

NORTH CAROLINA REGISTER

VOLUME 32 • ISSUE 19 • Pages 1824 – 1916

April 2, 2018

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The Office of Administrative Hearings

Rules Division

6714 Mail Service Center

Raleigh, NC 27699-6714

Telephone (919) 431-3000

Fax (919) 431-3104

Julian Mann III, Director

Molly Masich, Codifier of Rules

Dana McGhee, Publications Coordinator

Lindsay Woy, Editorial Assistant

Contact List for Rulemaking Questions or Concerns

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

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

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

Raleigh, North Carolina 27609

(919) 431-3000

(919) 431-3104 FAX

contact: Molly Masich, Codifier of Rules

molly.masich@oah.nc.gov

(919) 431-3071

Dana McGhee, Publications Coordinator

dana.mcgee@oah.nc.gov

(919) 431-3075

Lindsay Woy, Editorial Assistant

lindsay.woy@oah.nc.gov

(919) 431-3078

Rule Review and Legal Issues

Rules Review Commission

1711 New Hope Church Road

Raleigh, North Carolina 27609

(919) 431-3000

(919) 431-3104 FAX

contact: Abigail Hammond, Commission Counsel

abigail.hammond@oah.nc.gov

(919) 431-3076

Amber Cronk May, Commission Counsel

amber.may@oah.nc.gov

(919) 431-3074

Amanda Reeder, Commission Counsel

amanda.reeder@oah.nc.gov

(919) 431-3079

Jason Thomas, Commission Counsel

jason.thomas@oah.nc.gov

(919) 431-3081

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

(919) 431-3080

Julie Brincefield, Administrative Assistant

julie.brincefield@oah.nc.gov

(919) 431-3073

Fiscal Notes & Economic Analysis and Governor's Review

Office of State Budget and Management

116 West Jones Street

Raleigh, North Carolina 27603-8005

(919) 807-4700

(919) 733-0640 FAX

Contact: Anca Grozav, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4740

Carrie Hollis, Economic Analyst

osbmruleanalysis@osbm.nc.gov

(919) 807-4757

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

(919) 715-2893

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

(919) 715-4000

150 Fayetteville Street, Suite 300

Raleigh, North Carolina 27601

contact: Sarah Collins

scollins@nclm.org

Legislative Process Concerning Rule-making

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27611

(919) 733-2578

(919) 715-5460 FAX

Karen Cochrane-Brown, Director/Legislative Analysis Division

karen.cochrane-brown@ncleg.net

Jeff Hudson, Staff Attorney

Jeffrey.hudson@ncleg.net

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
32:14	01/16/18	12/19/17	01/31/18	03/19/18	03/20/18	04/19/18	05/01/18	05/2018	10/13/18
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32:16	02/15/18	01/25/18	03/02/18	04/16/18	04/20/18	05/17/18	06/01/18	01/2019	11/12/18
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
32:18	03/15/18	02/22/18	03/30/18	05/14/18	05/21/18	06/21/18	07/01/18	01/2019	12/10/18
32:19	04/02/18	03/09/18	04/17/18	06/01/18	06/20/18	07/19/18	08/01/18	01/2019	12/28/18
32:20	04/16/18	03/23/18	05/01/18	06/15/18	06/20/18	07/19/18	08/01/18	01/2019	01/11/19
32:21	05/01/18	04/10/18	05/16/18	07/02/18	07/20/18	08/16/18	09/01/18	01/2019	01/26/19
32:22	05/15/18	04/24/18	05/30/18	07/16/18	07/20/18	08/16/18	09/01/18	01/2019	02/09/19
32:23	06/01/18	05/10/18	06/16/18	07/31/18	08/20/18	09/20/18	10/01/18	01/2019	02/26/19
32:24	06/15/18	05/24/18	06/30/18	08/14/18	08/20/18	09/20/18	10/01/18	01/2019	03/12/19
33:01	07/02/18	06/11/18	07/17/18	08/31/18	09/20/18	10/18/18	11/01/18	01/2019	03/29/19
33:02	07/16/18	06/22/18	07/31/18	09/14/18	09/20/18	10/18/18	11/01/18	01/2019	04/12/19
33:03	08/01/18	07/11/18	08/16/18	10/01/18	10/22/18	11/15/18	12/01/18	01/2019	04/28/19
33:04	08/15/18	07/25/18	08/30/18	10/15/18	10/22/18	11/15/18	12/01/18	01/2019	05/12/19
33:05	09/04/18	08/13/18	09/19/18	11/05/18	11/20/18	12/20/18	01/01/19	01/2019	06/01/19
33:06	09/17/18	08/24/18	10/02/18	11/16/18	11/20/18	12/20/18	01/01/19	01/2019	06/14/19
33:07	10/01/18	09/10/18	10/16/18	11/30/18	12/20/18	01/17/19	02/01/19	05/2020	06/28/19
33:08	10/15/18	09/24/18	10/30/18	12/14/18	12/20/18	01/17/19	02/01/19	05/2020	07/12/19
33:09	11/01/18	10/11/18	11/16/18	12/31/18	01/22/19	02/21/19	03/01/19	05/2020	07/29/19
33:10	11/15/18	10/24/18	11/30/18	01/14/19	01/22/19	02/21/19	03/01/19	05/2020	08/12/19
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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.

Department of Insurance
Change in Public Hearing Location

On April 18, 2018 at 10:00 a.m., the North Carolina Department of Insurance will be holding a public hearing for the readoption of the following two rules:

- 11 NCAC 20 .0202
- 11 NCAC 20 .0204

The location of the public hearing needs to be changed from Room B090B located in the Administration Building at 116 W. Jones Street, Raleigh, NC 27603.

The new location for the public hearing will be the 1st Floor Hearing Room, Room 131 (Albemarle Building) located at 325 N. Salisbury Street, Raleigh, NC 27603.

The Notice of Text was published in Volume 32 (page 1742) of the North Carolina Register on March 15, 2018.

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

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Office of the Commissioner of Banks intends to readopt with substantive changes the rules cited as 04 NCAC 03E .0101, .0102, .0201, .0401, .0402, .0601, .0602; 03F .0201, .0301, .0402, .0501, .0504-.0509, .0601, .0602; 03H .0102, .0103; 03J .0101, .0201-.0203, .0205, .0301, .0302, .0304, .0306, .0401; 03K .0101, .0201-.0203, .0205, .0206, .0301, .0401, .0402, .0501, .0502, .0601, .0701, .0703; 03L .0102, .0202, .0301, .0303, .0501, .0502; 03M .0101, .0201, .0205 and .0403 and readopt without substantive changes the rules cited as 04 NCAC 03E .0204, .0302; 03J .0204, .0303, .0305, .0402; 03K .0204, .0302, .0403-.0405, .0702; 03L .0101, .0201, .0302, .0401-.0403, .0601-.0603; 03M .0102, .0202-.0204, .0206, .0401, .0402, .0501, .0502, .0602, and .0701-.0703.

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>.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.nccob.gov/Public/financialinstitutions/ReadoptionofRules.aspx>

Proposed Effective Date: August 1, 2018

Public Hearing:

Date: May 3, 2018

Time: 9:00 a.m.

Location: 316 W. Edenton Street, 2nd Floor Hearing Room, Raleigh, NC 27603

Reason for Proposed Action: The Office of the Commissioner of Banks and the Banking Commission have met with stakeholders to review the rules for readoption in Subchapters 03E, 03F, 03H, 03J, 03K, 03L and 03M and have determined that the rules needed to be amended in order to modernize and clarify the language, improve readability, update the rules to current practices, and delete unnecessary or outdated language. The repeals are being made as part of the readoption process to eliminate outdated rules, eliminate rules that restate what is already in the general statutes, or eliminate rules that are no longer useful or necessary, and to reduce regulatory burden on our regulated entities.

Comments may be submitted to: Lonnie E. Christopher, Rules Coordinator, 316 W. Edenton Street, 4309 Mail Service Center, Raleigh, NC 27699-4309, phone (919) 715-7438, fax (919) 733-6918, lchristopher@nccob.gov

Comment period ends: June 1, 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 03 - BANKING COMMISSION

SUBCHAPTER 03E - LICENSEES UNDER NORTH CAROLINA CONSUMER FINANCE ACT

SECTION .0100 – LICENSING

04 NCAC 03E .0101 APPLICATION

(a) No person shall make loans under the provisions of the North Carolina Consumer Finance Act without first obtaining a license from the Commissioner of Banks. The application for a consumer finance license shall contain a request for a license to operate a business under the North Carolina Consumer Finance Act, incorporate all statutory requirements and criteria, and include payment of the statutory fee. A copy of the application, and information concerning its filing, may be obtained from the agency's website located at <https://www.nccob.gov>.
~~The form shall be obtained from and filed with:~~

Office of the Commissioner of Banks
316 West Edenton Street
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.

(b) Upon receipt of an application for a consumer finance license, the Commissioner of Banks shall give written notice of the application to all licensees operating within the community proposed to be served as described in the application. Where a licensee holds two or more licenses the notification is to be ~~mailed~~ provided to the home office of ~~such the~~ licensee. ~~The notification may be by copy of acknowledgment to the applicant.~~

(c) Following an investigation of the application pursuant to G.S. 53-168, the Commissioner of Banks shall decide as to:

- (1) approval of the application, or
- (2) denial of the application.

Authority G.S. 53-92; 53-95; 53-104; 53C-2-1; 53C-2-2; 53-168; 53-169; 53-170; 53-171; 53-185; 150B-21.2.

04 NCAC 03E .0102 APPROVAL

Authority G.S. 53-92; 53-95; 53-104; 53-168; 58-169; 53-172; 53-185; 53-188.

SECTION .0200 - ACTIONS REQUIRING APPROVAL OF COMMISSIONER OF BANKS

04 NCAC 03E .0201 OPERATION OF OTHER BUSINESS IN SAME OFFICE

Authority G.S. 53-92; 53-122(3); 53-168; 53-172; 53-185; 150B-21.2.

04 NCAC 03E .0204 TRANSFER OF LICENSE AND CHANGE OF LOCATION (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

SECTION .0300 - REPORTS REQUIRED BY COMMISSIONER OF BANKS

04 NCAC 03E .0302 ANNUAL REPORT (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

SECTION .0400 - EXAMINATION

04 NCAC 03E .0401 EXAMINATION

04 NCAC 03E .0402 REPORTS OF EXAMINATION

Authority G.S. 53-92; 53-184; 53-185.

SECTION .0600 - CONSUMER FINANCE OFFICES

04 NCAC 03E .0601 BOOKS AND RECORDS

Each consumer finance office licensed by the Commissioner of Banks shall keep the following books and accounting records. Except as may be permitted by G.S. 53-184(a), these records shall be maintained in each office and be ~~readily~~ available to the Commissioner of Banks or his authorized agent. ~~No books or records of the licensee shall show any account or reflect any~~

~~transaction other than those~~ Licensees must maintain separate loan ledgers and accounts directly related to the making and collecting of loans within the provisions of the Consumer Finance Act. ~~Act, including Where where~~ a licensee is also an installment paper dealer, ~~completely separate books and records shall be maintained, including for general ledger purposes a separate cash account.~~ dealer. Allocation of expenses shall be made monthly according to appropriate and reasonable accounting principles. All books and records covered by these Rules ~~must~~ shall be retained for a period of not less than three years after the last transaction:

- (1) Cash Transaction Journal. ~~The cash transaction journal shall be the book of original entry in which all~~ All transactions of receipts and disbursements of any nature or amount whatsoever shall be ~~itemized.~~ in a cash transaction journal, which shall be the book of original entry. Each transaction made in connection with a loan shall be identified with the loan by the name or account number of the borrower and shall ~~clearly~~ define the nature of each charge, collection, or refund made in connection with such loan. All entries shall ~~be made as of~~ reflect the exact date the transactions occur.
- (2) General Ledger. The general ledger shall be double entry, showing in ~~full~~ detail the total of assets, liabilities, capital, income, and expenses. Each account shall be ~~clearly and appropriately~~ separately and distinctly designated. No net or "wash" entries shall be made to any account. The general ledger shall be posted at least once each month and ~~such the~~ posting shall include all transactions through the last business day of the month. The actual posting ~~must~~ shall be completed by the ~~20th~~ 30th day of each ensuing month for the previous month's business. ~~In instances where an organization operates two or more offices, the general ledger may be maintained in a central accounting office of the organization, provided a trial balance shall be made as of the last business day of each month and a copy placed on file in each office not later than the last business day of the following month. Each debit or credit entry appearing on the general ledger each month shall appear on the trial balance. A detailed licensee shall maintain a description of each general ledger entry originating outside of a local office and not reflected on the cash book of that office shall be on file in each office to support such entries appearing on the general ledger. This shall include entry, including adjusting and closing entries. If any account on the general ledger does not agree with the corresponding account on the annual report to the Commissioner of Banks, a supplement to the annual report shall be furnished which that reconciles or explains any differences.~~

- (3) Individual Account Record. A separate account record shall be maintained for each loan made. Each account record shall provide the following information:
 - (a) name and address of ~~borrower spouse's name, borrower(s)~~ and the name of any other person obligated directly or indirectly on the loan;
 - (b) cross reference to other loans of the borrower, ~~or spouse, or~~ endorser, guarantor, ~~or~~ surety, or to any joint obligation of the borrower;
 - (c) account number;
 - (d) date of loan and maturity;
 - (e) length of contract;
 - (f) the cash advance, finance charge, number of payments and amount of each;
 - (g) date and amount of each payment, an allocation between ~~principal, and interest, principal, interest, and any fees authorized by statute~~ for each payment, and the remaining loan balance after each payment;
 - (h) brief description of security;
 - (i) type of insurance, insurance origination fees, and amount of insurance premium for each coverage written;
 - (j) amount of recording fee or non-filing charges;
 - (k) amount of any other charge whatsoever made in connection with the loan;
 - (l) amount of unearned insurance premium refunded for each coverage written;
 - (m) if refunds are paid by cash or check, acknowledgment of receipt of ~~refund by signature of borrower; refund;~~ and
 - (n) contract interest rate and the annual percentage rate computed under Regulation Z, if different.
- (4) Index of Borrowers. Each office shall keep ~~an a~~ a single report showing a cumulative index record on which of all loans to each individual, which shall be entered in order, showing by date made, showing the account number, amount of loan, and date of cancellation. ~~This record shall be maintained on individual index cards or on the face of the borrower's individual file, "shuck," "jacket," or folder and shall be filed alphabetically or by account number, provided where the account number is used an alphabetical cross index be available to the examiner.~~
- (5) Loan Documents. ~~After January 1, 1994, loans~~ Loans made by a licensee shall on the loan contract contain the following statement printed in a conspicuous manner: "This loan is regulated by the provisions of the North Carolina Consumer Finance Act, located at Chapter 53, Article 15 of the North Carolina General Statutes."
- (6) Judgments. When a loan has been reduced to final judgment, all of the following provisions shall be complied with:
 - (a) the individual account record maintained pursuant to Subpart (3) of this Rule shall ~~clearly~~ be designated a judgment account;
 - (b) payments received shall be identified and applied on the judgment account record;
 - (c) the licensee shall maintain ~~in the office from which the judgment account originated~~ a copy of the final judgment and any other court documents ~~which~~ that are necessary to disclose the following information:
 - (i) final judgment date;
 - (ii) name of licensee;
 - (iii) final judgment debtor's name;
 - (iv) date suit was filed;
 - (v) nature of the suit;
 - (vi) name and location of the court;
 - (vii) amount of the final judgment, specifying principal, interest charges, any fees authorized by statute, and court costs; and
 - (viii) disposition of the case;
 - (d) a licensee ~~which that~~ charges a borrower for court costs it incurred on a final judgment account shall itemize such costs on the individual account record and retain a receipt or other document substantiating the costs; and
 - (e) a licensee shall retain a copy of the sheriff's return of execution issued when property is sold pursuant to a final judgment.
- (7) Repossessions. When property is taken in accordance with the terms of a security agreement or by judicial process or abandonment, the individual account record shall be ~~clearly~~ designated as a repossession account and shall state when and how possession of the security was obtained and shall identify the proceeds of the sale of the property. The licensee shall also retain ~~in the office in which the repossession account originated,~~ all of the following:
 - (a) a copy of any agreement entered into with the borrower with respect to the terms of surrender;

- (b) a copy of the notice of sale, together with evidence of mailing or personal delivery;
 - (c) an inventory of the property taken, unless it otherwise appears in detail on the notice of sale;
 - (d) a signed bill of sale or a statement from the purchasers, or from the auctioneer if the sale was public, describing the collateral purchased and showing the amounts paid;
 - (e) evidence that the sale took place on the date set forth in the notice of sale, including a notice of any bids received;
 - (f) copy of a detailed final accounting sent to the borrower setting forth the disposition of the proceeds of sale and the principal balance due, if any, on the account; and
 - (g) paid receipts evidencing costs incurred in the repossession and sale of the security ~~which that~~ have been charged to the borrower.
- (8) ~~Insurance Records. A licensee shall maintain in each office where a loan account originated, a record of any claims paid under insurance written in connection with a consumer finance loan. The records shall include:~~ Late Fees.
- (a) ~~the loan number and name of debtor;~~ Lenders may apply a borrower's most recent payment to the oldest installment due;
 - (b) ~~description of the insurance claim, i.e., whether death claim, property damage, or claim for benefits under accident and health insurance; and A lender may not collect more than one late fee from any full or partial payment made toward a particular scheduled installment payment; however, a lender may collect more than one late fee from any payment made toward more than one installment payment, provided the number of late fees collected does not exceed the number of different installment payments to which such payment was applied.~~
 - (c) ~~in the case of claims under credit life insurance, a copy of the certified death certificate. If a lender declares a borrower in default and accelerates a loan, the lender may collect a late fee for each installment payment that is past due for 10 days or more.~~
 - (d) If a lender refinances a loan, a lender may include in the amount financed

late fees for each installment payment that is past due for 10 days or more.

- (e) If a loan reaches maturity, a lender may include in the final balance owed a late fee for each installment payment that remains past due for 10 days or more.

- (9) Deferral Charges. For any loan made on or after July 1, 2013, licensees may assess a deferral charge of one and one-half percent (1 ½ percent) for each month of the remaining loan term on each installment owed after the date of deferral. Licensees may charge a late fee on deferred payments that remain past due for 10 days or more after the agreed upon due date. Deferrals do not alter the maturity date of the loan contract, even where a payment is deferred beyond maturity.

- (10) ELT Fees. Licensees who are required by the North Carolina Department of Motor Vehicles (NCDMV) to use its electronic lien title (ELT) system to file or record the licensee's security interest in a vehicle may collect from borrowers those fees actually charged by NCDMV, ELT vendors, and service provider vendors to use the ELT system. When a borrower takes out a junior lien on a vehicle pledged as security, licensees who are senior lienholders with an already perfected lien may collect from borrowers those fees actually charged to the licensee by NCDMV, ELT vendors, and service provider vendors, provided the licensee has disclosed the potential for the fee at origination of the loan. Licensees should account for ELT fees as they account for other government recording fees as described in Sub-item (3)(j) of this Rule.

Authority G.S. 53-92; 53-104; 20-58.4A; 53-184; 53-185; 53-177; 450B-21.2; 53C-2-1; 53C-2-2.

04 NCAC 03E .0602 COLLECTION PRACTICES

Authority G.S. 53C-2-1; 53C-2-2; 53-180; 53-185.

SUBCHAPTER 03F - LICENSEES UNDER MONEY TRANSMITTERS ACT

SECTION .0200 - ADMINISTRATIVE

04 NCAC 03F .0201 DEFINITIONS

Authority G.S. 53-208.27.

SECTION .0300 - LICENSING

04 NCAC 03F .0301 APPLICATION FOR A LICENSE

- (a) ~~Any person who wishes to sell or issue checks in this State pursuant to the Money Transmitters Act must first obtain a license~~

issued by the Commissioner. An application for a license can be obtained from and shall be filed pursuant to Rule .0201(b) of this Subchapter.

(b) An application for a Money Transmitters' license shall include information required by G.S. 53-208.5 through G.S. 53-208.10 of Chapter 53, Article 16A. The application must be submitted on a form provided by the Commissioner.

(c) ~~In addition to the documents and information listed in Paragraph (b) of this Rule, the Commissioner may require additional information necessary to complete an investigation pursuant to G.S. 53-208.10.~~

(d) Incomplete application files shall be closed and deemed ~~denied~~ withdrawn without prejudice when the applicant has not submitted information requested by the Commissioner within 30 days of such request.

Authority G.S. 53-208.3; 53-208.27; 53-208.45; 53-208.60.

SECTION .0400 - OPERATIONS

04 NCAC 03F .0402 SURRENDER OF LICNENSE

Authority G.S. 53-208.27.

SECTION .0500 - REPORTING AND NOTIFICATIONS

04 NCAC 03F .0501 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

Authority G.S. 53-208.27.

- 04 NCAC 03F .0504 AGENT ACTIVITY REPORTS**
- 04 NCAC 03F .0505 AMENDMENTS TO APPLICATION**
- 04 NCAC 03F .0506 REVOCATION OF CANCELLATION OF SURETY BOND**
- 04 NCAC 03F .0507 CEASING OPERATOINS**
- 04 NCAC 03F .0508 IMPAIRMENT OF MINIMUM NET WORTH**
- 04 NCAC 03F .0509 DISHONOR OR DEFAULT IN PAYMEN INSTRUMENT**

Authority G.S. 53-208.5; 53-208.8; 53-208.27.

SECTION .0600 - EXAMINATION; BOOKS AND RECORDS

- 04 NCAC 03F .0601 RECORD AND BOOKKEEPING REQUIREMENTS**
- 04 NCAC 03F .0602 EXAMINATION FEE**

Authority G.S. 53-208.15; 53-208.16; 53-208.20; 53-208.27; 53-282(c).

SUBCHAPTER 03H - APPLICATIONS BY REGIONAL BANK HOLDING COMPANIES

SECTION .0100 - REGIONAL BANK HOLDING COMPANIES

04 NCAC 03H .0102 REGIONAL BANK HOLDING COMPANY ACQUISITIONS

04 NCAC 03H .0103 BANK HOLDING COMPANY REGISTRATION

Authority G.S. 53-211; 53-214(b); 53-227; 53-230.

SUBCHAPTER 03J - REFUND ANTICIPATION LOAN

SECTION .0100 - ADMINISTRATIVE

04 NCAC 03J .0101 DEFINITIONS; FILINGS

(a) Terms defined in G.S. 53-246 have the same meaning as in this Subchapter. As used in this Subchapter, unless the context clearly requires otherwise:

- (1) "Applicant" shall have the same meaning as set forth in G.S. 53-246(1).
- (2) "Commission" shall have the same meaning as set forth in G.S. 53-246(2).
- (3) "Commissioner" shall have the same meaning as set forth in G.S. 53-246(3).
- (4)(1) "Controlling person" ~~shall mean~~ means any person as defined in G.S. 53-246(7) who owns or holds with the power to vote 10% or more of the equity securities of the registrant, or who has the power to direct the management and policy of the registrant.
- (5) "Creditor" ~~shall have the same meaning as set forth in G.S. 53-246(4).~~
- (6)(2) "Creditor loan fee" ~~shall mean~~ means the fee charges, fees, or other consideration charged or imposed by the creditor ~~which funds the refund anticipation loan in consideration for funding the refund anticipation loan. for the making of a refund anticipation loan.~~
- (7) "Debtor" ~~shall have the same meaning as set forth in G.S. 53-246(5).~~
- (8)(3) "Electronic filing fee" ~~shall mean~~ means the fee imposed by the facilitator in consideration for the electronic filing of a tax return.
- (9) "Executive officer" ~~shall have the same meaning as such term is defined in Regulation "O" promulgated by the Board of Governors of the Federal Reserve System, and codified in the Code of Federal Regulations at Title 12, Chapter II, Part 215.~~
- (10) "Facilitator" shall have the same meaning as set forth in G.S. 53-246(6).
- (11)(4) "Facilitator loan fee" ~~shall mean~~ means the fee charges, fees, or other consideration charged or imposed by the facilitator ~~in consideration for assisting the debtor in obtaining the refund anticipation loan. for the making of a refund anticipation loan.~~
- (12) "Income tax return preparation fee" shall mean the fee imposed by a person in consideration for preparation of the debtor's tax returns.
- (13) "Loan related fee" shall mean any fee other than a creditor fee, facilitator loan fee or

~~electronic filing fee paid by the debtor for transmittal to third persons who provide services in connection with the refund anticipation loan.~~

- (14) ~~"Person" shall have the same meaning as set forth in G.S. 53-246(7).~~
- (15) ~~"Refund anticipation loan" shall have the same meaning as set forth in G.S. 53-246(8).~~
- (16)(5) ~~"Refund Anticipation Loan Act" shall mean~~ means the Refund Anticipation Loan Act codified at Chapter 53, Article 20 of the North Carolina General Statutes (G.S. 53-245, et seq.).
- (17) ~~"Refund anticipation loan fee" shall have the same meaning as set forth in G.S. 53-246(9) and shall include a creditor fee, facilitator loan fee, and loan related fee as defined herein.~~
- (18) ~~"Registrant" shall have the same meaning as set forth in G.S. 53-246(10).~~
- (19)(6) ~~"Transmitter" shall mean~~ means any person as defined herein who transmits electronic returns directly to the Internal Revenue Service. This term shall include persons who receive information to be reformatted and transmitted to the Internal Revenue Service, i.e., third-party transmitters.

(b) An application for registration or any report, notice, form or other document which is required by law or rule to be filed with the Commissioner shall be ~~addressed as follows:~~ obtained from and submitted electronically at <https://www.nccob.gov>.

Office of the Commissioner of Banks
4309 Mail Service Center
Raleigh, North Carolina 27699-4309.

Authority G.S. 53-245; 53-246; 53-248; 53-253; 150B-21.2.

SECTION .0200 - APPLICATION AND RENEWAL

04 NCAC 03J .0201 APPLICATION FOR REGISTRATION AS A FACILITATOR

~~(a) Any person who would like to engage in business as a facilitator pursuant to the Refund Anticipation Loan Act shall first be registered with the Commissioner, unless such person is exempt from registration pursuant to G.S. 53-247(c) or G.S. 53-254. An application for registration shall be obtained from the Commissioner and shall be filed pursuant to Rule .0101(b) of this Subchapter.~~

~~(b)(a)~~ The application for registration as a facilitator shall include the following:

- (1) A description of the applicant's organizational structure, ~~including the name, business and residence address~~ address, and business telephone number of the applicant, its partners, ~~executive officers, directors and the name of its~~ controlling persons;
- (2) Copies of the following documents, where applicable:
 - (A) The applicant's Articles of Incorporation, Articles of

Organization, or ~~general or limited~~ partnership agreement;

- (B) A Certificate of Existence or Certificate of Good Standing not more than 90 days old from the applicant's state of incorporation;
- (C) A Certificate of Authority to do business in this State; and
- (D) A copy of the applicant's Certificate of Assumed ~~Name~~; Name.
- (3) A description of the applicant's operations, including the names and addresses of the ~~banks~~ which lenders that will fund refund anticipation loans to its customers, and the names and addresses of transmitters and any other intermediary parties involved in the process of facilitating refund anticipation loans;
- (4) A description of the business(es) in which the applicant is primarily engaged;
- (5) The applicant's Electronic Filer Identification Number (EFIN) and Preparer Tax Identification Number (PTIN) as provided by the Internal Revenue Service;
- (6) Proof that the applicant has been accepted by the Internal Revenue Service to participate in its electronic filing program for the present tax year;
- (7) Disclosure of any civil judgments entered against the applicant, ~~its partners, executive officers, directors or its~~ controlling persons during the past 10 years ~~which that~~ which that have remained partially or wholly unpaid;
- (8) Disclosure of any civil proceedings pending against or civil judgments entered against the applicant, ~~its partners, executive officers, directors or its~~ controlling persons ~~which that~~ which that involve fraud or dishonesty;
- (9) Disclosure of any felony convictions entered against the applicant, ~~its partners, executive officers, directors or its~~ controlling persons;
- (10) Disclosure of any misdemeanor convictions entered against the applicant ~~its partners, executive officers, directors or its~~ controlling persons ~~which that~~ which that involve theft, fraud, or dishonesty;
- (11) Disclosure of any enforcement proceeding brought against the applicant ~~its partners, executive officers, directors or its~~ controlling persons by any agency or department of this State, the Federal government or any other state ~~which that~~ which that involves the revocation or suspension of any business license;
- (12) Disclosure of whether the applicant, ~~any partner, executive officer, director, or its~~ controlling ~~person has~~ persons have been denied acceptance in or suspended from the Electronic Filing Program of the Internal Revenue Service;

- (13) Disclosure of whether the applicant is, or has ever been, the subject of the following proceedings: bankruptcy, assignment for the benefit of creditors, receivership, conservatorship, or similar proceeding; and
- (14) ~~Three business references, including one bank reference;~~

- (15)(14) The address of each office in this State at ~~which~~ that the applicant intends to facilitate refund anticipation loans.

~~(c) The application for registration as a facilitator shall be accompanied by a fee made payable to the Commissioner in the amount set forth in G.S. 53-248(a).~~

~~(d) The application shall be in writing and verified.~~

~~(e)(b) Incomplete application files applications shall be closed and the application deemed denied without prejudice withdrawn when the applicant has not submitted information requested by the Commissioner within 30 days of request. If an application is withdrawn, the applicant shall submit a new application and pay all fees associated with the application.~~

Authority G.S. 53-245(b); 53-247(a); 53-248(a); 53-253; 150B-21.2.

04 NCAC 03J .0202 ISSUANCE OF A CERTIFICATE OF REGISTRATION
04 NCAC 03J .0203 EXPIRATION AND RENEWAL

Authority G.S. 53-248(a), (b); 53-253; 150B-21.2.

04 NCAC 03J .0204 APPLICATION FOR RENEWAL OF CERTIFICATE OF REGISTRATION (READoption WITHOUT SUBSTANTIVE CHANGES)

04 NCAC 03J .0205 NONTRANSFERABILITY OF CERTIFICATE OF REGISTRATION

(a) A Certificate of Registration shall be neither transferable nor assignable.

~~(b) The circumstances under which the Commissioner shall deem a change in the registrant's organizational structure to constitute a transfer or assignment of the Certificate of Registration shall include, but not be limited to, the following:~~

- (1) ~~If the registrant is a corporation:~~
 - ~~(A) A change in ownership of 50% or more of the registrant's stock;~~
 - ~~(B) The conversion of the corporation into a general or limited partnership or proprietorship;~~
- (2) ~~If the registrant is a general or limited partnership:~~
 - ~~(A) A change in one of the registrant's general partners;~~
 - ~~(B) The conversion of the general partnership into a limited partnership, corporation or proprietorship;~~
 - ~~(C) The conversion of the limited partnership into a general partnership, corporation or proprietorship;~~
- (3) ~~If the registrant is a proprietor:~~

~~(A) The conversion of the proprietorship into a general or limited partnership or corporation;~~

~~(B) The sale of all of the assets of the registrant's business to another person.~~

~~(e)(b) Upon a change in organization organizational structure that may include a change to or from a sole proprietorship, partnership, limited partnership, general partnership, limited liability company, or corporation as set forth in Paragraph (b) of this Rule, the Certificate of Registration shall become void and the registrant shall surrender its Certificate of Registration to the Commissioner within 30 days of such change. void.~~ If the entity which results from the change in the registrant's organization would like to engage in business as a facilitator in this State, it shall apply for a Certificate of Registration pursuant to Rule .0201 of this Section.

Authority G.S. 53-253; 150B-21.2.

SECTION .0300 - OPERATIONS, REPORTING REQUIREMENTS, NOTIFICATIONS

04 NCAC 03J .0301 CHECK CASHING SERVICES

Authority G.S. 53-250(5); 53-253; 150B-21.2.

04 NCAC 03J .0302 RECORD AND BOOKKEEPING REQUIREMENTS

(a) A registrant shall maintain the following records with respect to each application for a refund anticipation loan in this State. These records shall be kept in an office or offices of the registrant in this State. This Rule shall not be interpreted to require a registrant to maintain one central office at which all records required ~~herein~~ are located:

- (1) Name of applicant for a refund anticipation loan;
- (2) Social security number of applicant for a refund anticipation loan;
- (3) Date of application;
- (4) Disposition of application, e.g., whether loan was funded, denied, etc.;
- (5) The gross amount of the refund anticipation loan;
- (6) The amount of the creditor fee;
- (7) The amount of the facilitator loan fee, if any;
- ~~(8) The amount of the loan related fees, if any;~~
- ~~(9)(8) The amount of the electronic filing fee;~~
- ~~(10)(9) The amount of refund anticipation loan proceeds disbursed by the registrant to the debtor;~~
- ~~(11)(10) The date on which refund anticipation loan proceeds were disbursed by the registrant to the debtor; and~~
- ~~(12)(11) The identity of the registrant's executive officer, partner or employee individual originating the application for the refund anticipation loan; loan.~~
- (13) ~~The number, identity of drawer and amount of the check delivered to the debtor in payment of the proceeds of the refund anticipation loan;~~

(14) ~~A copy of Internal Revenue Service Form No. 8453 or any successor Form.~~

(b) ~~An original (where the drawer is the registrant) or a copy Evidence of all checks disbursement delivered by the registrant to each debtor in payment of the proceeds of the refund anticipation loan shall be available upon request by the Commissioner.~~

(c) ~~All records required by Paragraph (a) of this Rule may be maintained in any reasonable manner that the registrant selects. Where applicable, the information required by Paragraph (a) of this Rule may be maintained by the retention of copies of forms used to comply with state or federal statutes, rules and regulations.~~

(d) ~~All records required to be kept pursuant to Paragraph (a) of this Rule may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media. However, records kept in this manner shall be convertible into clearly legible, tangible documents within 24 hours of request. This time period shall be extended for an additional reasonable time by the Commissioner if the registrant demonstrates to the satisfaction of the Commissioner that it cannot provide the records requested within 24 hours of request.~~

(e)(c) ~~All records required to be kept pursuant to Paragraph (a) of this Rule shall be kept for a period of at least three years.~~

Authority G.S. 53-249; 53-250; 53-253; 150B-21.2.

04 NCAC 03J .0303 FILING AND POSTING OF FEE SCHEDULE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

04 NCAC 03J .0304 DISCLOSURES

(a) For the purposes of G.S. 53-249(d)(1), (2), the registrant shall disclose and provide a copy to the debtor the following fees:

- (1) The creditor loan fee;
- (2) The facilitator loan fee; and
- (3) ~~All loan related fees;~~
- (4)(3) The electronic filing fee; fee.
- (5) ~~The total dollar amount of the fees disclosed pursuant to Subparagraphs (a)(1) (3) of this Rule.~~

(b) For the purposes of G.S. 53-249(d)(5), the term "appropriate taxing authority" shall mean the Internal Revenue Service.

(c) ~~All disclosures made pursuant to G.S. 53-249(d) shall be made on a form or forms detached from the application. The registrant shall provide an applicant for a refund anticipation loan with a copy of all such disclosure forms. In the case of an application for a refund anticipation loan by a married couple who are filing a joint tax return, the registrant may satisfy this provision by providing one copy of all such disclosure forms to the couple.~~

Authority G.S. 53-249(d); 53-253; 150B-21.2.

04 NCAC 03J .0305 AMENDMENTS TO APPLICATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

04 NCAC 03J .0306 CESSATION OF OPERATIONS

Authority G.S. 53-253; 150B-21.2.

SECTION .0400 - ENFORCEMENT

04 NCAC 03J .0401 HEARINGS

Authority G.S. 53-251; 53-253; 150B-21.2.

04 NCAC 03J .0402 EXAMINATIONS, AUDITS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 03K - REVERSE MORTGAGES

SECTION .0100 - ADMINISTRATIVE

04 NCAC 03K .0101 DEFINITIONS; FILINGS

(a) As used in this Subchapter, unless the context clearly requires otherwise:

- (1) Terms defined in G.S. 53-257 ~~shall~~ have the same meaning as set forth therein;
- (2) "Accounting period" ~~shall mean~~ means either a period of 12 months (or less in the first year of operation) ending December 31 or a fiscal year of not more than 12 months ~~(or less in the first year of operation)~~ ending on the last day of any month except December;
- (3) "Application fee" ~~shall mean~~ means any fee accepted by an authorized lender or lenders in connection with an application for a reverse mortgage loan including any charge for soliciting, processing, ~~placing~~ or negotiating a reverse mortgage loan. ~~The term does not include a third party fee as such term is defined in Subparagraph (a)(8) of this Rule; loan;~~
- (4) "Branch" has the same meaning as defined in G.S. 53-244.030(4);
- (4)(5) "Certified Financial Statements" shall mean the Statement of Financial Position, Income Statement, Statement of Cash Flows, and Statement of Retained Earnings which have been attested by a certified public accountant; "Engaging in the mortgage business" has the same meaning at G.S. 53-244.030(11);
- (5)(6) "Person" shall mean an individual, corporation, partnership, trust, association, or other entity; "Mortgage lender" has the same meaning as G.S. 53-244.030(20);
- (6)(7) "Regulation Z" shall mean Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified at 12 CFR Part 226, et seq.; "NC SAFE Act authorized lender" means a mortgage lender licensed in this State that has obtained a Notice of Authorization;
- (7)(8) "RESPA" shall mean the Real Estate Settlement Procedures Act, codified at 12 USC 2601, et seq.; "Notice of Authorization" means the document granted by the Commissioner that authorizes a mortgage lender to engage in the business of making reverse mortgage loans.

- (8)(9) ~~"Third Party fee" shall mean the fees or charges paid by the borrower for a mortgage loan to the lender for transmittal to third persons who provide services in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney's fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges; "Person" has the same meaning as G.S. 53-244.030(25);~~
- (9) ~~"Truth In Lending Act" shall mean Title I of the Consumer Credit Protection Act, as amended, and codified at 15 USC 1601, et seq..~~

(b) Any application for authorization to make reverse mortgage loans, ~~or~~ any report, annual statement, amendment to application, notice or other document ~~which~~ that is required by law or rule shall be obtained and filed with the Commissioner of Banks located at 316 West Edenton Street, Raleigh, North Carolina 27603. The mailing address is 4309 Mail Service Center, Raleigh, North Carolina 27699 4309. Banks. Forms shall be obtained at <http://www.nccob.gov>.

Authority G.S. 53-257; 53-259; 53-271(a).

SECTION .0200 - AUTHORIZATION OF REVERSE MORTGAGE LENDERS

04 NCAC 03K .0201 APPLICATION FOR AUTHORIZATION AS A REVERSE MORTGAGE LENDER

(a) ~~No person shall make reverse mortgage loans pursuant to the Reverse Mortgage Act without first obtaining authorization from the Commissioner. An application for authorization to make reverse mortgage loans shall be obtained from the Commissioner and shall be filed pursuant to Rule .0101(b) of this Subchapter.~~

(b) ~~The following fees shall be submitted with the application for authorization to make reverse mortgage loans:~~

- (1) ~~A non refundable application fee made payable to the Commissioner in the amount set forth in G.S. 53-258(b);~~
- (2) ~~An annual fee made payable to the Commissioner as set forth in G.S. 53-258(d).~~

~~(c)(a) The application shall be in writing writing, and verified by the oath of attested by the applicant. Applicant, and filed pursuant to Rule .0101(b) of this Subchapter, and shall include the following:~~

~~(d) The application shall include:~~

- (1) ~~The applicant's Articles of Incorporation, or General or Limited Partnership Agreement;~~
- (2) ~~A Certificate of Existence or Certificate of Good Standing, not more than 90 days old, from the applicant's state of incorporation;~~
- (3) ~~A Certificate of Authority to do business in this State;~~
- (4) ~~A copy of the applicant's Certificate of Assumed Name;~~
- (5) ~~Disclosure of any criminal proceedings pending against or criminal convictions entered against~~

~~the applicant, its partners, directors, principal officers or controlling persons;~~

(6) ~~Disclosure of any civil proceedings pending against or civil judgments entered against the applicant, its partners, directors, principal officers or controlling persons which involve fraud or dishonesty;~~

(7) ~~Disclosure of any civil judgments entered against the applicant, its partners, directors, principal officers or controlling persons during the past 10 years which have remained partially or wholly unpaid;~~

(8) ~~Disclosure of the following proceedings involving the applicant: bankruptcy, assignment for the benefit of creditors, receivership, conservatorship or similar proceeding;~~

(9) ~~Disclosure of enforcement proceedings by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, or any other federal or state agency against the applicant, its partners, directors, principal officers or controlling persons which involve licensure or business activities as a mortgage broker or mortgage banker;~~

(10)(1) ~~A an updated business plan that includes a description of the applicant's reverse mortgage business operations and organizational structure; operations;~~

(11)(2) ~~The the addresses at which the applicant intends to engage in business as a reverse mortgage lender, including branch offices and the name of the each branch manager at each branch office; manager.~~

(12)(3) ~~A a description of the business experience, current business activities and education of the applicant, its partners, directors, principal officers and controlling persons; and~~

(13)(4) ~~Three three business references, including one bank reference.~~

~~(e)(b) In addition to the documents and information described in Paragraph (d)(a) of this Rule, the Commissioner may require additional information as necessary to make the findings required by G.S. 53-258 and G.S. 53-271.~~

~~(f) In the event of denial of an application, the Commissioner shall refund in full any annual fee paid pursuant to G.S. 53-258(d).~~

~~(g)(c) Incomplete application files may be closed and deemed denied without prejudice withdrawn when the applicant has not submitted information requested by the Commissioner within 30 days of the request.~~

Authority G.S. 53-258(a),(b),(d); 53-259; 53-271(a).

04 NCAC 03K .0202 NOTIFICATION OF INTENT TO ENGAGE IN REVERSE MORTGAGE LENDING

Authority G.S. 53-258(a)(c); 53-259; 53-271(a).

**04 NCAC 03K .0203 CURRENT AUTHORIZED
LENDER INFORMATION**

(a) ~~An A NC SAFE Act~~ authorized lender shall notify the Commissioner within 30 days of the effective date of any material changes to the information on file with the Commissioner. Notification shall be made on the lender's letterhead.

(b) ~~Notification to the Commissioner of all material changes shall be made on the authorized lender's letterhead and filed pursuant to Rule .0101(b) of this Subchapter.~~

(c)~~(b)~~ For the purposes of this Rule, the term "material" shall mean means any information ~~which that~~ would be likely to influence the granting of authorization to engage in reverse mortgage lending. The term "material" shall also include ~~but not be limited to~~ information concerning a changes change in the address of the authorized lenders, directors, corporate officers, partners, or the business structure. It shall also include changes in the address of the authorized lender's main or branch offices and any names under which the applicant operates. lender's reverse mortgage branch locations or the cessation of reverse mortgage lending activities in this state.

Authority G.S. 53-258(b),(d); 53-259; 53-271.

**04 NCAC 03K .0204 ANNUAL REGISTRATION FEE
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 03K .0205 CERTIFICATE OF
AUTHORIZATION**

Authority G.S. 53-122(3); 53-258(b)(d); 53-259; 53-271(a).

**04 NCAC 03K .0206 NONTRANSFERABILITY OF
CERTIFICATE OF AUTHORIZATION**

~~(a)~~ A Certificate of Authorization shall be neither transferrable nor assignable.

~~(b) The circumstances under which the Commissioner shall deem a change in the authorized lender's organizational structure to constitute a transfer or assignment of the Certificate of Authorization shall include, but not be limited to, the following:~~

- ~~(1) If the authorized lender is a corporation:~~
 - ~~(A) A change in ownership of 50% or more of the authorized lender's stock;~~
 - ~~(B) The conversion of the corporation into a general or limited partnership or sole proprietorship.~~
- ~~(2) If the authorized lender is a general or limited partnership:~~
 - ~~(A) A change in one of the authorized lender's general partners;~~
 - ~~(B) The conversion of the general partnership into a limited partnership, corporation or sole proprietorship;~~
 - ~~(C) The conversion of the limited partnership into a general partnership, corporation or sole proprietorship.~~
- ~~(3) If the authorized lender is a sole proprietor:~~
 - ~~(A) The conversion of the sole proprietorship into a general or limited partnership or corporation;~~

~~(B) The sale of all of the assets of the authorized lender's business to another person.~~

~~(c) Upon a change in organization as set forth in Paragraph (b) of this Rule, the authorized lender's registration shall become void and the authorized lender shall surrender its Certificate of Authorization to the Commissioner within 30 days of such change. If the entity which results from the change in the authorized lender's organizational structure would like to engage in business as a reverse mortgage lender in this State, it shall apply for authorization pursuant to Rule .0201 of this Section.~~

Authority G.S. 53-258(d); 53-259; 53-271(a).

**SECTION .0300 - REQUIREMENTS FOR
AUTHORIZATION**

**04 NCAC 03K .0301 MINIMUM NET WORTH
REQUIREMENT FOR AUTHORIZED LENDER OR
LENDERS**

Authority G.S. 53-258(b); 53-259; 53-271(a).

**04 NCAC 03K .0302 SURETY BONDS (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0400 - OPERATIONS, NOTIFICATIONS, AND
REPORTING**

**04 NCAC 03K .0401 CERTIFIED FINANCIAL
STATEMENTS**

Authority G.S. 53-259; 53-271(a).

**04 NCAC 03K .0402 RECORD AND BOOKKEEPING
REQUIREMENTS**

(a) All NC SAFE Act authorized lenders shall maintain their books and records relating to the making of reverse mortgage loans for a period of three years after payment of the debt in a manner permitting inspection by the Commissioner.

~~(b) All financial records required by Paragraph (a) of this Rule shall be prepared in accordance with generally accepted accounting principles.~~

~~(c)(b)~~ An NC SAFE Act authorized lender shall notify the Commissioner of any change in the location of its books and records.

~~(d) In the case of an out of state lender, the lender shall designate the Commissioner as agent for service of process in connection with any reverse mortgage loan transaction.~~

Authority G.S. 53-259; 53-270; 53-271(a).

**04 NCAC 03K .0403 EXAMINATIONS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 03K .0404 WITHDRAWAL/TERMINATION
OF AUTHORIZATION AS REVERSE MTG. LENDER
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 03K .0405 IMPAIRMENT OF MINIMUM
NET WORTH, AND SURETY BOND (READOPTIO
WITHOUT SUBSTANTIVE CHANGES)**

SECTION .0500 - DISCLOSURE REQUIREMENTS

**04 NCAC 03K .0501 REVERSE MORTGAGE
LENDER APPLICATION DISCLOSURE
04 NCAC 03K .0502 PERMITTED FEES**

Authority G.S. 53-259; 53-264; 53-265(a); 53-270; 53-271(a).

SECTION - .0600 COUNSELING

04 NCAC 03K .0601 COUNSELING

Authority G.S. 53-259; 53-260; 53-264; 53-271(a).

**SECTION .0700 - PROHIBITED ACTS AND PRACTICES;
ENFORCEMENT ACTIONS**

04 NCAC 03K .0701 PROHIBITED ACTS

Authority G.S. 53-259; 53-270; 53-271(a).

**04 NCAC 03K .0702 ENFORCEMENT ACTIONS
(READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

04 NCAC 03K .0703 HEARINGS

Authority G.S. 53-259; 53-270; 53-271; 53-272.

SUBCHAPTER 03L - CHECK-CASHING BUSINESSES

SECTION .0100 – ADMINISTRATIVE

**04 NCAC 03L .0101 DEFINITIONS (READOPTIO
WITHOUT SUBSTANTIVE CHANGES)**

04 NCAC 03L .0102 FILINGS

~~Any~~ Licensees may obtain from the agency's website, located at <https://www.nccob.gov>, information concerning ~~application applications~~ for a license, ~~or any report reports~~, ~~application applications~~ for annual renewal, ~~amendment amendments~~ to application, renewal ~~notice notices~~, or other ~~document documents~~ which ~~is that~~ are required by law or rule to be filed with the Commissioner shall be addressed as follows: Commissioner.

Office of the Commissioner of Banks

4309 Mail Service Center

Raleigh, North Carolina 27699-4309

~~or, if not mailed, then delivered to:~~

Office of the Commissioner of Banks

316 West Edenton Street

Raleigh, North Carolina 27603.

Authority G.S. 53-288; 53C-2-1; 53C-2-2.

SECTION .0200 - APPLICATION

**04 NCAC 03L .0201 APPLICATION FOR LICENSE
(READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

04 NCAC 03L .0202 FEES

Authority G.S. 53-278; 53-288, 53C-2-1; 53C-2-2.

SECTION .0300 - LICENSING

04 NCAC 03L .0301 ISSUANCE

Authority G.S. 53-278; 53-279; 53-288, 53C-2-1; 53C-2-2.

**04 NCAC 03L .0302 NONTRANSFERABILITY OF
LICENSE (READOPTIO WITHOUT SUBSTANTIVE
CHANGES)**

**04 NCAC 03L .0303 ANNUAL RENEWAL OF
LICENSE**

On or before September 1 of each year, a licensee may renew its license by filing with the Commissioner an application for license renewal on a form available from the Commissioner, along with payment of renewal fees required under G.S. 53-278(d). Absent such renewal each year, the license shall expire and become void on September 30 without further action by the Commissioner. A check-cashing license shall be valid from the date of issuance and, unless renewed annually shall expire on September 30 of each year without further action by the Commissioner. The renewal period shall begin on July 1 of each year. Licensees may file renewal applications and pay applicable renewal fees on the agency website located at www.nccob.gov. Any new license issued on or after July 1 of each year shall not be required to be renewed until the subsequent renewal period.

Authority G.S. 53-276; 53-278; 53-288; 53C-2-1; 53C-2-2.

SECTION .0400 - OPERATIONS

**04 NCAC 03L .0401 POSTING OF LICENSE OR
BRANCH CERTIFICATE (READOPTIO WITHOUT
SUBSTANTIVE CHANGES)**

**04 NCAC 03L .0402 SURRENDER OF LICENSE
(READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 03L .0403 POSTING OF FEES
(READOPTIO WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0500 - BOOKS AND RECORDS:
EXAMINATIONS**

04 NCAC 03L .0501 BOOKS AND RECORDS

(a) Each check-cashing business licensed by the Commissioner of Banks shall record all transactions of receipts and disbursements pertaining to checks cashed. All entries shall ~~be made as of~~ reflect the exact date the transactions occur. A licensee shall maintain books and accounting records which shall include, at a minimum:

- (1) a daily transaction journal, or equivalent record, ~~which shall show that shows~~ the customer's name for each transaction;
- (2) the written receipt required by G.S. 53-282(b); and
- (3) the bank statements of the licensee. If the statements are not maintained on the premises of the licensee, they ~~must~~ shall be made available upon request by the Office of the Commissioner of Banks.

(b) These records shall be maintained at each business location and shall be made available by the close of business on the next business day upon request to the Commissioner of Banks or his designee for inspection or examination for a period of not less than three years from the date of final entry.

~~(c) No books or records of the licensee required hereunder shall show any account or reflect any transaction other than those related to the check cashing business within the provisions of the Check Cashing Businesses Act.~~

~~(d) Books and records retained by a licensee which arise from or relate to a prior accounting period may be maintained in the form of magnetic tape, magnetic disk, or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display, or other medium so long as any books and records kept in such manner are convertible into legible, tangible documents within 72 hours of request of the Commissioner. The time for such conversion may be extended if the Commissioner determines that the burden to the licensee of such conversion exceeds the benefit to the Commissioner and the public.~~

Authority G.S. 53C-2-1; 53C-2-2; 53-282; 53-288.

**04 NCAC 03L .0502 EXAMINATIONS;
INVESTIGATIONS EXAMINATIONS**

~~(a) The Commissioner of Banks may make such examination of the books, records, business locations, and operations of any licensee and at such times as may seem necessary or desirable to the Commissioner or his designee. Such examinations Examinations may be with or without advance notice to the licensee.~~

~~(b) In addition to examinations authorized by G.S. 53-278(b) or G.S. 53-282(c), the Commissioner may request from licensees hereunder such reports from the licensee and at such times as to him shall be necessary or advisable for the purpose of determining the general results of operations under G.S. 53, pursuant to Article 22. 22 of Chapter 53. The Commissioner or his designee may also examine or investigate a licensee when the Commissioner has reasonable grounds to believe that a registrant has violated any law or regulation of this State, the Federal government or any agency thereof.~~

~~(c) If a licensee fails to pay the costs of examination as authorized by G.S. 53-282(c) and at a rate pursuant to 04 NCAC 03C .1601 or investigation to the Commissioner within a reasonable time as required by 60-days of billing, G.S. 53-282(e), then the Commissioner may proceed to remedies contemplated by G.S. 53-284 et seq. 53-284.~~

Authority G.S. 53-278; 53-282; 53-284; 53-288; 53C-2-1; 53C-2-2.

**SECTION .0600 - REPORTING AND NOTIFICATION
REQUIREMENTS**

**04 NCAC 03L .0601 AMENDMENTS TO
INFORMATION ON FILE WITH THE COMMISSIONER
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 03L .0602 EXPANSION OR RELOCATION
(READOPTIOIN WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 03L .0603 IMPAIRMENT OF FINANCIAL
REQUIREMENTS (READOPTIOIN WITHOUT
SUBSTANTIVE CHANGES)**

SUBCHAPTER 03M – MORTGAGE LENDING

SECTION .0100 – GENERAL

04 NCAC 03M .0101 DEFINITIONS

As used in this Subchapter, unless a contrary definition is provided or required by the context:

- (1) Terms used in this Subchapter which are defined in the Act have the same meaning as set forth in the Act.
- (2) When any term in this Subchapter is defined by reference to or incorporation of a regulation or rule of a federal or state agency, board, commission or other regulatory body other than the Commissioner, the reference shall be deemed to be to the regulation or rule as it is in effect and interpreted in its most current version.
- (3) "Act" means Article 19B of Chapter 53 of the North Carolina General Statutes, commonly known as the "North Carolina Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act," or "NC SAFE Act."
- (4) "Advertisement" means material used or intended to be used to induce the public to apply for a mortgage loan. The term includes any printed or published material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated or funded by a licensee or exempt entity whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, electronic mail or other electronic means, or billboard or similar display. The term does not include any disclosures, program descriptions, or other materials prepared or authorized by any state or federal government agency, nor does the term include any material or communication which has been excluded for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures.

- (5) "Call Report" means a report of condition on a company and its operations which includes financial and loan activity information.
- (6) ~~"Commission" means the North Carolina Banking Commission. For purposes of complying with these Rules by credit unions, Banking Commission means the North Carolina Credit Union Commission.~~
- (7) ~~"Controlling person" means a person who, with regard to a licensee:~~
 - ~~(a) has the ability to exercise "control", as the term is defined in G.S. 53-244.030(7), or~~
 - ~~(b) otherwise has the power to direct the management and policy of the licensee.~~
- (8) ~~"Instructor" means an individual who is employed by a provider and who is responsible for teaching a program.~~
- (9)(6) "License" means a mortgage lender, mortgage servicer, mortgage broker, exclusive mortgage broker, or mortgage loan originator license issued pursuant to the Act and this Subchapter.
- (10)(7) ~~"Material" when used in connection with "Material facts" means facts or information provided to the Commissioner by a licensee or applicant, means facts or information regarding the person's identity, contact information, or business operations that a reasonable person knows, or should know, would be likely to influence a decision to grant, suspend, condition, limit, renew, or revoke a license or to take other disciplinary action against a licensee or exempt person, including:~~
 - ~~(a) notice of a pending administrative action involving the licensee or applicant for licensure by any state or federal authority to which the licensee is subject;~~
 - ~~(b) the issuance of an administrative order against the licensee or applicant for licensure by any state or federal authority to which the licensee is subject;~~
 - ~~(c) notice of a pending criminal charge against the licensee or applicant for actions related to financial services or moral turpitude;~~
 - ~~(d) the entry of a conviction or one of the following on a criminal charge against the licensee or applicant for licensure for a felony or other criminal charge for actions related to financial services or moral turpitude:~~
 - ~~(i) a plea of guilty;~~
 - ~~(ii) a plea of no contest or nolo contendere;~~
 - ~~(iii) a prayer for judgment continued;~~
- (iv) ~~a deferred prosecution agreement;~~
- (v) ~~an adjudication or verdict of guilty by a domestic, foreign, military, or other court of competent jurisdiction;~~
- (vi) ~~the equivalent of any of the foregoing in a domestic, foreign, military, or other court of competent jurisdiction; or~~
- (vii) ~~any other classification that is deemed a conviction pursuant to the applicable law in the jurisdiction where the criminal charge was brought.~~
- (e) a change in status to the licensee's bond, including the reduction or cancellation of such ~~bond; and bond;~~
- (f) the licensee's primary phone number, mailing address, and principal office address;
- (g) any assumed name, trade name, or d/b/a (doing business as) under which the licensee may be operating;
- (h) the address at which files and documents retained pursuant to the Act or the rules in this Subchapter are stored;
- (i) the identity of the licensee's bonding company or carrier, and the bond number;
- (j) for corporate licensees, the identity of any affiliated mortgage lender, mortgage broker, mortgage servicer, or provider of settlement services; and
- (k) for corporate license, the identity of the licensee's owners, officers, directors, qualifying individual, branch manager(s), or control persons.
- (11) ~~"Material" when used in connection with facts or information provided to the Commissioner, by a licensee or applicant for licensure, also means facts and information regarding the licensee's identity and contact information, including:~~
 - ~~(a) the licensee's primary phone number, mailing address, and principal office address;~~
 - ~~(b) any assumed name, trade name, or d/b/a (doing business as) under which the licensee may be operating;~~
 - ~~(c) the address at which files or documents retained pursuant to the Act or the rules in this Subchapter are stored;~~
 - ~~(d) the identity of the licensee's bonding company or carrier, and bond number;~~

- (e) ~~for corporate licensees, the identity of any affiliated mortgage lender, mortgage broker, mortgage servicer, or provider of settlement services; and~~
- (f) ~~for corporate licensees, the identity of the licensee's owners, officers, directors, qualifying individual, branch manager(s), or control persons.~~
- (12)(8) "Material" when used in connection with facts or information provided to a borrower, "Material borrower information" means facts or information that a reasonable person knows, or should know, would reasonably be expected to influence a borrower's decision with regard to one or more loans, including:
 - (a) the total compensation the mortgage broker expects to receive from all sources in connection with each loan option presented to the borrower;
 - (b) the terms of each loan option presented to the borrower;
 - (c) the anticipated monthly payment (including property tax and insurance payments) for each loan option presented to the borrower;
 - (d) if the loan contains a variable rate feature or other terms which may result in a change to the borrower's monthly payments over the life of the loan, the circumstances upon which the terms or payments will change and the impact of the changes upon the borrower's required monthly payments; and
 - (e) any affiliate relationships that may exist between the licensee and any party or parties to the sale or financing of the subject property, or any provider of settlement services.
- (13)(9) "Material" when used in connection with the word "change" or "changes," "Material change" means a change to any material facts or information. facts.
- (14)(10) "Nationwide Mortgage Licensing System and Registry" or "NMLS&R" has the same meaning as in the NC SAFE Act.
- (15)(11) "Prelicensing Education" means a classroom or classroom equivalent education program required by G.S. 53-244.070.
- (16) "Program" means a prelicensing program.
- (17) "Provider" means any person who provides a program.
- (18) "Qualified Written Test" means the mortgage prelicensing qualified written test required by G.S. 53-244.080.
- (12) "Registration" means the approval granted to a mortgage origination support registrant to engage exclusively in the processing or

underwriting of residential mortgage loans but not the mortgage business.

- (19)(13) "Settlement Services" has the same meaning as defined in federal Real Estate Procedures Act (RESPA) 12 U.S.C. Sec. 2601 et. seq. Regulation X, 24 C.F.R. Part 3500 et. seq, which is incorporated by reference and includes subsequent amendments. A copy of the regulation may be obtained from the website free of charge U. S. Government Publications Office website at <https://www.gpo.gov/fdsys/granule/CFR-2000-title24-vol5/CFR-2000-title24-vol5-part3500/content-detail.html>.
- (20) "Testing Provider" means an organization approved by the NMLS&R to administer the qualified written test.

Authority G.S. 53-244.118.

04 NCAC 03M .0102 NOTICES (READoption WITHOUT SUBSTANTIVE CHANGES)

SECTION .0200 - LICENSING

04 NCAC 03M .0201 APPLICATION

~~(a) All fees required by G.S. 53-244.090 or 53-244.101 shall be submitted with an application for licensure or renewal of license as a mortgage lender, mortgage broker, mortgage servicer, exclusive mortgage broker or mortgage loan originator. The fees are nonrefundable.~~

~~(b)(a)~~ Each type of application required by the rules in this Subchapter or the Act shall be filed through the NMLS&R and shall be verified by the ~~oath or~~ affirmation of the applicant or a principal officer thereof. officer.

~~(c)(b)~~ In addition to the documents and information required by the rules in this Subchapter, the Commissioner ~~or his or her staff~~ may require additional information ~~according to the Rules in order to enable the Commissioner~~ to determine that the applicant meets ~~or the licensee~~ continues to meet the requirements of G.S. 53-244.040, 53-244.050, 53-244.060, 53-244.070, 53-244.080, 53-244.100, 53-244.101, 53-244.102, 53-244.103, 53-244.104, and 53-244.105. the Act.

~~(d)(c)~~ Applications submitted without the required fees ~~or which are missing material information facts, or any information requested under Paragraph (b) of this Rule~~ shall be held in pending status for a period of 30 calendar days after ~~written notice~~ notification through the NMLS&R to the applicant specifying the nature of the deficiency. If ~~any such~~ the deficiency remains outstanding for more than 30 days, the application shall automatically be considered withdrawn without further action by the Commissioner, and the applicant shall submit a new application and pay all ~~fees associated therewith.~~ fees.

Authority G.S. 53-244.040, 53-244.050; 53-244.060; 53-244.070, 53-244.080, 53-244.100; 53-244.101; 53-244.102; 53-244.103; 53-244.104; 53-244.118.

**04 NCAC 03M .0202 NONTRANSFERABILITY
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 03M .0203 NAME CHANGES
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 03M .0204 EXPERIENCE (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

04 NCAC 03M .0205 FINANCIAL RESPONSIBILITY

~~(a) In order for applicants to be deemed to have the financial responsibility such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly under G.S. 53-244.60(4), the applicant shall:~~

- ~~(1) If a mortgage lender:

 - ~~(A) provide an audited statement of financial condition that demonstrates a net worth of at least \$100,000;~~
 - ~~(B) provide evidence of warehouse line of credit of \$1,000,000 or other evidence of funding capacity to conduct mortgage originations;~~
 - ~~(C) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of outstanding judgments or tax liens against applicant, its officers or directors, by creditors; and~~
 - ~~(D) provide an explanation of the corporate or ownership structure of the applicant, including information regarding any required distributions to investors or owners.~~~~
- ~~(2) If a mortgage broker:

 - ~~(A) provide a certified statement of financial condition that demonstrates a net worth of at least \$25,000;~~
 - ~~(B) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of outstanding judgments or tax liens against applicant, its officers or directors, by creditors; and~~
 - ~~(C) provide evidence (in the form of a copy of a bank statement or other verifiable document) that the broker owns and holds on a continual basis cash or other liquid assets in a demand deposit account under the firm's name of at least ten thousand dollars (\$10,000.00) in an FDIC insured financial institution.~~~~
- ~~(3) If a mortgage loan originator:

 - ~~(A) have a credit score from any of the three major credit rating agencies (Experian, TransUnion or Equifax) of 600 or greater;~~~~

- ~~(B) demonstrate a history of satisfying debt obligations, as indicated by an absence of outstanding tax liens, other government liens or filings, outstanding judgments, except judgments resulting solely from medical expenses, by creditors; and~~
- ~~(C) not have any foreclosures or accounts delinquent in excess of 90 days within the past three years.~~

- ~~(4) If a mortgage servicer:

 - ~~(A) provide an audited statement of financial condition that demonstrates a net worth of at least \$100,000.00;~~
 - ~~(B) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal credit report(s) that does not contain evidence of outstanding judgments or tax liens against applicant, its officers or directors, by creditors; and~~
 - ~~(C) provide an explanation of the corporate or ownership structure of the applicant, including information regarding any required distributions to investors or owners.~~~~

~~(b) The Commissioner shall not waive any requirement listed in Paragraph (a) of this Rule unless he believes the predominant weight of the evidence supports a determination that the applicant has the financial responsibility necessary to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly.~~

~~(c) Financial Responsibility is an ongoing requirement and upon issuance of a license, a licensee must continue to meet the requirements of Paragraph (a) of this Rule. G.S. 53-244.060(4).~~

Authority G.S. 53-92; 53-104; 53-244.060(4); 53-244.104; 53-244.118.

**04 NCAC 03M .0206 SURETY BOND (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**SECTION .0400 - REPORTING AND NOTIFICATION
REQUIREMENTS**

**04 NCAC 03M .0401 REPORTING REQUIREMENTS
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 03M .0402 AMENDMENTS TO
INFORMATION ON FILE WITH THE COMMISSIONER
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**04 NCAC 03M .0403 TERMINATION OF
OPERATIONS OR EMPLOYMENT**

(a) A licensee or registrant shall notify the Commissioner in writing of its decision to cease operations as a mortgage lender, mortgage servicer, or mortgage broker in this State, and the anticipated effective date of the cessation of operations, at least 15 days before the cessation.

(b) A mortgage lender, mortgage servicer, or mortgage broker that has not originated or serviced a mortgage loan within a ~~12 month~~ 12-month period is considered to have ceased operations. A mortgage origination support registrant that has not processed or underwritten a mortgage loan within a 12-month period is considered to have ceased operations. Cessation of operations is grounds for summary suspension pursuant to G.S. 53-244.114(b); ~~provided, however, 53-244.114(b).~~ However, that suspension for cessation of operations shall not extend or revive any license that would otherwise terminate on December 31st based on the ~~licensee's person's~~ failure to renew its license or ~~registration or the Commissioner's refusal to renew the licensee's license.~~ license or registration.

(c) A mortgage broker, mortgage lender, mortgage servicer, or mortgage origination support registrant shall not sponsor a mortgage loan originator who is not an employee of the person and shall notify the Commissioner within 30 days of the termination of the individual mortgage loan originator's employment and sponsorship.

Authority G.S. 53-100.53; 53-244:114(b); 53-244.118.

SECTION .0500 - RECORD AND BOOKKEEPING REQUIREMENTS

04 NCAC 03M .0501 RECORDS TO BE MAINTAINED (READOPTION WITHOUT SUBSTANTIVE CHANGES)

04 NCAC 03M .0502 FORM AND LOCATION OF RECORDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0600 - ORIGINATION PRACTICES

04 NCAC 03M .0602 SELLER DISCOUNTS FOR USE OF AFFILIATED MORTGAGE LENDER OR BROKER (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0700 - SERVICING

04 NCAC 03M .0701 TRANSFER OF SERVICING RIGHTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

04 NCAC 03M .0702 REQUIREMENTS FOR MORTGAGE SERVICERS TO COMMUNICATE EFFECTIVELY WITH BORROWERS REGARDING LOSS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

04 NCAC 03M .0703 CESSATION OF FORECLOSURE ACTIVITY DURING PENDENCY OF LOSS MITIGATION REQUEST (READOPTION WITHOUT SUBSTANTIVE CHANGES)

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alcoholic Beverage Control Commission intends to amend the rules cited as 14B NCAC 15B .0217, .0220; 15C .0302-.0304, .0307, .0308, and .0403.

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

Proposed Effective Date: August 1, 2018

Public Hearing:

Date: June 13, 2018

Time: 10:00 a.m.

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

Reason for Proposed Action: *To adopt permanent rules to replace the temporary rules that became effective November 28, 2017 regulating the sale of malt beverages and wine in containers filled by retail establishments holding certain ABC permits as a result of amendments to the law made by the General Assembly in S.L. 2017-87, Section 5.*

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: June 13, 2018 at 10:00 a.m.

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 15 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 15B - RETAIL BEER: WINE: MIXED

**BEVERAGES: BROWNBAGGING: ADVERTISING:
SPECIAL PERMITS**

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

**14B NCAC 15B .0217 FILL OR REFILL ORIGINAL
CONTAINERS**

No permittee ~~except a bottler or manufacturer~~ shall fill or refill in whole or in part any original container of alcoholic beverages with the same or any other kind of alcoholic ~~beverage~~. beverage, except a bottler, manufacturer, or permittee authorized pursuant to G.S. 18B-1001(1), (2), (3), (4), or (16).

Authority G.S. 18B-206(a); 18B-207; 18B-1001.

**14B NCAC 15B .0220 DISPENSING ALCOHOLIC
BEVERAGES: PRODUCT IDENTIFICATION**

(a) Malt Beverages, On-Premises. Malt beverages may be sold by persons holding on-premise permits in the original containers, by the glass, by the mug, by the ~~pitcher~~ pitcher, or a single-service and single-use container as defined by FDA Food Code 2009, 1-201.10(B). The brand name of draught malt beverages dispensed in retail outlets shall be shown on the knobs of draught faucets. Covers for these faucets bearing a brand name may be used if the brand name appearing on the cover corresponds with the brand name on the knob of the faucets that are to be used for that brand.

(b) Malt Beverages, Off-Premises. Malt beverages may be sold by persons holding ~~a retail~~ an off-premise permit only in the unopened original container that was filled by the product ~~manufacturer~~. manufacturer, except as permitted pursuant to G.S. 18B-1001.

(c) Wine, On-Premises. A person holding an on-premises wine permit may sell wine in the unopened original container, by the carafe, by the ~~glass~~ glass, or a single-service and single-use container. A person holding an on-premises wine permit may sell wine mixed with non-alcoholic beverages by the carafe, by the ~~glass~~ glass, or a single-service and single-use container. Wine served in carafes, by the ~~glass~~ glass, or single-service and single-use containers may be dispensed under pressure from nitrogen from sealed bulk containers provided the containers and dispensing systems have been approved by the Commission and the Commission for Public Health. The vintner, ~~brand~~ brand, and type of wine dispensed by the carafe, ~~glass~~ glass, or single-service and single-use container, except for the house wine, shall appear on the wine list. Where the wine is dispensed from bulk containers, the vintner, ~~brand~~ brand, and type shall be shown on the knobs of draught faucets.

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

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

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

(g) Incorporation by Reference. The 2009 FDA Food Code, as established by the U.S. Department of Health and Human Services, Food and Drug Administration, is hereby incorporated by reference, excluding subsequent amendments and editions, and may be accessed at no cost at <https://www.fda.gov/food/guidanceregulation/retailfoodprotection/foodcode/ucm2019396.htm>.

Authority G.S. 18B-100; 18B-206; 18B-207; 18B-1001; 130A-248(a). ~~FDA Food Code 2009, 1-201.10(B), 3-304.11(a).~~

**SUBCHAPTER 15C - INDUSTRY MEMBERS:
RETAIL/INDUSTRY MEMBER RELATIONSHIPS: SHIP
CHANDLERS: AIR CARRIERS: FUEL ALCOHOL**

**SECTION .0300 - PACKAGING AND LABELING OF
MALT BEVERAGES AND WINE**

**14B NCAC 15C .0302 LABELS TO BE SUBMITTED TO
COMMISSION**

(a) All labels for malt beverage and wine products shall be submitted in duplicate to the Commission on an "Application for Label Approval ~~Form~~." Form," as required by Rule .0201 or .0202 of this Subchapter.

(b) Each person requesting label approval shall furnish, in the application for label approval, the names and addresses of the manufacturer, bottler, and importer of the product.

(c) Notwithstanding Paragraphs (a) and (b) of this Rule, holders of retail permits pursuant to G.S. 18B-1001(1), (2), ~~(3), (4),~~ or (16) that fill or refill growlers on demand ~~are not~~ shall not be required to submit the labels required by ~~Rule~~ Rules .0303(b) or (c) or .0304(d) or (e) of this Section.

Authority G.S. 18B-100; 18B-206(a); 18B-207; ~~18B-1001(1); 18B-1001(2); 18B-1001(16); 18B-1001.~~

**14B NCAC 15C .0303 LABEL CONTENTS: MALT
BEVERAGES**

(a) Containers that are prefilled by the manufacturer shall be affixed with malt beverage labels that shall contain the following information in a legible form:

- (1) brand name of product;
- (2) name and address of brewer or bottler;
- (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
- (4) net contents;
- (5) if the malt beverage is fortified with any stimulants, the amount of each (milligrams) per container; and
- (6) the alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. Sections 16.20 through 16.22.

(b) Growlers that are filled or refilled on demand with malt beverages pursuant to Rule .0308 of this ~~Subchapter~~ Section shall be affixed with a label or a tag that shall contain the following information in type not smaller than 3 millimeters in height and not more than 12 characters per inch:

- (1) brand name of the product dispensed;
- (2) name of brewer or bottler;
- (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
- (4) net contents;
- (5) if the malt beverage is fortified with any stimulants from the original manufacturer, the amount of each (milligrams) per container;
- (6) name and address of business that filled or refilled the growler;
- (7) date of fill or refill;
- (8) if the malt beverage is more than six percent alcohol by volume, the amount of alcohol by volume pursuant to G.S. 18B-101(9); and
- (9) the following statement: "This product may be unfiltered and unpasteurized. Keep refrigerated at all times."

(c) Growlers that are filled or refilled on demand pursuant to Rule .0308 of this Section shall be affixed with the alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. Sections 16.20 through 16.22. The provisions of 27 C.F.R. Sections 16.20 through 16.22 referenced in this Section are hereby incorporated by reference, including subsequent amendments and editions, and may be accessed for free at <https://www.gpo.gov>.

Authority G.S. 18B-100; 18B-101(9); 18B-206(a); 18B-207; 18B-1001(1); 18B-1001(2); 18B-1001(16); 27 C.F.R. 16.20 through 16.22; 18B-1001.

14B NCAC 15C .0304 LABEL CONTENTS: WINE

(a) All wine labels shall contain the following information, in a ~~legible form:~~ form legible to the consumer:

- (1) brand name of product;
- (2) class and type, in conformity with Section .0400 of this Subchapter;
- (3) name and address of manufacturer, or bottler, except as otherwise provided in these Rules;
- (4) on blends consisting of foreign and domestic wine, if any reference is made to the presence of foreign wine, the exact percentage by volume the foreign wine; and
- (5) net contents (unless blown or otherwise permanently inscribed in the container).

(b) Exception for Retailer's Private Brand. In the case of wine bottles packaged for a retailer or other person under ~~his the~~ the person's private brand, the name and address of the bottler ~~need not be stated on the brand label but~~ may be stated on another label affixed to the container, if the name and address of the person for whom ~~the wine was~~ the wine bottled or packed appears on the label. The net contents shall be stated on the brand label or on a separate label affixed ~~in immediate proximity~~ thereto on the same side of the container in ~~readily~~ legible form, unless blown or otherwise permanently inscribed in the container.

(c) Imported Wines. The name and address of the importer of a foreign wine need not be stated on the brand label if it is stated upon another label affixed to the container.

(d) Growlers that are filled or refilled on demand with unfortified wine pursuant to Rule .0308 of this Section shall be affixed with a label or a tag containing the following information in type not smaller than 3 millimeters in height and not more than 12 characters per inch:

- (1) brand name of the product dispensed;
- (2) name of manufacturer or bottler;
- (3) class and type of product;
- (4) net contents;
- (5) name and address of business that filled or refilled the growler;
- (6) date of fill or refill; and
- (7) the following statement: "This product may be unfiltered and unpasteurized. Keep refrigerated at all times."

(e) Growlers that are filled or refilled on demand pursuant to Rule .0308 of this Section shall be affixed with the alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. Sections 16.20 through 16.22.

Authority G.S. 18B-206(a); 18A-207; 18B-1001.

14B NCAC 15C .0307 GROWLERS

(a) As used in this ~~Rule, Section,~~ a "growler" is a ~~refillable~~ rigid glass, ceramic, plastic, aluminum, or stainless steel container with a ~~flip top or screw on lid closure or cap with a secure sealing~~ that is no larger than 2 liters (0.5283 gallons) into which a malt beverage or unfortified wine is prefilled, filled, or refilled for off-premises consumption.

(b) Malt beverages may be sold in growlers as follows:

- (1) Holders of only a brewery permit may sell, deliver, and ship growlers prefilled with the brewery's malt beverage for off-premises consumption provided a label is affixed to the growler that accurately provides the information as required by Rules .0303(a) and .0305 of this Section.
- ~~(e)(2)~~ (2) Holders of retail permits pursuant to G.S. 18B-1001(1), (2), or (16) who do not hold a brewery permit shall not prefill growlers with malt beverage.
- ~~(d)(3)~~ (3) Holders of a brewery permit who also have retail permits pursuant to G.S. 18B-1001(1) may fill or refill growlers on demand with the brewery's malt beverage for off-premises consumption, provided the label as required by Rules .0303(b) and (c) and .0305 of this Section is affixed to the growler.
- ~~(e)(4)~~ (4) Holders of retail permits pursuant to G.S. 18B-1001(1), (2), or (16) may fill or refill growlers on demand with draft malt beverage for off-premises consumption, provided the label as required by Rules .0303(b) and (c) and .0305 of this Section is affixed to the growler.

(c) Unfortified wine may be sold in growlers as follows:

- (1) Holders of only an unfortified winery permit may sell, deliver, and ship growlers prefilled with the winery's unfortified wine for off-premises consumption provided a label is

- affixed to the growler that provides the information as required by Rules .0304(a), (b) and (c), and Rule .0305 of this Section.
- (2) Holders of retail permits pursuant to G.S. 18B-1001(3), (4), or (16) who do not hold an unfortified winery permit shall not prefill growlers with unfortified wine.
- (3) Holders of an unfortified winery permit who also have retail permits pursuant to G.S. 18B-1001(3) may fill or refill growlers on demand with the winery's unfortified wine for off-premises consumption, provided the label as required by Rules .0304(d) and (e) and .0305 of this Section is affixed to the growler.
- (4) Holders of retail permits pursuant to G.S. 18B-1001(3), (4), or (16) may fill or refill growlers on demand with unfortified wine for off-premises consumption, provided the label as required by Rules .0304(d) and (e) and .0305 of this Section is affixed to the growler.

~~(d)~~ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), (3), (4), or (16) shall affix a label as required by Rules .0303(b) and (c), Rules .0304(d) and (e), and Rule .0305 of this Section to the growler when filling or refilling a growler.

~~(e)~~ Holders of retail permits pursuant to G.S. 18B-1001(1), (2), (3), (4), or (16), may, in their discretion, refuse to fill or refill a growler, except in matters of discrimination pursuant to G.S. 18B-305(c).

Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-305; ~~18B-1001(1); 18B-1001(2); 18B-1001(16); 18B-1001.~~

14B NCAC 15C .0308 GROWLERS: CLEANING, SANITIZING, FILLING AND SEALING

- (a) ~~Filling~~ Except as permitted pursuant to Rules .0307(b) and (c) of this Section, filling and refilling growlers shall only occur on demand by a ~~customer~~ consumer.
- (b) Growlers shall only be filled or refilled by a permittee or the permittee's employee.
- (c) Prior to filling or refilling a growler, the growler and its cap shall be cleaned and sanitized by the permittee or the permittee's employee using one of the following methods:

- (1) Manual washing in a three compartment sink:
 - (A) ~~Prior~~ prior to starting, clean sinks and work area to remove any chemicals, oils, or grease from other cleaning activities;
 - (B) ~~Empty~~ empty residual liquid from the growler to a drain. Growlers shall not be emptied into the cleaning water;
 - (C) ~~Clean~~ clean the growler and cap in water and detergent. Water temperature shall be at a minimum 110°F or the temperature specified on the cleaning agent manufacturer's label instructions. Detergent shall not be fat or oil based;

- (D) ~~Remove~~ remove any residues on the interior and exterior of the growler and cap;
 - (E) ~~Rinse~~ rinse the growler and cap in the middle compartment with water. Rinsing may be from the spigot with a spray arm, from a spigot, or from the tub as long as the water for rinsing ~~shall is not be stagnant but shall be and~~ continually refreshed;
 - (F) ~~Sanitize~~ sanitize the growler and cap in the third compartment. Chemical sanitizer shall be used in accordance with the EPA-registered label use instructions and shall meet the minimum water temperature requirements of that chemical; and
 - (G) ~~A~~ a test kit or other device that accurately measures the concentration in mg/L of chemical sanitizing solutions shall be provided and be ~~readily~~ accessible for use; or
- (2) Mechanical washing and sanitizing machine:
- (A) ~~Mechanical~~ mechanical washing and sanitizing machines shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer and shall be used according to the machine's design and operation specifications;
 - (B) ~~Mechanical~~ mechanical washing and sanitizing machines shall be equipped with chemical or hot water sanitization;
 - (C) ~~Concentration~~ concentration of the sanitizing solution or the water temperature shall be accurately determined by using a test kit or other device; and
 - (D) ~~The~~ the machine shall be regularly serviced based upon the manufacturer's or installer's guidelines.

(d) Notwithstanding Paragraph (c) of this Rule, a growler may be filled or refilled without cleaning and sanitizing the ~~growler~~ growler, as follows:

- (1) Filling or refilling a growler with a tube as referenced by Paragraph (e) of this Rule:
 - (A) ~~Food~~ food grade sanitizer shall be used in accordance with the EPA-registered label use instructions;
 - (B) ~~A~~ a container of liquid food grade sanitizer shall be maintained for no more than 10 malt beverage taps that will be used for filling and refilling growlers;
 - (C) ~~Each~~ each container shall contain no fewer than five tubes that will be used only for filling and refilling growlers;

- (D) ~~The~~ the growler is inspected visually for contamination;
- (E) ~~The growler is filled or refilled with a tube as described in Paragraph (e) of this Rule;~~
- (F) ~~After~~ after each filling or refilling of a growler, the tube shall be immersed in the container with the liquid food grade sanitizer; and
- (G)(F) ~~A~~ a different tube from the container shall be used for each fill or refill of a growler; or
- (2) Filling a growler with a contamination-free process:
- (A) ~~The~~ the growler shall be inspected visually for contamination; ~~and~~
- (B) ~~Shall for growlers that can be refilled, the process shall be otherwise in compliance with the FDA Food Code 2009, Section 3-304.17(c), Section 3-304.17(C); and~~
- (C) for growlers that are for single use, the process shall be otherwise in compliance with the FDA Food Code 2009, Sections 4-903.11 and 4-903.12.
- (e) Growlers shall be filled or refilled from the bottom of the growler to the top with a tube that is attached to the malt beverage or unfortified wine faucet and extends to the bottom of the growler or with a commercial filling machine.
- (f) When not in use, tubes to fill or refill growlers shall be immersed and stored in a container with liquid food grade sanitizer.
- (g) After filling or refilling a growler, the growler shall be sealed with a closure or cap.

Authority G.S. 18B-100; 18B-206(a); 18B-207; ~~18B-1001(1); 18B-1001(2); 18B-1001(16); FDA Food Code 2009, Section 3-304.17(c) and Section 4-204.13(a), (b) and (d); 18B-1001.~~

SECTION .0400 - STANDARDS OF IDENTITY FOR WINE: CONTAINERS

14B NCAC 15C .0403 CONTAINERS

- (a) Unsealed Container Prohibited. ~~The~~ Except as permitted by Rule .0307 of this Subchapter, the sale of wine in any unsealed ~~container or container,~~ any container originally designed for a product other than ~~wine~~ wine, or in any container the design or shape of which would tend to mislead the consumer as to the nature of the contents is prohibited. ~~All wine containers shall be made of glass or other nonmetallic materials except for bulk on premises containers approved by the Commission.~~
- (b) Distinguishing Mark Different from Retailer. The sale of wine in containers that have the blown, ~~branded~~ branded, or burned name or other distinguishing mark of any person engaged in business as a wine producer, importer, ~~wholesaler~~ wholesaler, or bottler or any other person different from the person whose name is required to appear on the brand label by Rule .0304 of this Subchapter is prohibited.

Authority G.S. 18B-206; 18B-207; 18B-1001.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10F .0307, .0342, .0360, .0373, and .0375 and readopt with substantive changes the rules cited as 15A NCAC 10F .0320, .0353 and .0366.

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

Proposed Effective Date:

October 1, 2018 - 15A NCAC .0307, .0342, .0360, .0373, .0375, .0353 and .0366

September 1, 2018 - 15A NCAC 10F .0320

Public Hearing:

Date: May 2, 2018

Time: 10:00 a.m.

Location: WRC Headquarters, 1751 Varsity Drive, Raleigh, NC 27606

Reason for Proposed Action: *All 10F Rules were reviewed as part of the 2016 Periodic Review process. Seven rules currently proposed for readoption or amendment are being updated to incorporate the following changes:*

- *Updating language and terms for consistency;*
- *Clarifying no-wake zone boundaries by including coordinates;*
- *Name changes;*
- *Removing the maintenance of markers;*
- *Removing the word "motorboat", as the statutory definition of "vessel" includes motorboats; and*
- *Including appropriate federal approval for placement of markers. Amendments to 15A NCAC 10F .0320 are proposed to mitigate hazards to boater safety at a boating access area at Queens Creek in Onslow Co.*

Comments may be submitted to: *Carrie Ruhlman, Rule-making Coordinator, 1701 Mail Service Center, Raleigh, NC 27699-1701; email regualtions@ncwildlife.org*

Comment period ends: *June 1, 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
- ☐ No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

15A NCAC 10F .0307 ~~CATAWBA, IREDELL, LINCOLN, MECKLENBURG COUNTIES~~

(a) Regulated Area. This Rule applies to the waters of Lake Norman which is located in the counties of Catawba, Iredell, Lincoln and Mecklenburg, Mecklenburg counties:

- (1) within 50 yards of the shoreline at Jetton Park in Mecklenburg County, from a point on the west side of the park at 35.47082 N, 80.90427 W, south and around the point at 35.46703 N, 80.90360 W, then northeast to a point at 35.47262 N, 80.89727 W;
- (2) within 50 yards of Brown's Cove the end of the docks at Blythe Landing Park, west of N.C. Highway 73 in Huntersville;
- (3) the waters of Bluff Point Cove in Cornelius shore to shore, east of a line from a point 50 yards west of the south shore of the cove mouth at 35.45327 N, 80.89520 W to a point 50 yards west of the north shore of the cove mouth at 35.45487 N, 80.89440 W; and
- (4) the waters of the Hager Creek cove in Iredell County, east of a line at the cove mouth from a point on the south shore at 35.55117 N, 80.95250 W to a point on the north shore of the cove mouth at 35.56162 N, 80.95230 W.

(b) ~~Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no wake speed within 50 yards of any marked boat launching area, bridge, dock, pier, marina, boat storage structure, or boat service area on the waters of Lake Norman.~~

(b) No person shall operate a vessel at greater than no wake speed within the regulated areas described in Paragraph (a) of this Rule.

~~(c) Speed Limit Near Parks: No person shall operate a vessel greater than no wake speed within 50 yards of the following parks as designated by markers:~~

- ~~(1) Jetton Park;~~
- ~~(2) Brown's Cove Park.~~

~~(d) Specific Speed Zones: No person shall operate a vessel at greater than no wake speed in the following designated waters:~~

- ~~(1) the entire area of Bluff Point Cove;~~
- ~~(2) that cove immediately north of the inlet of Hager Creek.~~

~~(e)(c) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked swimming area on the waters of Lake Norman.~~

~~(f)(d) Placement and Maintenance of Markers. Each of the boards of commissioners of the above named counties The Lake Norman Marine Commission or a county in that Commission is the designated a suitable agency for placement and maintenance of navigational aids and regulatory markers of a general nature on the waters of Lake Norman Norman, within the boundaries of each respective county. Provided the said counties exercise their supervisory responsibility, they may delegate the actual process of placement or maintenance of such markers to some other agency, corporation, group, or individual.~~

~~With regard to marking the restricted zones described above, markers may be placed and maintained by the individuals using the protected areas and facilities in accordance with the Uniform Waterway Marking System and supplementary standards as set forth in Rule .0301(g)(1) to (8) of this Section.~~

~~(g)(e) Markers Reflecting County Regulation. Where any Any marker conforming or required to conform to the system USATONS standards that is placed in or near Lake Norman advising the public of the provisions of any a regulation by local act or of county ordinances ordinance made under the authority of any local act and: that is not within the enforcement jurisdiction of the Commission shall bear the legend "County Regulation" to indicate the regulation is not enforceable by the Commission.~~

- ~~(1) Such provisions are not within the enforcement jurisdiction of the Commission; and~~
- ~~(2) The Commission has not passed regulations of an identical or closely similar nature to that of the provisions in question, such marker to be deemed in conformity with the uniform system must bear on it the legend "County Regulation" at such a place or at such places as needed to indicate which provisions are not enforceable by the Commission as a matter of state law.~~

~~(h)(f) Miscellaneous Restrictions. In addition to the acts prohibited by Paragraph (f) of Rule .0301 of this Section, it is shall be unlawful to commit any such act with respect to any marker placed or erected under the authority of Chapter 1205 of the 1965 Session Laws of the State of North Carolina by any one of the above named counties or by them jointly. the Lake Norman Marine Commission or one of the counties in that Commission.~~

Authority G.S. 75A-3; 75A-15; S.L. 1965, c. 1205; S.L. 1969, c.1089.

15A NCAC 10F .0320 ONSLOW COUNTY

(a) Regulated Areas. This Rule applies to the following waters and portions of waters: in Onslow County:

- (1) ~~Old Settler's Beach: those waters of Onslow County contained within the canals located in the Old Settler's Settlers Beach subdivision in the Town of Surf City, extended from east of the Pender Onslow-Pender County line northwardly or northeasterly to the canal adjacent to or near the property of Topsail Island Developers, Inc., and more specifically those canals extending along the cul-de-sac lots from the Pender County line northwardly or northeasterly to the most northwardly of said canals above referred to, said canals extended from First Street to the canal lying northwardly or northeasterly of Ninth Street, to include those waters of the approach canal at Old Settler's Beach from marker number 53 in the Intracoastal Waterway south to Broadway Street; line, and the waters of the approach canal from the Intracoastal Waterway between markers 53 and 57, extending south-southwest to the Onslow-Pender County line;~~
- (2) New River: those the waters of New River, near River in the City of Jacksonville shore to shore, between a point 100 yards upstream, and 300 yards downstream, of the Seaboard Coast Line Railroad trestle; north from a line at a point on the east shore at 34.74356 N, 77.43775 W to a point on the west shore at 34.74358 N, 77.43924 W; and south from a line at a point on the east shore at 34.74695 N, 77.43719 W, to a point on the west shore at 34.74562 N, 77.44114 W; and those the waters of the New River shore to shore between north of the SR 1402 bridge otherwise known as the Old Bridge Street bridge and south of the U.S. Highway 17 Business bridge otherwise known as Marine Boulevard bridge; and US 17 (Riverview Street) bridges and upstream from the US 17 bridge along the south shore to a point 50 yards beyond the Jacksonville Marina; and within 50 yards of the shoreline at the Marina Café and Marina, from the U.S. Highway 17 Business bridge otherwise known as Marine Boulevard bridge to a point on the west shore at 34.75461 N, 77.43819 W; and
- (3) ~~Wheeler's Point: those waters in the creek from Wheeler's Point northerly to SR 1558 near the town of Sneads Ferry;~~
- (4) ~~Swansboro Harbor: those waters of White Oak River and Swansboro Bay between the Atlantic Intracoastal Waterway and the NC Highway 24 bridge, Swansboro.~~
- (3) the waters of Queens Creek near the boating access area at the north end of SR 1688, otherwise known as Sussex Lane in Hubert, shore to shore west of a line from a point on the

south shore at 34.69881 N, 77.18884 W to a point on the north shore at 34.69949 N, 77.18880 W and south-southeast of a line from a point on the west shore at 34.70103 N, 77.19287 W to a point on the east shore at 34.70101 N, 77.19216 W.

(b) Speed Limit. No person shall operate any motorboat ~~or vessel~~ at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.

(c) Placement ~~and Maintenance~~ of Markers. The Board of Commissioners of Onslow County is the designated ~~a suitable~~ agency for placement ~~and maintenance~~ of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0342 CATAWBA COUNTY

(a) Regulated Areas. This Rule applies to the following waters of Lake Hickory:

- (1) ~~the public fishing pier located at the old Wildlife Club off 12th Street Drive, NW, City of Hickory;~~
- (2) ~~the shores of the Dixie Boat Club, Inc.;~~
- (3)(1) ~~that the area within 50 yards of the Moore's Ferry Boat Marina and Boathouse in the City of Hickory on 44th Avenue, Circle NW; at 44th Avenue Circle, NW; and~~
- (4)(2) the cove entering the Lake Hickory RV Resort Marina as delineated by appropriate markers. Resort boating access area, south of a line from a point on the east shore at 35.80767 N, 81.22795 W, to a point on the west shore at 35.80818 N, 81.22899 W, and the waters of the cove west and south of the Lake Hickory RV Resort shore to shore, south-southeast of a line from a point on the west shore of the cove mouth at 35.80675 N, 81.23275 W to a point on the east shore of the cove mouth at 35.80722 N, 81.23145 W.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed in the waters of the regulated areas specified in Paragraph (a) of this Rule.

(c) Placement ~~and Maintenance~~ of Markers. The governing board of the City of Hickory and the Catawba County Board of Commissioners are the designated ~~suitable~~ agencies for placement ~~and maintenance~~ of the markers implementing this Rule, subject to the approval of ~~the United States Coast Guard and~~ the United States Army Corps of Engineers.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0353 MOUNTAIN ISLAND LAKE; LAKE - MECKLENBURG, GASTON AND LINCOLN COUNTIES

(a) Regulated Area. This Rule applies to Mountain Island Lake, ~~which is located Lake~~ in Mecklenburg, Gaston and Lincoln ~~counties. counties:~~

- (1) ~~Latta Plantation Park—The the cove lying north of and adjacent to the Historic Latta Plantation Park and adjacent to the Mecklenburg County Park and Duke Power Company properties. Park in Mecklenburg County, southeast of a line from a point on the southwest shore at 35.35772 N, 80.92474 W to a point on the northeast shore at 35.36019 N, 80.91935 W;~~
 - (2) ~~Duck Cove—The the waters of Duck Cove as delineated by appropriate markers. Duck Cove is adjacent to Mecklenburg County's in Cowan's Ford Wildlife Refuge and west of the portion of Neck Road that runs through Cowan's Ford Wildlife Refuge. Refuge in Mecklenburg County, beginning at the mouth of the cove at 35.38097 N, 80.97894 W;~~
 - (3) ~~Nance Cove the waters in a portion of the south prong of Nance Cove in Mecklenburg County, south of a line from a point on the west shore at 35.33982 N, 80.95313 W to a point on the east shore at 35.34010 N, 80.95185 W; and the waters of the west prong of Nance Cove between SR 2253, otherwise known as Nance Cove Road, and SR 5510 otherwise known as Haymarket Road, south of a line at the mouth of the cove's west prong from a point on the west shore at 35.34547 N, 80.955677 W to a point on the east shore at 35.34506 N, 80.95578 W;~~
 - (A) ~~The waters of the southern portion of Nance Cove extending north from the back of the cove, at or near Shuffletown Landing, up the cove toward the main channel of Mountain Island Lake, extending to a point that is roughly even with the boundary line between Lots 166 and 167 in the Overlook subdivision, which lots are just north of the Overlook Swim & Tennis Club, and where the cove is approximately 368 feet wide.~~
 - (B) ~~The waters of the western arm or sub-cove of Nance Cove, which lies west of Shadow Cove Lane and the northern most portion of Nance Cove Road and east of Haymarket Road.~~
 - (4) ~~North Carolina Highway 16 Bridge B – an the area extending approximately within 50 yards in all directions from shore to shore, northeast and southwest of the NC Highway 16 Bridge also known as the Rozelles Ferry Bridge N.C. Highway 16, otherwise known as Brookshire Boulevard bridge in Mecklenburg and Gaston counties;~~
 - (5) ~~the portion of Neck Cove in Mecklenburg County beginning at a point shore to shore, north of a line from a point on the western west shore at 35.367061 N, 80.932632 W 35.36706 N, 80.93263 W to a point on the eastern east shore at 35.367085N, 80.931129 35.36708 N, 80.93113 W; and extending the entire length of the cove.~~
 - (6) ~~Gar Creek in Mecklenburg County, east of a line from a point on the north shore at 35.348851 N, 80.927461 W 35.34885 N, 80.92746 W to a point on the south shore at 35.348082 N, 80.927736 W 35.34804 N, 80.92774 W, and west to of a line from a point on the north shore at 35.348854N, 80.926821W to a point on the south shore at 35.34844 N, 80.925803W. 35.34887 N, 80.92686 W to a point on the south shore at 35.34840 N, 80.92585 W;~~
 - (7) ~~Whispering Cove in Mecklenburg County, south of a line beginning at from a point on the western west shore at 35.341223N, 80.975715W 35.34119 N, 80.97570 W to a point on the eastern east shore at 35.340806N, 80.974785W and extending the entire length of the cove. 35.34079 N, 80.97477 W; and~~
 - (8) ~~North Carolina Highway 73 Bridge – an area extending approximately 50 yards in all directions from the NC Highway 73 Bridge: east of a line from a point on the north shore at 35.428079N, 80.95799W to a point on the south shore at 35.427177N, 80.957424W to a line from a point on the north shore at 35.427845N, 80.955441W to a point on the south shore at 35.427008N, 80.955422W. shore to shore within 50 yards north and south of the N.C. Highway 73 bridge in Mecklenburg and Gaston counties.~~
- (b) Speed Limit. No person shall operate any ~~motorboat or~~ vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.
- (c) Placement and Maintenance of Markers. The ~~Board~~ Boards of Commissioners ~~for of~~ Mecklenburg County, ~~for of~~ Gaston County and ~~for of~~ Lincoln County are the designated as suitable agencies for placement and maintenance of markers implementing this Rule for regulated areas within their territorial jurisdiction in accordance with the Uniform System. jurisdictions.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0360 GRAHAM COUNTY

(a) Regulated Area. This Rule applies to the following waters and portions of waters described as follows: waters in Graham County:

- (1) ~~Lake Santeetlah Boat Dock on Lake Santeetlah in Graham County. Santeetlah Marina cove on Santeetlah Lake, shore to shore north of a line from a point on the west shore at 35.36435 N, 83.85841 W to a point on the northeast shore at 35.36532 N, 83.85529 W;~~
- (2) ~~Entrance of Fontana Boat Dock Fontana Village Resort Marina cove in Fontana Lake in Graham County. on Fontana Lake, shore to shore west of a line from a point on the north~~

- (3) shore at 35.44294 N, 83.78900 W to a point on the south shore at 35.44077 N, 83.78936 W; within 50 yards of the Thomas Prince Boat Dock Marina at 237 Prince Boat Dock Road in Almond, and its docks and mooring areas on Fontana Lake in Graham County. Lake;
- (4) within 50 yards of Crisp's Crisp Boat Dock, Dock on Town Branch off Panther Creek on Fontana Lake in Graham County. Lake, near the northern end of SR 1234 otherwise known as Lower Panther Creek Road in Robbinsville; and
- (5) within 50 yards of the Deyton Camp Boat Dock on Santeetlah Lake at 270 Deyton Camp Road off the main channel of the Tallulah prong of Santeetlah Lake. Road otherwise known as SR 1153, in Robbinsville.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within 50 yards of the regulated areas as described in Paragraph (a) of this Rule.

(c) Cheoah Point Swimming Area, Lake Santeetlah - No person shall operate a vessel within the Cheoah Point Swimming Area which begins at the head of Cheoah Point Cove and extends to the mouth of the Cove as designated by marker buoys and float lines. Cove. No one shall operate a vessel at greater than no-wake speed east of the mouth of Cheoah Point Cove, beginning at a point at 35.37246 N, 83.87081 W.

(d) Placement and Maintenance of Markers. The Graham County Board of Commissioners is the designated as a suitable designated agency for the placement and maintenance of markers implementing this Rule. Rule, subject to the authority of the Tennessee Valley Authority and the United States Army Corps of Engineers.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0366 MACON COUNTY

(a) Regulated Area. This Rule applies to the following waters of Nantahala Lake:

- (1) Lakes End Cove west of SR 1310 otherwise known as Wayah Road in Tipton, shore to shore, beginning at shore north of a line from a point on the northwest west shore at 35.19602 N, 83.64184 W to a point on the southeast east shore at 35.19544 N, 83.64053 W. 83.64053 W; and
- (2) That the area within 100 yards from of a point at 35.16570 N, 83.64686 W at from the end of the Mountain Shadows Community Dock-dock, in Tipton.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed in the waters of the regulated area specified in Paragraph (a) of this Rule.

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

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0373 TRANSYLVANIA COUNTY

(a) Regulated Area. This Rule applies to Lake Toxaway. Toxaway in Transylvania County.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake speed within 50 yards of the Lake Toxaway Marina. the Lake Toxaway Country Club Marina cove, south of a line from a point on the west shore at 35.14136 N, 82.95424 W to a point on the east shore at 35.14126 N, 82.95303 W.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Transylvania County is the designated a suitable agency for placement and maintenance of markers implementing this Rule, subject to the approval of the United States Army Corp of Engineers. Rule.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0375 DUKE ENERGY CORPORATION HYDROELECTRIC STATION SAFETY ZONES

(a) Regulated Area. This Rule applies to the area one hundred feet upstream or downstream from the stations and ~~dams (and~~ dams, and associated structures, abutments and equipment of these stations and ~~dams) dams,~~ listed in Paragraph (f) of this Rule.

(b) Fishing. Except as otherwise provided in this Paragraph or in Paragraph (c) of this Rule, no person may enter the waters within the regulated areas described in Paragraph (a) of this Rule. Persons engaged in fishing within the regulated areas described in Paragraph (a) of this Rule may enter these waters in connection with such fishing activities provided that they shall wear at all times a U.S. Coast Guard United States Coast Guard approved personal ~~floatation~~ floatation device in serviceable condition and of appropriate size for the wearer.

(c) Boating. Any person in or upon a boat, raft or other floating object that enters the regulated area described in Paragraph (a) of this Rule shall wear at all times a U.S. Coast Guard United States Coast Guard approved personal ~~floatation~~ floatation device in serviceable condition and of appropriate size for the wearer. No vessel may tie off to any part of the dam structure or the accessory ~~portions thereof portions, nor anchor or otherwise secure a vessel within regulated areas described in Paragraph (a) of this Rule, or to anchor or otherwise secure a vessel in these areas. Rule.~~

(d) Paragraph (c) of this Rule does not apply to persons who enter with consent of Duke Energy Corporation for the purpose of maintaining, repairing or evaluating facilities of Duke Energy Corporation; law enforcement or emergency personnel; or North Carolina state employees acting in an official capacity.

(e) Placement and Maintenance of Markers. Duke Energy Corporation is the designated as a suitable entity for placement and maintenance of buoys and other signs implementing this Rule.

(f) Duke Energy Corporation hydroelectric stations and dams affected by this Rule:

- (1) Bridgewater Hydroelectric Station (Paddy including Paddy Creek Dam, Linville Dam and Catawba Dam) Dam in the Catawba River in Burke and McDowell counties;
- (2) Cowans Ford Hydroelectric Station (Cowans Ford Dam) including Cowans Ford Dam in the Catawba River in Lincoln and Mecklenburg counties;

- (3) Lookout Hydroelectric Station (~~Lookout Dam~~) including Lookout Dam in the Catawba River in Catawba and Iredell counties;
- (4) Mountain Island Hydroelectric Station (~~Mountain Island Dam~~) including Mountain Island Dam in the Catawba River in Gaston and Mecklenburg counties;
- (5) Oxford Hydroelectric Station (~~Oxford Dam~~) including Oxford Dam in the Catawba River in Alexander and Catawba counties;
- (6) Rhodhiss Hydroelectric Station (~~Rhodhiss Dam~~) including Rhodhiss Dam in the Catawba River in Burke and Caldwell counties; and
- (7) Tuxedo Hydroelectric Station (~~Tuxedo Dam~~) including Tuxedo Dam in the Green River in Henderson County.

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 27 - WELL CONTRACTOR CERTIFICATION RULES

SECTION .0100 - DUTIES AND DEFINITIONS

15A NCAC 27 .0120 PETITION FOR RULEMAKING

(a) Any person wishing to request that the Commission adopt, amend, or repeal a rule shall make the request in a petition addressed to offices of the Commission:

NC Well Contractors Certification Commission
1653 Mail Service Center
Raleigh, NC 27699-1653

(b) Additional contact information for the Commission may be found online at www.wellcontractors.nc.gov.

(c) The petition shall contain the following information:

- (1) the text of the proposed rule(s) for adoption or amendment;
- (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an existing rule(s);
- (3) the name(s) and address(es) of the petitioner(s); and
- (4) a request to present the petition to the Commission, if desired.

(d) The petitioner may include the following additional information:

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

(e) In its review of the petition, the Commission shall consider:

- (1) whether it has authority to adopt the rule;
- (2) the effect of the proposed rule on existing rules, programs, and practices;
- (3) costs of the proposed rule; and

Authority G.S. 75A-3; 75A-15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Well Contractors Certification Commission intends to adopt the rule cited as 15A NCAC 27 .0120.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://wellcontractors.nc.gov/web/eh/rules>

Proposed Effective Date: *October 1, 2018*

Public Hearing:

Date: *April 23, 2018*

Time: *10:00 a.m.*

Location: *5605 Six Forks Road, Raleigh, NC 27609, Room 3-3-B5*

Reason for Proposed Action: *This proposed rule is necessary to conform to NC General Statute 150B-20(a) which requires agencies to provide additional notice of petitions for rulemaking.*

Comments may be submitted to: *Andrew Morgan, 1653 Mail Service Center, Raleigh, NC 27699-1653; phone (919) 707-5882; email Andrew.morgan@dhhs.nc.gov*

Comment period ends: *June 1, 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

PROPOSED RULES

(4) the impact of the rule on the public and regulated entities.

Authority G.S. 143B-301.11; 150B-20.

(f) The Commission shall return petitions that do not contain the information required by Paragraph (c) of this Rule.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on February 15, 2018 Meeting.

**REGISTER CITATION TO THE
NOTICE OF TEXT****ALCOHOLIC BEVERAGE CONTROL COMMISSION**

<u>Off-Site Storage Location</u>	14B NCAC 15C .0505*	32:09 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Sewage Sludge Incineration Units</u>	15A NCAC 02D .1204*	32:04 NCR
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<u>Purpose</u>	15A NCAC 02R .0101	32:04 NCR
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<u>Definitions</u>	15A NCAC 02R .0102*	32:04 NCR
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<u>Purpose</u>	15A NCAC 02R .0201	32:04 NCR
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<u>Components</u>	15A NCAC 02R .0202*	32:04 NCR
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<u>Public Involvement, Availability</u>	15A NCAC 02R .0203	32:04 NCR
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<u>General</u>	15A NCAC 02R .0301*	32:04 NCR
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<u>Mitigation Banks</u>	15A NCAC 02R .0302*	32:04 NCR
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<u>Purpose</u>	15A NCAC 02R .0401	32:04 NCR
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<u>Schedule of Fees</u>	15A NCAC 02R .0402*	32:04 NCR
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<u>Donation of Property</u>	15A NCAC 02R .0403*	32:04 NCR
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<u>Riparian Buffer Mitigation Fees to the NC Ecosystem Enhanc...</u>	15A NCAC 02R .0601*	32:04 NCR
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<u>Nutrient Offset Payment Rates for the NC Ecosystem Enhanc...</u>	15A NCAC 02R .0602*	32:04 NCR
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<u>General</u>	15A NCAC 13A .0101*	32:08 NCR
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<u>Definitions</u>	15A NCAC 13A .0102*	32:08 NCR
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<u>Petitions - Part 260</u>	15A NCAC 13A .0103	32:08 NCR
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<u>Public Information - Part 2</u>	15A NCAC 13A .0104	32:08 NCR
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<u>RCRA/Hazardous Waste Permit Requirements - Part 124</u>	15A NCAC 13A .0105*	32:08 NCR
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<u>Identification and Listing of Hazardous Wastes - Part 261</u>	15A NCAC 13A .0106	32:08 NCR
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<u>Standards Applicable to Generators of Hazardous Waste - P...</u>	15A NCAC 13A .0107*	32:08 NCR
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<u>Standards Applicable to Transporters of Hazardous Waste -...</u>	15A NCAC 13A .0108	32:08 NCR
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<u>Standards for Owners and Operators of Hazardous Treatment...</u>	15A NCAC 13A .0109*	32:08 NCR
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<u>Interim Status Standards for Owners and Operators of Haza...</u>	15A NCAC 13A .0110*	32:08 NCR
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<u>Standards for the Management of Specific Hazardous Wastes...</u>	15A NCAC 13A .0111*	32:08 NCR
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<u>Land Disposal Restrictions - Part 268</u>	15A NCAC 13A .0112	32:08 NCR
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<u>The Hazardous Waste Permit Program - Part 270</u>	15A NCAC 13A .0113*	32:08 NCR
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<u>Requirements for Authorization of State Hazardous Waste P...</u>	15A NCAC 13A .0114	32:08 NCR
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<u>Commercial Hazardous Waste Facility Scoring For Category ...</u>	15A NCAC 13A .0116	32:08 NCR
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<u>Fee Schedule for Commercial Hazardous Waste Treatment, St...</u>	15A NCAC 13A .0117*	32:08 NCR
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<u>Standards for the Management of Used Oil</u>	15A NCAC 13A .0118*	32:08 NCR
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<u>Standards For Universal Waste Management - Part 273</u>	15A NCAC 13A .0119*	32:08 NCR
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GENERAL CONTRACTORS, LICENSING BOARD FOR

<u>Identification</u>	21 NCAC 12 .0101	32:10 NCR
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<u>Structure of Board</u>	21 NCAC 12 .0103*	32:10 NCR
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<u>Classification</u>	21 NCAC 12 .0202	32:10 NCR
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<u>Qualifier</u>	21 NCAC 12 .0205*	32:10 NCR
<u>Joint Venture</u>	21 NCAC 12 .0207	32:10 NCR
<u>Construction Management</u>	21 NCAC 12 .0208	32:10 NCR
<u>Multiunit Buildings</u>	21 NCAC 12 .0211*	32:10 NCR
<u>General</u>	21 NCAC 12 .0301	32:10 NCR
<u>Request</u>	21 NCAC 12 .0302	32:10 NCR
<u>Application for Licensure</u>	21 NCAC 12 .0303	32:10 NCR
<u>Fees</u>	21 NCAC 12 .0304	32:10 NCR
<u>Filing Address</u>	21 NCAC 12 .0305	32:10 NCR
<u>Subject Matter</u>	21 NCAC 12 .0402	32:10 NCR
<u>Passing Grade</u>	21 NCAC 12 .0404	32:10 NCR
<u>Person Taking Examination</u>	21 NCAC 12 .0408	32:10 NCR
<u>Failing Examination</u>	21 NCAC 12 .0410	32:10 NCR
<u>License Granted</u>	21 NCAC 12 .0501	32:10 NCR
<u>Temporary License</u>	21 NCAC 12 .0502	32:10 NCR
<u>Maintaining Current Address; Notification</u>	21 NCAC 12 .0505	32:10 NCR
<u>Charge for Status of Licensure</u>	21 NCAC 12 .0506	32:10 NCR
<u>Improper Practice</u>	21 NCAC 12 .0701*	32:10 NCR
<u>Unlicensed Practice</u>	21 NCAC 12 .0702*	32:10 NCR
<u>Fee for Submittal of Bad Check</u>	21 NCAC 12 .0703*	32:10 NCR
<u>Right to Hearing</u>	21 NCAC 12 .0817	32:10 NCR
<u>Request for Hearing</u>	21 NCAC 12 .0818*	32:10 NCR
<u>Notice of Hearing</u>	21 NCAC 12 .0820*	32:10 NCR
<u>Failure to Appear</u>	21 NCAC 12 .0826*	32:10 NCR
<u>Subpoenas</u>	21 NCAC 12 .0827*	32:10 NCR
<u>Final Decision</u>	21 NCAC 12 .0829*	32:10 NCR
<u>Proposals for Decisions</u>	21 NCAC 12 .0830*	32:10 NCR

COSMETIC ART EXAMINERS, BOARD OF

<u>Definitions</u>	21 NCAC 14A .0101*	32:05 NCR
<u>Water</u>	21 NCAC 14H .0301*	32:05 NCR
<u>Ventilation and Light</u>	21 NCAC 14H .0302*	32:05 NCR
<u>Bathroom Facilities</u>	21 NCAC 14H .0303*	32:05 NCR
<u>Licensees and Students</u>	21 NCAC 14H .0401*	32:05 NCR
<u>Disinfection Procedures</u>	21 NCAC 14H .0403*	32:05 NCR
<u>First Aid</u>	21 NCAC 14H .0404*	32:05 NCR
<u>Rule Compliance and Enforcement Measures</u>	21 NCAC 14H .0505*	32:05 NCR
<u>Application/Licensure/Individuals Who Have Been Convicted...</u>	21 NCAC 14I .0401*	32:05 NCR

HEARING AID DEALERS AND FITTERS BOARD

<u>Abbreviations</u>	21 NCAC 22A .0402*	32:10 NCR
<u>Forms</u>	21 NCAC 22A .0403*	32:10 NCR
<u>Affidavits</u>	21 NCAC 22A .0404*	32:10 NCR
<u>Fee Schedule</u>	21 NCAC 22A .0501*	32:10 NCR
<u>Submission of Applications and Fees</u>	21 NCAC 22A .0503	32:10 NCR
<u>Qualifications for Licensure</u>	21 NCAC 22F .0104*	32:10 NCR
<u>Examination</u>	21 NCAC 22F .0105	32:10 NCR
<u>Examination Results</u>	21 NCAC 22F .0107	32:10 NCR

<u>Review of Examination</u>	21 NCAC 22F .0108	32:10 NCR
<u>Reciprocity</u>	21 NCAC 22F .0122	32:10 NCR
<u>Military Licensure</u>	21 NCAC 22F .0123	32:10 NCR
<u>Continuing Education Definitions</u>	21 NCAC 22F .0201	32:10 NCR
<u>Annual Continuing Education Requirements</u>	21 NCAC 22F .0202	32:10 NCR
<u>Content Categories</u>	21 NCAC 22F .0203	32:10 NCR
<u>Self-Study</u>	21 NCAC 22F .0208*	32:10 NCR
<u>Apprenticeship Requirements</u>	21 NCAC 22F .0301	32:10 NCR
<u>Certificate Expiration and Renewal</u>	21 NCAC 22F .0303	32:10 NCR

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

SOCIAL SERVICES COMMISSION

<u>Sanctions and Appeals for Fraudulent Misrepresentation</u>	10A NCAC 10 .0308*	32:02 NCR
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TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 10 .0308 FRAUDULENT MISREPRESENTATION

(a) Notwithstanding G.S. 110-107, the Local Purchasing Agency or the Division shall impose sanctions for fraudulent misrepresentation when a person, whether an operator or recipient or someone claiming to be an operator or recipient does the following:

- (1) With intent to deceive, makes a false statement or representation regarding a material fact, omits or fails to disclose a material fact, or submits inaccurate records; and as a result of the false statement or representation, omission, or submission of inaccurate records, obtains, attempts to obtain, or continues to receive a child care subsidy for himself or herself or for another person; or
- (2) Has an error rate in excess of 10 percent.

(b) For purposes of this Rule, the following definitions shall apply:

- (1) "Error rate" shall mean the correct monthly payment divided by the monthly payment paid. The "correct monthly payment" shall mean the amount that should have been paid if the records submitted had not contained any errors.
- (2) "Error" shall mean that for each child the operator marks as present for a particular day on attendance entered into the automated provider portal for purposes of payment from the Subsidized Child Care Assistance Program:
 - (A) Neither the daily attendance records required to be kept in accordance with 10A NCAC 09 .0302(d)(3) and .1721(e)(6) nor the records of arrival and departure times required to be kept in accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6) show the child marked present; or

(B) Either the daily attendance records required to be kept in accordance with 10A NCAC 09 .0302(d)(3) and .1721(e)(6) or the records of arrival and departure times required to be kept in accordance with 10A NCAC 09 .0302(d)(4) and .1721(e)(6) show the child marked absent.

(c) Sanctions for fraudulent misrepresentation shall be as follows:

- (1) Upon the first instance of fraudulent misrepresentation by an operator, he or she must repay the amount of child care subsidy for which he or she was ineligible to receive, and the operator shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.
- (2) Upon the first instance of fraudulent misrepresentation by an operator who is not an owner, he or she must repay the amount of child care subsidy for which he or she was ineligible to receive, and the operator who is not an owner shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program in the capacity of an operator.
- (3) Upon the first instance of fraudulent misrepresentation by a recipient, he or she must repay the amount of child care subsidy for which he or she was ineligible to receive, and the recipient shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.
- (4) Upon the first instance of fraudulent misrepresentation by someone claiming to be a provider or recipient of child care subsidies, the individual claiming to be a provider or recipient of child care subsidies shall be permanently ineligible to participate in the Subsidized Child Care Assistance Program.

- (5) Repayments required under this Paragraph shall be made in accordance with Rule 10A NCAC 10 .0309(d).

(d) A recipient or operator shall also be permanently ineligible to participate in the Subsidized Child Care Assistance Program if convicted of fraudulent misrepresentation pursuant to G.S. 110-107. When a court of competent jurisdiction finds a recipient or operator guilty of fraudulent misrepresentation pursuant to G.S. 110-107, the sanction imposed is not subject to appeal under this Rule.

(e) Sanctions pursuant to this Rule shall be effective 10 days from the date of notice of the sanction.

(f) If an operator subject to a sanction purchases an existing child care facility or opens a new facility, the sanction in effect against the operator shall attach to the new or existing child care facility.

(g) The Local Purchasing Agency shall assist the Division in investigating instances of suspected fraudulent misrepresentation or falsification by an operator.

(h) The Local Purchasing Agency shall notify the Division in writing within five days of issuing any sanction.

(i) An operator may appeal any sanction imposed in Paragraph (c) of this Rule pursuant to 10A NCAC 10 .0311 and 10A NCAC 10 .0312; however, if the Division issues any sanction pursuant to this Rule, the operator may appeal directly to the Division pursuant to 10A NCAC 10 .0312. A recipient may appeal any sanction imposed in Paragraph (c) of this Rule by following the appeals procedures pursuant to G.S. 108A-79.

(j) Nothing in this Rule shall prevent the Division from initiating its own investigation of suspected falsification, inaccurate records, or fraudulent misrepresentation related child care subsidy, and taking administrative action as a result of its findings and conclusions.

(k) If the Division issues a sanction in accordance with this Rule, prior to taking any action, the Division shall notify the operator of the proposed action and the operator shall have 15 days to provide information to the Division as to why the action should not be taken. This provision shall not apply to sanctions issued by the Local Purchasing Agency.

*History Note: Authority G.S. 143B-153;
Eff. April 1, 2001;
Amended Eff. December 1, 2011;
Readopted Eff. Pending Legislative Review.*

TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

14B NCAC 15C .0505 OFF-SITE STORAGE LOCATION

(a) The holder of a brewery, winery, or distillery permit shall notify the Commission in advance of storing any alcoholic beverages that the permittee manufactures under its permit in a noncontiguous storage location as authorized pursuant to G.S. 18B-1120. This notification shall be deemed a part of the original permit application.

(b) Notification shall be made on a form approved by the Commission that requires:

- (1) the permittee's name;
- (2) the business mailing address;

- (3) the permit number;
- (4) the principal location address;
- (5) the noncontiguous storage location address;
- (6) a diagram of the premises showing the exact locations of entrances, exits, storage areas for alcoholic beverages, and separate storage areas for any other property or merchandise;
- (7) a copy of the Alcohol and Tobacco Tax and Trade Bureau approval of the noncontiguous storage location; and
- (8) a copy of the Commission's Zoning and Compliance form applicable to the noncontiguous storage location, completed pursuant to G.S. 18B-901(c).

(c) The noncontiguous storage location shall only be used by the permittee for storage of alcoholic beverages manufactured by the permittee and non-alcoholic items owned by the permittee. No alcoholic beverages of the permittee shall be stored in the same storage area with other property or merchandise of the permittee or any other person. The noncontiguous storage location shall be subject to inspection pursuant to G.S. 18B-502 and Rule .0501 of this Section.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-502; 18B-901; 18B-1120;
Eff. March 1, 2018.*

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02D .1204 SEWAGE SLUDGE INCINERATION UNITS

(a) Applicability. This Rule shall apply to sewage sludge incineration units that meet all three requirements listed in 40 CFR 60.5060(a) through (c).

(b) The provisions of this Rule shall apply to any incinerator subject to this Rule. However, when the provisions of this Rule and provisions of 15A NCAC 02D .0524, .1110, or .1111 or provisions of 40 CFR Part 61, Subpart C; 40 CFR Part 61, Subpart E; or 40 CFR Part 503, Subpart E, regulate the same pollutant, the provisions of the more restrictive standards established in Paragraphs (e) and (f) of this Rule shall apply, notwithstanding provisions of 15A NCAC 02D .0524, .1110, or .1111 or provisions of 40 CFR Part 61, Subpart C; 40 CFR Part 61, Subpart E; or 40 CFR Part 503, Subpart E to the contrary.

(c) Exemptions. Sewage sludge incineration units shall be exempted from this Rule if they are subject to:

- (1) 40 CFR Part 60 Subpart LLLL by:
 - (A) commencing construction after October 14, 2010; or
 - (B) commencing modification after September 21, 2011; or
- (2) Rule 15A NCAC 02D .1210, if they are not located at a wastewater treatment facility designed to treat domestic sewage sludge as defined in 40 CFR 60.5065.

(d) Definitions. For the purpose of this Rule, the definitions in 40 CFR 503.41, 40 CFR 60.5250, and 40 CFR 60.2 shall apply in addition to the definitions in 15A NCAC 02D .1202.

(e) Emission Standards. Any incinerator subject to this Rule shall comply with all of the following emission standards:

- (1) Emissions of particulate matter from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165 or 40 CFR 60.152 as defined in Paragraph (b) of this Rule.
- (2) Fugitive emissions from a sewage sludge incineration unit ash handling process shall meet the requirements established in 40 CFR 60.5165. All other visible emissions from a sewage sludge incineration unit shall comply with 15A NCAC 02D .0521.
- (3) Emissions of hydrogen chloride from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (4) Emissions of carbon monoxide from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (5) Emissions of dioxin and furan (total mass basis) from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (6) Emissions of dioxin and furan (toxic equivalency basis) from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (7) Emissions of mercury from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165 and in 40 CFR 61.52(b) as referenced in 15A NCAC 02D .1110(a), (d), and (e).
- (8) Emissions of nitrogen oxides from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (9) Emissions of sulfur dioxide from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (10) Emissions of cadmium from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165.
- (11) Emissions of lead from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 60.5165. The daily concentration of lead in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(c).
- (12) Emissions of beryllium from a sewage sludge incineration unit shall meet the requirements established in 40 CFR 61.32(a) through (c) as referenced in 15A NCAC 02D .1110(a), (d), and (e).
- (13) The daily concentration of arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(d).

(14) Emissions of toxic air pollutants from a sewage sludge incineration unit shall meet the requirements specified in 15A NCAC 02D .1100 in accordance with 15A NCAC 02Q .0700.

(15) The monthly average concentration for total hydrocarbons, or for carbon monoxide as provided in 40 CFR 503.40(c), in the exit gas from a sewage sludge incinerator stack, corrected to zero percent moisture and seven percent oxygen as specified in 40 CFR 503.44, shall not exceed 100 parts per million on a volumetric basis using the continuous emission monitoring required in Paragraph (l) of this Rule.

(f) Operating limits. The owner or operator of a sewage sludge incineration unit shall meet:

- (1) as applicable, the operating limits and requirements specified in 40 CFR 60.5170 including Subparagraphs (a) through (d) and (h) according to the schedule specified in 40 CFR 60.5170(e);
- (2) the operating limits and requirements specified in 40 CFR 60.5170 including Subparagraphs (a) through (d) by the final compliance date specified in Paragraph (o) of this Rule;
- (3) monitor the feed rate and moisture content of the sewage sludge fed to the sewage sludge incinerator, as specified in 40 CFR 60.5170(f)(1) and (f)(2); and
- (4) the operating requirements in 40 CFR 60.5170(a) through (d) and (h) shall meet any new operating limits, re-established in accordance with 40 CFR 60.5210.

(g) Emission and operational standards and limits established in Paragraphs (e) and (f) of this Rule and in accordance with provisions in Paragraph (b) of this Rule shall apply at all times that sewage sludge is in the combustion chamber before the sewage sludge feed to the combustor is cut off for a period of time not less than the sewage sludge incineration residence time and during periods of malfunction as specified in 40 CFR 60.5180.

(h) Initial Compliance:

- (1) Requirements with the emission standards specified in the Paragraph (e) of this Rule shall be demonstrated by using the procedures specified in 40 CFR 60.5185(a) through (e).
- (2) Requirements with the site-specific operating limits specified in 40 CFR 60.5190(a) shall be established in accordance with the requirements specified 40 CFR 60.5190(a) through (f).
- (3) Initial air pollution control device inspection specified 40 CFR 60.5220(c) shall be conducted by the date established in accordance with 40 CFR 60.5195(a). All necessary repairs shall be completed in accordance with 40 CFR 60.5195(b).
- (4) A site-specific monitoring plan for continuous monitoring, bag leak detection, ash handling systems, and an initial performance evaluation

date shall be developed in accordance with the requirements specified in 40 CFR 60.5200(a) and (d) through (h).

(i) Continuous Compliance Requirements. The owner or operator of a sewage sludge incineration unit subject to this Rule shall demonstrate compliance with the emissions standards in Subparagraphs (e)(1) through (13) and (15) of this Rule by:

- (1) demonstrating continuous compliance as specified in 40 CFR 60.5205(a) through (f);
- (2) demonstrating continuous compliance with the operating limits as specified in 40 CFR 60.5210(a)(1) and (b) through (d);
- (3) demonstrating continuous compliance with the total hydrocarbon concentration of the incinerator stack exit gas according to 40 CFR 503.45(a) unless the requirements for continuously monitoring carbon monoxide as provided in 40 CFR 503.40(c) are satisfied;
- (4) demonstrating continuous compliance with the oxygen content of the incinerator stack exit gas as provided in 40 CFR 503.45(b);
- (5) demonstrating continuous compliance with the moisture content of the incinerator stack exit gas as provided in 40 CFR 503.45(c);
- (6) conducting an annual air pollution control device inspection as specified in 40 CFR 60.5215(a);
- (7) making all necessary repairs within the time periods specified in 40 CFR 60.5215(b);
- (8) monitoring the concentration of beryllium and mercury from the sewage sludge fed to the incinerator as frequently as specified in 40 CFR 503.46(a)(1); and
- (9) monitoring the concentrations of arsenic, cadmium, chromium, lead, and nickel in the sewage sludge fed to the incinerator as frequently as specified in 40 CFR 503.46(a)(2) and (3).

(j) Performance Testing, Monitoring, and Calibration Requirements. The owner or operator of a sewage sludge incineration unit subject to this Rule shall demonstrate compliance with the emissions standards in Subparagraphs (e)(1) through (13) and (15) of this Rule by:

- (1) meeting the performance testing requirements specified in 40 CFR 60.5220(a)(1) through (11), 40 CFR 61.53(d) or 40 CFR 61.54, 40 CFR 503.43(e), and 40 CFR 61.33;
- (2) meeting the monitoring requirements specified in 40 CFR 60.5220(b)(1) through (7), 40 CFR 61.55, 40 CFR 503.55, 40 CFR 503.46; and 40 CFR 60.153;
- (3) performing the air pollution control device inspection requirements specified in 40 CFR 60.5220(b)(1) through (3); and
- (4) meeting the bypass stack provisions specified in 40 CFR 60.5220(d).

(k) The owner or operator of a sewage sludge incineration unit, subject to this Rule, shall install, operate, calibrate, and maintain the continuous parameter monitoring systems to ensure

compliance with the operational limits set forth in Paragraph (f) of this Rule as specified in 40 CFR 503.45, 40 CFR 60.5225 (a)(1), (2), and 40 CFR 60.153.

(l) Recordkeeping and Reporting. The owner or operator of a sewage sludge incineration unit subject to this Rule shall:

- (1) maintain on site in either paper copy or electronic format that can be printed upon request for a period of five years the following:
 - (A) the calendar date of each record as specified in 40 CFR 60.5230(a);
 - (B) increments of progress as specified in 40 CFR 60.5230(b);
 - (C) operator training records as specified in 40 CFR 60.5230(c)(1) through (4);
 - (D) air pollution control device inspections as specified in 40 CFR 60.5230(d);
 - (E) performance test reports as specified in 40 CFR 60.5230(e)(1) through (4);
 - (F) continuous monitoring data as specified in 40 CFR 60.5230(f)(1) through (4) and 40 CFR 60.153;
 - (G) other records for continuous monitoring systems as specified in 40 CFR 60.5230(g)(1) through (3) and 40 CFR 60.153;
 - (H) deviation reports as specified in 40 CFR 60.5230(h);
 - (I) equipment specifications and operation and maintenance requirements as specified in 40 CFR 60.5230(i);
 - (J) inspections, calibrations, and validation checks of monitoring devices as specified in 40 CFR 60.5230(j);
 - (K) monitoring plan and performance evaluations for continuous monitoring systems as specified in 40 CFR 60.5230(k);
 - (L) records indicating use of the bypass stack as specified in 40 CFR 60.5230(m);
 - (M) malfunction occurrence records shall as specified in 40 CFR 60.5230(n); and
 - (N) records showing compliance with standards for the use or disposal of sewage sludge listed in 40 CFR 503.47(b) through (n).
- (2) Submit to the Director in the format specified in 40 CFR 60.5235(h)(1) and by due dates established in Table 6 of 40 CFR Part 60 Subpart MMMM the following:
 - (A) the initial compliance report as specified in 40 CFR 60.5235(b);
 - (B) the annual compliance report as specified in 40 CFR 60.5235(c);

- (C) deviation reports (deviations from emission limits, emission standards, or operating limits, as specified in 40 CFR 60.5235(e)(1)) when it is required by 40 CFR 60.5235(d);
- (D) notification of qualified operator deviation and notification of status of qualified operator deviation as specified in 40 CFR 60.5235(e)(1);
- (E) notification of resumed operation pursuant to 40 CFR 60.5155(b)(2)(i) following shutdown (due to qualified operator deviation) as specified in 40 CFR 60.5235(e)(2);
- (F) notification of a force majeure as specified in 40 CFR 60.5235(f);
- (G) notification of intent to start or stop use of a continuous monitoring system, notification of intent to conduct a performance test, and notification of intent to conduct a rescheduled performance test as specified in 40 CFR 60.5235(g);
- (H) performance test relative accuracy audit data (test reference method) and performance test data in the manner specified in 40 CFR 60.5235(h)(2); and
- (I) semiannual reports as specified in 40 CFR 60.155.

- (3) With the Director's approval, the owner or operator may change the semiannual or annual reporting dates of the reports listed in Subparagraph (m)(2) of this Rule in accordance with the procedures established in 40 CFR 60.19(c) pursuant to 40 CFR 60.5235(i).

(m) Operator Training and Qualification.

- (1) A sewage sludge incineration unit subject to this Rule shall not be operated unless a fully trained and qualified sewage sludge incineration unit operator is at the facility or can be at the facility within one hour. The trained and qualified sewage sludge incineration unit operator may operate the sewage sludge incineration unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified sewage sludge incineration unit operators are temporarily not accessible, the procedures in 40 CFR 60.5155 shall apply.
- (2) Operator training and qualification shall be obtained by completing the requirements specified in 40 CFR 60.5130(c).
- (3) The owner or operator of a sewage sludge incineration unit subject to this Rule shall complete an annual review or refresher course covering the five topics specified in 40 CFR 60.5145(a) through (e) to maintain an operator qualification.

- (4) The owner or operator of a sewage sludge incineration unit subject to this Rule shall renew a lapsed operator qualification before he or she begins operation of the unit by one of the two methods specified in 40 CFR 60.5150(a) and (b).
- (5) When a qualified operator of a sewage sludge incineration unit subject to this Rule is not at the facility and cannot be at the facility within one hour, the owner shall meet the criteria specified in 40 CFR 60.5155.
- (6) The owner or operator of a sewage sludge incineration unit subject to this Rule shall maintain and review the operator training documentation as specified in 40 CFR 60.5160 (a) and (b).

(n) Final compliance. The owner or operator of a sewage sludge incineration unit subject to this Rule shall achieve final compliance by the dates specified in 40 CFR 60.5035(a) or (b).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5); Eff. October 1, 1991; Amended Eff. June 1, 2008; August 1, 2002; July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; December 1, 1993; Readopted Eff. March 1, 2018.

15A NCAC 02R .0101 PURPOSE

History Note: Authority G.S. 143-214.8; 143-214.9; 143-215.3; Eff. August 1, 1998; Amended Eff. July 3, 2008; Repealed Eff. March 1, 2018.

15A NCAC 02R .0102 DEFINITIONS

The definition of any word or phrase used in this Subchapter shall be the same as given in G.S. 143, Article 21. The following words and phrases shall mean:

- (1) "Aquatic resources" means wetlands, streams, lakes, rivers, springs, seeps, reservoirs, ponds, groundwater, riparian areas, and the fauna that reside within them. Aquatic resources include permanent, seasonal, flowing, standing, natural, or man-made water bodies.
- (2) "Non-riparian wetlands" means Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8) whose major source of water is precipitation. Examples of non-riparian wetlands include wet flats, pocosins, and ephemeral wetlands.
- (3) "Riparian area" means an area that does not meet the definition of wetlands found at 15A NCAC 02B .0202 and that is located within 300 feet of any perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographic map

(available at <http://viewer.nationalmap.gov>) or other site-specific data.

- (4) "Riparian wetlands" means Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8) whose primary source of water is ground water or surface water. Examples of riparian wetlands include freshwater marshes, swamp forests, bottomland hardwood forests, headwater forests, bog forests, mountain bogs, and seeps.

History Note: Authority G.S. 143-214.8; 143-214.9; 143-214.11; 143-215.3;
Eff. August 1, 1998;
Readopted Eff. March 1, 2018.

15A NCAC 02R .0201 PURPOSE

History Note: Authority G.S. 143-214.10; 143-215.3;
Eff. August 1, 1998;
Amended Eff. July 3, 2008;
Repealed Eff. March 1, 2018.

15A NCAC 02R .0202 COMPONENTS

Each Basinwide Restoration Plan shall consist of the following components conducted by DMS staff and contractors:

- (1) an assessment of the baseline aquatic resource functions within each 8-digit cataloging unit;
- (2) an assessment of the potential functional improvement of aquatic resources within each 8-digit cataloging unit;
- (3) an identification of aquatic resource areas that have the potential, if restored or enhanced, to contribute to the functional goals identified in the Basinwide Restoration Plans;
- (4) an identification of aquatic resource areas that have the potential, if preserved, to contribute to the functional goals identified in the Basinwide Restoration Plans;
- (5) a summary of the 8-digit cataloging unit characteristics, identification of priority ecosystem functions that have been degraded or lost, and opportunities for functional improvement; and
- (6) an outline of the specific goals to be accomplished through implementation of the Basinwide Restoration Plan.

History Note: Authority G.S. 143-214.10; 143-215.3; 143-214.9;
Eff. August 1, 1998;
Readopted Eff. March 1, 2018.

15A NCAC 02R .0203 PUBLIC INVOLVEMENT; AVAILABILITY

- (a) The Secretary or the Secretary's designee shall provide interested parties an opportunity to review and comment on the proposed Basinwide Restoration Plans.

- (b) The Basinwide Restoration Plans shall be available for review through the Division of Mitigation Services' website at <http://deq.nc.gov/about/divisions/mitigation-services>.

History Note: Authority G.S. 143-214.10; 143-215.3;
Eff. August 1, 1998;
Amended Eff. July 3, 2008;
Readopted Eff. March 1, 2018.

15A NCAC 02R .0301 GENERAL

All projects implemented for the purpose of satisfying compensatory mitigation requirements of certifications issued by the Department under 33 U.S.C. Section 1341 and permits or authorizations issued by the United States Army Corps of Engineers (Corps) under 33 U.S.C. Section 1344 shall be consistent with the Basinwide Restoration Plan for the appropriate river basin. A project shall be consistent with the Basinwide Restoration Plan if the project demonstrates that it advances the functional improvement goals identified in the Basinwide Restoration Plan or is determined to be consistent by the United States Army Corps of Engineers.

History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;
Eff. August 1, 1998;
Readopted Eff. March 1, 2018.

15A NCAC 02R .0302 MITIGATION BANKS

All sponsors of mitigation banks that submit a prospectus to the United States Army Corps of Engineers after the effective date of this Rule shall provide the Secretary or the Secretary's designee documentation that the proposed mitigation bank is consistent with the approved Basinwide Restoration Plan for the appropriate river basin and meets the requirements of G.S. 143-214.11(f). A mitigation bank is consistent with the Basinwide Restoration Plans if the mitigation bank demonstrates that it advances the functional improvement goals identified in the Basinwide Restoration Plan, is located at a site that is otherwise consistent with the goals outlined in the Basinwide Restoration Plan for the appropriate river basin, or is approved by the United States Army Corps of Engineers. The Secretary or the Secretary's designee shall provide comments concerning this documentation through participation on the Interagency Review Team in accordance with 33 CFR Part 332 Compensatory Mitigation for Losses of Aquatic Resources. The signature of the Secretary or the Secretary's designee on the Mitigation Banking Instrument, described in 33 CFR Part 332, shall be considered as a finding by the Department that the mitigation bank is consistent with the Basinwide Restoration Plan.

History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;
Eff. August 1, 1998;
Readopted Eff. March 1, 2018.

15A NCAC 02R .0401 PURPOSE

History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;

Eff. August 1, 1998;
Amended Eff. July 3, 2008;
Repealed Eff. March 1, 2018.

15A NCAC 02R .0402 RATE SCHEDULE - STREAM AND WETLAND RATES FOR THE NC DIVISION OF MITIGATION SERVICES

(a) For the purposes of this Rule:

- (1) "cost" or "costs" shall mean the NC Division of Mitigation Services In-Lieu Fee Mitigation Program's costs associated with stream or wetland projects in a given rate area, as described in this Rule; and
- (2) "credit" or "credits" shall mean the number of credits of stream or wetland compensatory mitigation that have been:
 - (A) requested by the applicant; and
 - (B) specified in the approved certifications issued by the Department and in the permits or authorizations issued by the United States Army Corps of Engineers pursuant to 33 U.S.C. Section 1344.

(b) The in-lieu fee shall be calculated by multiplying the rate, as established in this Rule, by the total number of credits.

(c) The Program shall calculate and publish general statewide stream and wetland payment rates and premium stream and wetland rates for watersheds as identified in Paragraph (d) of this Rule. Rates shall be published on the Division's website (<https://deq.nc.gov/about/divisions/mitigation-services>).

(d) Payment rates shall be developed for stream, freshwater wetland, and coastal wetland credits:

- (1) Streams shall consist of classified surface waters other than wetlands as defined in 15A NCAC 02B .0202.
- (2) Freshwater wetlands shall consist of Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8) and shall include riparian and non-riparian wetlands.
- (3) Coastal wetlands shall consist of Class SWL wetlands as defined in 15A NCAC 07H .0205.

(e) Premium Watershed Rate. The Program shall apply premium watershed rates for the following areas:

- (1) Any 8-digit cataloging unit (as defined by the United States Geological Survey), mitigation service area, or smaller watershed where costs are 33 percent greater than the general statewide rate shall have a surcharge equal to the difference between the general statewide rate and the actual cost of mitigation in that mitigation service area.
- (2) The initial coastal wetland rate shall be five hundred sixty thousand dollars (\$560,000) per credit.

(f) Rate Adjustment Frequency. Initial rates shall be effective as of the readoption effective date of this Rule. They shall be calculated and adjusted on July 1 of each year and shall become effective on those dates. Rate adjustments shall be published on the Program's website two weeks prior to the effective date. The

rate shall be adjusted within two business days if the Program suspends acceptance of payments at the current rate.

(g) Payment rates for streams and wetlands shall be determined for a rate area using the following equation and presented in per-credit values:

$$ActualCostRate = 1.43 \frac{ActualProjectCosts_{PresentDay}}{ActualCredits_{PresentDay}}$$

Where:

- (1) "Actual Project Costs_{PresentDay}" means the sum of all full delivery project and mitigation bank credit purchase costs, adjusted for inflation, as described in this Paragraph. Only the costs of full delivery and mitigation bank credit purchase projects that were contracted within the last three years, including completed projects, terminated projects, and projects in process, shall be included in the calculation of Actual Project Costs. At the time the rate is calculated, all contracts and expenditures shall be adjusted to present-day values using the annual composite USACE Civil Works Construction Cost Index, incorporated by reference including subsequent amendments and editions. A copy of this document may be obtained at no cost at http://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_1110-2-1304.pdf. If the USACE Civil Works Construction Cost Index is not available, the adjustment to present-day values shall be calculated using the average annual composite USACE Civil Works Construction Cost values from the previous three years;
- (2) "Project costs" means the total costs associated with development of stream or wetland compensatory mitigation projects including identification, land acquisition, project design, project construction, monitoring, maintenance, and long-term stewardship;
- (3) The "cost for projects in process" means the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program obligations in the rate area;
- (4) "Actual Credits_{PresentDay}" means the total number of credits from Actual Project Costs_{PresentDay} at the time of calculation. If the Actual Credits_{PresentDay} for an existing or completed project is reduced, the Actual Costs_{PresentDay} for that existing or completed project shall be proportionally adjusted.

History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;

Eff. August 1, 1998;

Amended Eff. July 18, 2008; April 1, 2003;

Readopted Eff. March 1, 2018.

15A NCAC 02R .0403 DONATION OF PROPERTY

(a) If approved by the Council of State, donations or dedications of interests in real property for the purposes of restoration, enhancement, or preservation may be accepted by the Secretary or the Secretary's designee if the property is consistent with the Basinwide Restoration Plan for the appropriate river basin subject to the factors listed in Paragraphs (b) and (c) of this Rule, or if the property interest is being donated to satisfy a condition of a certification issued by the Department pursuant to 33 U.S.C. Section 1341.

(b) The factors that shall be considered by the Secretary or the Secretary's designee in determining whether to accept donations or dedications of interests in real property for the purposes of wetland or riparian area restoration or enhancement include the following:

- (1) whether the property is:
 - (A) adjacent to, or will become a part of, a Department compensatory mitigation project;
 - (B) adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan;
 - (C) adjacent to or includes property on which rare aquatic species, as identified by the North Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina," is known to have been found; or
 - (D) is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program at <https://ncnhde.natureserve.org>. These documents are hereby incorporated by reference, including subsequent amendments and editions. Copies of these documents may be obtained from the Department of Natural and Cultural Resources Division of Land and Water Stewardship at <http://www.ncnhp.org/references/publications/rare-animal-list> and <http://www.ncnhp.org/references/publications/rare-plant-list>;
- (2) whether the size of the property is at least five contiguous acres;
- (3) the likelihood that the site can be successfully restored or enhanced, based on hydrology, soils, and vegetation;
- (4) the intensity of activities required to successfully restore or enhance the site. Sites requiring extreme measures for successful restoration, such as removal of structures or infrastructure, shall not be accepted;
- (5) the absence of cultural and historic resources;

- (6) the prior, current, and future land use of the donated property and adjacent properties;
- (7) the existence of federally or state-listed sensitive, endangered, or threatened species, or their critical habitat;
- (8) the potential for enhancement of natural resource values of public lands;
- (9) the absence of hazardous substance and solid waste;
- (10) whether the property is adjacent to non-supporting, partially supporting, or support-threatened waters as designated by the Division of Water Resources pursuant to 40 CFR 131.10(a) through (g). This material is available from the Department of Environmental Quality, Division of Water Resources, at <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/surface-water-standards>;
- (11) the absence of encumbrances and conditions on the transfer of the property interests; and
- (12) whether provisions have been made by the landowner for the long-term maintenance and management of the property.

(c) The factors that shall be considered by the Secretary or the Secretary's designee in determining whether to accept donations or dedications of interests in real property for the purpose of preservation of existing wetland and riparian areas include the following:

- (1) whether the property has clearly identifiable unique wetland or riparian area functions or values, such as federally or state-listed sensitive, endangered, or threatened species, or their critical habitat;
- (2) the potential for enhancement of natural resource values of public lands;
- (3) whether the property is:
 - (A) adjacent to, or will become a part of, a Department-approved restoration or preservation project;
 - (B) adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan;
 - (C) adjacent to or includes property on which rare aquatic species, as identified by the North Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina," is known to have been found; or
 - (D) is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program at <https://ncnhde.natureserve.org/>. These documents are hereby incorporated by

reference, including subsequent amendments and editions. Copies of these documents may be obtained from the Department of Natural and Cultural Resources Division of Land and Water Stewardship at 1651 Mail Service Center Raleigh, NC 27603 or at

<http://www.ncnhp.org/references/publications/rare-animal-list> and
<http://www.ncnhp.org/references/publications/rare-plant-list>;

- (4) whether the size of the property is at least five contiguous acres;
- (5) whether the property is under imminent threat of degradation;
- (6) the prior, current, and future land use of the donated property and adjacent properties;
- (7) the absence of extensive structures and infrastructure;
- (8) the absence of hazardous substance and solid waste;
- (9) the absence of cultural and historic resources;
- (10) whether the property is adjacent to non-supporting, partially supporting, or support-threatened waters as designated by the Division of Water Resources pursuant to 40 CFR 131.10(a) through (g);
- (11) the absence of encumbrances and conditions on the transfer of the property interests; and
- (12) whether provisions have been made by the landowner for the long-term maintenance and management of the property.

(d) At the expense of the applicant or donor, the following information shall be submitted with any proposal for donations or dedications of interest in real property:

- (1) documentation that the property meets the criteria in Paragraph (b) and (c) of this Rule;
- (2) US Geologic Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, and the presence of existing structures and easements;
- (3) a current property survey performed in accordance with the requirements of the North Carolina Department of Administration, State Property Office as identified by the North Carolina Board of Examiners for Engineers and Surveyors in "Standards of Practice for Land Surveying in North Carolina," incorporated by reference including subsequent amendments and editions. Copies may be obtained at no charge from the North Carolina State Board of Examiners for Engineers and Surveyors, www.ncbels.org;

- (4) a current appraisal of the value of the property performed in accordance with the requirements of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional Appraisal Practice," incorporated by reference including subsequent amendments and editions. Copies may be obtained at no cost from the Appraisal Foundation,

<http://www.appraisalfoundation.org>;

- (5) a title certificate; and

- (6) a Phase 1 Environmental Site Assessment documenting that the property does not contain structures that present health or safety problems to the general public. If wells, septic systems, water treatment systems, or water or sewer connections exist, they shall be filled, remediated, or closed at owner's expense and in accordance with State and local health and safety regulations.

(e) In addition to the factors outlined in Paragraphs (b) through (d) of this Rule, the Secretary or the Secretary's designee shall consider the following factors when determining whether to accept a donation of interest in real property to satisfy compensatory mitigation requirements:

- (1) whether restoration of the property will offset the adverse impacts of the permitted project; and
- (2) whether the adverse impacts of the permitted project are within the same 8-digit cataloging unit as the property proposed for donation.

(f) Donations of interests in real property for the purpose of satisfying compensatory mitigation requirements shall only be considered for acceptance if the proposed donation offsets an impact for which an application has already been made to the United States Army Corps of Engineers under 33 U.S.C. Section 1344 or to the Department under 33 U.S.C. Section 1341.

(g) For the purposes of satisfying compensatory mitigation requirements through the donation of interests in real property requiring restoration, enhancement, or preservation, the size of property to be donated shall equal or exceed the acreage of wetland required to be mitigated under the approved permit, and every parcel shall be a minimum of five contiguous acres in size.

(h) Donation of real property interests to satisfy compensatory mitigation requirements shall be accepted only if such property meets the requirements of Paragraphs (a) through (i) of this Rule and 15A NCAC 02H .0506(h) and if it satisfies the compensatory mitigation requirements of the approved permit.

(i) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if:

- (1) the conservation easement is granted in perpetuity and the property to be encumbered meets the requirements of Paragraphs (a) through (j) of this Rule; or
- (2) if the property interest is being donated to satisfy a condition of a certification issued by the Department pursuant to 33 U.S.C. Section 1341.

(j) Donation of interests in real property may contribute to or fulfill compensatory mitigation requirements that may be satisfied through payment of a fee according to the Rate Schedule in Rule .0402(c) of this Section. The value of the property interest shall be determined by an appraisal performed in accordance with Subparagraph (d)(4) of this Rule. The required fee as calculated in accordance with Rule .0402(c) of this Section shall be satisfied if the appraised value of the donated property interest is equal to or greater than the fee. If the appraised value of the donated property interest is less than the designated fee requirement as calculated in accordance with Rule .0402(c) of this Section, the applicant shall pay the difference between the calculated fee and the appraised value of the property interest.

History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;

Eff. August 1, 1998;

Readopted Eff. March 1, 2018.

**15A NCAC 02R .0601 RIPARIAN BUFFER
MITIGATION FEES TO THE NC DIVISION OF
MITIGATION SERVICES**

(a) For the purposes of this Rule:

- (1) "cost" or "costs" shall mean the NC Division of Mitigation Services In-Lieu Fee Mitigation Program's costs associated with riparian buffer mitigation projects in a given rate area, as described in this Rule; and
- (2) "credit" or "credits" shall mean the number of credits of riparian buffer compensatory mitigation that have been:
 - (A) requested by the applicant; and
 - (B) specified in the approved certifications issued by the Department.

(b) The Program shall calculate and publish one general riparian buffer mitigation payment rate applicable to all river basins where Commission rules allow riparian buffer mitigation payments and premium rates for specific watersheds, as identified in Paragraph (c) of this Rule. Rates shall be published on the Division's website (<https://deq.nc.gov/about/divisions/mitigation-services>). All rates shall be based on the costs incurred by the program in those watersheds.

(c) Premium Watershed Rates. The Program shall apply premium watershed rates to:

- (1) The Randleman Lake Watershed;
- (2) The Jordan Lower New Hope Watershed; and
- (3) Any 8-digit cataloging unit, mitigation service area, or smaller watershed where costs are 33 percent greater than the general statewide rate shall have a surcharge equal to the difference between the general statewide rate and the actual cost of mitigation in that mitigation service area.

The initial rate for a premium watershed with fewer than two riparian buffer mitigation projects that have reached the design stage shall be the highest riparian buffer rate in effect under the Program. The initial rate shall be revised for a premium watershed in the quarter following a quarter in which at least two riparian

buffer mitigation projects in that watershed have reached design stage.

(d) Rate Adjustment Frequency. Initial rates shall be effective as of the readoption effective date of this Rule. They shall be adjusted quarterly whenever the rate calculation set forth in Paragraph (e) of this Rule exceeds the existing rate by at least 10 percent. The rates shall also be adjusted annually. Annual calculations and adjusted rates shall be published by June 15 on the

Program's website, <http://deq.nc.gov/about/divisions/mitigation-services>, and shall become effective July 1. Any quarterly rate adjustments shall become effective on the first day of October, January, or April, as applicable, and shall be published on the same website two weeks prior to that date. The rate shall be adjusted within two business days if the Program suspends acceptance of payments at the current rate

(e) Payment rates shall be determined for a rate area using the following equation and presented in per-credit values:

$$ActualCostRate = \frac{ActualCosts_{PresentDay}}{TotalRiparianBufferCredits_{PresentDay}} + AdjustmentFactor$$

Where:

- (1) Actual Costs_{PresentDay} means the sum of all costs, adjusted for inflation, as described in this Subparagraph. Costs shall mean project costs and administrative costs and shall include the costs of completed projects, terminated projects, and projects in process. At the time the rate is set, all completed land acquisition contracts and expenditures shall be adjusted to present-day values using the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values, incorporated by reference including subsequent amendments and editions. All other completed contracts and expenditures shall be adjusted to present day values using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for projects in process shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the current composite USACE Civil Works Construction Cost Index. For projects in process where the contract type has not been determined, the cost of the project shall be calculated using the Program's average per credit cost adjusted to the future inflated value when the project will be initiated. Future year

annual inflation rates shall be drawn from the USACE Civil Works Construction Cost Index. If not available from either source, future year annual inflation rates shall be calculated using the average annual percentage change over the last three-year period;

(2) As used in this Rule:

(A) "Project Costs" means the total costs associated with development of riparian buffer mitigation projects including identification, land acquisition, project design, project construction, monitoring, maintenance, and long-term stewardship.

(B) "Administrative Costs" means costs associated with administration of the Program including staffing, supplies and rent.

(C) The "cost for projects in process" means the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program riparian buffer mitigation obligations in the rate area.

(D) "Total Riparian Buffer Credits_{PresentDay}" means the total amount of credits provided by projects in the rate area at the time of calculation. If the Total Riparian Buffer Credits_{PresentDay} for an existing or completed project is reduced, the Actual Costs_{PresentDay} for that existing or completed project shall be proportionally adjusted;

(3) The Adjustment Factor shall be applied only in those calculation periods where actual costs are calculated to be greater than actual receipts.

$$\text{Adjustment Factor} = \frac{(\text{Actual Costs} - \text{Actual Receipts})}{\text{Number of Riparian Buffer Credits Paid During Adjustment Period}}$$

The Adjustment Factor shall not comprise more than 60 percent of the overall rate;

(A) "Actual Costs" shall be the same as Actual Costs_{PresentDay} as defined in Subparagraph (1) of this Paragraph, except that the existing contracts and completed land acquisitions shall not be adjusted for inflation.

(B) "Actual Receipts" means the sum of all riparian buffer mitigation payments made to the Program in the rate area at the time of calculation.

(C) "Number of Riparian Buffer Credits Paid During Adjustment Period" means the average number of riparian buffer mitigation credits paid to the Program over the last three years in the

rate area, multiplied by the adjustment period. If no payments have been made to the Program in a rate area the number of credits paid shall be 435,600 riparian buffer credits until greater than 435,600 riparian buffer credits have been purchased in that rate area.

(4) Adjustment Period shall be one to four years determined as follows for a rate area.

(A) One year if Actual Costs exceed Actual Receipts by less than five percent.

(B) Two years if Actual Costs exceed Actual Receipts by 5 percent or more but less than 15 percent.

(C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25 percent.

(D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.5(i); 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d);

Eff. August 11, 2009;

Amended Eff. May 1, 2015;

Transferred from 15A NCAC 02B .0269 Eff. May 1, 2015;

Readopted Eff. March 1, 2018.

15A NCAC 02R .0602 NUTRIENT OFFSET PAYMENT RATES FOR THE NC DIVISION OF MITIGATION SERVICES

(a) For the purposes of this Rule, the term "cost" or "costs" means the costs of the NC Division of Mitigation Services, hereinafter in this Rule the "Program," associated with nutrient offset projects in a given rate area, as described in this Rule.

(b) The Program shall calculate and publish general offset payment rates applicable to each river basin where Commission rules allow such nutrient offsets and premium watershed rates for specific watersheds as identified in Paragraph (d) of this Rule. All rates shall be based on the per-pound nutrient reduction costs incurred by the Program in those watersheds.

(c) Payment rates shall be developed for nitrogen, phosphorus, or other nutrients as dictated by Commission rules for each river basin. Rates shall be published on the Division's website (<https://deq.nc.gov/about/divisions/mitigation-services>).

(d) Premium Watershed Rates. The Program shall apply premium watershed rates to:

(1) The Neuse 03020201 cataloging unit below the Falls watershed, the Jordan Lake watershed, and the Falls Lake watershed; and

(2) Any eight-digit cataloging unit or smaller watershed that is subject to nutrient management rules where costs are 33 percent greater than costs in the larger watershed or river basin where that cataloging unit is located.

The initial rate for a premium watershed with fewer than two nutrient reduction projects that have reached the design stage shall be the highest rate in effect under the Program for the applicable nutrient. The initial rate shall be revised for a premium watershed in the quarter following a quarter in which at least two nutrient reduction projects in that watershed have reached design stage.

(e) Once an area has been established as an area with premium watershed rates, it shall remain a premium watershed rate area.

(f) Rate Adjustment Frequency. Rates shall be adjusted quarterly whenever the rate calculation set forth in Paragraph (g) of this Rule exceeds the existing rate by at least 10 percent. The rates shall also be adjusted annually. Annual calculations and adjusted rates shall be published by June 15 on the Program's website <http://deq.nc.gov/about/divisions/mitigation-services>, and shall become effective July 1. Any quarterly rate adjustments shall become effective on the first day of October, January, or April, as applicable, and shall be published on the same website two weeks prior to that date. The rate shall be adjusted within two business days if the Program suspends acceptance of payments at the current rate pursuant to 15A NCAC 02B .0240(e)(2).

(g) Payment rates for each nutrient shall be determined for a rate area using the following equation and presented in per-pound values:

$$\text{ActualCostRate} = \frac{\text{ActualCosts}_{\text{PresentDay}}}{\text{TotalPoundsOffset}_{\text{PresentDay}}} + \text{AdjustmentFactor}$$

Where:

- (1) "Actual Costs_{PresentDay}" means the sum of all costs adjusted for inflation as described in this Subparagraph. Costs shall mean project costs and administrative costs and shall include the costs of completed projects, terminated projects, and projects in process. At the time the rate is set, all completed land acquisition contracts and expenditures shall be adjusted to present-day values using the current North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other completed contracts and expenditures shall be adjusted to present-day values using the annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for projects in process shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the North Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other future contracts shall be calculated using the Program's per-credit contract costs of the same type adjusted to the inflated future value at the time the contracts will be encumbered using the current composite USACE Civil Works Construction Cost Index. For projects in process where the contract type has not been determined, the cost of the project shall be calculated using the Program's average per pound cost adjusted to the future inflated value

at the time the project will be initiated. Future year annual inflation rates shall be drawn from the USACE Civil Works Construction Cost Index. If not available from either source, they shall be calculated using the average annual percentage change over the last three-year period;

(2) As used in this Rule:

- (A) "Project Costs" means the total costs associated with development of nutrient reduction projects including identification, land acquisition, project design, project construction, monitoring, maintenance, and long-term stewardship;
- (B) "Administrative Costs" means costs associated with administration of the Program including staffing, supplies, and rent; and
- (C) The "costs for projects in process" means the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program nutrient reduction obligations in the rate area;

(3) "Total Pounds Offset_{PresentDay}" means the total number of pounds of a nutrient reduced by the Program's projects in the rate area at the time of calculation. If the Total Pounds Offset_{PresentDay} for an existing or completed project is reduced, the Actual Costs_{PresentDay} for that existing or completed project shall be proportionally adjusted:

- (A) The Adjustment Factor shall be calculated using the following formula:

$$\text{AdjustmentFactor} = \frac{(\text{ActualCosts} - \text{ActualReceipts})}{\text{NumberofPoundsPaidDuringAdjustmentPeriod}}$$

The Adjustment Factor shall be applied only in those calculation periods where actual costs are calculated to be greater than actual receipts. The Adjustment Factor shall not comprise more than 60 percent of the overall rate;

- (B) "Actual Costs" shall be the same as Actual Costs_{PresentDay} as defined in Subparagraph (1) of this Paragraph, except that the existing contracts and completed land acquisitions are not adjusted for inflation;
- (C) "Actual Receipts" means the sum of all offset payments made to the Program in the rate area at the time of calculation; and

- (D) "Number of Pounds Paid during Adjustment Period" means the average number of pounds of a nutrient paid to the Program over the last three years in the rate area multiplied by the adjustment period. If no payments have been made to the Program in a rate area, the number of pounds paid shall be 1,000 pounds until greater than 1,000 pounds have been purchased in that rate area.
- (4) Adjustment Period shall be one to four years, determined as follows for a rate area:
 - (A) One year if Actual Costs exceed Actual Receipts by less than five percent;
 - (B) Two years if Actual Costs exceed Actual Receipts by five percent or more but less than 15 percent;
 - (C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25 percent; and
 - (D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.

(h) If individual projects produce more than one type of nutrient reduction, the project costs shall be prorated for each nutrient being offset by the project.

(i) If an applicant is required to reduce more than one nutrient type and chooses to use the Program to offset nutrients, the applicant shall make a payment pursuant to 15A NCAC 02B .0240(e)(3) for each nutrient type.

History Note: Authority G.S. 143-214.1; 143-214.20; 143-214.21; S.L. 1995-572; S.L. 2006-215; S.L. 2007-438; S.L. 2009-337; S.L. 2009-484; S.L. 2009-486; Eff. September 1, 2010; Transferred from 15A NCAC 02B .0274 Eff. May 1, 2015; Readopted Eff. March 1, 2018.

15A NCAC 13A .0101 GENERAL

(a) The Hazardous Waste Section of the Division of Waste Management shall administer the hazardous waste management program for the State of North Carolina.

(b) In applying the federal requirements incorporated by reference throughout this Subchapter, the following substitutions or exceptions shall apply:

When used in any of the federal regulations incorporated by reference throughout this Subchapter, except where the context requires references to remain without substitution (including with regard to forms, publications, and regulations concerning international shipments, variances from land disposal restrictions, and other program areas over which the federal government retains sole authority): "United States" shall mean the State of North Carolina; "Environmental Protection Agency," "EPA," and "Agency" shall mean the

Department of Environmental Quality; and "Administrator," "Regional Administrator," "Assistant Administrator," and "Director" shall mean the Secretary of the Department of Environmental Quality. The North Carolina Solid Waste Management Act and other applicable North Carolina General Statutes set forth in G.S. 130A shall be substituted for references to "the Solid Waste Disposal Act," "the Resource Conservation and Recovery Act," and "RCRA" where required by context.

(c) In the event that there are inconsistencies or duplications in the requirements of those Federal rules incorporated by reference throughout this Subchapter and the State rules set out in this Subchapter, the provisions incorporated by reference shall prevail except where the State rules are more stringent.

(d) 40 CFR 260.1 through 260.3 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 260.11, "Incorporation by Reference" is incorporated by reference including subsequent amendments and editions.

(f) Copies of all materials in this Subchapter may be inspected or obtained as follows:

- (1) Persons interested in receiving rule-making notices concerning the North Carolina Hazardous Waste Management Rules shall submit a written request to the Hazardous Waste Section, 1646 Mail Service Center, Raleigh, N.C. 27699-1646. Upon receipt of each request, individuals shall be placed on a mailing list to receive notices.
- (2) Material incorporated by reference in the Federal Register may be obtained electronically free of charge from the United States Environmental Protection Agency website at <http://www.epa.gov/laws-regulations/regulations>.
- (3) All material is available for inspection at the Department of Environmental Quality, Hazardous Waste Section, 217 West Jones Street, Raleigh, NC and at <https://deq.nc.gov/about/divisions/waste-management/hw/rules>.

History Note: Authority G.S. 130A-294(c); Eff. September 1, 1979; Amended Eff. June 1, 1989; June 1, 1988; August 1, 1987; May 1, 1987; Transferred and Recodified from 10 NCAC 10F .0001 Eff. April 4, 1990; Amended Eff. October 1, 1993; April 1, 1993; October 1, 1992; December 1, 1991; Recodified from 15A NCAC 13A .0001 Eff. December 20, 1996; Amended Eff. July 1, 2016; August 1, 2004; August 1, 2000; August 1, 1998; August 1, 1997; Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018); Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017; Amended Eff. March 1, 2018.

15A NCAC 13A .0102 DEFINITIONS

(a) The definitions contained in G.S. 130A-290 apply to this Subchapter.

(b) 40 CFR 260.10 (Subpart B), "Definitions" is incorporated by reference, including subsequent amendments and editions except that the definitions for "Disposal," "Landfill," "Management or hazardous waste management," "Person," "Sludge," "Storage," and "Treatment" are defined by G.S. 130A-290 and are not incorporated by reference and the definition in 260.10 for "Contained" is not incorporated by reference.

(c) The following definition shall be substituted for "Contained:" "Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

- (1) the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials or hazardous constituents originating from the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. "Unpermitted releases" means releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures;
- (2) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and
- (3) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.
- (4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

(d) The following additional definitions shall apply throughout this Subchapter:

- (1) "Section" means the Hazardous Waste Section, in the Division of Waste Management, Department of Environmental Quality.
- (2) The "Department" means the Department of Environmental Quality (DEQ).
- (3) "Division" means the Division of Waste Management (DWM).
- (4) "Long Term Storage" means the containment of hazardous waste for an indefinite period of time in a facility designed to be closed with the hazardous waste in place.
- (5) "Off-site Recycling Facility" means any facility that receives shipments of hazardous waste from off-site to be recycled or processed for recycling through any process conducted at the

facility, but does not include any facility owned or operated by a generator of hazardous waste to recycle their own waste.

History Note: Authority G.S. 130A 294(c);

Eff. September 1, 1979;

Amended Eff. June 1, 1989; June 1, 1988; February 1, 1987; October 1, 1986;

Transferred and Recodified from 10 NCAC 10F .0002 Eff. April 4, 1990;

Amended Eff. April 1, 1993; October 1, 1990; August 1, 1990;

Recodified from 15A NCAC 13A .0002 Eff. December 20, 1996;

Amended Eff. August 1, 2000;

Temporary Amendment Eff. January 1, 2009;

Amended Eff. July 1, 2010;

Temporary Amendment Eff. December 1, 2015;

Amended Eff. July 1, 2016;

Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018);

Readopted Eff. March 1, 2018.

15A NCAC 13A .0103 PETITIONS - PART 260

(a) All rulemaking petitions for changes in this Subchapter shall be made in accordance with 15A NCAC 02I .0501.

(b) In applying the federal requirements incorporated by reference in Paragraph (c) of this Rule, 15A NCAC 02I .0501 shall be substituted for references to 40 CFR 260.20.

(c) 40 CFR 260.21 through 260.43 (Subpart C), "Rulemaking Petitions" are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c);

Eff. November 19, 1980;

Amended Eff. June 1, 1988; May 1, 1987; January 1, 1986; October 1, 1985;

Transferred and Recodified from 10 NCAC 10F .0028 Eff. April 4, 1990;

Amended Eff. April 1, 1993; November 1, 1991; October 1, 1990;

Recodified from 15A NCAC 13A .0003 Eff. December 20, 1996;

Amended Eff. August 1, 2000;

Temporary Amendment Eff. January 1, 2009;

Amended Eff. July 1, 2010;

Temporary Amendment Eff. December 1, 2015;

Amended Eff. July 1, 2016;

Readopted Eff. March 1, 2018.

15A NCAC 13A .0104 PUBLIC INFORMATION - PART 2

(a) The provisions concerning requests for information in 40 CFR 2.100 to 2.108 (Subpart A), "Procedures for Disclosure of Records Under the Freedom of Information Act" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 2.107 is not incorporated by reference.

(b) The address: Hazardous Waste Section - Records Request, Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646 is substituted for the addresses of the Records, FOIA, and Privacy Branch, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, DC 20460 in 40 CFR

2.101(a) and the Headquarters Freedom of Information Operations (1105), 1200 Pennsylvania Ave., N.W., Washington, DC 20460 in 40 CFR 2.213(a).

(c) The provisions concerning confidentiality of business information in 40 CFR 2.201 to 2.311 (Subpart B), "Confidentiality of Business Information" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 2.209 (b) and (c), 2.301, 2.302, 2.303, 2.304, 2.306, 2.307, 2.308, 2.309, 2.310 and 2.311 are not incorporated by reference.

History Note: Authority G.S. 130A-294(c);

Eff. January 1, 1986;

Amended Eff. June 1, 1988;

Transferred and Recodified from 10 NCAC 10F .0040 Eff. April 4, 1990;

Amended Eff. August 1, 1990;

Recodified from 15A NCAC 13A .0005 Eff. August 30, 1990;

Amended Eff. April 1, 1993; October 1, 1990;

Recodified from 15A NCAC 13A .0004 Eff. December 20, 1996;

Amended Eff. May 1, 2002; August 1, 2000;

Readopted Eff. March 1, 2018.

15A NCAC 13A .0105 RCRA / HAZARDOUS WASTE PERMIT REQUIREMENTS - PART 124

(a) 40 CFR 124.1 through 124.21 (Subpart A), "General Program Requirements" are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 124.31 through 124.33 (Subpart B), "Specific Procedures Applicable to RCRA Permits" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 124.31(a), 124.32(a), and 124.33(a) are not incorporated by reference.

(1) The following shall be substituted for the provisions of 40 CFR 124.31(a) that are not incorporated by reference:

(A) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units and shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under 40 CFR 270.42.

(B) The requirements of this section shall not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(2) The following shall be substituted for the provisions of 40 CFR 124.32(a) that are not incorporated by reference:

(A) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units.

(B) The requirements of this section shall apply to RCRA part B applications seeking renewal of permits for such units under 40 CFR 270.51.

(C) The requirements of this section shall not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(3) The following shall be substituted for the provisions of 40 CFR 124.33(a) that is not incorporated by reference:

Applicability. The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units.

History Note: Authority G.S. 130A-294(c);

Eff. November 19, 1980;

Amended Eff. February 1, 1988; October 1, 1986; July 1, 1986; July 1, 1985;

Transferred and Recodified from 10 NCAC 10F .0035 Eff. April 4, 1990;

Recodified from 15A NCAC 13A .0006 Eff. August 30, 1990;

Amended Eff. April 1, 1993; October 1, 1990;

Recodified from 15A NCAC 13A .0005 Eff. December 20, 1996;

Amended Eff. August 1, 1998;

Readopted Eff. March 1, 2018.

15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

(a) 40 CFR 261.1 through 261.9 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste" are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 261.30 through 261.35 (Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 261.140 through 261.151 (Subpart H), "Financial Requirements for Management of Excluded Hazardous

Secondary Materials" are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 261.170 through 261.179 (Subpart I), "Use and Management of Containers" are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 261.190 through 261.200 (Subpart J), "Tank Systems" are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 261.400 through 261.420 (Subpart M), "Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.

(j) 40 CFR 261.1030 through 261.1049 (Subpart AA), "Air Emission Standards for Process Vents" are incorporated by reference including subsequent amendments and editions.

(k) 40 CFR 261.1050 through 261.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks" are incorporated by reference including subsequent amendments and editions.

(l) 40 CFR 261.1080 through 261.1090 (Subpart CC), "Air Emission Standards for Tanks and Containers" are incorporated by reference including subsequent amendments and editions.

(m) The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c);

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Readopted Eff. March 1, 2018.

15A NCAC 13A .0107 STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE - PART 262

(a) 40 CFR 262.1 through 262.18 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions. In addition, a small quantity generator shall maintain aisle space of at least two feet in a central accumulation area to allow the unobstructed movement of personnel, fire prevention equipment, spill control equipment, and decontamination equipment.

(b) 40 CFR 262.20 through 262.27 (Subpart B), "Manifest Requirements Applicable to Small and Large Quantity Generators" are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 262.30 through 262.35 (Subpart C), "Pre-Transport Requirements Applicable to Small and Large Quantity

Generators" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 262.40 through 262.44 (Subpart D), "Recordkeeping and Reporting Applicable to Small and Large Quantity Generators" are incorporated by reference including subsequent amendments and editions. In addition, a generator shall keep records of inspections and results of inspections required by Section 40 CFR 262.16 and 262.17 for three years from the date of the inspection.

(e) 40 CFR 262.70 (Subpart G), "Farmers" is incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 262.80 through 262.89 (Subpart H), "Transboundary Movements of Hazardous Waste for Recovery or Disposal" are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 262.200 through 262.216 (Subpart K), "Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities" are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 262.230 through 262.233 (Subpart L), "Alternative Standards for Episodic Generation" are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 262.250 through 262.265 (Subpart M), "Preparedness, Prevention, and Emergency Procedures for Large Quantity Generators" are incorporated by reference with subsequent amendments and editions. In addition, a large quantity generator shall maintain aisle space of at least two feet in a central accumulation area to allow the unobstructed movement of personnel, fire prevention equipment, spill control equipment, and decontamination equipment.

(j) The Appendix to 40 CFR Part 262 is incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c);

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Amended Eff. July 1, 2016; April 1, 2010; November 1, 2007; January 1, 2007; April 1, 2001; August 1, 1998;

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15A NCAC 13A .0108 STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE - PART 263

(a) 40 CFR 263.10 through 263.12 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 263.20 through 263.25 (Subpart B), "Compliance with the Manifest System and Recordkeeping" are incorporated by reference including subsequent amendments and editions.

- (c) Upon discovering a significant manifest discrepancy, the transporter shall attempt to reconcile the discrepancy with the waste generator (e.g. with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the transporter on the 16th day shall submit to the Department a letter describing the discrepancy and attempts to reconcile it with a copy of the manifest or shipping paper at issue.
- (d) "Manifest discrepancies" means differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a transporter actually transports. Significant discrepancies in quantity shall be as follows: for bulk waste, variations greater than 10 percent in weight; and, for batch waste, any variation in piece count (e.g. a discrepancy of one drum in a truckload). Significant discrepancies in type are obvious differences that may be discovered by inspection or waste analysis (e.g. waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper).
- (e) 40 CFR 263.30 through 263.31 (Subpart C), "Hazardous Waste Discharges" are incorporated by reference including subsequent amendments and editions.

*History Note: Authority G.S. 130A-294(c);
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**15A NCAC 13A .0109 STANDARDS FOR OWNERS
AND OPERATORS OF HAZARDOUS WASTE
TREATMENT, STORAGE, AND DISPOSAL
FACILITIES - PART 264**

- (a) Any person who treats, stores, or disposes of hazardous waste shall comply with the requirements set forth in this Section. The treatment, storage, or disposal of hazardous waste is prohibited except as provided in this Section.
- (b) 40 CFR 264.1 through 264.4 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 264.10 through 264.19 (Subpart B), "General Facility Standards" are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 264.30 through 264.37 (Subpart C), "Preparedness and Prevention" are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 264.50 through 264.56 (Subpart D), "Contingency Plan and Emergency Procedures" are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 264.70 through 264.77 (Subpart E), "Manifest System, Recordkeeping, and Reporting" are incorporated by reference including subsequent amendments and editions.

- (g) 40 CFR 264.90 through 264.101 (Subpart F), "Releases From Solid Waste Management Units" are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 264.90(a)(2).
- (h) 40 CFR 264.110 through 264.120 (Subpart G), "Closure and Post-Closure" are incorporated by reference including subsequent amendments and editions.
- (i) 40 CFR 264.140 through 264.151 (Subpart H), "Financial Requirements" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), (a)(6), and Section 15 of 40 CFR 264.151(a)(1) are not incorporated by reference.

- (1) The following shall be substituted for the provisions of 40 CFR 264.143(a)(3) that are not incorporated by reference:
The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established.
- (2) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) and 264.145(a)(6) that are not incorporated by reference:
After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.
- (3) The following shall be substituted for the provisions of 40 CFR 264.145(a)(3) that are not incorporated by reference:
 - (A) Except as otherwise provided in Part (i)(3)(B) of this Rule, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.
 - (B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit is unable to provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund over the term of the RCRA post-closure permit shall be established by the Department as a permit condition.
- (4) The following shall be substituted for Section 15 of 40 CFR 264.151(a)(1) that is not incorporated by reference:

Section 15. Notice of Payment. The trustee shall notify the Department of payment to the trust fund, by certified mail within 10 days following said payment to the trust fund. The notice shall contain the name of the Grantor, the date of payment, the amount of payment, and the current value of the trust fund.

- (5) Concerning financial assurance for corrective action, the owner or operator shall choose from the financial instrument options provided in 40 CFR 264.145 Subpart H, or any combination of the financial instruments allowed by the Section to satisfy corrective action financial assurance requirements of 40 CFR 264.100 and 264.101. The wording of the financial assurance instrument or instruments shall be consistent with the wording provided in 40 CFR 264.151. The wording of the instrument used shall be modified to include the term "corrective action," as applicable.

(j) 40 CFR 264.170 through 264.179 (Subpart I), "Use and Management of Containers" are incorporated by reference including subsequent amendments and editions.

(k) 40 CFR 264.190 through 264.200 (Subpart J), "Tank Systems" are incorporated by reference including subsequent amendments and editions.

(l) The following are requirements for Surface Impoundments:

- (1) 40 CFR 264.220 through 264.232 (Subpart K), "Surface Impoundments" are incorporated by reference including subsequent amendments and editions.
- (2) The following are additional standards for surface impoundments:
 - (A) the liner system shall consist of at least two liners;
 - (B) artificial liners shall be equal to or greater than 30 mils in thickness;
 - (C) clayey liners shall be equal to or greater than five feet in thickness and have a maximum permeability of 1.0×10^{-7} cm/sec;
 - (D) clayey liner soils shall have the same characteristics as described in Subparts (r)(4)(B)(ii), (iii), (iv), (vi), and (vii) of this Rule;
 - (E) a leachate collection system shall be constructed between the upper liner and the bottom liner;
 - (F) a leachate detection system shall be constructed below the bottom liner; and
 - (G) surface impoundments shall be constructed in such a manner to prevent landsliding, slippage, or slumping.

(m) 40 CFR 264.250 through 264.259 (Subpart L), "Waste Piles" are incorporated by reference including subsequent amendments and editions.

(n) 40 CFR 264.270 through 264.283 (Subpart M), "Land Treatment" are incorporated by reference including subsequent amendments and editions.

(o) 40 CFR 264.300 through 264.317 (Subpart N), "Landfills" are incorporated by reference including subsequent amendments and editions.

(p) A long-term storage facility shall meet groundwater protection, closure and post-closure, and financial requirements for disposal facilities as specified in Paragraphs (g), (h), and (i) of this Rule.

(q) 40 CFR 264.340 through 264.351 (Subpart O), "Incinerators" are incorporated by reference including subsequent amendments and editions.

(r) The following are additional location standards for facilities:

- (1) In addition to the location standards set forth in Paragraph (c) of this Rule, the Department, in determining whether to issue a permit for a hazardous waste management facility, shall consider the risks posed by the proximity of the facility to: water table levels; flood plains; water supplies; public water supply watersheds; mines; population centers; natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites; and shall consider whether provisions have been made for buffer zones. The Department shall also consider ground water travel time, soil pH, soil cation exchange capacity, soil characteristics, composition, and permeability; slope; climate; local land use; transportation factors such as proximity to waste generators, route, route safety, and method of transportation; aesthetic factors such as the visibility, appearance, and noise level of the facility; potential impact on air quality; and existence of seismic activity and cavernous bedrock. The basis for issuing or denying the permit are found in 40 CFR 264 as adopted by reference in this Rule.

(2) The following minimum separation distances shall be required of all hazardous waste management facilities except that existing facilities shall be required to meet these minimum separation distances to the maximum extent feasible:

- (A) All hazardous waste management facilities shall be located at least 0.25 miles from institutions including but not limited to schools, health care facilities and prisons, unless the owner or operator demonstrates that no risks shall be posed by the proximity of the facility.
- (B) All hazardous waste treatment and storage facilities shall comply with the following separation distances: all hazardous waste shall be treated and stored a minimum of 50 feet from the property line of the facility; except that

- all hazardous waste with ignitable, incompatible, or reactive characteristics shall be treated and stored a minimum of 200 feet from the property line of the facility if the area adjacent to the facility is zoned for any use other than industrial or is not zoned.
- (C) All hazardous waste landfills, long-term storage facilities, land treatment facilities, and surface impoundments shall comply with the following separation distances:
- (i) all hazardous waste shall be located a minimum of 200 feet from the property line of the facility;
 - (ii) each hazardous waste landfill, long-term storage, or surface impoundment facility shall be constructed so that the bottom of the facility is 10 feet or more above the historical high ground water level. The historical high ground water level shall be determined by measuring the seasonal high ground water levels and predicting the long-term maximum high ground water level from published data on similar North Carolina topographic positions, elevations, geology, and climate; and
 - (iii) all hazardous waste shall be located a minimum of 1,000 feet from the zone of influence of any existing off-site ground water well used for drinking water, and outside the zone of influence of any existing or planned on-site drinking water well.
- (D) Hazardous waste storage and treatment facilities for liquid waste that is classified as hazardous waste due to the Toxicity Characteristic, as defined in 40 CFR 261.24, or is classified as Acute Hazardous Waste or Toxic Waste, as defined in 40 CFR 261.30(b), and is stored or treated in tanks or containers shall not be located:
- (i) in the recharge area of an aquifer that is designated as an existing sole drinking water source as defined in the Safe Drinking Water Act,
- Section .1424(e) [42 U.S.C. 300h-3(e)] unless an adequate secondary containment system, as described in 40 CFR 264, is constructed, and after consideration of applicable factors in Subparagraph (r)(3) of this Rule, the owner or operator demonstrates no risk to public health;
- (ii) within 200 feet of surface water impoundments or surface water stream with continuous flow as defined by the United States Geological Survey;
 - (iii) in an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in 15A NCAC 02B .0200 and 15A NCAC 18C .0102;
 - (iv) in an area that will allow direct surface or subsurface discharge to the watershed for a Class I or II Reservoir as defined in 15A NCAC 18C .0102;
 - (v) within 200 feet horizontally of a 100-year floodplain elevation;
 - (vi) within 200 feet of a seismically active area; and
 - (vii) within 200 feet of a mine, cave, or cavernous bedrock.
- (3) The Department shall require any hazardous waste management facility to comply with greater separation distances or other protective measures when necessary to avoid risks posed by the proximity of the facility to: water table levels; flood plains; water supplies; public water supply watersheds; mines; population centers; natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites; or to provide a buffer zone as required by this Rule. The Department shall also require protective measures when necessary to avoid unreasonable risks posed by the soil pH, soil cation exchange capacity, soil characteristics, composition, and permeability; slope; climate; local land use; transportation factors such as proximity to waste generators, route, route safety, and method of transportation; aesthetic factors such as the visibility, appearance, and noise level of the facility; potential impact on air quality; and the existence of seismic activity

and cavernous bedrock. In determining whether to require greater separation distances or other protective measures, the Department shall consider the following factors:

- (A) all proposed hazardous waste activities and procedures to be associated with the transfer, storage, treatment, or disposal of hazardous waste at the facility;
 - (B) the type of hazardous waste to be treated, stored, or disposed of at the facility;
 - (C) the volume of waste to be treated, stored, or disposed of at the facility;
 - (D) land use issues including the number of permanent residents in proximity to the facility and their distance from the facility;
 - (E) the adequacy of facility design and plans for containment and control of sudden and non-sudden accidental events in combination with adequate off-site evacuation of potentially impacted populations;
 - (F) other land use issues including the number of institutional and commercial structures such as airports and schools in proximity to the facility, their distance from the facility, and the particular nature of the activities that take place in those structures;
 - (G) the lateral distance and slope from the facility to surface water supplies or to watersheds draining into surface water supplies;
 - (H) the vertical distance, and type of soils and geologic conditions separating the facility from the water table;
 - (I) the direction and rate of flow of ground water from the sites and the extent and reliability of on-site and nearby data concerning seasonal and long-term groundwater level fluctuations;
 - (J) potential air emissions including rate, direction of movement, dispersion and exposure, whether from planned or accidental, uncontrolled releases; and
 - (K) any other relevant factors.
- (4) The following are additional location standards for hazardous waste landfills, hazardous waste long-term storage facilities, and hazardous waste surface impoundments:
- (A) A hazardous waste landfill, long-term storage, or a surface impoundment facility shall not be located:

- (i) in the recharge area of an aquifer that is an existing sole drinking water source;
 - (ii) within 200 feet of a surface water stream with continuous flow;
 - (iii) in an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in 15A NCAC 02B .0200 and 15A NCAC 18C .0102;
 - (iv) in an area that will allow direct surface or subsurface discharge to a watershed for a Class I or II Reservoir as defined in 15A NCAC 18C .0102;
 - (v) within 200 feet horizontally of a 100-year flood hazard elevation;
 - (vi) within 200 feet of a seismically active area; and
 - (vii) within 200 feet of a mine, cave, or cavernous bedrock.
- (B) A hazardous waste landfill or long-term storage facility shall be located in geologic formations with the following soil characteristics:
- (i) the depth of the unconsolidated soil materials shall be equal to or greater than 20 feet;
 - (ii) the percentage of fine-grained soil material shall be equal to or greater than 30 percent passing through a number 200 sieve;
 - (iii) soil liquid limit shall be equal to or greater than 30;
 - (iv) soil plasticity index shall be equal to or greater than 15;
 - (v) soil compacted hydraulic conductivity shall be a maximum of 1.0×10^{-7} cm/sec;
 - (vi) soil Cation Exchange Capacity shall be equal to or greater than 5 milliequivalents per 100 grams;
 - (vii) soil Potential Volume Change Index shall be equal to or less than 4; and
 - (viii) soils shall be underlain by a geologic formation having a rock quality designation

- equal to or greater than 75 percent.
- (C) A hazardous waste landfill or long-term storage facility shall be located in areas of low to moderate relief to the extent necessary to prevent landsliding or slippage and slumping. The site may be graded to comply with this standard.
- (5) All new hazardous waste impoundments that close with hazardous waste residues left in place shall comply with the standards for hazardous waste landfills in Subparagraph (r)(4) of this Rule.
- (6) The owners and operators of all new hazardous waste management facilities shall construct and maintain a minimum of two observation wells, one upgradient and one downgradient of the proposed facility; and shall establish background groundwater concentrations and monitor annually for all hazardous wastes that the owner or operator proposes to store, treat, or dispose at the facility.
- (7) The owners and operators of all new hazardous waste facilities shall demonstrate that the community has had an opportunity to participate in the siting process by complying with the following:
- (A) The owners and operators shall hold at least one public meeting in the county in which the facility is to be located to inform the community of all hazardous waste management activities including: the hazardous properties of the waste to be managed; the type of management proposed for the wastes; the mass and volume of the wastes; the source of the wastes; and to allow the community to identify specific health, safety and environmental concerns or problems expressed by the community related to the hazardous waste activities associated with the facility. The owners and operators shall provide a public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting. The written transcript and other written material submitted or used at the meeting shall be submitted to the local public library closest to and in the county of the proposed site with a request that the information be made available to the public.
- (B) For the purposes of this Rule, public notice shall include: notification of the boards of county commissioners of the county where the proposed site is to be located and all contiguous counties in North Carolina; a legal advertisement placed in a newspaper or newspapers serving those counties; and provision of a news release to at least one newspaper, one radio station, and one TV station serving these counties. Public notice shall include the time, place, and purpose of the meetings required by this Rule.
- (C) No less than 30 days after the first public meeting transcript is available at the local public library, the owners and operators shall hold at least one additional public meeting in order to attempt to resolve community concerns. The owners and operators shall provide public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting.
- (D) The application, written transcripts of all public meetings, any additional material submitted or used at the meetings, and any additions or corrections to the application, including any responses to notices of deficiencies shall be submitted to the local library closest to and in the county of the proposed site, with a request that the information be made available to the public until the permit decision is made.
- (E) The Department shall consider unresolved community concerns in the permit review process and impose final permit conditions based on sound scientific, health, safety, and environmental principles as authorized.
- (s) 40 CFR 264.550 through 264.555 (Subpart S), "Special Provisions for Cleanup" are incorporated by reference including subsequent amendments and editions.

- (t) 40 CFR 264.570 through 264.575 (Subpart W), "Drip Pads" are incorporated by reference including subsequent amendments and editions.
- (u) 40 CFR 264.600 through 264.603 (Subpart X), "Miscellaneous Units" are incorporated by reference including subsequent amendments and editions.
- (v) 40 CFR 264.1030 through 264.1049 (Subpart AA), "Air Emission Standards for Process Vents" are incorporated by reference including subsequent amendments and editions.
- (w) 40 CFR 264.1050 through 264.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks" are incorporated by reference including subsequent amendments and editions.
- (x) 40 CFR 264.1080 through 264.1091 (Subpart CC), "Air Emission Standards for Tanks, Surface Impoundments, and Containers" are incorporated by reference including subsequent amendments and editions.
- (y) 40 CFR 264.1100 through 264.1110 (Subpart DD), "Containment Buildings" are incorporated by reference including subsequent amendments and editions.
- (z) 40 CFR 264.1200 through 264.1202 (Subpart EE), "Hazardous Waste Munitions and Explosives Storage" are incorporated by reference including subsequent amendments and editions.
- (aa) Appendices to 40 CFR Part 264 are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c);
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Amended Eff. July 1, 1995; October 1, 1993; April 1, 1993;
October 1, 1992;
Recodified from 15A NCAC 13A .0009 Eff. December 20, 1996;
Amended Eff. August 1, 2004; April 1, 2001; April 1, 1999;
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Readopted Eff. March 1, 2018.

15A NCAC 13A .0110 INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES - PART 265

- (a) 40 CFR 265.1 through 265.4 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 265.10 through 265.19 (Subpart B), "General Facility Standards" are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 265.30 through 265.37 (Subpart C), "Preparedness and Prevention" are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 265.50 through 265.56 (Subpart D), "Contingency Plan and Emergency Procedures" are incorporated by reference including subsequent amendments and editions.

- (e) 40 CFR 265.70 through 265.77 (Subpart E), "Manifest System, Recordkeeping, and Reporting" are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 265.90 through 265.94 (Subpart F), "Ground-Water Monitoring" are incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 265.110 through 265.121 (Subpart G), "Closure and Post-Closure" are incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 265.140 through 265.150 (Subpart H), "Financial Requirements" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 265.143(a)(3), (a)(4), (a)(5), (a)(6), and 40 CFR 265.145(a)(3), (a)(4), (a)(5), and (a)(6) are not incorporated by reference.

(1) The following shall be substituted for the provisions of 40 CFR 265.143(a)(3) that are not incorporated by reference:

The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established.

(2) The following shall be substituted for the provisions of 40 CFR 265.143(a)(6) and 265.145(a)(6) that are not incorporated by reference:

After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.

(3) The following shall be substituted for the provisions of 40 CFR 265.145(a)(3) that are not incorporated by reference:

(A) Except as otherwise provided in Part (h)(3)(B) of this Rule, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit is unable to provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund during the interim status period shall be established by the Department by use of an order.

- (i) 40 CFR 265.170 through 265.178 (Subpart I), "Use and Management of Containers" are incorporated by reference including subsequent amendments and editions.

(j) 40 CFR 265.190 through 265.202 (Subpart J), "Tank Systems" are incorporated by reference including subsequent amendments and editions.

(k) 40 CFR 265.220 through 265.231 (Subpart K), "Surface Impoundments" are incorporated by reference including subsequent amendments and editions.

(l) 40 CFR 265.250 through 265.260 (Subpart L), "Waste Piles" are incorporated by reference including subsequent amendments and editions.

(m) 40 CFR 265.270 through 265.282 (Subpart M), "Land Treatment" are incorporated by reference including subsequent amendments and editions.

(n) 40 CFR 265.300 through 265.316 (Subpart N), "Landfills" are incorporated by reference including subsequent amendments and editions.

(o) 40 CFR 265.340 through 265.369 (Subpart O), "Incinerators" are incorporated by reference including subsequent amendments and editions.

(p) 40 CFR 265.370 through 265.383 (Subpart P), "Thermal Treatment" are incorporated by reference including subsequent amendments and editions.

(q) 40 CFR 265.400 through 265.406 (Subpart Q), "Chemical, Physical, and Biological Treatment" are incorporated by reference including subsequent amendments and editions.

(r) 40 CFR 265.440 through 265.445 (Subpart W), "Drip Pads" are incorporated by reference including subsequent amendments and editions.

(s) 40 CFR 265.1030 through 265.1049 (Subpart AA), "Air Emission Standards for Process Vents" are incorporated by reference including subsequent amendments and editions.

(t) 40 CFR 265.1050 through 265.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks" are incorporated by reference including subsequent amendments and editions.

(u) 40 CFR 265.1080 through 265.1091 (Subpart CC), "Air Emission Standards for Tanks, Surface Impoundments, and Containers" are incorporated by reference including subsequent amendments and editions.

(v) 40 CFR 265.1100 through 265.1110 (Subpart DD), "Containment Buildings" are incorporated by reference including subsequent amendments and editions.

(w) 40 CFR 265.1200 through 265.1202 (Subpart EE), "Hazardous Waste Munitions and Explosives Storage" are incorporated by reference including subsequent amendments and editions.

(x) Appendices to 40 CFR Part 265 are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c);

Eff. November 19, 1980;

Amended Eff. June 1, 1989; December 1, 1988; June 1, 1988;

February 1, 1988;

Transferred and Recodified from 10 NCAC 10F .0033 Eff. April 4, 1990;

Recodified from 15A NCAC 13A .0011 Eff. August 30, 1990;

Amended Eff. July 1, 1995; April 1, 1993; October 1, 1992;

February 1, 1992;

Recodified from 15A NCAC 13A .0010 Eff. December 20, 1996;

Amended Eff. November 1, 2005; August 1, 2000; April 1, 1999;

Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018);

Readoption Eff. March 1, 2018.

15A NCAC 13A .0111 STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES - PART 266

(a) 40 CFR 266.20 through 266.23 (Subpart C), "Recyclable Materials Used in a Manner Constituting Disposal" are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 266.70 (Subpart F), "Recyclable Materials Utilized for Precious Metal Recovery" is incorporated by reference including subsequent amendments and editions. Off-site recycling facilities that receive materials described in 40 CFR 266.70(a) shall mark or label each container and tank holding recyclable materials at off-site precious metal recycling facilities with the words "Recyclable Material."

(c) 40 CFR 266.80 (Subpart G), "Spent Lead-Acid Batteries Being Reclaimed" is incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 266.100 through 266.112 (Subpart H), "Hazardous Waste Burned in Boilers and Industrial Furnaces" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 266.200 through 266.206 (Subpart M), "Military Munitions" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 266.210 through 266.360 (Subpart N), "Conditional Exemption for Low-Level Mixed Waste Storage, Treatment, Transportation and Disposal" are incorporated by reference including subsequent amendments and editions.

(g) Appendices to 40 CFR Part 266 are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c);

Eff. July 1, 1985;

Amended Eff. June 1, 1990; June 1, 1988; February 1, 1988;

December 1, 1987;

Transferred and Recodified from 10 NCAC 10F .0039 Eff. April 4, 1990;

Recodified from 15A NCAC 13A .0012 Eff. August 30, 1990;

Amended Eff. January 1, 1995; April 1, 1993; August 1, 1991;

October 1, 1990;

Recodified from 15A NCAC 13A .0011 Eff. December 20, 1996;

Amended Eff. April 1, 2006; April 1, 2003; April 1, 1999; August 1, 1998;

Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018);

Readoption Eff. March 1, 2018.

15A NCAC 13A .0112 LAND DISPOSAL RESTRICTIONS - PART 268

(a) 40 CFR 268.1 through 268.9 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 268.10 through 268.14 (Subpart B), "Schedule for Land Disposal Prohibition and Establishment of Treatment

Standards" are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 268.20 through 268.39 (Subpart C), "Prohibitions on Land Disposal" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 268.40 through 268.49 (Subpart D), "Treatment Standards" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 268.50 (Subpart E), "Prohibitions on Storage" is incorporated by reference including subsequent amendments and editions.

(f) Appendices to 40 CFR Part 268 are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c);

Eff. August 1, 1987;

Amended Eff. June 1, 1990; June 1, 1989; June 1, 1988; February 1, 1988;

Transferred and Recodified from 10 NCAC 10F .0042 Eff. April 4, 1990;

Recodified from 15A NCAC 13A .0013 Eff. August 30, 1990;

Amended Eff. April 1, 1995; January 1, 1995; April 1, 1993; February 1, 1991;

Recodified from 15A NCAC 13A .0012 Eff. December 20, 1996;

Amended Eff. November 1, 2005; August 1, 2000; August 1, 1998;

Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018);

Readopted Eff. March 1, 2018.

15A NCAC 13A .0113 THE HAZARDOUS WASTE PERMIT PROGRAM - PART 270

(a) 40 CFR 270.1 through 270.6 (Subpart A), "General Information" are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 270.1(c).

(b) 40 CFR 270.10 through 270.29 (Subpart B), "Permit Application" are incorporated by reference including subsequent amendments and editions.

(c) In addition to the specific Part B Permit Application information requirements for all hazardous waste facilities as defined in 40 CFR 270.14, the owners and operators of hazardous waste facilities shall provide the following information:

- (1) description and documentation of the public meetings as required in 15A NCAC 13A .0109(r)(7);
- (2) a description of the hydrological and geological properties of the site including flood plains, depth to water table, ground water travel time, seasonal and long-term groundwater level fluctuations, proximity to public water supply watersheds, consolidated rock, soil pH, soil cation exchange capacity, soil characteristics, composition, and permeability; existence of cavernous bedrock and seismic activity; slope; mines; climate; location and withdrawal rates of surface water users within the immediate drainage basin and well water users within a one mile radius of the facility; water quality

information of both surface and groundwater within 1000 feet of the facility; and a description of the local air quality;

- (3) a description of the facility's proximity to and potential impact on wetlands, endangered species habitats, parks, forests, wilderness areas, historical sites, mines, and air quality;
- (4) a description of local land use including residential, industrial, commercial, recreational, agricultural, and the proximity to schools and airports;
- (5) a description of: the proximity of the facility to waste generators and population centers; a description of the method of waste transportation; the comments of the local community and state transportation authority on the proposed route; and route safety. Comments shall include proposed alternative routes and restrictions necessary to protect the public health;
- (6) a description of facility aesthetic factors including visibility, appearance, and noise level; and
- (7) a description of any other objective factors that the Department determines are related and relevant to the proper siting and operation of the facility.

(d) In addition to the specific Part B Permit Application information requirements for hazardous waste disposal facilities as defined in 40 CFR 270.17 through 270.19 and 270.21, owners, and operators of hazardous waste landfills or longterm storage facilities shall provide the following information:

- (1) design drawings and specifications of the leachate collection and removal system;
- (2) design drawings and specifications of the artificial impervious liner;
- (3) design drawings and specifications of the clay or clay-like liner below the artificial liner, and a description of the permeability of the clay or clay-like liner; and
- (4) a description of how hazardous wastes will be treated prior to placement in the facility.

(e) In addition to the specific Part B Permit Application information requirements for surface impoundments as defined in 40 CFR 270.17, owners and operators of surface impoundments shall provide the following information:

- (1) design drawings and specifications of the leachate collection and removal system;
- (2) design drawings and specifications of all artificial impervious liners;
- (3) design drawings and specifications of all clay or clay-like liners and a description of the clay or clay-like liner; and
- (4) design drawings and specifications that show that the facility has been constructed in a manner that will prevent landsliding, slippage, or slumping.

(f) 40 CFR 270.30 through 270.33 (Subpart C), "Permit Conditions" are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 270.40 through 270.43 (Subpart D), "Changes to Permit" are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 270.50 through 270.51 (Subpart E), "Expiration and Continuation of Permits" are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 270.60 through 270.66 (Subpart F), "Special Forms of Permits" are incorporated by reference including subsequent amendments and editions.

(j) 40 CFR 270.70 through 270.73 (Subpart G), "Interim Status" are incorporated by reference including subsequent amendments and editions. For the purpose of this incorporation by reference, "January 1, 1986" shall be substituted for "November 8, 1984" contained in 40 CFR 270.73(c).

(k) 40 CFR 270.235, (Subpart I), "Integration with Maximum Achievable Control Technology (MACT) Standards" is incorporated by reference including subsequent amendments and editions.

(l) The following are additional permitting requirements for hazardous waste facilities.

- (1) An applicant applying for a permit for a hazardous waste facility shall submit a disclosure statement to the Department as a part of the application for a permit, a permit renewal, or a permit modification that involves a change in owner or operator. The disclosure statement shall be supported by an affidavit attesting to the truth and completeness of the facts asserted in the statement and shall include:
 - (A) a brief description of the form of the business (e.g. partnership, sole proprietorship, corporation, association, or other);
 - (B) the name and address of any hazardous waste facility constructed or operated after October 21, 1976 by the applicant or any parent or subsidiary corporation if the applicant is a corporation;
 - (C) a list identifying any legal action taken against any facility identified in Part (l)(1)(B) of this Rule involving:
 - (i) any administrative ruling or order issued by any state, federal, or local authority relating to revocation of any environmental or waste management permit or license, or to a violation of any state or federal statute or local ordinance relating to waste management or environmental protection;
 - (ii) any judicial determination of liability or conviction under any state or federal law or

local ordinance relating to waste management or environmental protection; and

- (iii) any pending administrative or judicial proceeding of the type described in this Part; and

- (D) the identification of each action described in Part (l)(1)(C) of this Rule shall include the name and location of the facility that the action concerns, the agency or court that heard or is hearing the matter, the title, docket or case number, and the status of the proceeding.

- (2) In addition to the information set forth in Subparagraph (l)(1) of this Rule, the Department shall require from any applicant additional information as it deems necessary to satisfy the requirements of G.S. 130A-295. The information may include:

- (A) the names, addresses, and titles of all officers, directors, or partners of the applicant and of any parent or subsidiary corporation if the applicant is a corporation;
- (B) the name and address of any company in the field of hazardous waste management in which the applicant business or any of its officers, directors, or partners, hold an equity interest and the name of the officer, director, or partner holding such interest; and
- (C) a copy of any administrative ruling or order and of any judicial determination of liability or conviction described in Part (l)(1)(C) of this Rule, and a description of any pending administrative or judicial proceeding in that item.

- (3) If the Department finds that any part or parts of the disclosure statement is not necessary to satisfy the requirements of G.S. 130A-295, the information shall not be required.

(m) An applicant for a new or modification to an existing commercial facility permit shall provide a description and justification of the need for the facility.

(n) Requirements for Off-site Recycling Facilities.

- (1) The permit requirements of 15A NCAC 13A .0109 apply to owners and operators of off-site recycling facilities unless excluded in Subparagraph (n)(2) of this Rule.
- (2) Requirements of Subparagraphs (n)(4), (5), (6), (7) and (8) of this Rule do not apply to owners and operators of off-site recycling facilities that recycle only precious metals as described in 40 CFR 40 CFR 266.70(a).

- (3) Off-site facilities that recycle precious metals shall comply with the regulations as described in 15A NCAC 13A .0111(b).
 - (4) Notwithstanding any other statement of applicability, the following provisions of 40 CFR 264 shall apply to owners and operators of off-site recycling facilities except those excluded in Subparagraph (n)(2) of this Rule:
 - (A) Subpart B - General Facility Standards;
 - (B) Subpart C - Preparedness and Prevention;
 - (C) Subpart D - Contingency Plan and Emergency Procedures;
 - (D) Subpart E - Manifest System, Recordkeeping and Reporting;
 - (E) Subpart G - Closure and Post-closure;
 - (F) Subpart H - Financial Requirements;
 - (G) Subpart I - Use and Management of Containers;
 - (H) Subpart J - Tank Systems;
 - (I) 264.101 - Corrective Action for Solid Waste Management Units;
 - (J) Subpart X - Miscellaneous Units; and
 - (K) Subpart DD - Containment Buildings.
 - (5) The requirements listed in Subparagraph (n)(4) of this Rule apply to the entire off-site recycling facility, including all recycling units, staging and process areas, and permanent and temporary storage areas for wastes.
 - (6) The following provisions of 15A NCAC 13A .0109 shall apply to owners and operators of off-site recycling facilities:
 - (A) the substitute financial requirements of Rule .0109(i)(1), (2) and (4); and
 - (B) the additional standards of Rule .0109(r)(1), (2), (3), (6) and (7).
 - (7) The owner or operator of an off-site recycling facility shall keep a written operating record at his facility.
 - (8) The following information shall be recorded and maintained in the operating record until closure of the facility:
 - (A) a description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or recycling at the facility;
 - (B) the location of all hazardous waste within the facility and the quantity at each location. This information shall include cross-references to specific manifest document numbers if the waste was accompanied by a manifest; and
 - (C) documentation of the fate of all hazardous wastes received from off-site or generated on-site. This shall include records of the sale, reuse, off-site transfer, or disposal of all waste materials.
- (o) Permit Fees for Commercial Hazardous Waste Facilities.
- (1) An applicant for a permit modification for a commercial hazardous waste facility shall pay an application fee for the Class of permit modification defined in 40 CFR 270.42 as follows:
 - (A) Class 1 permit modification \$100;
 - (B) Class 2 permit modification \$1,000; or
 - (C) Class 3 permit modification \$5,000.
 Class 1 permit modifications identified in Appendix I to 40 CFR 270.42 that do not require prior approval of the Division Director are excluded from the fee requirement.
 - (2) The application fee for a new permit, permit renewal, or permit modification shall accompany the application, and is non-refundable. The application shall be considered incomplete until the fee is paid. Checks shall be made payable to: Division of Waste Management.

History Note: Authority G.S. 130A-294(c); 130A-294.1; 130A-295(a)(1),(2), (c);
 Eff. November 19, 1980;
 Amended Eff. November 1, 1989; June 1, 1988; February 1, 1988;
 December 1, 1987;
 Transferred and Recodified from 10 NCAC 10F .0034 April 4, 1990;
 Amended Eff. August 1, 1990;
 Recodified from 15A NCAC 13A .0014 Eff. August 30, 1990;
 Amended Eff. April 1, 1993; August 1, 1991; October 1, 1990;
 Recodified from 15A NCAC 13A .0013 Eff. December 20, 1996;
 Amended Eff. August 1, 2008; April 1, 2006; August 1, 2004;
 April 1, 2001; August 1, 2000;
 Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018);
 Readopted Eff. March 1, 2018.

15A NCAC 13A .0114 REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS - PART 271

40 CFR 271.17, "Sharing of Information" has been incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c);
 Eff. January 1, 1986;
 Amended Eff. June 1, 1988; December 1, 1987; August 1, 1987;
 May 1, 1987;
 Transferred and Recodified from 10 NCAC 10F .0041 Eff. April 4, 1990;
 Recodified from 15A NCAC 13A .0015 Eff. August 30, 1990;
 Amended Eff. April 1, 1993; October 1, 1990;
 Recodified from 15A NCAC 13A .0014 Eff. December 20, 1996;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017;
 Amended Eff. March 1, 2018.

15A NCAC 13A .0116 COMMERCIAL HAZARDOUS WASTE FACILITY SCORING FOR CATEGORY DETERMINATION

(a) The Department shall evaluate all commercial hazardous waste facilities to determine a score for each facility in accordance with Paragraph (c) of this Rule.

(b) A commercial hazardous waste facility (other than an incinerator or a land disposal facility) with a volume of waste of 20,000 tons or less per year of hazardous waste and having a total score pursuant to Paragraph (c) of this Rule of equal to or less than 40 is designated as a "special purpose commercial hazardous waste facility." These facilities shall be classified as follows:

Total Score	Category
1-11	1
Greater than 11-18	2
Greater than 18-25	3
Greater than 25-32	4
Greater than 32-40	5

(c) A score for each facility shall be determined by adding the total score for Paragraphs (d) through (k) of this Rule and subtracting the score for Paragraph (l) of this Rule.

(d) A score shall be assigned for size of the facility by adding the applicable score for storage and the applicable score for treatment using Table 1.

TABLE 1

Size of Facility	Constructed Capacity	Score
Storage:	Less than 10,000	1
(gallons)	10,000-100,000	2
	Greater than 100,000	3
Treatment:	Less than 10,000	1
(gallons	10,000-100,000	2
per day)	Greater than 100,000	3

(e) A score shall be assigned for type of treatment permitted by adding the score for each type of treatment being performed by the facility using Table 2.

TABLE 2

Type of Treatment Being Performed	Score
Storage Only	1
Solvent Recovery	2
Metal Recovery	2
Energy Recovery	2
Fuel Blending	2
Aqueous Treatment	3
Stabilization	2
Incineration	5
Residuals Management	5
Other Treatment	2

(f) A score shall be assigned for the nature of hazardous waste being treated or stored by adding the score for each type of waste managed at the facility using Table 3. However, if the facility is permitted for storage only and no treatment is performed, the score for the nature of hazardous waste shall be reduced by one-half for each hazardous waste stream stored only.

TABLE 3

Nature of Hazardous Waste (from Annual Report as listed in the Permit)	Score
Corrosive	1
Ignitable	2
Reactive	3
Toxicity Characteristic	2
Listed Toxic	2
Acute	3

(g) A score shall be assigned for volume of hazardous waste by using the applicable score in Table 4.

TABLE 4

Volume of Waste (Tons from Annual Report)	Score
---	-------

Less than 2,000	1
2,000-10,000	2
10,000-20,000	3

(h) A score shall be assigned for uniformity, similarity, and lack of diversity of waste streams by using the applicable score in Table 5.

TABLE 5

Uniformity, Similarity, Lack of Diversity of Waste Streams (Number of EPA Waste Codes) As Listed in the Permit	Score
Less than 5	1
5-75	2
Greater than 75	3

(i) A score shall be assigned for predictability and treatability of site specific waste streams by using the applicable score in Table 6.

TABLE 6

Predictability and Treatability of Waste Streams	Score
Simple Waste Streams and Treatment	1
Complex Waste Streams and Treatment (Incompatibles, highly toxic, or multicoded waste streams).	2

(j) A score shall be assigned for compliance history for the past two years by using the highest applicable score in Table 7.

TABLE 7

Compliance History for Past Two Years	Score
Class II Violations	1
Class I Violations	2
Penalties	3
Injunctions	5

(k) A score shall be assigned for annual changes, which increase or decrease "sensitive land use" within a ¼ mile radius of the commercial hazardous waste facility's property boundary by using the applicable score in Table 8. Each score shall be added together.

TABLE 8

Changes in "sensitive land use"	Score
Increases	
Greater than 5 percent – less than 10 percent increase in the number of residential housing units as compared to the baseline.	1
Greater than or equal to 10 percent increase in the number of residential housing units as compared to the baseline, or 30 percent increase in the number of total sensitive land uses over a period of the previous four years.	2
Greater than 50 percent increase in the number of non-residential sensitive land uses as compared to the baseline.	1
Decreases	
Greater than 5 percent – less than 10 percent decrease in the number of residential housing units as compared to the baseline.	-1
Greater than or equal to 10 percent decrease in the number of residential housing units as compared to the baseline, or 30 percent decrease in the number of total sensitive land uses over a period of the previous four years.	-2
Greater than 50 percent decrease in the number of non-residential sensitive land uses as compared to the baseline.	-1

"Sensitive land use," as defined in G.S. 130A-295.01(f), includes residential housing, places of assembly, places of worship, schools, day care providers, and hospitals. Sensitive land use does not include retail businesses.

"Baseline" means:

- (1) for existing "Special Purpose Commercial Hazardous Waste Facilities" as the January 2008 data collected from the local government that has planning jurisdiction over the site on which the facility is located; and
- (2) for new "Special Purpose Commercial Hazardous Waste Facilities" as the data from the local government that has planning jurisdiction over the site on which the facility is located collected in the year in which the facility permit is first issued.

(l) A score shall be assigned for on-site reclamation by using the applicable score in Table 9.

TABLE 9

Reclamation (Credit Given)	Score
Pretreatment for Off-site Reclamation	1
On-site Reclamation	2

(m) The information referred to in Paragraphs (c) through (l) of this Rule shall be determined based on the facility's permit, the previous year's annual report, and compliance history. If no annual report was submitted, quarterly projections of waste volume shall be submitted to the Department by the facility. Each facility may be re-evaluated at any time new information is received by the Department concerning the factors in Paragraphs (c) through (l) of this Rule.

(n) The frequency of inspections at special purpose commercial hazardous waste facilities shall be determined by the facility's classification as follows:

Category	Minimum Inspections
1	2 per month
2	4 per month
3	6 per month
4	8 per month
5	10 per month

History Note: Authority G.S. 130A-295.02(j);

Temporary Adoption Eff. February 15, 1991 for a period of 180 days to expire on August 14, 1991;

ARRC Objection Lodged February 25, 1991;

ARRC Objection Removed March 21, 1991;

Eff. August 1, 1991;

Amended Eff. April 1, 1994;

Recodified from 15A NCAC 13A .0016 Eff. December 20, 1996;

Amended Eff. January 1, 2011;

Readopted Eff. March 1, 2018.

15A NCAC 13A .0117 FEE SCHEDULE FOR COMMERCIAL HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

(a) A commercial hazardous waste treatment, storage, or disposal facility other than a special purpose facility shall pay monthly, in addition to the fees applicable to all hazardous waste storage, treatment, or disposal facilities as required by G.S. 130A-294.1, a charge of forty-one dollars (\$41.00) per hour of operation. The fee shall be paid for any time when hazardous waste is managed or during periods of maintenance, repair, testing, or calibration. Each facility shall submit an operational schedule to the Department on a quarterly basis.

(b) A special purpose commercial hazardous waste facility shall pay monthly, in addition to the fees applicable to all hazardous waste treatment, storage or disposal facilities as required by G.S. 130A-294.1, a charge per ton of hazardous waste received during the previous month and an additional charge based on the Category as determined in 15A NCAC 13A .0116. Effective January 1, 2013, a special purpose commercial hazardous waste facility shall pay four dollars and fifty cents (\$4.50) per ton of hazardous waste received and:

Category	Monthly Fee
1	\$1,332.00
2	\$2,664.00
3	\$3,996.00
4	\$5,328.00
5	\$6,660.00

History Note: Authority G.S. 130A-295.02(h);

Temporary Adoption Eff. February 15, 1991 for a period of 180 days to expire on August 14, 1991;

ARRC Objection Lodged February 25, 1991;

ARRC Objection Removed March 21, 1991;

Eff. August 1, 1991;

Recodified from 15A NCAC 13A .0017 Eff. December 20, 1996;

Amended Eff. April 1, 2011;

Readopted Eff. March 1, 2018.

15A NCAC 13A .0118 STANDARDS FOR THE MANAGEMENT OF USED OIL

(a) 40 CFR 279.1 (Subpart A), "Definitions" is incorporated by reference including subsequent amendments and editions, except that the Definition for "Used Oil" is defined by G.S. 130A-290(b) and is not incorporated by reference.

(b) 40 CFR 279.10 through 279.12 (Subpart B), "Applicability" are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 279.20 through 279.24 (Subpart C), "Standards for Used Oil Generators" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 279.30 through 279.32 (Subpart D), "Standards for Used Oil Collection Centers and Aggregation Points" are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 279.40 through 279.47 (Subpart E), "Standards for Used Oil Transporter and Transfer Facilities" are incorporated by reference including subsequent amendments and editions.

- (f) 40 CFR 279.50 through 279.59 (Subpart F), "Standards for Used Oil Processors and Re-Refiners" are incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 279.60 through 279.67 (Subpart G), "Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery" are incorporated by reference including subsequent amendments and editions.
- (h) 40 CFR 279.70 through 279.75 (Subpart H), "Standards for Used Oil Fuel Marketers" are incorporated by reference including subsequent amendments and editions.
- (i) 40 CFR 279.80 through 279.81 (Subpart I), "Standards for Use as a Dust Suppressant and Disposal of Used Oil" are incorporated by reference including subsequent amendments and editions. G.S. 130A-309.15 provides additional information for prohibited acts regarding used oil, including used oil as a dust suppressant.

History Note: Authority G.S. 130A-294(b),(c);
 Eff. October 1, 1993;
 Recodified from 15A NCAC 13A .0018 Eff. December 20, 1996;
 Amended Eff. August 1, 2000;
 Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018);
 Readopted Eff. March 1, 2018.

15A NCAC 13A .0119 STANDARDS FOR UNIVERSAL WASTE MANAGEMENT - PART 273

- (a) 40 CFR 273.1 through 273.9 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 273.10 through 273.20 (Subpart B), "Standards for Small Quantity Handlers of Universal Waste" are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 273.30 through 273.40 (Subpart C), "Standards for Large Quantity Handlers of Universal Waste" are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 273.50 through 273.56 (Subpart D), "Standards for Universal Waste Transporters" are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 273.60 through 273.62 (Subpart E), "Standards for Destination Facilities" are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 273.70 (Subpart F), "Import Requirements" is incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 273.80 through 273.81 (Subpart G), "Petitions to Include Other Wastes Under 40 CFR Part 273" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 273.80(a) and (b), are not incorporated by reference.

- (1) The following shall be substituted for the provisions of 40 CFR 273.80(a) that are not incorporated by reference:
 Any person seeking to add a hazardous waste or a category of hazardous waste to this Part may petition for a regulatory amendment under this Subpart, 15A NCAC 02I .0501 and 40 CFR 260.23.

- (2) The following shall be substituted for the provisions of 40 CFR 273.80(b) that are not incorporated by reference:
 To be successful, the petitioner shall demonstrate to the satisfaction of the Administrator that regulation under the universal waste regulations of 40 CFR Part 273 is:
 - (A) appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program;
 - (B) the petition shall include the information required by 15A NCAC 02I .0501; and
 - (C) the petition shall also address as many of the factors listed in 40 CFR 273.81 as are appropriate for the waste or waste category addressed in the petition.

History Note: Authority G.S. 130A-294(c);
 Eff. January 1, 1996;
 Recodified from 15A NCAC 13A .0019 Eff. December 20, 1996;
 Amended Eff. April 1, 2001; August 1, 1998;
 Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018);
 Readopted Eff. March 1, 2018.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 12 – LICENSING BOARD FOR GENERAL CONTRACTORS

21 NCAC 12 .0101 IDENTIFICATION

The State Licensing Board for General Contractors, hereinafter referred to as the "North Carolina Licensing Board for General Contractors" or "the Board," is located in Raleigh, North Carolina; its mailing address is 5400 Creedmoor Road, Raleigh, North Carolina 27612. The Board website is www.nclbgc.org.

History Note: Authority G.S. 87-2;
 Eff. February 1, 1976;
 Amended Eff. June 23, 1977;
 Readopted Eff. September 26, 1977;
 Amended Eff. December 1, 1985; January 1, 1983;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
 Amended Eff. April 1, 2018.

21 NCAC 12 .0103 STRUCTURE OF BOARD

- (a) Officers. Annually, during the April meeting, the Board shall elect from its members a Chairman and Vice-Chairman. The Chairman shall preside over all meetings of the Board and perform other duties as he or she may be directed to do by the

Board. The Vice-Chairman shall function as Chairman if the Chairman is unavailable.

(b) Secretary-Treasurer. In addition to those duties and responsibilities required of him or her by G.S. 87-8, the Secretary-Treasurer, referred to as "Secretary-Treasurer" or "Executive Director," as the Board's Chief Administrative Officer, has the responsibility and power to:

- (1) employ the clerical and legal services necessary to assist the Board in carrying out the requirements of the North Carolina General Statutes;
- (2) purchase or rent whatever office equipment, stationery, or other miscellaneous articles as are necessary to keep the records of the Board;
- (3) make expenditures from the funds of the Board by signing checks, or authorizing the designee of the Secretary-Treasurer to sign checks, for expenditures after the checks are signed by the Chairman or Vice-Chairman; and
- (4) do such other acts as may be required of him or her by the Board.

(c) Official Meetings of the Board.

- (1) Regular Meetings. Regular meetings shall be held during January, April, July and October of each year at the Board's office or at any other place so designated by the Board.
- (2) Special Meetings. Special meetings shall be called and conducted in accordance with Article 33C of Chapter 143 of the North Carolina General Statutes.
- (3) Notice of Meetings. Notice of all official meetings of the Board shall be given pursuant to Article 33C of Chapter 143 of the North Carolina General Statutes.

History Note: Authority G.S. 87-2; 87-4; 87-6; 87-7; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2014; August 1, 2002; January 1, 1992; May 1, 1989; January 1, 1983; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. April 1, 2018.

21 NCAC 12 .0202 CLASSIFICATION

(a) A general contractor shall be certified in one of the following five classifications:

- (1) Building Contractor. This classification covers all building construction activity including: commercial, industrial, institutional, and all residential building construction. It includes parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, and gutters; storm drainage, retaining or screen walls, and hardware and accessory structures; and indoor and outdoor recreational facilities including natural and artificial surface athletic fields, running tracks, bleachers, and seating. It also covers work done under the specialty

classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Marine Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), S(Swimming Pools), and S(Asbestos), and S(Wind Turbine).

- (2) Residential Contractor. This classification covers all construction activity pertaining to the construction of residential units that are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138; all site work, driveways, sidewalks, and water and wastewater systems ancillary to the aforementioned structures and improvements; and the work done as part of such residential units under the specialty classifications of S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Swimming Pools), and S(Asbestos).
- (3) Highway Contractor. This classification covers all highway construction activity including: grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to a principal project, bridge construction and repair, culvert construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. It also includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of fencing, signage, runway lighting and marking; and work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction), S(Railroad Construction), and H(Grading and Excavating).
- (4) Public Utilities Contractor. This classification includes operations that are the performance of construction work on water and wastewater systems and on the subclassifications of facilities set forth in G.S. 87-10(b)(3). The Board shall issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(b)(3) for which the contractor qualifies. A public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), PU(Water Lines and Sewer Lines), PU(Water Purification and Sewage Disposal), and S(Swimming Pools).
- (5) Specialty Contractor. This classification covers all construction operation and performance of contract work outlined as follows:

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| <p>(A) H(Grading and Excavating). This classification covers the digging, moving, and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation may be executed with the use of hand and power tools and machines used for these types of digging, moving, and material placing. It covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. It also includes clearing and grubbing, and erosion control activities.</p> <p>(B) S(Boring and Tunneling). This classification covers the construction of underground or underwater passageways by digging or boring through and under the earth's surface, including the bracing and compacting of such passageways to make them safe for the purpose intended. It includes preparation of the ground surfaces at points of ingress and egress.</p> <p>(C) PU (Communications). This classification covers the installation of the following:</p> <ul style="list-style-type: none"> (i) all types of pole lines, and aerial and underground distribution cable for telephone systems; (ii) aerial and underground distribution cable for cable TV and master antenna TV systems capable of transmitting R.F. signals; (iii) underground conduit and communication cable including fiber optic cable; and (iv) microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals; and installation of PCS or cellular telephone towers and sites. <p>(D) S(Concrete Construction). This classification covers the construction and installation of foundations, pre-cast silos, and other concrete tanks or receptacles, prestressed components,</p> | <p>and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots, and highways.</p> <p>(E) PU(Electrical-Ahead of Point of Delivery). This classification covers the construction, installation, alteration, maintenance, or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated, and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers.</p> <p>(F) PU(Fuel Distribution). This classification covers the construction, installation, alteration, maintenance, or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas, chemicals, and slurries through pipeline from one station to another. It includes all excavating, trenching, and backfilling in connection therewith. It covers the installation, replacement, and removal of above ground and below ground fuel storage tanks.</p> <p>(G) PU(Water Lines and Sewer Lines). This classification covers construction work on water and sewer mains, water service lines, and house and building sewer lines, as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. It includes pavement patching, backfill, and erosion control as part of construction.</p> <p>(H) PU(Water Purification and Sewage Disposal). This classification covers the performance of construction work on water and wastewater systems; water and wastewater treatment facilities; and all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters that are ancillary to such construction of water and wastewater treatment facilities. It covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry</p> |
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- Construction), S(Roofing), and S(Metal Erection) as part of the work on water and wastewater treatment facilities.
- (I) S(Insulation). This classification covers the installation, alteration, or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. It does not include the insulation of mechanical equipment, and ancillary lines and piping.
- (J) S(Interior Construction). This classification covers the installation of acoustical ceiling systems and panels, partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets, and millwork. It includes the removal of asbestos and replacement with non-toxic substances.
- (K) S(Marine Construction). This classification covers all marine construction and repair activities and all types of marine construction in deep-water installations and in harbors, inlets, sounds, bays, and channels; it covers dredging, construction, and installation of pilings, piers, decks, slips, docks, and bulkheads. It does not include structures required on docks, slips, and piers.
- (L) S(Masonry Construction). This classification covers the installation, with or without the use of mortar or adhesives, of the following:
- (i) brick, concrete block, gypsum partition tile, pumice block, or other lightweight and facsimile units and products common to the masonry industry;
 - (ii) installation of fire clay products and refractory construction; and
 - (iii) installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). This classification covers the building, construction, and repair of railroad lines including:
- (i) the clearing and filling of rights-of-way;
 - (ii) shaping, compacting, setting, and stabilizing of road beds;
 - (iii) setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences, and gates; and
 - (iv) construction and repair of tool sheds and platforms.
- (N) S(Roofing). This classification covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" for purposes of this Subparagraph includes cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.
- (O) S(Metal Erection). This classification covers:
- (i) the field fabrication, erection, repair, and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment, and structure; and
 - (ii) the layout, assembly and erection by welding, bolting, riveting, or fastening in any manner metal products as curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, bleachers, fire escapes, and seating for

- (P) S(Swimming Pools). This classification covers the construction, service, and repair of all swimming pools. It includes:
- (i) excavation and grading;
 - (ii) construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
 - (iii) installation of all equipment including pumps, filters, and chemical feeders. It does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.
- (Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation or demolition activities.
- (R) S(Wind Turbine). This classification covers the construction, installation, and repair of wind turbines, wind generators, and wind power units. It includes assembly of blades, generator, turbine structures, and towers. It also includes ancillary foundation work, field fabrication of metal equipment, and structural support components.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examinations for the classifications in question. The license granted to an applicant who meets the qualifications for all of the classifications set forth in the rules of this Section shall be designated "unclassified."

History Note: Authority G.S. 87-1; 87-4; 87-10; Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. June 1, 1994; June 1, 1992; May 1, 1989; January 1, 1983;
Temporary Amendment Eff. February 18, 1997;

Amended Eff. April 1, 2014; June 1, 2011; September 1, 2009; April 1, 2004; April 1, 2003; August 1, 2002; April 1, 2001; August 1, 2000; August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018.

21 NCAC 12 .0205 QUALIFIER

- (a) The qualifier for the applicant shall be a responsible managing employee, officer, or member of the personnel of the applicant, as described in G.S. 87-10. A qualifier's examination credentials shall archive if the qualifier does not serve as a qualifier for an active licensee for a period of four consecutive years. Any subsequent attempts to qualify for a license shall require the qualifier to earn a passing grade. Subject to the provisions of G.S. 150B and Section .0800 of these Rules, the Board may reject the application of an applicant seeking qualification by employment of a person who has already passed an examination if such person has previously served as qualifier for a licensee that has been disciplined by the Board.
- (b) A licensee shall notify the Board in writing in the event a qualifier ceases to be connected with the licensee. The notice shall include the date on which the qualifier was last connected with the licensee and shall be submitted no later than 10 days after the date of separation. A qualifier shall also be required to notify the Board in writing in such circumstances. After such notice is filed with the Board in writing, or the Board determines that the qualifier is no longer connected with the licensee if there are no additional qualifiers for the licensee, the license shall remain in full force and effect for a period of 90 days from the termination date, and then becomes invalid unless a qualifier has transferred a valid examination credential to the licensee, as provided by G.S. 87-10.
- (c) Persons associated with a firm or corporation may take the required examination on behalf of the firm or corporation as described in G.S. 87-10. A partner may take an examination on behalf of a partnership.
- (d) "Responsible managing" as used in G.S. 87-10 shall describe a person who is engaged in the work of the applicant a minimum of 20 hours per week or a majority of the hours operated by the applicant, whichever is less.
- (e) "Members of the personnel" as used in G.S. 87-10 shall describe a person who is a responsible managing employee of the applicant. A member of the personnel shall not be an independent contractor.
- (f) An applicant or licensee may have more than one qualifier. If one person associated with the applicant fails, and another passes, the license will be granted to that applicant. A license will be issued only in the classification held by a qualifier who has passed an examination in that classification.

History Note: Authority G.S. 87-1; 87-4; 87-10; 87-11(a); Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. April 1, 2014; July 1, 2008; April 1, 2006; August 1, 2000; June 1, 1994; June 1, 1992; May 1, 1989; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018.

21 NCAC 12 .0207 JOINT VENTURE

A joint venture may practice general contracting in North Carolina if every principal or member of the joint venture is licensed to practice general contracting in North Carolina with the appropriate classification and at least one principal has the appropriate limitation, or if the joint venture obtains a general contracting license in its own name in accordance with G.S. 87-10 and these Rules. If an LLC is a joint venturer, all members and managers of the LLC shall be licensed to practice general contracting in North Carolina with the appropriate classification and limitation.

History Note: Authority G.S. 87-1; 87-10; Eff. June 1, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. April 1, 2018.

21 NCAC 12 .0208 CONSTRUCTION MANAGEMENT

(a) The phrase "undertakes to superintend or manage" as used in G.S. 87-1 to describe a person, firm, or corporation deemed to be a general contractor means that the person, firm, or corporation shall be responsible for superintending or managing the construction of an entire project, and either contracts directly with subcontractors to perform the construction for the project or is compensated for superintending or managing the project based upon the cost of the project or the time taken to complete the project. The person, firm, or corporation shall hold a general contracting license in the classifications and limitation applicable to the construction of the project.

(b) The phrase "undertakes to superintend or manage" described in Paragraph (a) of this Rule shall not include the following:

- (1) an architect or engineer licensed in North Carolina who is supervising the execution of design plans for the project owner and who does not contract directly with subcontractors to perform the construction for the project; or
- (2) subject to the conditions stated within this Subparagraph and Paragraph (c), any person, firm, or corporation retained by an owner of real property as a consultant, agent, or advisor to perform development-related functions, including:
 - (A) assisting with site planning and design;
 - (B) formulating a development scheme;
 - (C) obtaining zoning and other entitlements;
 - (D) tenant selection and negotiation;
 - (E) interfacing and negotiating with the general contractor, engineer, architect, other construction and design professionals, and other development consultants with whom the land owner separately contracts, including, negotiating contracts on the owner's behalf, assisting with scheduling issues, ensuring that any disputes

between such parties are resolved to the owner's satisfaction, and otherwise ensuring that such parties are proceeding in an efficient, coordinated manner to complete the project;

- (F) providing cost estimates, bids, and budgeting;
- (G) monitoring the progress of development activities performed by other parties;
- (H) arranging and negotiating governmental incentives and entitlements; and
- (I) selecting and sequencing sites for development.

(c) The exclusions set forth in Subparagraph (b)(2) shall not apply, however, unless the following conditions are satisfied:

- (1) the owner has retained a licensed general contractor or licensed general contractors to construct the entire project or to directly superintend and manage all construction work in which the person, firm, or corporation has any involvement and that would otherwise require the use of a licensed general contractor; and
- (2) the use of the person, firm, or corporation will not impair the general contractor's ability to communicate directly with the owner and to verify the owner's informed consent and ratification of the directions and decisions made by the person, firm, or corporation to the extent that such directions or decisions affect the construction activities otherwise requiring the use of a licensed general contractor. For the purposes of this Subparagraph, the general contractor shall be entitled to make a written demand for written verification from the owner of any directions given or decisions made by such a person, firm, or corporation on the owner's behalf. In that regard, if the general contractor delivers a written request directly to the owner asking that the owner confirm in writing that the owner desires that the general contractor perform consistent with a direction or decision made by such person, firm, or corporation:
 - (A) the general contractor shall not be obligated to follow such direction or decision in question until such time as the owner provides written verification of the direction or decision; and
 - (B) if the third party person, firm, or corporation whose direction or decision is being questioned by the general contractor attempts to itself provide the confirmation requested from the owner by the general contractor as provided above, such

person, firm, or corporation shall be deemed to be "undertaking to superintend or manage" as described in Paragraph (a) of this Rule.

History Note: Authority G.S. 87-1; 87-4;
Eff. May 1, 1995;
Amended Eff. June 1, 2010;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018.

21 NCAC 12 .0211 MULTIUNIT BUILDINGS

(a) If a project consists of the construction or alteration of one or more buildings that fall under the requirements of the North Carolina Building Code, all structures and units on the same parcel of land shall be considered as a single project.
 (b) If a project consists of the construction or alteration of one or more buildings that fall under the requirements of the North Carolina Residential Code, only structures and units on the same parcel of land shall be considered as one project.
 (c) The North Carolina State Building Code standards are hereby incorporated by reference, including subsequent amendments and editions. The current Code may be found online at http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Codes_-_Current_and_Past&user=State_Building_Codes.

History Note: Authority G.S. 87-1; 87-4; 87-10;
Eff. August 11, 2009;
Amended Eff. April 1, 2010;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018.

21 NCAC 12 .0301 GENERAL

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018.

21 NCAC 12 .0302 REQUEST

History Note: Authority G.S. 87-1; 87-10; 150B-19(5);
Eff. February 1, 1976;
Amended Eff. June 23, 1977;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 2006; December 1, 1995; June 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018.

21 NCAC 12 .0303 APPLICATION FOR LICENSURE

(a) General. Applications for licensure shall contain the following:

- (1) the Social Security Number of examinee(s) and qualifier(s) and tax identification numbers for corporate applicants;
- (2) the applicant's contact information;
- (3) the name of business under which licensee will be operating, if any;
- (4) requested designation of license limitation and classifications;
- (5) information about all crimes of which the applicant has been convicted;
- (6) certified copies of court records reflecting information regarding all crimes of which the applicant and qualifier(s) have been convicted;
- (7) information indicating whether the applicant or qualifier(s) has any disciplinary history with the Board or any other occupational licensing, registration, or certification agency;
- (8) information establishing financial responsibility as required by G.S. 87-10(a) and Rule .0204 of this Chapter;
- (9) letters of reference as prescribed in Rule .0308 of this Chapter; and
- (10) the application fee as set forth in Rule .0304 of this Chapter.

(b) Contents. The application form requires the applicant to state which limitation and classification or classifications of license he or she is applying for and also to set forth the experience of the applicant or of his or her principal employees, as appropriate. In addition, the application form requires the applicant to give information concerning his or her personal history, including personal references.

(c) Reciprocity. Applicants based on reciprocity shall submit with the application form a copy of the applicant's license in the other state, certified by the other state licensing board as being a copy of a valid license.

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018.

21 NCAC 12 .0304 FEES

(a) The Board shall charge the following fees:

- (1) Application for limited license: \$75.00;
- (2) Application for intermediate license: \$100.00;
- (3) Application for unlimited license: \$125.00;
- (4) Application for increase in limitation: \$100.00 for increase to intermediate license and \$125.00 for increase to unlimited license;
- (5) Late renewal: \$10.00 per month for every month or part after the first day of January.

(b) All fees charged by the Board shall be non-refundable.

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. January 1, 1983;
Repealed Eff. May 1, 1989;
Codifier approved agency's waiver request to reuse rule number;
Eff. April 1, 2018.

21 NCAC 12 .0305 FILING ADDRESS

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Amended Eff. June 23, 1977;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018.

21 NCAC 12 .0402 SUBJECT MATTER

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. August 1, 2000; June 1, 1994; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018.

21 NCAC 12 .0404 PASSING GRADE

Persons taking the examination shall receive a score of at least 70 in order to pass the examination.

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. January 1, 1983;
Repealed Eff. May 1, 1989;
Codifier approved agency's waiver request to reuse rule number;
Eff. April 1, 2018.

21 NCAC 12 .0408 PERSON TAKING EXAMINATION

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. April 1, 2006; September 1, 1992; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. July 23, 2016;
Repealed Eff. April 1, 2018.

21 NCAC 12 .0410 FAILING EXAMINATION

History Note: Authority G.S. 87-10;
Eff. December 1, 1995;
Amended Eff. August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. July 23, 2016;

Repealed Eff. April 1, 2018.

21 NCAC 12 .0501 LICENSE GRANTED

(a) License numbers shall be included on all contracts, advertisements, and licensee websites.
 (b) If a licensee files Articles of Dissolution or the N.C. Department of the Secretary of State withdraws the licensee's Certificate of Authority, the Board shall archive the license.

History Note: Authority G.S. 87-1; 87-10; 87-12;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018.

21 NCAC 12 .0502 TEMPORARY LICENSE

The Board shall issue a temporary license only as required by G.S. 93B-15.1.

History Note: Authority G.S. 87-1; 87-10;
Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018.

21 NCAC 12 .0505 MAINTAINING CURRENT ADDRESS; NOTIFICATION

(a) All licensees, applicants, and qualifiers shall notify the Board of any change in mailing address, phone number, or email address within 30 days from the date of the change. Notice shall be given in writing or through the Board's website portal for licensees.
 (b) Notification from the Board shall be deemed received if mailed to the address provided by the licensee and shown in the records of the Board.

History Note: Authority G.S. 87-8;
Eff. June 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018.

21 NCAC 12 .0506 CHARGE FOR STATUS OF LICENSURE

The Board shall charge persons requesting a verified copy of all or part of its roster of licensed contractors a fee to cover the cost of copying and mailing.

History Note: Authority G.S. 87-8; 87-13; 150B-19(5);
Eff. June 1, 1992;
Amended Eff. May 1, 2006; May 1, 1995;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018.

21 NCAC 12 .0701 IMPROPER PRACTICE

(a) Complaint. Any person who believes that a licensed general contractor is in violation of the provisions of G.S. 87-11 may file a complaint with the Board against a licensee, qualifier, or both by setting forth in writing those charges and swearing to their authenticity. The complaint shall be submitted to the Board and include the complainant's contact information, project location, and name of the licensee, qualifier, or both.

(b) Preliminary or Threshold Determination:

- (1) A complaint filed in accordance with G.S. 87-11(a1) shall be forwarded to a staff investigator for investigation. Within 30 days, the Board shall forward a written notice of the complaint to the licensee and qualifier(s) against whom the charge is made. The notice shall request a response from the licensee and qualifier(s). The Board shall send notice of the charge and of the alleged facts or alleged conduct by first class mail to the last known address and by email to the address of the licensee and qualifier(s).
- (2) After the investigation is complete, the charge shall be referred to the review committee. The review committee shall consist of the following individuals:
 - (A) one member of the Board;
 - (B) the Secretary-Treasurer or his designee; and
 - (C) a staff person agreed upon by the individuals listed above.
- (3) Based upon the complaint and investigation, the review committee shall recommend to the Board that:
 - (A) The charge be dismissed;
 - (B) When the charge is admitted as true by the licensee and qualifier(s), the Board accept the licensee's and qualifier(s)' admission of guilt and order the licensee and qualifier(s) not to commit in the future the act or acts admitted by him to have been violated and not to violate any of the acts of misconduct specified in G.S. 87-11 at any time in the future; or
 - (C) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .0800 of this Chapter and the provisions of G.S. 87-11. Prior to the charge's being heard and determined by the Board, it may be resolved by consent order.

History Note: Authority G.S. 87-4; 87-11; 150B-3; 150B-38; Eff. February 1, 1976;
Readopted Eff. September 26, 1977;

Amended Eff. April 1, 2014; June 1, 2011; April 1, 2006; April 1, 2003; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018.

21 NCAC 12 .0702 UNLICENSED PRACTICE

(a) Complaint. Any person who believes that a person, firm, or corporation is in violation of the acts specified in G.S. 87-13 may file a complaint against that person, firm, or corporation. The complaint shall be filed with the Board and include the complainant's contact information, project location, and name of the alleged violator.

(b) Preliminary or Threshold Determination:

- (1) A complaint filed in accordance with G.S. 87-13 shall be forwarded to a staff investigator for investigation. Board staff shall investigate the charge to determine whether there is probable cause to believe that a party against whom a charge has been brought violated the provisions of G.S. 87-13.
- (2) After the investigation is complete, the charge shall be referred to the review committee. The review committee shall consist of the following individuals:
 - (A) one member of the Board;
 - (B) the Secretary-Treasurer or his designee; and
 - (C) a staff person agreed upon by the individuals listed above.
- (3) Based upon the complaint and investigation, if the review committee determines that probable cause exists that a person, firm, or corporation is practicing general contracting without a license, it shall recommend to the Board that injunctive relief be sought. If the Board concurs with the review committee's recommendation, the investigation shall be forwarded to Board counsel to seek injunctive relief. If the review committee does not believe that the person, firm, or corporation is practicing general contracting without a license, it shall recommend to the Board dismissal of the complaint. Once dismissed, the Board shall notify the complainant.

History Note: Authority G.S. 87-1; 87-4; 87-13; 87-13.1; Eff. February 1, 1976;
Readopted Eff. September 26, 1977;
Amended Eff. April 1, 2014; June 1, 2011; May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. April 1, 2018.

21 NCAC 12 .0703 FEE FOR SUBMITTAL OF BAD CHECK

(a) The Board shall charge the maximum processing fee allowed by G.S. 25-3-506 if a check submitted to the Board is returned by

a financial institution because of insufficient funds or because the drawer did not have an account at that bank.

(b) Until such time as the drawer of the bad check has paid the prescribed fee, the drawer shall not be eligible to take an examination, review an examination, obtain a license, or have the license renewed. For the purpose of this Rule, "prescribed fee" shall mean the sum of:

- (1) the maximum processing fee allowed by G.S. 25-3-506;
- (2) the renewal or application fee, whichever is applicable; and
- (3) the late payment fee described in G.S. 87-10(e).

(c) Any license that has been issued or renewed based on a check which is returned to the Board shall be invalid until such time as the drawer has paid the prescribed fee. The invalidity of the license or renewal shall commence on the date of the issuance of the license or renewal.

(d) Payment of the prescribed fee to the Board shall be made in the form of a cashier's check, money order, credit card, or debit card.

(e) In the event the drawer of the bad check fails to pay the prescribed fee, during which time the license or renewal lapses for four years, the license shall not be renewed and the licensee for whom the check was to benefit shall fulfill all requirements of a new applicant set forth in G.S. 87-10 and Rules .0303 and .0503 of this Chapter.

History Note: Authority G.S. 25-3-506; 87-4; 87-10; Eff. January 1, 1983; Amended Eff. April 1, 2014; April 1, 2003; May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. April 1, 2018.

21 NCAC 12 .0817 RIGHT TO HEARING

History Note: Authority G.S. 87-11(b); 150B-11; 150B-38; Eff. September 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Repealed Eff. April 1, 2018.

21 NCAC 12 .0818 REQUEST FOR HEARING

(a) A person aggrieved as defined by G.S. 150B-2 may submit a request for a hearing pursuant to G.S. 150B-38 before the Board in writing to the Board's office, with the request bearing the notation: REQUEST FOR ADMINISTRATIVE HEARING. The request shall contain the following information:

- (1) name and address of the aggrieved person;
- (2) a statement of the action taken by the Board that is challenged; and
- (3) a statement of the way in which the aggrieved person has been aggrieved.

(b) Upon receipt of a request for a hearing, the Board shall acknowledge the request and schedule a hearing.

History Note: Authority G.S. 87-4; 87-11; 150B-38; Eff. September 1, 1988; Amended Eff. June 1, 2011; August 1, 2002;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. April 1, 2018.

21 NCAC 12 .0820 NOTICE OF HEARING

(a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall comply with G.S. 150B-38(b).

(b) Based upon information received, if the Board determines that the public health, safety, or welfare requires emergency action, it may issue an order summarily suspending a license or exam credentials. Upon service of the order, the licensee or qualifier to whom the order is directed shall cease the practice of general contracting in North Carolina. The Board shall give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

History Note: Authority G.S. 87-4; 87-11(b); 150B-3(c); 150B-38; Eff. October 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. April 1, 2018.

21 NCAC 12 .0826 FAILURE TO APPEAR

Should a party fail to appear at a scheduled hearing, the Board may proceed with the hearing and make its decision in the absence of the party, provided that the party has been given notice in accordance with G.S. 150B-38 and unless otherwise directed by law. The Board may order a continuance in order to give the party another opportunity to appear as determined on a case by case basis and upon good cause shown.

History Note: Authority G.S. 87-4; 87-11(b); 150B-38; 150B-40; Eff. October 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. April 1, 2018.

21 NCAC 12 .0827 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall:

- (1) be made in writing to the Board;
- (2) identify any document sought;
- (3) include the full name and home or business address of all persons to be subpoenaed; and
- (4) if known, the date, time, and place for responding to the subpoena.

The Board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain the following:

- (1) the caption of the case;
- (2) the name and address of the person subpoenaed;
- (3) the date, hour, and location of the hearing in which the witness is commanded to appear;

- (4) a particularized description of the books, papers, records, or objects the witness is directed to bring with him to the hearing, if any;
- (5) the identity of the party on whose application the subpoena was issued;
- (6) the date of issue;
- (7) the signature of the presiding officer or his designee; and
- (8) a "return of service." The "return of service" form as filled out, shall show:
 - (A) the name and capacity of the person serving the subpoena;
 - (B) the date on which the subpoena was delivered to the person directed to make service;
 - (C) the date on which service was made;
 - (D) the person on whom service was made;
 - (E) the manner in which service was made; and
 - (F) the signature of the person making service.

(c) Subpoenas shall be served in a manner set forth in Rule 45 of the N.C. Rules of Civil Procedure.

(d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office. Written objections shall comply with Rule 45 of the N.C. Rules of Civil Procedure.

(e) The party who requested the subpoena may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness with filing the response with the Board.

(f) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(g) Promptly after the close of such hearing, a majority of the Board members with voting authority will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

History Note: Authority G.S. 87-11(b); 150B-38; 150B-39; 150B-40; Eff. October 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. April 1, 2018.

21 NCAC 12 .0829 FINAL DECISION

In all cases heard by the Board, the Board shall issue a final written decision within 60 days following the close of the hearing. This decision will be the prerequisite "final agency decision" for the right to judicial review.

History Note: Authority G.S. 87-4; 87-11(b); 150B-38; 150B-42; Eff. September 1, 1988;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. April 1, 2018.

21 NCAC 12 .0830 PROPOSALS FOR DECISIONS

(a) If an administrative law judge hears a contested case pursuant to G.S. 150B-40(e), a party may file written exception and alternative finding of facts and conclusions of law to the "proposal for decision" issued by the administrative law judge. The written exceptions and alternative findings of facts and conclusions of law shall be received by the Board within 10 days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions shall be written and refer specifically to pages of the record or otherwise identify the occurrence to which exception is taken. The exceptions must be filed with the Board within ten days of the receipt of the proposal for decision. The written exceptions shall bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (Name of case).

(c) Pursuant to G.S. 150B-40(e), any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, Board staff shall issue notice to all parties designating time and place for such oral argument.

(e) The Board's final decision shall be a part of the record, a copy shall be given to all parties, and shall be the "final agency decision" for the right to judicial review. The final written decision shall be issued by the Board within 60 days from the date oral arguments were presented to the Board. If there are no oral arguments presented, the final written decision shall be issued within 60 days of the date on which the Board rendered its decision.

History Note: Authority G.S. 87-4; 87-11(b); 150B-38; 150B-40; Eff. September 1, 1988; Amended Eff. July 1, 2008; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. April 1, 2018.

CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14A .0101 DEFINITIONS

In addition to the definition set forth in G.S. 88B-2, the following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Clean" is the removal of visible and surface debris, washing with soap (or detergent) and water, detergent or chemical cleaner that prepares non-porous items for disinfection and reduces the number and slows the growth of pathogens on both porous and non-porous

- surfaces. Cleaning does not make multi-use items safe for use.
- (3) "Contact time" is the amount of moist contact time required for a disinfectant to be effective against the pathogens on the manufacturers label. Clean items or surfaces must remain immersed, or visibly wet if using sprays or wipes, for full contact time to be effective.
- (4) "Cosmetology School" is any cosmetic art school that teaches cosmetic art as defined by G.S. 88B-2(5), but is not solely a manicurist or an esthetics school.
- (5) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
- (6) "Disinfect" is the process of making a non-porous item safe for use. Requires the use of a chemical intended to kill or denature a bacteria, virus or fungus. Items to be disinfected must be cleaned prior to disinfection. UV light is not acceptable for disinfection.
- (7) "Disinfectant" is an EPA registered bactericidal, virucidal and fungicidal disinfectant that is approved for use in hospital settings, following instruction label for dilution ratio and contact time, or an EPA registered Sodium Hypochlorite 5.25 percent or higher (household bleach) with instructions for disinfection, diluted as instructed on the label and observing the contact time listed on the manufacturers label. Bleach must be active (not expired) with a manufacture date of less than 6 months prior to use.
- (8) "Esthetician School" is any cosmetic art school that teaches only the cosmetic art of skin care.
- (9) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14T .0604.
- (10) "Licensing cycle" for cosmetologists is a three-year period beginning on the first day of October and ending on the third following first day of October and continuing thereafter in three year intervals. For estheticians, natural hair care specialists and manicurists, the licensing cycle is one year in length beginning on the first day of October and ending on the next first day of October. For teachers, the licensing cycle is a two-year period beginning on the first day of October of an even-numbered year and ending on the next first day of October of the next even-numbered year.
- (11) "Manicurist School" is a cosmetic art school that teaches only the cosmetic art of manicuring.
- (12) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14T .0605.

- (13) "Non-porous" is a material that has no pores and does not allow for liquids to be absorbed or pass through. Common non-porous materials include glass, metal, and plastic.
- (14) "Porous" is a material that has minute spaces or holes through which liquid or air may pass. Porous may also be called permeable, penetrable, or cellular.
- (15) "Renewal period" for individual licensees is a three-month period beginning on the first day of July and ending on the first day of October of a renewal year. The "renewal period" for salon licensees is a two-month period beginning on the first day of December and ending on the first day of February of a renewal year.
- (16) "Sterilize" is the eradication of all microbial life through the use of heat, steam, or chemical sterilants. Autoclaves and or dry heat sterilizers used to sterilize must be spore tested through an independent lab every 30 days. Autoclaves or dry heat sterilizers used to sterilize must be FDA approved and used only as instructed by the manufacturer. Spore testing results and maintenance records must be kept onsite for 12 months.
- (17) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70 percent, whichever is deemed as passing by the cosmetic art school.

History Note: Authority G.S. 88B-2; 88B-4; Eff. February 1, 1976; Amended Eff. June 1, 1993; October 1, 1991; May 1, 1991; January 1, 1989; Temporary Amendment Eff. January 1, 1999; Amended Eff. October 1, 2012; July 1, 2010; December 1, 2008; May 1, 2005; December 1, 2004; May 1, 2004; February 1, 2004; April 1, 2001; August 1, 2000; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015; Amended Eff. March 1, 2018.

21 NCAC 14H .0301 WATER

- (a) Cosmetic art shops shall have a sink with hot and cold running water in the clinic area, separate from restrooms.
- (b) When a service is provided in a room in an area of a cosmetic art shop, closed off by a door, the sink required in this Rule must be within 50 feet of the door. The restroom sink shall not be used to meet this requirement.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012; Amended Eff. June 1, 2013; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015; Amended Eff. March 1, 2018.

21 NCAC 14H .0302 VENTILATION AND LIGHT

- (a) Ventilation shall be provided at all times in the areas where patrons are serviced in all cosmetic art shops and there must be a continuous exchange of air.
- (b) Light shall be provided in the service area of a cosmetic art shop.
- (c) All cosmetic art shops must adhere to any federal, State and local government regulation or ordinance regarding fire safety codes, plumbing and electrical work.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. March 1, 2018.

21 NCAC 14H .0303 BATHROOM FACILITIES

- (a) Toilet and hand washing facilities consisting of at least one commode and one hand washing sink with running water, liquid soap and individual clean towels or hand air dryer shall be provided in each cosmetic art shop.
- (b) Shops with an initial licensure date after March 1, 2012 must have toilet and hand washing facilities in the bathroom.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; Eff. April 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. March 1, 2018.

21 NCAC 14H .0401 LICENSEES AND STUDENTS

- (a) Notwithstanding Rule .0201 in this Subchapter, this Rule applies to licensees and students in practice in cosmetic art schools and shops. Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.
- (b) Each licensee and student shall wear clean garments and shoes while serving patrons.
- (c) Licensees or students shall not use or possess in a cosmetic art school or shop any of the following:
 - (1) Methyl Methacrylate Liquid Monomer, a.k.a. MMA;
 - (2) razor-type callus shavers designed and intended to cut growths of skin including skin tags, corns, and calluses;
 - (3) FDA rated Class III devices;
 - (4) carbolic acid (phenol) over two percent strength;
 - (5) animals including insects, fish, amphibians, reptiles, birds, or non-human mammals to perform any service; or
 - (6) a variable speed electrical nail file on a natural nail unless it has been designed for use on a natural nail.
- (d) A licensee or student shall not:
 - (1) use any product, implement, or piece of equipment in any manner other than the product's, implement's, or equipment's intended

- use as described or detailed by the manufacturer;
- (2) treat any medical condition unless referred by a physician;
- (3) provide any service unless trained prior to performing the service;
- (4) perform services on a client if the licensee has reason to believe the client has any of the following:
 - (A) fungus, lice, or nits;
 - (B) an inflamed, infected, broken, raised, or swollen skin or nail tissue in the area to be worked on; or
 - (C) an open wound or sore in the area to be worked on;
- (5) alter or duplicate a license issued by the Board;
- (6) advertise or solicit clients in any form of communication in a manner that is false or misleading;
- (7) use any FDA rated Class II device without the documented supervision of a licensed physician;
- (8) use any product that will penetrate the dermis;
- (9) make any statement to a member of the public, either verbally or in writing, stating or implying any action is required or forbidden by Board rules when such action is not required or forbidden by Board rules. A violation of this prohibition is considered practicing or attempting to practice by fraudulent misrepresentation is set forth in 21 NCAC 14P .0108 of this Chapter; or
- (10) use or possess any product banned by the FDA. A list of banned products is available at www.fda.gov.

- (e) In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended by the manufacturer in the Safety Data Sheet.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-24; Eff. April 1, 2012;
Amended Eff. August 1, 2014; March 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015;
Amended Eff. March 1, 2018.

21 NCAC 14H .0403 DISINFECTION PROCEDURES

- (a) Sanitation rules that apply to towels and cloths are as follows:
 - (1) Clean protective capes, drapes, linens, and towels shall be used for each patron;
 - (2) After a protective cape has been in contact with a patron's neck it shall be placed in a clean, closed container until laundered with soap and hot water and dried in a heated dryer. Capes that cannot be laundered and dried in a heater dryer may be disinfected with an EPA registered hospital grade disinfectant mixed and used in accordance with the manufacturer directions; and

- (3) After a drape, linen, or towel has been in contact with a patron's skin it shall be placed in a clean, covered container until laundered with soap and hot water and dried in a heated dryer. A covered container may have an opening so soiled items may be dropped into the container.
- (b) Any paper or nonwoven protective drape or covering shall be discarded after one use.
- (c) There shall be a supply of clean protective drapes, linens and towels at all times. Wet towels used in services must be prepared fresh each day. Unused, prepared wet towels must be laundered daily.
- (d) Clean drapes, capes, linens, towels and all other supplies shall be stored in a clean area.
- (e) Bathroom facilities must be kept clean.
- (f) All implements shall be cleaned and disinfected after each use in the following manner:
 - (1) They shall be washed with warm water and a cleaning solution and scrubbed to remove debris and dried.
 - (2) They shall be disinfected with either:
 - (A) disinfectant that is bactericidal, virucidal and fungicidal and approved by the EPA for use in beauty salons, or salon settings that is mixed and used according to the manufacturer's directions. They shall be rinsed with hot tap water and dried with a clean towel before their next use. They shall be stored in a clean, closed cabinet or container until they are needed;
 - (B) 1 and 1/3 cup of 5.25 percent unexpired household bleach to one gallon of water for 10 minutes. They shall be rinsed with hot tap water and dried with a clean towel before their next use. They shall be stored in a clean, closed cabinet or container until they are needed; or
 - (C) UV-C, ultraviolet germicidal irradiation used in accordance with the manufacturer's directions.
 - (3) If the implement is not immersible or is not disinfected by UV-C irradiation, it shall be cleaned by wiping it with a clean cloth moistened or sprayed with a disinfectant that is bactericidal, virucidal and fungicidal and approved by the EPA for use in beauty salons, or salon settings used in accordance with the manufacturer's directions.
- (g) All disinfected non-electrical implements shall be stored in a clean, closed cabinet or clean closed container.
- (h) All disinfected electrical implements shall be stored in a clean area.
- (i) Disposable and porous implements and supplies must be discarded after use or upon completion of the service.
- (j) Product that comes into contact with the patron must be discarded upon completion of the service.
- (k) Containers with open faces may be covered or closed with plastic wrapping. Disinfected implements must not be stored with any implement or item that has not been disinfected.
- (l) Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.
- (m) All creams, lotions, wax, cosmetics, and other products dispensed to come in contact with patron's skin must be kept in clean, closed containers, and must conform in all respects to the requirements of the Pure Food and Drug Law. Any product apportioned for use and removed from original containers must be distributed in a sanitary manner that prevents contamination of product or container. Any product dispensed in portions into another container must be dispensed into a clean container and applied to patrons by means of a disinfected or disposable implement or other clean methods. Any product dispensed in portions not dispensed into another container must be used immediately and applied to patrons by means of a disinfected or disposable implement or other clean methods. No product dispensed in portions may be returned to the original container.
- (n) As used in this Rule whirlpool or footspa means any basin using circulating water.
- (o) After use by each patron each whirlpool or footspa must be cleaned and disinfected as follows:
 - (1) All water must be drained and all debris removed from the basin;
 - (2) The basin must be disinfected by filling the basin with water and circulating:
 - (A) Two tablespoons of automatic dishwashing powder and 1/4 cup of 5.25 percent household bleach to one gallon of water through the unit for 10 minutes; or
 - (B) Surfactant or enzymatic soap with an EPA registered disinfectant with bactericidal, fungicidal and virucidal activity used according to manufacturer's instructions through the unit for 10 minutes;
 - (3) The basin must be drained and rinsed with clean water; and
 - (4) The basin must be wiped dry with a clean towel.
- (p) At the end of the day each whirlpool or footspa must be cleaned and disinfected as follows:
 - (1) The screen must be removed and all debris trapped behind the screen removed;
 - (2) The screen and the inlet must be washed with surfactant or enzymatic soap or detergent and rinsed with clean water;
 - (3) Before replacing the screen one of the following procedures must be performed:
 - (A) The screen must be totally immersed in a household bleach solution of 1/4 cup of 5.25 percent household bleach to one gallon of water for 10 minutes; or
 - (B) The screen must be totally immersed in an EPA registered disinfectant with bactericidal, fungicidal and virucidal activity in accordance to the

- (5) performance of services on a client if the licensee has reason to believe the client has any of the following:
 - (A) fungus, lice, or nits;
 - (B) inflamed infected, broken, raised, or swollen skin or nail tissue in the area to be worked on; or
 - (C) an open wound or sore in the area to be worked on;
- (6) alteration of or duplication of a license issued by the Board;
- (7) advertisement or solicitation of clients in any form of communication in a manner that is false or misleading; or
- (8) use of any FDA rated Class II device without the documented supervision of a licensed physician.

(d) The failure to record the date and time of each cleaning and disinfecting of a footspa in a cosmetic art school or shop as required by this Subchapter including the date, time, reason, and name of the staff member who performed the cleaning or the failure to keep or make such record available for at least 90 days upon request by either a patron or inspector shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per footspa.

(e) The failure to clean and disinfect a footspa in a cosmetic art shop or school as required by this Subchapter shall result in civil penalty in the amount of one hundred dollars (\$100.00) per footspa.

(f) The failure to maintain in a cosmetic art shop and school antiseptics, gloves or finger guards, and sterile bandages available to provide first aid shall result in civil penalty in the amount of twenty-five dollars (\$25.00) per item.

(g) The failure to maintain a sink with hot and cold running water in the clinic area, separate from restrooms, shall result in civil penalty in the amount of one hundred dollars (\$100.00).

(h) The failure to provide ventilation at all times in the areas where patrons are serviced in cosmetic art shops shall result in civil penalty in the amount of twenty-five dollars (\$25.00).

(i) The failure to maintain equipment and supplies necessary to perform any cosmetic art service offered in the shop shall result in civil penalty in the amount of one hundred dollars (\$100.00).

(j) The failure to maintain a sanitation grade of 80 percent or higher shall result in a civil penalty in the amount of two hundred dollars (\$200.00).

(k) Repeated violations of the rules in this Subchapter exceeding three written notifications of any one rule documented to any one individual, shop, or school shall result in a mandatory disciplinary hearing in accordance with 21 NCAC 14C.

History Note: Authority G.S. 88B-2; 88B-4; 88B-14; 88B-23; 88B-24; 88B-26; 88B-27; 88B-29;
Eff. April 1, 2012;

Amended Eff. August 1, 2014;
Readopted Eff. January 1, 2016;
Amended Eff. March 1, 2018.

21 NCAC 14I .0401 APPLICATION/LICENSURE/ INDIVIDUALS WHO HAVE BEEN CONVICTED OF FELONY

(a) Any applicant convicted of a felony or charged with a felony that is still pending may apply for Board approval. All documentation submitted shall have no effect on an individual's ability to attend a cosmetic art school, take an examination administered by the Board, or apply for a license.

(b) The applicant shall supply the following:

- (1) a statement of facts of the crime, accompanied by a certified copy of the indictment (or, in the absence of an indictment, a copy of the "information" that initiated the formal judicial process), the judgment and any commitment order for each felony for which there has been a conviction;
- (2) at least three letters attesting to the applicant's character from individuals unrelated by blood or marriage;
- (3) a summary of the applicant's personal history since conviction including, if applicable, date of release, parole or probation status, employment, and military service; and
- (4) any other information that in the opinion of the applicant would be useful or pertinent to the consideration by the Board of the applicant's request for licensure.

History Note: Authority G.S. 88B-4; 88B-24(1);

Eff. June 1, 1995;

Amended Eff. August 1, 2014; September 1, 2010; December 1, 2008; April 1, 2001; August 1, 1998;

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

Amended Eff. March 1, 2018.

CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD

21 NCAC 22A .0402 ABBREVIATIONS

The following abbreviations shall apply throughout this Chapter:

- (1) IHS - International Hearing Society.
- (2) ILE - International Licensing Examination for Hearing Healthcare Professionals.

History Note: Authority G.S. 93D-3;

Eff. March 1, 2018.

21 NCAC 22A .0403 FORMS

(a) F1 Form – Apprentice Registration Application. An individual who seeks licensure from the Board and who is required to complete one full year of apprenticeship shall submit a F1 form when submitting an apprentice registration electronic application for a new apprenticeship or to renew or replace an apprenticeship certificate. It requires the following:

- (1) the sponsor last name;
- (2) the reason for application by applicant;

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| <p>(3) the sponsor license number and first and last name;</p> <p>(4) the applicant first and last name, email address, and name to be printed on certificate;</p> <p>(5) the apprentice business location, including business name, address, city, state zip code, county, and phone number;</p> <p>(6) the apprentice mailing address;</p> <p>(7) the education information including high school/GED school name, city, county, state, and year completed;</p> <p>(8) acknowledgement of audiometer calibration certificate;</p> <p>(9) acknowledgement of passport photo requirement;</p> <p>(10) answering questions regarding the plan of supervision;</p> <p>(11) acknowledgement of F1 Affidavit;</p> <p>(12) acknowledgement of background check;</p> <p>(13) answering the following yes or no questions:</p> <p style="padding-left: 20px;">(A) are you now or have you ever been apprenticed or licensed to fit and dispense hearing aids in any other state;</p> <p style="padding-left: 20px;">(B) have you ever made an application for apprenticeship or for a license to fit and dispense hearing aids that was denied;</p> <p style="padding-left: 20px;">(C) have you ever taken and failed to pass an examination for issuance of a license to fit and dispense hearing aids in any other state;</p> <p style="padding-left: 20px;">(D) has your apprenticeship or license to fit and dispense hearing aids in any other state ever been revoked or suspended;</p> <p style="padding-left: 20px;">(E) have you ever been convicted of or forfeited bond in connection with a criminal offense (i.e. misdemeanor or a felony)? Include DUIs and DWIs;</p> <p style="padding-left: 20px;">(F) have you ever been treated for alcoholism or narcotic abuse;</p> <p style="padding-left: 20px;">(G) have you ever filed for bankruptcy;</p> <p style="padding-left: 20px;">(H) have you ever been named as a party in a civil action (legal proceeding);</p> <p style="padding-left: 20px;">(I) to your knowledge, has a complaint ever been filed against you (or a company owned by you) with a hearing aid related board or organization, the Federal Trade Commission, or any consumer protection agency;</p> <p style="padding-left: 20px;">(J) to your knowledge, is there anything that would impair your ability to perform the functions for which you are licensed (such as a physical or mental disability);</p> | <p>(K) will you be working under the supervision of a Registered Sponsor for less than 27 hours per week; and</p> <p>(14) selection of payment options.</p> <p>(b) F4 Form – Application for License and Exam Registration. An apprentice or out of state applicant shall submit a F4 form when submitting an application for licensure and exam registration. It requires the following:</p> <p style="padding-left: 20px;">(1) the email address, first, and last name of applicant;</p> <p style="padding-left: 20px;">(2) the reason for application by applicant;</p> <p style="padding-left: 20px;">(3) the name as applicant wishes to have it printed on license;</p> <p style="padding-left: 20px;">(4) selection of exam part, exam period, and exam time preference;</p> <p style="padding-left: 20px;">(5) acknowledgement of exam reminders;</p> <p style="padding-left: 20px;">(6) acknowledgement of additional required documents;</p> <p style="padding-left: 20px;">(7) selection of payment options;</p> <p style="padding-left: 20px;">(8) the education information including high school/GED school name, city, county, state, and year completed;</p> <p style="padding-left: 20px;">(9) acknowledgement of background check;</p> <p style="padding-left: 20px;">(10) answering the following yes or no questions:</p> <p style="padding-left: 40px;">(A) are you now or have you ever been apprenticed or licensed to fit and dispense hearing aids in any other state;</p> <p style="padding-left: 40px;">(B) have you ever made an application for apprenticeship or for a license to fit and dispense hearing aids that was denied;</p> <p style="padding-left: 40px;">(C) have you ever taken and failed to pass an examination for issuance of a license to fit and dispense hearing aids in any other state;</p> <p style="padding-left: 40px;">(D) has your apprenticeship or license to fit and dispense hearing aids in any other state ever been revoked or suspended;</p> <p style="padding-left: 40px;">(E) have you ever been convicted of or forfeited bond in connection with a criminal offense (i.e. misdemeanor or a felony)? include DUIs and DWIs;</p> <p style="padding-left: 40px;">(F) have you ever been treated for alcoholism or narcotic abuse;</p> <p style="padding-left: 40px;">(G) have you ever filed for bankruptcy;</p> <p style="padding-left: 40px;">(H) have you ever been named as a party in a civil action (legal proceeding);</p> <p style="padding-left: 40px;">(I) to your knowledge, is there anything that would impair your ability to perform the functions for which you are licensed (such as a physical or mental disability);</p> <p style="padding-left: 40px;">(J) will you be engaged in fitting and selling hearing aids for less than 27 clock hours per week;</p> <p style="padding-left: 20px;">(11) the business address information of applicant; and</p> |
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(12) attestation of duly made application.

(c) F7 Form – Verification of License. An out of state or military spouse applicant shall submit a F7 verification of license form when submitting an application for licensure and exam registration. It requires the following:

- (1) authorization from the applicant for a state board, other than N.C., having control of any documents, records and other information pertaining to the applicant to furnish to the Board information, including documents, records regarding charges or complaints filed against me, formal or informal, pending or closed, or any other pertinent information;
- (2) license verification by providing: the applicant first and last name, the board and State, the licensure status, the license number, the issue and expiration date of license;
- (3) education verification if applicant has an audiology degree on file;
- (4) discipline information by answering the following yes or no questions:
 - (A) has the applicant ever been the subject of complaints or charges received by your board;
 - (B) has the applicant ever been warned, censured or disciplined in any manner by your board;
 - (C) has any application by the above applicant for initial licensure or reinstatement ever been denied; and
- (5) board seal, signature and title of person filling out information, and date.

(d) F10 Form - Application for License and Exam Registration for Military-Trained applicant or Military Spouse applicant. An applicant for apprentice registration shall submit a F10 form when submitting an application for licensure and exam registration. It requires the following:

- (1) indication of whether the applicant is new or returning;
- (2) the applicant first and last name, and email address;
- (3) the applicant business location, including business name, address, city, state zip code, county, and phone number;
- (4) the applicant mailing address;
- (5) the reason for application;
- (6) selection of exam part, exam period, and exam time preference;
- (7) selection of option to mail or electronically submit required documentation;
- (8) the education information including high school/GED school name, city, county, state, and year completed;
- (9) the military program of training (if applying as military-trained applicant);
- (10) the experience in fitting and selling hearing aids;
- (11) acknowledgement of background check; and
- (12) answering the following yes or no questions:

- (A) are you now or have you ever been apprenticed or licensed to fit and dispense hearing aids in any other state;
- (B) have you ever made an application for apprenticeship or for a license to fit and dispense hearing aids that was denied;
- (C) have you ever taken and failed to pass an examination for issuance of a license to fit and dispense hearing aids in any other state;
- (D) has your apprenticeship or license to fit and dispense hearing aids in any other state ever been revoked or suspended;
- (E) have you ever been convicted of or forfeited bond in connection with a criminal offense (i.e. misdemeanor or a felony)? Include DUIs and DWIs;
- (F) have you ever been treated for alcoholism or narcotic abuse;
- (G) have you ever filed for bankruptcy;
- (H) have you ever been named as a party in a civil action (legal proceeding);
- (I) to your knowledge, has a complaint ever been filed against you (or a company owned by you) with a hearing aid related board or organization, the Federal Trade Commission, or any consumer protection agency;
- (J) to your knowledge, is there anything that would impair your ability to perform the functions for which you are licensed (such as a physical or mental disability); and
- (K) will you be working under the supervision of a registered sponsor for less than 27 hours per week?

History Note: Authority G.S. 93B-8.1; 93B-15.1; 93D-3; 93D-5; 93D-6; 93D-8; 93D-9; 93D-11; 93D-13; Eff. March 1, 2018.

21 NCAC 22A .0404 AFFIDAVITS

(a) F1 Apprentice Registration Affidavit. An individual who seeks licensure from the Board and who is required to complete one full year of apprenticeship shall submit an F1 affidavit when submitting an apprentice registration electronic application. It requires the following:

- (1) the date of electronic application;
- (2) the sponsor first and last name, license number or registered sponsor certificate number;
- (3) the apprentice applicant first and last name, social security number, and date of birth of applicant;
- (4) attestation by the applicant and sponsor of the following: I hereby affirm that I have

completed the Apprentice Registration Application ("Application"); that I have read and understand the complete Application; and that I declare under penalty of perjury, that all of the information, documents, and materials submitted in response thereto are true, correct, and complete. I understand that falsification or misrepresentation of any item or response in this duly-made application (see 21 NCAC 22A) shall constitute a sufficient basis for the Board to deny the Application, revoke my license or initiate and pursue any other disciplinary action including revoking my license after issuance. I attest that I have read and understand the rules promulgated by the NC State Hearing Aid Dealers and Fitters Board, codified as Title 21, Chapter 22 of the North Carolina Administrative Code and North Carolina General Statute Chapter 93D, and I agree to abide by the same;

- (5) applicant's and sponsor's signatures; and
- (6) notarization.

(b) F4 Application for License and Exam Registration Affidavit. An apprentice or out of state applicant shall submit an F4 affidavit when submitting an application for licensure and exam registration. It requires the following:

- (1) the date of electronic application;
- (2) the first and last name, social security number, and date of birth of applicant;
- (3) attestation by the applicant of the following: I hereby affirm that I have completed the Application for License/Exam Registration ("Application"); that I have read and understand the complete Application; and that I declare under penalty of perjury, that all of the information, documents, and materials submitted in response thereto are true, correct, and complete. I understand that falsification or misrepresentation of any item or response in this duly-made application (as defined in 21 NCAC 22A) shall constitute a sufficient basis for the Board to deny the Application, revoke my license or initiate and pursue any other disciplinary action including revoking my license after issuance. I attest that I have read and understand the rules promulgated by the NC State Hearing Aid Dealers and Fitters Board, codified as Title 21, Chapter 22 of the North Carolina Administrative Code and North Carolina General Statute Chapter 93D, and I agree to abide by the same;
- (4) applicant's signature; and
- (5) notarization.

(b) F6 Waiver of Apprenticeship Requirement Affidavit. An out of state applicant or military spouse applicant shall submit an F6 affidavit when submitting an application for licensure and exam registration. It requires the following:

- (1) the date of electronic application;
- (2) the first and last name of applicant;

- (3) attestation by the authorized board representative of the following: I hereby affirm that I am an authorized representative of the Board shown below; that I have reviewed the Board's official records regarding the above-named applicant; that applicant is currently licensed and has been continuously licensed in the state or jurisdiction of (insert jurisdiction) for the past three consecutive years immediately preceding this affidavit; and that a Verification of Licensure form (F7-VOL) has been completed to supplement this affidavit; and
- (4) the date when giving attestation, first and last name of authorized board representative, title of representative, name of board, and board seal.

*History Note: Authority G.S. 93B-14; 93B-15.1; 93D-3; 93D-5; 93D-8; 93D-9; 93D-13;
Eff. March 1, 2018.*

21 NCAC 22A .0501 FEE SCHEDULE

The Board hereby establishes the following fees:

- (1) Application for registration as an apprentice \$100.00
- (2) Renewal of apprentice registration \$150.00
- (3) Application for registration of a Registered Sponsor not otherwise licensed by the Board \$150.00
- (4) Application for a license fee \$425.00
- (5) Examination fee \$75.00
- (6) Issuance of certificate of license after successfully passing examination \$ 25.00
- (7) To reissue a suspended license more than 90 days after but not more than two years after license suspended \$200.00
- (8) Annual license renewal \$250.00
 - (a) Late fee: 60 days or fewer after license expiration (in addition to renewal fee) \$ 25.00
 - (b) Late fee: more than 60 days after license expiration (in addition to renewal fee) \$ 50.00
- (9) Approval of a continuing education program provider \$ 40.00
- (10) Verifying and recording attendance at a continuing education program (per program, per person) \$ 15.00
- (11) A continuing education make-up class provided by the Board (per person, per day) \$ 50.00
- (12) A voluntary apprentice training workshop (per person, per day) \$ 50.00
- (13) A license examination preparation course provided by the Board (per person, per day) 50.00
- (14) Processing fee for a check on which payment has been refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank \$ 25.00

History Note: Authority G.S. 12-3.1; 25-3-506; 93D-3; 93D-5; 93D-8; 93D-9; 93D-11; 93D-13;
Temporary Adoption Eff. July 11, 1991, For a Period of 180 Days to Expire on January 7, 1992;
Eff. January 1, 1992;
Amended Eff. March 1, 2009; March 1, 2007;
Recodified from 21 NCAC 22B .0603 Eff. May 1, 2013;
Amended Eff. September 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. Pending Consultation pursuant to G.S. 12-3.1.

21 NCAC 22A .0503 SUBMISSION OF APPLICATIONS AND FEES

(a) Each applicant for a license shall submit an electronic application for licensure and exam registration located on the Board's website, www.nchalb.org, each time the applicant applies to take any portion of the exam. The application shall be considered a duly made application upon submission and receipt of the following:

- (1) for an out of state applicant: F4 form, F4 affidavit, audiometer calibration, passport style photograph, background check, F6 affidavit, F7 form, ILE score transfer letter from IHS (if applicable), and necessary fees.
- (2) for an apprentice: F4 form, F4 affidavit, audiometer calibration, passport style photograph, background check, and necessary fees.
- (3) for a military trained applicant: F10 form, F4 affidavit, audiometer calibration, passport style photograph, background check, proof of military training, ILE score transfer letter from IHS (if applicable), and necessary fees.
- (4) for a military spouse applicant: F10 form, F4 affidavit, audiometer calibration, passport style photograph, background check, F6 affidavit, F7 form, ILE score transfer letter from IHS (if applicable), and necessary fees.

(b) The Board shall accept a digital image of a signed affidavit or other document required as part of an application as the original when submitted electronically in conjunction with the electronic application.

(c) If an applicant submits an incomplete application, the Board office shall notify the applicant of the documents or any material otherwise needed in order for the application to be considered a duly made application. The application shall be classified as "abandoned by the applicant" if a duly made application is not submitted to and received by the Board office by the exam registration deadline. The Board shall not apply any fee paid or document submitted for the abandoned application to any other application. It is the responsibility of the applicant and the sponsor, if any, to ensure that all supplemental documents requested in the application are submitted by the exam registration deadline. This Rule shall not extend an application deadline set forth in any other rule of this Chapter.

(d) The exam registration deadline shall be 45 days prior to the examination date. An applicant may be denied admission to an exam if an application is submitted after the registration deadline,

based on proximity to examination date, availability of space in the examination, and the applicant or the applicant's sponsor's past history of compliance with the Board's rules. An applicant denied admission to an examination due to late registration shall be registered for the next scheduled examination, if otherwise eligible.

(e) Part D will be the ILE as administered by the IHS. For applicants registering to take Part D of the Board's licensing exam, the applicant will receive electronic notification from the IHS with further instructions on how to register for Part D of the exam, and instructions on how to pay the ILE examination fee. The ILE examination fee shall be paid directly to the IHS.

(f) An applicant shall submit a new application for license and exam registration and pay the fees set forth in 21 NCAC 22A .0501 each time the applicant registers for Parts A, B, C, and D of the licensing exam. However, the Board shall waive the application for license fee and the exam registration fee but not the ILE examination fee for any applicant that is only taking Part D.

(g) All applicants shall reapply for a license by examination within the time prescribed in Paragraph (d) of this Rule each time they take and fail to pass the licensing examination.

(h) The Board shall deny a late duly made application, except as set forth in Paragraph (d) of this Rule.

(i) In computing the time stated in the rules of this Chapter, the day of the act or event shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

History Note: Authority G.S. 25-3-506; 93D-3(c); 93D-5; 93D-9;
Eff. April 23, 1976;
Amended Eff. August 1, 2012; February 1, 1996; January 1, 1992; May 1, 1988;
Recodified from 21 NCAC 22F .0103 Eff. May 1, 2013;
Amended Eff. December 1, 2014; September 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. March 1, 2018.

21 NCAC 22F .0104 QUALIFICATIONS FOR LICENSURE

In order to be issued a license by the Board:

- (1) Each applicant for licensure shall submit an application for licensure and exam registration as set forth in 21 NCAC 22A .0503;
- (2) Each applicant for licensure shall show to the Board the requirements in G.S. 93D-5(a). The Board may require supplemental information for applications to determine the qualifications of each licensee, registered applicant, and registered apprentice, as set forth in these Rules and in Chapter 93D of the General Statutes of North Carolina. The Board will require supplemental information on a case-by-case basis including issues raised on the applicant's criminal background check or discrepancies in the application. Supplemental information may

include letters of recommendation, affidavits, official transcripts, and personal appearances before the Board;

- (3) The applicant shall pass all parts of the Board's licensing exam as set forth in 21 NCAC 22F .0105. In the event an out of state applicant, military trained applicant, or military spouse applicant has previously taken and passed Part D of the Board's licensing exam, this applicant shall submit an ILE score transfer letter from the IHS so as not to re-take Part D; and
- (4) Each applicant shall complete one full year of apprenticeship, with exception to those eligible for waiver under G.S. 93D-5(c) or those applying for licensure pursuant to 21 NCAC 22F .0123.

History Note: Authority G.S. 93D-3(c); 93D-5; 93D-6; 93D-9;
Eff. April 23, 1976;
Amended Eff. February 1, 1996; April 1, 1989; May 1, 1988;
Paragraph (d) recodified to 21 NCAC 22F .0122 Eff. May 1, 2013;
Temporary Amendment Eff. February 10, 2014;
Amended Eff. April 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. March 1, 2018.

21 NCAC 22F .0105 EXAMINATION

The exam consists of four parts:

- (1) Part A. This part shall assess applicant's knowledge of hearing testing through a computer simulation program;
- (2) Part B. This part shall assess applicant's practical knowledge and ability to make an ear impression;
- (3) Part C. This part shall assess the applicant's knowledge of relevant laws, rules, and regulations governing hearing aid specialists; and
- (4) Part D. Part D will be the ILE as administered by the IHS. This part shall assess the applicant's knowledge of the following:
 - (A) patient assessment;
 - (B) interpretation and application of assessment results;
 - (C) hearing devices;
 - (D) the scope of practice of hearing aid specialists; and
 - (E) ability to provide continuing care.

History Note: Authority G.S. 93B-8; 93D-1.1; 93D-3(c); 93D-8;
Eff. April 23, 1976;
Amended Eff. May 1, 1988;
Temporary Amendment Eff. February 10, 2014;
Amended Eff. February 1, 2015; April 1, 2014;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. March 1, 2018.

21 NCAC 22F .0107 EXAMINATION RESULTS

(a) The Board office shall communicate the examination results as follows:

- (1) issue a written notification concerning the applicant's performance on the qualifying examination to each registered applicant by mailing exam results to the mailing address provided by the applicant; and
- (2) if applicable, mail a copy of the applicant's exam results to the applicant's Registered Sponsor at the mailing address on file with the Board at the same time the results are mailed to the applicant.

(b) The Board shall mail exam results within 30 days after the examination.

(c) The written notification shall be titled "Official Notice of Examination Results" with the date of the notice printed below the title.

(d) For a registered applicant who completes one full year of apprenticeship, all exam results shall expire 31 months after the date of initial issuance of the apprentice certificate.

(e) If a registered applicant is exempt from the apprenticeship requirement, or takes an exam more than 31 months after the date of initial issuance of the apprentice certificate, the exam results shall expire 19 months after the date of the exam.

(f) Notwithstanding Paragraphs (d) and (e) of this Rule, the exam results for Part D shall not expire.

History Note: Authority G.S. 93B-8; 93D-3(c);
Eff. April 23, 1976;
Amended Eff. December 1, 2014; September 1, 2013; June 1, 2012; February 1, 1996; May 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. March 1, 2018.

21 NCAC 22F .0108 REVIEW OF EXAMINATION

(a) As set forth in G.S. 93B-8(c), each registered applicant who takes and does not pass the qualifying examination shall be granted an opportunity to review the failed portion of the examination that is in the custody and control of the Board in the presence of a representative of the Board, upon written request from the applicant.

(b) An applicant shall make a written request by completing the electronic form available on the Board website. The written request shall include the applicant's name and Exam ID number, contact phone number, e-mail address, and dates available for a review appointment.

(c) The deadline to request an exam review shall be 20 days after the date printed on the Official Notice of Examination Results.

(d) The Board shall conduct exam reviews at the Board's office by appointment.

(e) Pursuant to G.S. 93B-8(d), an applicant shall not have the privilege to review Part D of the licensing exam.

History Note: Authority G.S. 93B-8; 93D-3(c); Eff. April 23, 1976;
Amended Eff. December 1, 2014; October 1, 2013; February 1, 1996; January 1, 1992; May 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Amended Eff. March 1, 2018.

21 NCAC 22F .0122 RECIPROCITY

History Note: Authority G.S. 93D-3(c); 93D-5; 93D-6; 93D-9;
Recodified from 21 NCAC 22F .0104(d) Eff. May 1, 2013;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;
Repealed Eff. March 1, 2018.

21 NCAC 22F .0123 MILITARY LICENSURE

- (a) The Board shall issue a license to a military-trained applicant seeking licensure as a hearing aid specialist in North Carolina upon the applicant demonstrating the qualifications as prescribed by the provisions of G.S. 93B-15.1(a).
- (b) The Board shall issue a license to a military-trained applicant seeking licensure as a hearing aid specialist in North Carolina upon the applicant demonstrating the qualifications as prescribed by the provisions of G.S. 93B-15.1(a2).
- (c) The Board shall issue a license to a military spouse applicant seeking licensure as a hearing aid specialist in North Carolina upon the applicant demonstrating the qualifications as prescribed by the provisions of G.S. 93B-15.1(b).
- (d) The Board shall issue a "temporary practice permit" to a military-trained applicant or military spouse applicant while the military-trained applicant or military spouse is satisfying the requirements for licensure. The following provisions apply:
 - (1) the applicant may perform duties within the scope of practice for a Hearing Aid Specialist only upon issuance of a temporary practice permit by the Board; and
 - (2) the temporary practice permit shall remain valid for the later of one year or the renewal date for Hearing Aid Specialists or until a license is granted.
- (e) No later than 30 days following receipt of a duly made application for licensure and exam registration under Paragraph (a) and (b), the Board shall notify a military-trained applicant when the applicant's military training or experience does not satisfy the requirements for licensure, and shall specify the criteria or requirements that the Board determined that the applicant failed to meet and the basis for that determination.
- (f) Notwithstanding any other rule in this Chapter, the Board shall not charge a military-trained applicant or a military spouse an initial application fee for a license, registration, or temporary practice permit issued pursuant to this Section. Pursuant to G.S. 93B-15.1, nothing in this Paragraph shall be construed to prohibit the Board from charging its ordinary fee for a renewal application or prohibit a third party from charging actual costs for a service such as a background check.
- (g) The Board shall waive the license renewal fee and continuing education reporting fees and shall grant an extension of time for

up to one year for completing and reporting continuing education credits for those licensees currently licensed and in good standing with the Board who are serving in the Armed Forces of the United States, and to whom G.S. 105-249-2 grants an extension of time to file a tax return.

History Note: Authority G.S. 93B-15; 93B-15.1; 93D-1.1; 93D-2; 93D-3(c); 93D-5; 93D-8; 93D-9;
Eff. March 1, 2018.

21 NCAC 22F .0201 CONTINUING EDUCATION DEFINITIONS

The following definitions apply to the Rules contained in this Section:

- (1) "CE Program" means a continuing education presentation where attendance is monitored and the participants are required to be present at one or more designated physical locations. The CE Program shall consist of sessions that may be eligible for Board-approved CEU credit. A CE Program may be televised or conducted via the internet only if participants must be at a designated location where attendance is monitored by the CE Program provider.
- (2) "CEU accrual period" means the calendar year (January 1 through December 31) immediately preceding the March license renewal deadline.
- (3) "CEU reporting deadline" means the tenth day of January that immediately follows the CEU Accrual Period.
- (4) "CEU Verification Report" means the electronic form available on the Board website (www.nchalb.org) for recording CEU credits earned to satisfy the license renewal requirement.
- (5) "Continuing Education Unit" (CEU) means the reporting unit used in calculating approved continuing education hours. One-tenth of a CEU (0.10) equals one hour of approved instruction. Ten hours of approved instruction equals 1.00 CEU credit. The Board-approved CEU credits are recorded to two decimal points (for example, a session conducted for two hours would be recorded as 0.20 CEU).
- (6) "Educational objective" means a statement of the working knowledge or understanding of presented content that a participant is expected to attain upon completion of the session.
- (7) "Hour" means a full clock hour (60 minutes) of instruction and learning, excluding any time allowed for any other activity such as meals, breaks, or business or committee meetings.
- (8) "Program application" means the Board's official application for the purpose of program review for Board-approved CEU credit, which is available on the Board website.
- (9) "Presentation format" means the teaching method utilized to impart information to the participants (for example, lecture, panel

- discussion, demonstration, practicum, or debate).
- (10) "Report of Attendance" means the official attendance verification form entitled "Continuing Education Report of Program Attendance," which is available on the website in generic form and in specific form for approved programs and self-study.
- (11) "Self-study" means independently completed internet-based activities or events provided by the Board, or approved by the International Institute for Hearing Instruments Studies (IIHIS), American Speech-Language-Hearing Association (ASHA), or American Academy of Audiology (AAA), for at least one hour of credit that includes an internet-presented examination addressing the content of the self-study session. Self-study may be:
- (a) live, online presentations;
 - (b) prerecorded, downloaded presentations; or
 - (c) text-based, downloaded readings.
- (12) "Session" means an instructional or learning event, with at least two primary educational objectives addressing a single Board topic content category, and a specific amount of time allotted for accomplishing the specified objectives.
- (13) "Topic Content Categories" means a system to separate Board-approved sessions by content. "Category 1" is for amplification, hearing rehabilitation, hearing loss, regulations, and consumer-related issues.

*History Note: Authority G.S. 93D-3(c); 93D-11;
Eff. September 1, 2013;
Amended Eff. March 1, 2018.*

21 NCAC 22F .0202 ANNUAL CONTINUING EDUCATION REQUIREMENTS

- (a) A licensee shall complete and record with the Board 10 hours (1.00 CEU credit) of Board-approved continuing education annually, from sessions assigned to Category 1 in accordance with Rule .0203 of this Section.
- (b) The CEU Accrual Period for each license renewal shall be the calendar year preceding license renewal. CEU credit cannot be carried over from one CEU Accrual Period to the next, even if the CEU credit earned exceeds the license renewal requirement.
- (c) An individual who passes the licensing exam during a CEU Accrual Period shall have satisfied the continuing education requirement for the corresponding license renewal.

*History Note: Authority G.S. 93D-3(c); 93D-11;
Eff. September 1, 2013;
Amended Eff. March 1, 2018; October 1, 2016.*

21 NCAC 22F .0203 CONTENT CATEGORIES

- (a) Sessions assigned to Category 1, as described in this Rule, shall satisfy the continuing education requirement for license

renewal. Any session not assigned to Category 1 shall not be approved to satisfy the continuing education requirement for license renewal.

(b) Category 1 is for amplification, hearing rehabilitation, hearing loss, regulations, and consumer-related issues, and shall be assigned to continuing education sessions that are comprised of the following topics:

- (1) hearing aid technology: instrument circuitry and acoustic performance data;
- (2) earmold or shell coupling systems: design, selection, modifications, and ear impressions;
- (3) hearing aid selection procedures, verification, fitting and adjustment techniques, and servicing or repairs;
- (4) aural rehabilitation using amplification: auditory training, hearing aid orientation and counseling techniques, and hearing aid validation techniques;
- (5) biological, physical, and behavioral bases underlying normal and pathological hearing processes;
- (6) detection, assessment, or monitoring of hearing impairment (such as measurement techniques and test interpretation), including intraoperative monitoring;
- (7) cochlear implants or implantable hearing devices;
- (8) central auditory processing;
- (9) assistive listening devices, including FM Systems and ancillary wireless devices;
- (10) techniques for development of speech and language in children with hearing loss, or augmentative and alternative communication strategies for children or adults with hearing loss;
- (11) cerumen management, dizziness, or tinnitus as it pertains to persons with hearing loss;
- (12) hearing impaired consumers' views of the hearing health care industry and consumer complaints;
- (13) infection control issues for the hearing health care profession;
- (14) professional conduct and regulatory issues pertaining to the fitting and selling of hearing aids; and
- (15) hearing aid business practices, such as hearing aid office management, sales contracts, and hearing aid marketing or industry trends.

*History Note: Authority G.S. 93D-3(c); 93D-11;
Eff. September 1, 2013;
Amended Eff. March 1, 2018.*

21 NCAC 22F .0208 SELF-STUDY

- (a) Self-study may be completed to satisfy all 10 hours of the continuing education requirement during each CEU Accrual Period.

(b) Each self-study event of one session and up to 10 sessions completed in the same CEU Accrual Period may be reported on one self-study Report of Attendance as a self-study program.

(c) A licensee shall record self-study CEU credit with the Board by submitting all of the following:

- (1) an electronic CEU Verification Report;
- (2) a completed self-study Report of Attendance;
- (3) an official transcript listing the licensee's score of 80 percent or greater on an Internet-presented examination pertaining to the content of the self-study activity; and
- (4) the recording fee as set forth in Rule 21 NCAC 22A .0501 for each self-study program.

(d) The Board shall accept electronic images of the self-study Report of Attendance and official transcripts when submitted electronically in conjunction with the CEU Verification Report.

History Note: Authority G.S. 93D-3(c); 93D-11; Eff. September 1, 2013;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016;

Amended Eff. March 1, 2018; January 1, 2017.

21 NCAC 22F .0301 APPRENTICESHIP REQUIREMENTS

(a) Pursuant to G.S. 93D-5 and G.S. 93D-9, an individual who seeks licensure from the Board shall first complete one full year of apprenticeship, with exception of those applicants eligible for waiver pursuant to G.S. 93D-5(c) or applying for licensure pursuant to 21 NCAC 22F .0123.

(b) In order to complete the one full year of apprenticeship, the applicant shall:

- (1) be sponsored by a Registered Sponsor; and
- (2) register with the Board by submitting a complete apprentice registration electronic application. The application shall be considered complete upon submission and receipt of the following:
 - (A) F1 form;
 - (B) F1 affidavit;
 - (C) audiometer calibration;
 - (D) passport style photograph;
 - (E) background check; and
 - (F) the application for registration as an apprentice fee as set forth in 21 NCAC 22A .0501(1).

(c) The Board shall accept a digital image of a signed affidavit or other document required as part of an application as the original when submitted electronically in conjunction with the electronic application.

(d) The Board may require supplemental information for applications to determine the qualifications of each applicant for apprenticeship, as set forth in these Rules and in Chapter 93D of the General Statutes of North Carolina. The Board will require supplemental information on a case-by-case basis including issues raised on the applicant's criminal background check or discrepancies in the application. Supplemental information may include letters of recommendation, affidavits, official transcripts, and personal appearances before the Board.

(e) Once an apprentice registration application is complete and approved, the Board shall issue the applicant an initial apprentice registration certificate that allows him or her to perform duties within the scope of practice for a Hearing Aid Specialist under the Registered Sponsor's supervision. The Board shall post all active apprentice information on the Board's website, www.nchalb.org.

(f) An apprentice may elect to take any part of the licensing exam at any time during the apprenticeship by submitting an application for licensure and exam registration as set forth in 21 NCAC 22A .0503 prior to the registration deadline.

(g) An apprentice is under Personal supervision unless and until an apprentice takes and passes Parts A, B, and C of the Board's licensing exam, at which point the apprentice will be under General supervision.

History Note: Authority G.S. 93D-1.1; 93D-3(c); 93D-5; 93D-9;

Eff. April 1, 2014;

Amended Eff. March 1, 2018.

21 NCAC 22F .0303 CERTIFICATE EXPIRATION AND RENEWAL

(a) The initial apprentice registration certificate, and any subsequently issued replacement certificates issued within the first year of apprenticeship, shall expire after the apprentice has held a valid certificate for a total of 365 days.

(b) Within 14 days after the expiration of the initial apprentice registration certification, in order to continue performing duties within the scope of practice for a Hearing Aid Specialist under a Registered Sponsor's supervision, the apprentice shall renew the apprentice registration certificate by submitting an application for licensure and exam registration as set forth in 21 NCAC 22A .0503(a)(2) to take the next scheduled licensing exam.

(c) Within 20 days after the date on the Official Notice of Examination Results, if an apprentice who renewed by following Paragraph (b) of this Rule failed to pass all parts of the Board's licensing exam, then in order to continue performing duties within the scope of practice for a Hearing Aid Specialist under a Registered Sponsor's supervision, the apprentice shall renew the apprentice registration certificate by doing the following:

- (1) submitting a complete apprentice registration electronic application consisting of:
 - (A) F1 form;
 - (B) F1 affidavit;
 - (C) audiometer calibration;
 - (D) passport style photograph;
 - (E) background check; and
 - (F) the renewal of apprentice registration fee as set forth in 21 NCAC 22A .0501(2); and
- (2) submitting an application for licensure and exam registration as set forth in 21 NCAC 22A .0503(a)(2) to take the next scheduled licensing exam.

(d) Any subsequent renewal of an apprentice registration certificate after Paragraph (b) or (c) of this Rule by an apprentice who failed to pass all parts of the Board's licensing exam shall be done by following Paragraph (c) of this Rule.

APPROVED RULES

(e) An apprentice registration certificate obtained by renewal in accordance with Paragraph (b), (c), or (d) of this Rule shall expire 30 days after the date on the latest Official Notice of Examination Results for the apprentice.

(f) A sponsor who no longer wishes to supervise an apprentice shall submit written notice to the Board that the apprenticeship is being terminated at the current expiration date of the certificate.

*History Note: Authority G.S. 93D-3(c); 93D-5; 93D-9;
Eff. April 1, 2014;
Amended Eff. March 1, 2018.*

This Section contains information for the meeting of the Rules Review Commission April 19, 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
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

AGENDA**RULES REVIEW COMMISSION****THURSDAY, APRIL 19, 2018 10:00 A.M.****1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Department of Revenue – 17 NCAC 05B .1105, .1108, .1110, .1406; 05C .0101, .0403; .0801, .0907, .1506, .1702; 05D .0109, .0112 (Reeder)
 - B. Building Code Council - 2018 Residential Code Tables N1102.1.2 and N1102.1.4; 2018 Energy Conservation Code Tables R402.12 and R402.1.4 (Reeder)

Review of Log of Filings (Permanent Rules) for rules filed February 21, 2018 through March 20, 2018

 - Pre-Reviewed Rules
 - Industrial Commission (Reeder)
 - Wildlife Resources Commission (May)
 - Department of Revenue (Reeder)
 - Division of Motor Vehicles/Department of Transportation (Thomas)
 - Medical Board (Reeder)
 - Non Pre-Reviewed Rules
 - Board of Agriculture (Thomas)
 - Commission of Navigation and Pilotage for the Cape Fear River and Bar (Thomas)
 - Teachers' and State Employees' Retirement System Board of Trustees (Reeder)
 - Local Government Employees' Retirement System Board of Trustees (Reeder)
 - Interpreter and Transliterator Licensing Board (Thomas)
 - Board of Nursing (Reeder)
 - Real Estate Commission (May)
- IV. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- V. Existing Rules Review

- Review of Reports
 1. 07 NCAC 14 – Department of Natural and Cultural Resources (Thomas)
 2. 07 NCAC 15 – Department of Natural and Cultural Resources (Thomas)
 3. 10A NCAC 26C Section .0100, Rule .0402, and Section .0500 – DHHS/Division of MH/DD/SAS (Thomas)
 4. 10A NCAC 26C Sections .0200, .0300, Rule .0401, and Section .0600 – Commission for MH/DD/SAS (Thomas)
 5. 10A NCAC 27C – Commission for MH/DD/SAS (Thomas)
 6. 10A NCAC 28D – Commission for MH/DD/SAS (Thomas)
 7. 10A NCAC 28E - Commission for MH/DD/SAS (Thomas)
 8. 11 NCAC 12 - Department of Insurance (Thomas)
 9. 21 NCAC 19 – Board of Electrolysis Examiners (Thomas)

VI. Commission Business

- C. Periodic Review and Expiration of Existing Rules Readoption Schedule
 - Next meeting: Thursday, May 17, 2018
-

Commission Review
Log of Permanent Rule Filings
February 21, 2018 through March 20, 2018

AGRICULTURE, BOARD OF

The rules in Chapter 9 are from the Food and Drug Protection Division.

The rules in Subchapter 9B are the rules and standards adopted by reference.

<u>Adoptions by Reference</u>	02	NCAC	09B	.0116
Amend*				
<u>Defining Establishment</u>	02	NCAC	09B	.0134
Adopt*				
<u>Adulteration and Misbranding</u>	02	NCAC	09B	.0135
Adopt*				

INDUSTRIAL COMMISSION

The rules in Chapter 10 are from the Industrial Commission.

The rules in Subchapter 10A concern workers' compensation rules including administration (.0100); notice of act (.0200); insurance (.0300); disability, compensation, fees (.0400); agreements (.0500); claims administration and procedures (.0600); appeals (.0700); rules of the commission (.0800); report of earnings (.0900); and preauthorization for medical treatment (.1000).

<u>Computation of Time and Notice by the Commission</u>	04	NCAC	10A	.0107
Amend*				

The rules in Subchapter 10M concern the utilization of opioids, related prescriptions, and pain management treatment in workers' compensation claims including general provisions (.0100); utilization rules for opioid and other pharmacological pain management treatment (.0200); utilization rules for opioid antagonists (.0300); utilization rules for nonpharmacological treatment for pain (.0400); and utilization rules for treatment for substance use disorder (.0500).

<u>Purpose and Applicability of the Rules</u>	04	NCAC	10M	.0101
Adopt*				
<u>Definitions</u>	04	NCAC	10M	.0102
Adopt*				
<u>Waiver of Rules</u>	04	NCAC	10M	.0103
Adopt*				

<u>First Prescription of Medication for Pain in an Acute Phase</u> Adopt*	04	NCAC	10M	.0201
<u>Prescription of Medication for Pain in an Acute Phase Fol...</u> Adopt*	04	NCAC	10M	.0202
<u>Prescription of Medication for Pain in a Chronic Phase</u> Adopt*	04	NCAC	10M	.0203
<u>Co-Prescription of Opioid Antagonist</u> Adopt*	04	NCAC	10M	.0301
<u>Nonpharmacological Treatment for Pain</u> Adopt*	04	NCAC	10M	.0401
<u>Treatment for Substance Use Disorder Involving a Targeted...</u> Adopt*	04	NCAC	10M	.0501

NAVIGATION AND PILOTAGE FOR THE CAPE FEAR RIVER AND BAR, COMMISSION OF

The rules in Chapter 15 concern navigation and pilotage for the cape fear river and bar.

<u>Number of Pilots</u> Readopt without Changes*	04	NCAC	15	.0119
<u>Apprenticeship</u> Readopt without Changes*	04	NCAC	15	.0121
<u>Incidents or Accidents Involving Pilots</u> Readopt without Changes*	04	NCAC	15	.0123
<u>Movement of Vessels</u> Readopt without Changes*	04	NCAC	15	.0124
<u>Pilotage Rates</u> Readopt without Changes*	04	NCAC	15	.0127
<u>Fees</u> Readopt without Changes*	04	NCAC	15	.0128

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

<u>Possession of Certain Species of Wildlife Resources</u> Amend*	15A	NCAC	10B	.0123
<u>Bear</u> Amend*	15A	NCAC	10B	.0202
<u>Deer (White Tailed)</u> Amend*	15A	NCAC	10B	.0203
<u>Rabbits</u> Amend*	15A	NCAC	10B	.0207
<u>Pheasant (Nonnative Varieties)</u> Amend*	15A	NCAC	10B	.0211
<u>Foxes (Gray and Red)</u> Amend*	15A	NCAC	10B	.0212
<u>American Alligator</u> Adopt*	15A	NCAC	10B	.0224

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100); general rules (.0200); game fish (.0300); non-game fish (.0400); primary nursery areas (.0500); and anadromous fish spawning areas (.0600).

<u>Public Mountain Trout Waters</u>	15A	NCAC	10C	.0205
Amend*				
<u>Black Bass</u>	15A	NCAC	10C	.0305
Amend*				
<u>Trout</u>	15A	NCAC	10C	.0316
Amend*				
<u>Manner of Taking Nongame Fishes: Purchase and Sale</u>	15A	NCAC	10C	.0401
Amend*				
<u>Taking Nongame Fishes for Bait or Personal Consumption</u>	15A	NCAC	10C	.0402
Amend*				

The rules in Subchapter 10D are game lands rules.

<u>Hunting on Game Lands</u>	15A	NCAC	10D	.0103
Amend*				
<u>Fishing on Game Lands</u>	15A	NCAC	10D	.0104
Amend*				

REVENUE, DEPARTMENT OF

The rules in Chapter 6 deal with individual income taxes.

The rules in Subchapter 6B concern individual income tax including filing rules (.0100); personal exemptions (.0300); annuities and pensions (.0400); general (.0500); other tax credits (.0600); active and reserve duty military pay (.0700); installment sales (.0800); sale of principal residence (.0900); private annuity transactions (.1000); involuntary conversion (.1100); cost basis of property (.1200); tenancy by the entirety (.1300); income and deductions of decedents (.1400); stock dividends and stock rights (.1500); basis of divested stock (.1600); exempt income (.1700); scholarship and fellowship grants (.1800); employee death benefits (.1900); depreciation and depletion (.2000); conservation and land clearing (.2100); travel expenses (.2200); education expenses (.2300); moving expenses (.2400); retirement plans (.2500); carry-over loss (.2600); interest deduction (.2700); taxes paid (.2800); casualty and theft losses (.2900); contributions (.3000); medical expenses (.3100); penalties individual income tax (.3200); accounting periods and methods (.3300); statute of limitations and federal changes (.3400); partnerships (.3500); life estate and remainder interest (.3600); estates and trusts (.3700); miscellaneous rules (.3800); non-residents and part-year residents (.3900) and S corporation (.4000).

<u>Completing a Return</u>	17	NCAC	06B	.0104
Amend*				
<u>General</u>	17	NCAC	06B	.3501
Amend*				
<u>Partnership Returns</u>	17	NCAC	06B	.3503
Amend*				
<u>NonResident Partners</u>	17	NCAC	06B	.3513
Amend*				
<u>Income Tax Return for Estates and Trusts</u>	17	NCAC	06B	.3716
Amend*				

The rules in Subchapter 6C concern the withholding of individual income taxes including withholding requirements (.0100), and the regulation of reporting and paying of income tax withheld (.0200).

<u>Additional Withholding Allowances</u>	17	NCAC	06C	.0124
Amend*				

TRANSPORTATION, DEPARTMENT OF/DIVISION OF MOTOR VEHICLES

The rules in Chapter 3 are from the Division of Motor Vehicles.

The rules in Subchapter 3D are from the enforcement section and include general information (.0100); motor vehicle dealer, sales, distributor and factory representative licenses (.0200); motor vehicle thefts (.0300); notice of sale and stored vehicles (.0400); general information regarding safety inspection of motor vehicles (.0500); weight of vehicles and registration enforcement (.0600); approval of motor vehicles safety equipment (.0700); safety rules and regulations (.0800); and approval of sun screening devices (.0900).

<u>Business Records</u>	19A	NCAC	03D	.0219
Amend*				
<u>Vehicle Records and Required Disclosures</u>	19A	NCAC	03D	.0237
Adopt*				

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES

The rules in Chapter 2 concern the retirement System.

The rules in Subchapter 2B concern the teachers' and state employees' retirement system including general provisions (.0100); administration (.0200); beneficiaries (.0300) employer contributions (.0400); types of retirement (.0500); leaves of absence (.0700); military service (inchoate rights only) (.0800); out-of-state service (inchoate rights only) (.0900) prior service (.1000); voluntary withdrawn contributions (.1100); and delayed purchase of service credits (.1200).

<u>Anti-Pension Spiking Contribution-Based Benefit Cap Facto...</u>	20	NCAC	02B	.0405
Adopt*				

LOCAL GOVERNMENT EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES

The rules in Subchapter 2C concern the local government employees' retirement system including general provisions (.0100); administration (.0200); beneficiaries (.0300); contributions (.0400); disability retirement (.0500); leaves of absence (.0700); membership (.0800); military service (inchoate rights only) (.0900); out-of-state service (inchoate rights only) (.1000) prior service (.1100); retirement allowances (.1200); voluntary withdrawn contributions (.1300); delayed purchase of service credits (.1500) and purchase of service credits for probationary regular employment (.1600).

<u>Anti-Pension Spiking Contribution-Based Benefit Cap Facto...</u>	20	NCAC	02C	.0405
Adopt*				

INTERPRETER AND TRANSLITERATOR LICENSING BOARD

The rules in Chapter 25 are from the Interpreter and Transliterators Board including general provisions (.0100); licensing (.0200); moral fitness for licensure (.0300); reporting and disclosure requirements (.0400); continuing education (.0500); administrative procedure (.0600); and sanctions (.0700).

<u>Renewal of a Provisional License</u>	21	NCAC	25	.0205
Readopt without Changes*				
<u>Continuing Education Requirements</u>	21	NCAC	25	.0501
Readopt with Changes*				

MEDICAL BOARD

The rules in Subchapter 32M regulate the approval, registration and practice of nurse practitioners (.0100).

<u>Reporting Criteria</u>	21	NCAC	32M	.0117
Amend*				

<u>Definition of Consultation for Prescribing Targeted Contr...</u> Adopt*	21	NCAC	32M	.0118
The rules in Subchapter 32S regulate physician assistants including physician assistant registration (.0200).				
<u>Prescriptive Authority</u> Amend*	21	NCAC	32S	.0212
<u>Definition of Consultation for Prescribing Targeted Contr...</u> Adopt*	21	NCAC	32S	.0225

NURSING, BOARD OF

The rules in Chapter 36 include rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); articles of organization (.0600); nurse licensure compact (.0700); and approval and practice parameters for nurse practitioners (.0800).

<u>Reporting Criteria</u> Amend*	21	NCAC	36	.0815
<u>Definition of Consultation for Prescribing Controlled Sub...</u> Adopt*	21	NCAC	36	.0816

REAL ESTATE COMMISSION

The rules in Chapter 58 are from the North Carolina Real Estate Commission.

The rules in Subchapter 58A are rules relating to real estate brokers and salesmen including rules dealing with general brokerage (.0100); application for license (.0300); examinations (.0400); licensing (.0500); real estate commission hearings (.0600); petitions for rules (.0700); rulemaking (.0800); declaratory rulings (.0900); real estate education and recovery fund (.1400); discriminatory practices prohibited (.1600); mandatory continuing education (.1700); limited nonresident commercial licensing (.1800); post-licensure education (.1900); annual reports (.2000); brokers in military service (.2100); and broker price opinions and comparative market analyses (.2200).

<u>Advertising</u> Amend*	21	NCAC	58A	.0105
<u>Delivery of Instruments</u> Amend*	21	NCAC	58A	.0106
<u>Retention of Records</u> Amend*	21	NCAC	58A	.0108
<u>Broker-In-Charge</u> Amend*	21	NCAC	58A	.0110
<u>Residential Property and Owners' Association Disclosure S...</u> Amend*	21	NCAC	58A	.0114
<u>License Renewal</u> Amend*	21	NCAC	58A	.0503
<u>Reinstatement of a License</u> Amend*	21	NCAC	58A	.0505
<u>Licensing of Persons Licensed in Another Jurisdiction</u> Amend*	21	NCAC	58A	.0511
<u>Continuing Education Requirement</u> Amend*	21	NCAC	58A	.1702
<u>Continuing Education for License Activation</u> Amend*	21	NCAC	58A	.1703
<u>Continuing Education Required of Nonresident Brokers</u> Amend*	21	NCAC	58A	.1711

<u>Applicability</u> Amend*	21	NCAC	58A	.2101
The rules in Subchapter 58B deal with time shares including time share project registration (.0100); public offering statement (.0200); cancellation (.0300); time share sales operation (.0400); handling and accounting of funds (.0500); project broker (.0600); and time share forms (.0700)				
<u>Renewal of Time Share Project Registration</u> Amend*	21	NCAC	58B	.0103
The rules in Subchapter 58G concern the administration of the Real Estate Commission.				
<u>Definitions</u> Amend*	21	NCAC	58G	.0103
The rules in Subchapter 58H concern real estate education including general rules (.0100); real estate schools (.0200); approved instructors (.0300); and continuing education (.0400).				
<u>Prelicensing and Postlicensing Roster Reporting</u> Amend*	21	NCAC	58H	.0211
<u>Renewal of Sponsor Approval</u> Amend*	21	NCAC	58H	.0404

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	ABC	04626	2/27/2018	NC Alcoholic Beverage Control Commission	v.	Prachi Adhikary, Inc T/A C Mart	Bawtinheimer
15	DHR	03118	2/21/2018	Carolyn Smith	v.	DHHS	Malherbe
17	DHR	06019	2/21/2018	Tammie Bullard	v.	North Carolina Department of Health and Human Services, Division of Health Service Regulation	Lassiter
17	DOJ	04617	2/27/2018	Thomas Carl Robbins	v.	NC Criminal Justice Education and Training Standards Commission	Overby
17	EHR	05445	2/22/2018	Sunset South Owners Association	v.	NC Department of Environmental Quality, Division of Energy Mineral & Land Resources	Lassiter
17	INS	07195	2/2/2018	John Lacy Kelly	v.	Department of Department of State Treasurer, North Carolina State Health Plan	Ward
				<u>UNPUBLISHED</u>			

17	ABC	06751	2/6/2018	NC Alcoholic Beverage Control Commission	v.	J C W Restaurant Group Inc T/A EMZY Sushi Bar and Asian Kitchen	Malherbe
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CONTESTED CASE DECISIONS

17	ABC	06758	2/7/2018	NC Alcoholic Beverage Control Commission	v.	Dolgencorp LLC T/A Dollar General Store 168	Overby
17	ABC	06992	2/7/2018	NC Alcoholic Beverage Control Commission	v.	Stop N Go Food Mart Llc T/A Stop N Go Food Mart	Overby
17	BAR	07608	2/7/2018	Kareem Abdullah Kirk-Bey	v.	North Carolina State Bar Council	Malherbe
16	CSE	11176	2/2/2018	Daniel B Smith	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
17	CSE	07470	2/27/2018	Kennedy A Maranga	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Sutton
17	CSE	07716	2/13/2018	Brian M Ross	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
17	CSE	08137	2/5/2018	Darnel N Smith	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Sutton
17	CSE	08171	2/8/2018	Joseph Booker	v.	North Carolina Child Support Enforcement	Sutton
17	CSE	08295	2/8/2018	Douglas A Gibson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
17	CSE	08432	2/16/2018	Sheldon P Ranz	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Sutton
17	CSE	08475	2/23/2018	Randall S Moorefield	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
17	DHR	04802	2/15/2018	Dorothy A Graham	v.	Division of Child Development and Early Education	Mann
17	DHR	06735	2/15/2018	RBC Health Care Solutions Inc	v.	Division of Health Service Regulation	Ward
17	DHR	07290	2/1/2018	Doreen Fulton	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Ward
17	DHR	07767	2/7/2018	Aurora of Statesville LLC Brenda K Peterson, Executive Officer	v.	NC Department of Health and Human Services, Division of Health Service Regulation, Adult Care Licensure Section Office of Legal Affairs	May
17	DHR	07857	2/27/2018	Agape House @ Forest Drive Ezuma Asi	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Ward
17	DHR	08443	2/8/2018	Roy Lee Ennals	v.	Department of Health and Human Services, Division of Health Service Regulation	Sutton
17	DHR	08547	2/14/2018	Will Parker & Mary Parker	v.	Mecklenburg County Department of Social Services Division of Youth and Family Services	Sutton
17	DHR	08605	2/27/2018	Ken Gordon Gamekeeper Restaurant	v.	NC DHHS Watauga Health Department	Mann

CONTESTED CASE DECISIONS

17	DOC	06814	2/28/2018	Kareem Abdullah Kirk	v.	North Carolina Department of Corrections	Mann
17	DOJ	05851	2/23/2018	Delton E Pettress	v.	NC Sheriffs Education and Training Standards Commission	Ward
17	OSP	08066	2/6/2018	Jessica Abrantes	v.	Consolidated Human Services Onslow County Government	Bawtinhimer
17	SOS	07004	2/7/2018	Bridgeway Associates NP Chanel N Harris	v.	NC Dept of the Secretary of State Trademark Section	Ward