112</u> | | <u>15A NCAC 02N .0304</u> | <u>15A NCAC 02O .0301</u> |
| <u>15A NCAC 02L .0113</u> | | <u>15A NCAC 02N .0401</u> | <u>15A NCAC 02O .0302</u> |
| <u>15A NCAC 02L .0114</u> | | <u>15A NCAC 02N .0402</u> | <u>15A NCAC 02O .0303</u> |
| <u>15A NCAC 02L .0401</u> | | <u>15A NCAC 02N .0403</u> | <u>15A NCAC 02O .0304</u> |
| <u>15A NCAC 02L .0402</u> | | <u>15A NCAC 02N .0404</u> | <u>15A NCAC 02O .0305</u> |
| <u>15A NCAC 02L .0403</u> | | <u>15A NCAC 02N .0405</u> | <u>15A NCAC 02O .0306</u> |
| <u>15A NCAC 02L .0404</u> | | <u>15A NCAC 02N .0501</u> | <u>15A NCAC 02O .0307</u> |
| <u>15A NCAC 02L .0405</u> | | <u>15A NCAC 02N .0502</u> | <u>15A NCAC 02O .0308</u> |
| <u>15A NCAC 02L .0406</u> | | <u>15A NCAC 02N .0503</u> | <u>15A NCAC 02O .0401</u> |
| <u>15A NCAC 02L .0407</u> | | <u>15A NCAC 02N .0504</u> | <u>15A NCAC 02O .0402</u> |
| <u>15A NCAC 02L .0408</u> | | <u>15A NCAC 02N .0505</u> | <u>15A NCAC 02O .0501</u> |
| <u>15A NCAC 02L .0409</u> | | <u>15A NCAC 02N .0506</u> | <u>15A NCAC 02O .0502</u> |
| <u>15A NCAC 02L .0410</u> | | <u>15A NCAC 02N .0601</u> | <u>15A NCAC 02O .0503</u> |
| <u>15A NCAC 02L .0411</u> | | <u>15A NCAC 02N .0602</u> | <u>15A NCAC 02O .0504</u> |
| <u>15A NCAC 02L .0412</u> | | <u>15A NCAC 02N .0603</u> | <u>15A NCAC 02P .0103</u> |
| <u>15A NCAC 02L .0413</u> | | <u>15A NCAC 02N .0604</u> | <u>15A NCAC 02P .0201</u> |
| <u>15A NCAC 02L .0414</u> | | <u>15A NCAC 02N .0701</u> | <u>15A NCAC 02P .0202</u> |
| <u>15A NCAC 02L .0415</u> | | <u>15A NCAC 02N .0702</u> | <u>15A NCAC 02P .0301</u> |
| <u>15A NCAC 02L .0501</u> | | <u>15A NCAC 02N .0703</u> | <u>15A NCAC 02P .0302</u> |
| <u>15A NCAC 02L .0502</u> | | <u>15A NCAC 02N .0704</u> | <u>15A NCAC 02P .0401</u> |
| <u>15A NCAC 02L .0503</u> | | <u>15A NCAC 02N .0705</u> | <u>15A NCAC 02P .0402</u> |
| <u>15A NCAC 02L .0504</u> | | <u>15A NCAC 02N .0706</u> | <u>15A NCAC 02P .0403</u> |
| <u>15A NCAC 02L .0505</u> | | <u>15A NCAC 02N .0707</u> | <u>15A NCAC 02P .0404</u> |
| <u>15A NCAC 02L .0506</u> | | <u>15A NCAC 02N .0708</u> | <u>15A NCAC 02P .0405</u> |
| <u>15A NCAC 02L .0507</u> | | <u>15A NCAC 02N .0801</u> | <u>15A NCAC 02P .0406</u> |
| <u>15A NCAC 02L .0508</u> | | <u>15A NCAC 02N .0802</u> | <u>15A NCAC 02P .0407</u> |
| <u>15A NCAC 02L .0509</u> | | <u>15A NCAC 02N .0803</u> | |
| <u>15A NCAC 02L .0510</u> | | <u>15A NCAC 02N .0804</u> | |
| | | <u>15A NCAC 02N .0805</u> | |

**RRC Determination
Periodic Rule Review
February 15, 2018
Necessary without substantive public interest**

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| Administration, Department of | <u>01 NCAC 38 .0405</u> | <u>01 NCAC 40 .0303</u> |
| <u>01 NCAC 38 .0105</u> | <u>01 NCAC 38 .0406</u> | <u>01 NCAC 40 .0304</u> |
| <u>01 NCAC 38 .0202</u> | <u>01 NCAC 38 .0408</u> | <u>01 NCAC 40 .0305</u> |
| <u>01 NCAC 38 .0203</u> | <u>01 NCAC 38 .0409</u> | <u>01 NCAC 41B .0102</u> |
| <u>01 NCAC 38 .0204</u> | <u>01 NCAC 38 .0410</u> | <u>01 NCAC 41B .0104</u> |
| <u>01 NCAC 38 .0206</u> | <u>01 NCAC 38 .0601</u> | <u>01 NCAC 41B .0301</u> |
| <u>01 NCAC 38 .0207</u> | <u>01 NCAC 38 .0603</u> | <u>01 NCAC 41B .0302</u> |
| <u>01 NCAC 38 .0303</u> | <u>01 NCAC 39 .0101</u> | <u>01 NCAC 41B .0303</u> |
| <u>01 NCAC 38 .0304</u> | <u>01 NCAC 39 .0201</u> | <u>01 NCAC 41B .0304</u> |
| <u>01 NCAC 38 .0306</u> | <u>01 NCAC 39 .0301</u> | <u>01 NCAC 41B .0305</u> |
| <u>01 NCAC 38 .0401</u> | <u>01 NCAC 40 .0301</u> | <u>01 NCAC 41B .0306</u> |
| <u>01 NCAC 38 .0404</u> | <u>01 NCAC 40 .0302</u> | <u>01 NCAC 41B .0307</u> |

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Commerce, Department of

04 NCAC 19L .0101
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**Sheriffs Education and Training
Standards Commission**

12 NCAC 10B .0101
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12 NCAC 10B .0918
12 NCAC 10B .0919
12 NCAC 10B .0920
12 NCAC 10B .1001
12 NCAC 10B .1002
12 NCAC 10B .1003
12 NCAC 10B .1004
12 NCAC 10B .1005
12 NCAC 10B .1006
12 NCAC 10B .1101
12 NCAC 10B .1102
12 NCAC 10B .1103
12 NCAC 10B .1104
12 NCAC 10B .1105
12 NCAC 10B .1201

12 NCAC 10B .1202
12 NCAC 10B .1203
12 NCAC 10B .1204
12 NCAC 10B .1205
12 NCAC 10B .1206
12 NCAC 10B .1301
12 NCAC 10B .1302
12 NCAC 10B .1303
12 NCAC 10B .1304
12 NCAC 10B .1305
12 NCAC 10B .1306
12 NCAC 10B .1307
12 NCAC 10B .1308
12 NCAC 10B .1401
12 NCAC 10B .1402
12 NCAC 10B .1403
12 NCAC 10B .1404
12 NCAC 10B .1405
12 NCAC 10B .1406
12 NCAC 10B .1501
12 NCAC 10B .1502
12 NCAC 10B .1503
12 NCAC 10B .1504
12 NCAC 10B .1505
12 NCAC 10B .1601
12 NCAC 10B .1602
12 NCAC 10B .1603
12 NCAC 10B .1604
12 NCAC 10B .1605
12 NCAC 10B .1606
12 NCAC 10B .1901
12 NCAC 10B .2001
12 NCAC 10B .2002
12 NCAC 10B .2003
12 NCAC 10B .2004
12 NCAC 10B .2005
12 NCAC 10B .2006
12 NCAC 10B .2007
12 NCAC 10B .2008

12 NCAC 10B .2009
12 NCAC 10B .2101
12 NCAC 10B .2102
12 NCAC 10B .2103
12 NCAC 10B .2104
12 NCAC 10B .2105

**Environmental Management
Commission**

15A NCAC 02L .0201
15A NCAC 02L .0202
15A NCAC 02L .0301
15A NCAC 02L .0302
15A NCAC 02L .0303
15A NCAC 02L .0304
15A NCAC 02L .0305
15A NCAC 02L .0306
15A NCAC 02L .0307
15A NCAC 02L .0308
15A NCAC 02L .0309
15A NCAC 02L .0310
15A NCAC 02L .0311
15A NCAC 02L .0312
15A NCAC 02L .0313
15A NCAC 02L .0314
15A NCAC 02L .0315
15A NCAC 02L .0316
15A NCAC 02L .0317
15A NCAC 02L .0318
15A NCAC 02L .0319
15A NCAC 02N .0101
15A NCAC 02N .0102
15A NCAC 02N .0104
15A NCAC 02O .0101
15A NCAC 02O .0102
15A NCAC 02O .0103
15A NCAC 02P .0101
15A NCAC 02P .0102

**RRC Determination
 Periodic Rule Review
 February 15, 2018
 Unnecessary**

Administration, Department of

01 NCAC 38 .0101
01 NCAC 38 .0102
01 NCAC 38 .0104
01 NCAC 38 .0301
01 NCAC 38 .0307
01 NCAC 38 .0402
01 NCAC 38 .0403
01 NCAC 38 .0411

01 NCAC 38 .0501
01 NCAC 38 .0502
01 NCAC 38 .0602
01 NCAC 43B .0408
01 NCAC 43B .0514
01 NCAC 43B .0515

Commerce, Department of

04 NCAC 19L .1701

04 NCAC 19L .1702
04 NCAC 19L .1703

**Environmental Management
Commission**

15A NCAC 02L .0416
15A NCAC 02L .0417
15A NCAC 02P .0408

CONTESTED CASE DECISIONS

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 919-431-3000.

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
Don Overby
J. Randall May
David Sutton

A. B. Elkins II
Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer

| Year | Code | Number | Date Decision Filed | Petitioner | | Respondent | ALJ |
|------|------|--------|---------------------|--|----|---|--------------|
| | | | | <u>PUBLISHED</u> | | | |
| 17 | DHR | 08088 | 1/26/2018 | Annie Hasan 1st Start Child Development Center | v. | NC Department of Health and Human Services, Nutrition Services, Child & Adult Care Food Program | Bawtinheimer |
| 17 | DOJ | 04952 | 1/30/2018 | Edward Robin Hudson Jr | v. | NC Sheriffs Education and Training Standards Commission | Sutton |
| 17 | EDC | 04769 | 1/24/2018 | Tulsa Scales | v. | The State Board of Education | Sutton |
| 17 | INS | 01910 | 1/9/2018 | James E Best | v. | North Carolina State Health Plan | Bawtinheimer |
| 17 | INS | 05077 | 1/30/2018 | Cindi R Harris | v. | NC State Health Plan | Culpepper |
| | | | | <u>UNPUBLISHED</u> | | | |

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|----|-----|-------|-----------|-------------------|----|--|----------|
| 17 | CSE | 06851 | 1/8/2018 | Anthony M Weidner | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement | May |
| 17 | CSE | 06963 | 1/16/2018 | Michael A Bell | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement | Sutton |
| 17 | CSE | 06974 | 1/8/2018 | Stephani N Gadd | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement | May |
| 17 | CSE | 07034 | 1/9/2018 | Vernon Gibbs Jr | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement | Malherbe |

CONTESTED CASE DECISIONS

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|----|-----|-------|-----------|---|----|--|----------|
| 17 | CSE | 07276 | 1/16/2018 | Wanda R Anderson | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement | Sutton |
| 17 | CSE | 07373 | 1/8/2018 | Darrell E Bauldwin | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section | Malherbe |
| 17 | CSE | 07403 | 1/16/2018 | Allan A Young North Carolina Child Support Enforcement | v. | North Carolina Child Support Enforcement 000759517 Case # | Sutton |
| 17 | CSE | 07409 | 1/8/2018 | Alfred I Bryan | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section | Malherbe |
| 17 | CSE | 07462 | 1/16/2018 | Justin Livesay | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement | Sutton |
| 17 | CSE | 07569 | 1/16/2018 | John C Brown | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section | Malherbe |
| 17 | CSE | 07719 | 1/19/2018 | Anthony Cox | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement | Malherbe |
| 17 | CSE | 07964 | 1/25/2018 | Philip J McPoyle | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement | Sutton |
| 17 | CSE | 08035 | 1/25/2018 | Dwayn Moore | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section | May |
| 17 | CSE | 08039 | 1/31/2018 | Mark A Derrick | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section | Malherbe |
| 17 | CSE | 08092 | 1/30/2018 | Jerome Harvey | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section | Sutton |
| | | | | | | | |
| 17 | DAG | 07029 | 1/2/2018 | Ormond's Oil & Gas | v. | NC Department of Agriculture & Consumer Services | Overby |
| | | | | | | | |
| 17 | DCS | 04924 | 1/9/2018 | Sherri Lynch | v. | NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement | Malherbe |
| | | | | | | | |
| 17 | DHR | 05833 | 1/31/2018 | Danny Fisher | v. | Pender County Health Department Environmental Health Division | Lassiter |
| 17 | DHR | 06546 | 1/3/2018 | Lake Pointe Assisted Living Inc | v. | NC Department of Health and Human Services, Division of Health Service Regulation Adult Care Licensure Section | Lassiter |
| 17 | DHR | 07299 | 1/22/2018 | Miracle Houses Inc. Patsy Y Camp | v. | NC Department of Health and Human NCDHHS, DHSR, MHL and C | Malherbe |
| 17 | DHR | 07319 | 1/26/2018 | Miracle Houses Inc. Patsy Y Camp | v. | NCDHHS, DHSR, MHL and C | Malherbe |
| 17 | DHR | 07443 | 1/22/2018 | Options Driven | v. | NC Department of Health and Human Services, Division of Medical Assistance | Malherbe |
| 17 | DHR | 07564 | 1/18/2018 | Loree Ann Shuping | v. | Burke County DSS, IM Investigator Jessica Skipworth | Sutton |
| | | | | | | | |

CONTESTED CASE DECISIONS

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|----|-----|-------|------------------------|------------------------------------|----|--|----------|
| 17 | DOJ | 03629 | 1/3/2018; 1/10/2018 | Michael Earnest Moore | v. | NC Private Protective Services Board | Overby |
| 17 | DOJ | 04720 | 1/3/2018; 1/10/2018 | Alexander Samuel Smith | v. | NC Private Protective Services Board | Overby |
| 17 | DOJ | 06274 | 1/12/2018 | Kenneth Sinatra Whittington Jr. | v. | NC Sheriffs Education and Training Standards Commission | Sutton |
| 17 | DOJ | 07441 | 1/16/2018 | Timothy Michael Johnson | v. | NC Criminal Justice Education and Training Standards Commission | Sutton |
| 17 | DOJ | 07611 | 1/10/2018 | Jamie Rae Miller | v. | NC Private Protective Services Board | Overby |
| | | | | | | | |
| 17 | OSP | 00062 | 1/22/2018 | Amy W Crumpler | v. | Appalachian State University | Malherbe |
| 17 | OSP | 07557 | 1/9/2018 | Anthony Reeves | v. | DHHS | Ward |
| 17 | OSP | 08257 | 1/19/2018 | Alicia Marie Lopez | v. | NC Department of Transportation | Ward |
| 17 | OSP | 08267 | 1/3/2018 | Monica Adams | v. | Eastpointe LME/MCO, and Lynn Parrish, HR Director | Ward |