

NORTH CAROLINA REGISTER

VOLUME 34 • ISSUE 01 • Pages 1 – 110

July 1, 2019

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PUBLISHED BY

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

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

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NORTH CAROLINA REGISTER
Publication Schedule for January 2019 – December 2019

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	270 th day from publication in the Register
33:13	01/02/19	12/06/18	01/17/19	03/04/19	03/20/19	04/18/19	05/01/19	09/29/19
33:14	01/15/19	12/19/18	01/30/19	03/18/19	03/20/19	04/18/19	05/01/19	10/12/19
33:15	02/01/19	01/10/19	02/16/19	04/02/19	04/22/19	05/16/19	06/01/19	10/29/19
33:16	02/15/19	01/25/19	03/02/19	04/16/19	04/22/19	05/16/19	06/01/19	11/12/19
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33:18	03/15/19	02/22/19	03/30/19	05/14/19	05/20/19	06/20/19	07/01/19	12/10/19
33:19	04/01/19	03/11/19	04/16/19	05/31/19	06/20/19	07/18/19	08/01/19	12/27/19
33:20	04/15/19	03/25/19	04/30/19	06/14/19	06/20/19	07/18/19	08/01/19	01/10/20
33:21	05/01/19	04/09/19	05/16/19	07/01/19	07/22/19	08/15/19	09/01/19	01/26/20
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33:23	06/03/19	05/10/19	06/18/19	08/02/19	08/20/19	09/19/19	10/01/19	02/28/20
33:24	06/17/19	05/24/19	07/02/19	08/16/19	08/20/19	09/19/19	10/01/19	03/13/20
34:01	07/01/19	06/10/19	07/16/19	08/30/19	09/20/19	10/17/19	11/01/19	03/27/20
34:02	07/15/19	06/21/19	07/30/19	09/13/19	09/20/19	10/17/19	11/01/19	04/10/20
34:03	08/01/19	07/11/19	08/16/19	09/30/19	10/21/19	11/21/19	12/01/19	04/27/20
34:04	08/15/19	07/25/19	08/30/19	10/14/19	10/21/19	11/21/19	12/01/19	05/11/20
34:05	09/03/19	08/12/19	09/18/19	11/04/19	11/20/19	12/19/19	01/01/20	05/30/20
34:06	09/16/19	08/23/19	10/01/19	11/15/19	11/20/19	12/19/19	01/01/20	06/12/20
34:07	10/01/19	09/10/19	10/16/19	12/02/19	12/20/19	01/16/20	02/01/20	06/27/20
34:08	10/15/19	09/24/19	10/30/19	12/16/19	12/20/19	01/16/20	02/01/20	07/11/20
34:09	11/01/19	10/11/19	11/16/19	12/31/19	01/21/20	02/20/20	03/01/20	07/28/20
34:10	11/15/19	10/24/19	11/30/19	01/14/20	01/21/20	02/20/20	03/01/20	08/11/20
34:11	12/02/19	11/06/19	12/17/19	01/31/20	02/20/20	03/19/20	04/01/20	08/28/20
34:12	12/16/19	11/21/19	12/31/19	02/14/20	02/20/20	03/19/20	04/01/20	09/11/20

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

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.

**North Carolina Department of Labor
Division of Occupational Safety and Health
1101 Mail Service Center
Raleigh, NC 27699-1101**

(919) 707-7806

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- Rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101, to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1910 promulgated as of April 15, 2019, except as specifically described, and
- The *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically adopts subsequent amendments to certain parts of the *Code of Federal Regulations*. Title 29, Part 1910—General Industry Standards does not automatically include subsequent amendments.

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, CFR technical amendments to § 1910.119 - Process Safety Management of Highly Hazardous Chemicals, and 1910.184 - Slings (84 FR 15102, April 15, 2019)

The final rule, published in the Federal Register on April 15, 2019 (84 FR 15102), issues technical amendments for minor corrections to the Process Safety Management of Highly Hazardous Chemicals (1910.119) and Slings (1910.184) standards. Regarding Process Safety Management of Highly Hazardous Chemicals (1910.119), a typographical error was recently discovered in the Chemical Abstract Service ("CAS") number for the chemical "Methyl Vinyl Ketone" and the number was corrected to reflect 78-94-4. Regarding Slings (1910.184), correction was made to restore two figures, Figure N-184-4 and Figure N-184-5, that were inadvertently removed by amendments published on June 8, 2011 (76 FR 33590; effective July 8, 2011). OSHA's final rule on technical amendments was effective April 15, 2019.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

Jill F. Cramer, Agency Rulemaking Coordinator
North Carolina Department of Labor
Legal Affairs Division
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

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 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Department of Administration intends to amend the rule cited as 01 NCAC 38 .0401, and readopt with substantive changes the rules cited as 01 NCAC 38 .0103, .0201, .0205, .0302, .0305, .0308, and .0407.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://ncadmin.nc.gov/about-doa/administrative-rules-review/proposed-rules-and-public-comment>

Proposed Effective Date: November 1, 2019

Public Hearing:

Date: July 30, 2019

Time: 11:30 a.m.-1:30 p.m.

Location: Conference Room, Capehart-Crocker House, 424 N. Blount Street, Raleigh, NC 27603

Reason for Proposed Action: Rules scheduled for re adoption pursuant to the periodic review set forth in G.S. 150B-21.3.

Comments may be submitted to: Shanon M. Gerger, NC Department of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301; phone (984) 236-0008; fax (919) 733-9571; email adminrules@doa.nc.gov

Comment period ends: August 30, 2019

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
☐ Local funds affected
☐ Substantial economic impact (\geq \$1,000,000)

- ☐ Approved by OSBM
☒ No fiscal note required

CHAPTER 38 - MOTOR FLEET MANAGEMENT

SECTION .0100 – OPERATION OF THE DIVISION'S MOTOR POOLS

01 NCAC 38 .0103 MILEAGE RATES

~~(a) Rates charged for the use of the Division vehicles are established by the Department of Administration pursuant to G.S. 143-341(8)(i)(6).~~

~~(b) Agencies will reimburse the Department of Administration at the end of each calendar month, on a mileage basis at the rate set by the Department of Administration.~~

~~(c) Permanently and agency assigned vehicles will be billed for 1,050 miles per month or actual mileage, whichever is greater. Vehicle usage will be reviewed to determine if the assignment is cost effective and serves the best interest of the assigned agency and the Division.~~

~~(d) Temporarily assigned vehicles will be billed for actual mileage or 60 miles for each day's usage, whichever is greater. If the vehicle is checked out after 5:00 p.m., no minimum fee will be assessed for the day the vehicle is checked out. If the vehicle is returned before 8:00 a.m., no minimum fee will be assessed for the day the vehicle is returned. However, a minimum fee of 60 miles will be assessed for each temporary assignment made for less than 24 hours.~~

Agencies shall reimburse the Department of Administration ("Department") for the use of Motor Fleet Management Division ("Division") vehicles at the end of each month at the rate set by the Department. This rate shall be set out in the assignment documents and based upon the total cost of ownership of the vehicle.

Authority G.S. 143-341(8)i.

SECTION .0200 - MAINTENANCE AND CARE OF VEHICLES

01 NCAC 38 .0201 GENERAL REPAIRS AND MAINTENANCE

~~(a) The maintenance of permanent assigned and agency assigned vehicles is the responsibility of the individual and agency to whom the vehicle is assigned. The driver or agency may obtain any required maintenance at any Division motor pool or any state owned facility or any approved commercial facility. Charges for this maintenance are billed to the Division.~~

~~(b) The maintenance of temporarily assigned vehicles is the responsibility of the Division.~~

~~(c) All maintenance and repairs must have prior authorization by calling 1-800-277-8181 or 733-4043 (in Raleigh calling area)~~

with the details of the maintenance and an estimate of the cost. Authorized charges for maintenance or repairs shall be billed to the Division for payment. In case of holidays, nights or weekends, an authorization request must be left with the Division's answering service. Any unauthorized repair expense will be billed to the agency to which the vehicle is assigned.

Maintenance of Division vehicles is the responsibility of the individual and Agency to whom the vehicle is assigned. All maintenance and repairs shall have prior authorization by contacting the dedicated repair authorization line provided in the assignment document with the details of the maintenance and an estimate of the cost. Authorized charges for maintenance or repairs shall be billed to the Division for payment. The Division may invoice agencies for any unauthorized repair expenses to which the vehicle is assigned.

Authority G.S. 143-341(8)i.

01 NCAC 38 .0205 ACCIDENT REPORTING

All accidents involving state vehicles or other property damage, regardless of amount of damage, must be reported by calling 1-800-277-8181 or 733-4043 (in Raleigh calling area). Information which must be obtained from the other driver involved in the accident is: name, address, telephone number, license plate number, insurance company, and policy number. An Accident Report Form FM 16 must be completed and forwarded immediately to the Division. All accidents involving injury or damage to a state vehicle must be reported to Travelers Insurance Company, promptly as follows:

- (1) In North Carolina, call 1-800-762-3804 except in the following counties: Bertie, Currituck, Hertford, Pasquotank, Camden, Dare, Hyde, Perquimans, Chowan, Gates, Martin, and Washington. In these counties call 804-330-4788, collect.
- (2) On weekends, after hours and holidays when there is any injury or death, call immediately 1-800-243-3840.

(a) A police report shall be obtained at the time of the accident by the local law enforcement on all accidents involving Division vehicles.

(b) All accidents involving Division vehicles or other property damage, regardless of amount of damage, shall be reported by contacting the dedicated accident reporting agencies provided in the assignment documents.

(c) All accidents involving personal injury to a third party or damage to a third party's property shall be reported to Traveler's Insurance Company at the contact information provided in the assignment documents.

Authority G.S. 143-341(8)i.

SECTION .0300 - ASSIGNMENT OF VEHICLES

01 NCAC 38 .0302 REQUESTS FOR ASSIGNMENT OF VEHICLES

(a) Temporary assignment requests for temporary assignment of vehicles shall be made on Form FM 2 signed by the proper agency supervisor and presented to the dispatcher at the assigning motor

pool. Forms shall be provided by the Division to all requesting agencies.

- (1) ~~Before a vehicle may be picked up, a valid North Carolina driver's license shall be presented to the motor pool dispatcher by the assigned driver and all other passengers who are subject to drive the vehicle during its temporary assignment.~~
- (2) ~~Temporary assignments are intended to meet the needs of state employees who require transportation on a short term (one to thirty days) basis. All temporarily assigned vehicles shall be returned immediately upon completion of trip or at end of use.~~
- (3) ~~Temporary assignments shall not be renewed.~~
- (4) ~~If the vehicle assignment is originally requested for a period in excess of 30 calendar days, the request must be processed as a permanent assignment (see "Permanent Assignments" in this Rule).~~
- (5) ~~All temporarily assigned vehicles shall be returned to the motor pool from which it was originally dispatched. During the temporary assignment, the driver should make note of any malfunctions encountered and any repairs and adjustments needed and report them to a fuel pump attendant upon returning the vehicle to the motor pool.~~

(b) ~~Permanent Assignments. Requests for vehicles to be assigned to individuals or agencies on a permanent or indefinite basis or for a period in excess of 30 calendar days shall be made on Form FM 30, signed by the department head or his/her designee, and forwarded to the Division at least 10 calendar days prior to date of need. A photocopy of the permanently assigned driver's valid North Carolina driver's license shall be submitted with the FM 30. All permanently assigned vehicles shall be returned to Motor Fleet Management on Blue Ridge Road, Raleigh, at the end of assignment unless otherwise instructed by the Division. The Division shall not approve requests for assignment or reassignment when the purpose of that assignment or reassignment is to provide any employee with a newer or lower mileage vehicle because of his or her rank, management authority, or length of service or because of any non job related reason. A reassignment (a transfer of a vehicle from one employee to another) may occur when filling vacant positions to which a vehicle is assigned. A form FM 30 must be submitted by the requesting agency and approved by the Division before the vehicle may be reassigned. The requesting agency must attach a memorandum to the FM 30 explaining the request for reassignment. If approved, a Division approved copy of the FM 30 will be sent to the agency granting permission for the new driver to take possession of the vehicle. All exchanges of lower mileage and/or better quality vehicles to senior or higher ranking employees and higher mileage and/or lower quality vehicles to junior employees will be denied.~~

(c) ~~The Division will not assign "special use" vehicles such as four wheel drive vehicles or law enforcement vehicles to any agency or individual except upon written justification, verified by~~

historical data, and accepted by the Secretary of the Department of Administration.

- (1) ~~All assignments of four wheel drive and law enforcement vehicles must be reviewed. A memorandum, accompanied by historical data, must be sent to the Division for each individual vehicle assigned.~~
- (2) ~~All requests for "special use" vehicles must be on a completed FM 30 accompanied by a memorandum explaining the intended use of the vehicle. Attached to the memorandum should be evidence substantiating the necessity for this type of vehicle, which must be verified by historical data.~~
- (3) ~~The agency or individual to whom the vehicle is assigned is responsible for forwarding this information to the Division. The Division will forward all justification requests to the Secretary of the Department of Administration.~~
- (4) ~~The agency will be notified, in writing, of the Secretary's decision. If the assignment request is denied, the requesting agency will be notified by the Division of a date for the return of the vehicle to the Division.~~

(a) Permanent Assignments. Requests for Division vehicles to be assigned to individuals or agencies shall be on the Division form and shall include:

- (1) contact information on the requesting individual and the Agency;
- (2) copy of a valid North Carolina driver's license;
- (3) description of the requesting individual or Agency's vehicle needs and planned usage; and
- (4) signature by the Agency's Director or his or her designee.

(b) "Special Use" Assignments. In addition to the requirements set forth in Paragraph (a) of this Rule, written justification, verified by historical data shall be included on the official Division form for each "special use" vehicle assigned. All assignments of "special use" vehicles shall be reviewed and approved by the Secretary.

Authority G.S. 143-341(8)i.

01 NCAC 38 .0305 REMOVAL OF VEHICLES FROM INDIVIDUAL AND AGENCY ASSIGNMENT

Permanent vehicle assignment to individuals or agencies may be revoked if any of the following occur:

- (1) ~~If the vehicle is used for any purpose other than official state business.~~
- (2) ~~If reports are not submitted to the Department of Administration, or if the report is inaccurate, incomplete or correction is not made within 30 days of request.~~
- (3) ~~If false information is willfully submitted on any report or application.~~
- (4) ~~If reports or forms are not signed properly and correction is not made within 30 days of a request to do so.~~

- (5) ~~If vehicle abuse occurs. Abuse includes, but is not limited to, improper care and maintenance of the vehicle willful damage to the vehicle (destruction of interior or exterior, ordinary wear and tear excepted).~~
- (6) ~~If the vehicle is not being driven the 3,150 miles quarterly minimum mileage requirement and lower mileage cannot be justified.~~
- (7) ~~If violations of Motor Vehicle laws are committed.~~
- (8) ~~Any other willful violation of these Rules.~~
- (1) a violation of G.S. 20 or other state motor vehicle laws in which the vehicle is traveling;
- (2) any violation of G.S. 143-341(8)(i)(7a) is committed;
- (3) any vehicle abuse which may include not providing maintenance in accordance with the assigned maintenance schedule set for the vehicle, not providing repairs when needed, destruction of the interior or exterior not due to the natural aging of the vehicle; and
- (4) any other willful violation of the Rules of this Section.

Authority G.S. 143-341(8)i.

01 NCAC 38 .0308 RETURN OF ASSIGNED VEHICLES

~~(a) Vehicles assigned on a temporary basis shall be returned to the motor pool at the end of the assignment period See 1 NCAC .0302.~~

~~(b) The Division will schedule replacement vehicles based on mileage, time in service, economy and nature of use of each vehicle. If turn in or replacement is required, all permanently assigned vehicles must be returned to the Division's Garage on Blue Ridge Road. When returning a permanently assigned vehicle, all credit cards assigned to that vehicle, vehicle registration, travel log book, and any other materials issued by the Division must be returned. Drivers must turn their cars in to assignment personnel or the turn in will not be recognized by the Division, and the agency will continue to be charged for the assignment until the matter is handled properly.~~

~~(c) All cases of damages or excessive wear due to vehicle misuse or abuse will be billed to the driver's agency (ordinary wear and tear excepted).~~

(a) Replacement vehicles shall be assigned by the Division as necessary based on mileage, time in service, economy and nature of use of each vehicle.

(b) If turn-in or replacement is required, all permanently assigned vehicles, including all keys, credit cards assigned to that vehicle, vehicle registration, travel log book, and any other materials issued by the Division, shall be returned to the Division Office. The Agency shall continue to be charged for the assigned vehicle until the vehicle has been received by the Division's Vehicle Assignment staff and all of the requirements of this Paragraph are met.

(c) The driver's Agency shall pay for all damages due to vehicle neglect, misuse or abuse.

Authority G.S. 143-341(8)i.

SECTION .0400 - VEHICLE USE

01 NCAC 38 .0401 OFFICIAL USE ONLY

(a) State-owned ~~passenger-carrying~~ vehicles shall be driven only by state employees and used for official state business ~~only, except in accordance with this Rule. It shall be unlawful for any state employee to use a state-owned vehicle for any private purpose whatsoever. Commuting privileges approved by the Division are not considered a private purpose.~~

(b) An employee ~~with an individual permanently assigned vehicle~~ may drive the vehicle to and from ~~his/her~~ his or her home when one or more of the following conditions exist:

- (1) ~~By~~ by virtue of ~~his/her~~ his or her position, the employee is entitled to use the vehicle and is so approved and authorized by the Secretary of ~~Administration.~~ Administration;
- (2) ~~See G.S. 143-341(8)(i)(7a).~~ commuting purposes in accordance with G.S. 143-341(8)(i)(7a);
- (3) ~~Employee's home is his/her~~ the employee's home is his or her official work station and the vehicle is parked at home when not being used for official ~~business.~~ business; or
- (4) ~~State-owned~~ state-owned vehicle is required for a trip the following workday and employee's home is closer to the destination than the ~~regular~~ official work station, and the employee does not have to report to ~~his/her regular~~ his or her work station before beginning the trip. ~~Frequent occurrence of this situation would require the Division's approval.~~

(c) ~~Temporary and agency assigned vehicles may not be driven to an employee's home unless one of the above four conditions apply.~~

Authority G.S. 143-341(8)i.

01 NCAC 38 .0407 RELATIVES

~~Spouses~~ No spouses and children of state employees may accompany them in state-owned ~~vehicles.~~ vehicles if sufficient space is available and all travel is strictly for official state business. No family pets are permitted in state-owned vehicles. Service animals are excluded from this restriction.

Authority G.S. 143-341(8)i.

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Department of Administration intends to readopt with substantive changes the rules cited as 01 NCAC 43A .0307-.0320.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://ncadmin.nc.gov/about-doa/administrative-rules-review/proposed-rules-and-public-comment>

Proposed Effective Date: November 1, 2019

Public Hearing:

Date: July 30, 2019

Time: 9:00 a.m.-11:00 a.m.

Location: Conference Room, Capehart-Crocker House, 424 N. Blount Street, Raleigh, NC 27603

Reason for Proposed Action: Rules scheduled for readoption pursuant to the periodic review set forth in G.S. 150B-21.3.

Comments may be submitted to: Shanon M. Gerger, NC Department of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301; phone (984) 236-0008; fax (919) 733-9571; email adminrules@doa.nc.gov

Comment period ends: August 30, 2019

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact (\geq \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

CHAPTER 43 - SURPLUS PROPERTY

SUBCHAPTER 43A - STATE SURPLUS PROPERTY AGENCY

SECTION .0300 - DISPOSAL OF SURPLUS PROPERTY

01 NCAC 43A .0307 PUBLIC SALE

Unless otherwise disposed of, ~~of~~ in accordance with G.S. 143-64.03 or Rule .0305 of this Section, State Surplus Property shall be offered for public sale. ~~Public sale of weapons is limited to licensed firearms dealers.~~ Public sale is through sealed competitive bids, competitive bids, electronic bids, negative bids, auction, and retail sales. ~~other methods.~~

Authority G.S. 143-64.01; 143-64.04.

01 NCAC 43A .0308 FIRST-COME FIRST-SERVED

~~State surplus property is available on a first come, first served basis. This applies to retail sales to the general public as well as transfers to state agencies, political subdivisions or non-profit tax exempt organizations.~~

State surplus property shall be sold on a first-come, first served basis when:

- (1) the property is sold at a retail store to the general public; or
- (2) the property is transferred to state agencies, political subdivisions, or non-tax exempt organizations.

Authority G.S. 143-64.01; 143-64.04.

01 NCAC 43A .0309 REJECTION OF BIDS

(a) Any and all bids may be rejected.

(b) Bids may also be rejected in whole or in part if:

- (1) The bidder has failed to pay for or pick up surplus property awarded;
- (2) The bid is submitted by an ineligible bidder pursuant to Rule .0315 of this Section;
- (3) The bid does not fully comply with the terms and conditions of the request/solicitation for bid; State Surplus Property Agency;
- (4) The bid is not legible or lacks completeness; the information provided is inaccurate, incomplete or needs clarification;
- (5) The bid does not comply with the bid policies of State Surplus Property Agency; requirements of the request and solicitation as set forth in the bid; or
- (6) Bid rejection is recommended by the State Capitol Police, State Bureau of Investigation, Federal Bureau of Investigation, or other Homeland Security entity. In such cases, the security entity must provide a written statement requesting rejection and that the recommendation is based on homeland security concerns. In the event of receipt of a security based bid rejection recommendation, the State Surplus Property Agency shall reject the bid without further supporting documentation.

~~(b) If a bid is rejected in whole or part, the subject property may be re-advertised, sold at the highest bidder's amount, the next higher bid accepted, or sale negotiated, in the best interests of the State, without recourse to further bidding.~~

(c) If a bid is rejected in whole or in part, State Surplus Property may:

- (1) re-advertise the property;
- (2) award the property to the next highest bidder from the initial bid; or
- (3) negotiate the sale of the property in the best interest of the State.

Authority G.S. 143-64.01; 143-64.04.

01 NCAC 43A .0310 RECEIPT OF BIDS

It is the responsibility of the bidder to have the bid properly. The bidder shall ensure that the bid is received in the State Surplus Property Agency by the time and date set forth in the bid, specified time and date of bid opening.

Authority G.S. 143-64.01; 143-64.04.

01 NCAC 43A .0311 INSPECTION OF PROPERTY

~~Bidders are urged to inspect property prior to submitting bids. All property is sold "as is" and "where is." Any property descriptions provided by the State are solely as an aid to identification. Verbal communications by custodians of property cannot be deemed reliable, and will not be considered by the State Surplus Property Agency. Reasonable opportunity will be afforded for inspection up to the time for opening bids, but no labor will be furnished for such purpose. The purchaser assumes all liability for the property after award is made.~~

All property is sold "as is" and "where is." Bidders may inspect property prior to submitting bids. Opportunity will be afforded for inspection up to the time a bid is awarded, but no labor or materials shall be furnished to a bidder for such purpose. Once the award is made, the bidder shall assume all liability for the property. Photographs and descriptions are provided for the purpose of aiding the bidder to identify the property and shall not be used to determine quality or condition of the property. Descriptions by the custodian of the property shall not be considered by the State Surplus Property Agency nor will they be grounds for disputing an award.

Authority G.S. 143-64.01; 143-64.04.

01 NCAC 43A .0312 STATE DOES NOT GUARANTEE

~~The description of the property offered for sale is compiled from available information. All property is sold "as is" and "where is." In addition, all property offered for sale or a portion thereof is subject to withdrawal prior to the bid opening date. A refund or an adjustment will not be made on account of property not meeting expectations, a bidder's failure to inspect prior to sale, or change of condition of property from the time of award to the time of pickup. Any cost of weighing, packaging, crating, loading or hauling property is assumed by the bidder unless otherwise provided.~~

(a) The description of the property offered for sale is compiled from information available to the State Surplus Property Agency at the time the bid is prepared. All property is sold "as is" and "where is."

(b) State Surplus Property Agency may withdrawal the offer to sell prior to the award date.

(c) The bidder shall be responsible for any cost of weighing, packaging, crating, loading or hauling of property.

Authority G.S. 143-64.01; 143-64.04.

01 NCAC 43A .0313 REFUNDS

~~Refunds or adjustments due to change in condition from time of inspection until time of award are limited to the change in value as determined by the State Surplus Property Officer. In such cases,~~

~~the State Surplus Property Officer may remove the property from bid or reverse the award and re-bid the property.~~
No refund shall be made upon the following:

- (1) property not meeting expectation;
- (2) bidder's failure to inspect prior to sale; or
- (3) change of condition of property from the time of award to the time of pickup.

No refund shall be given unless a change in value has occurred from the initial inspection of the property until the time of the award as determined by the State Surplus Property Officer.

Authority G.S. 143-64.01; 143-64.04.

01 NCAC 43A .0314 EXTENSION TO PAY OR REMOVE PROPERTY

Extensions to pay or remove property may be granted under the following conditions:

- (1) ~~The~~ the purchaser's inability to pay or remove property ~~was is~~ due to the actions or inactions of the State Surplus Property Agency or the custodian of the ~~property, property;~~ and
- (2) ~~In the case of removal of property,~~ the State Surplus Property Officer determines that space is ~~available.~~ available to allow a delay in the removal of property.

The purchaser waives all rights to recourse for shall not be eligible for refund for the change in the condition of the property as a condition of the extension.

Authority G.S. 143-64.01; 143-64.04.

01 NCAC 43A .0315 FAILURE TO PAY OR REMOVE PROPERTY

(a) If the ~~successful~~ bidder fails to pay in full for the property by the time and date indicated on the notice of award, the award shall be rescinded, ~~the property resold,~~ and the defaulting bidder shall be charged with loss to the State, if any, together with all expenses of the sale.

(b) If the ~~successful~~ bidder does not remove the property purchased by the time and date indicated on the notice of award, the State Surplus Property Agency shall retain the purchase ~~price~~ price, and resell the property a second time and retain all proceeds therefrom.

(c) ~~Successful bidders~~ Bidders who fail to pay shall be ineligible for award of future bids.

Authority G.S. 143-64.01; 143-64.04; 143-64.05.

01 NCAC 43A .0316 BOND

(a) The selling ~~agency~~ entity or the State Surplus Property Agency may require performance bonds for the purchase of ~~commodities.~~ commodities when hazards to the environment may occur on property and requires additional costs.

(b) The selling ~~agency~~ entity or the State Surplus Property Agency shall set the amount and terms of the ~~bond.~~ based on an assessment of the property and estimated value.

(c) Selling agencies shall document the need for performance bonds.

(d) Selling agencies shall request a bond release from the State Surplus Property Agency once the requirements of the bond have been met by the ~~successful~~ bidder.

(e) Selling agencies shall submit a ~~justification~~ a letter verifying compliance with the terms of the bond to the State Surplus Property Agency for any retention in whole or in part of the performance bond.

(f) The State Surplus Property Agency ~~is the final authority shall make a determination on releasing the performance bond.~~ based on the bidder's level of compliance with the terms of the bond.

Authority G.S. 143-64.01; 143-64.04; 143-64.05.

01 NCAC 43A .0317 DEMOLITION OF STATE BUILDINGS

(a) The State Surplus Property Agency may, if in the best interest of the State, be responsible for handles bids and awards of contracts for the demolition of state ~~buildings buildings,~~ including those of universities, hospitals, and other state ~~agencies.~~ entities.

(b) Requests for bid ~~forms~~ are sent to ~~interested, contractors and are further available upon request.~~ any interested party upon request as well as to entities on a list maintained by the State Surplus Property Office.

(c) The owning ~~agency~~ entity shall submit ~~the requirements for permits, insurances, performance bonds and any other applicable requirements from local, state or federal authorities~~ a letter of approval from the Counsel of State regarding the demolition of a state building to the State Surplus Property Agency.

(d) The ~~successful bidder is responsible for obtaining~~ shall obtain all necessary permits, insurances, licenses, performance bonds and other requirements to complete the demolition.

Authority G.S. 143-64.01; 143-64.04; 143-64.05.

01 NCAC 43A .0318 TIMBER SALES, PINESTRAW, AND FOREST COMMODITIES SALES

The State Surplus Property Agency shall dispose of timber, Timber, pine straw, and other forest commodities owned by state agencies ~~are disposed of by the State Surplus Property Agency on a competitive bid basis.~~ through a public sale. A request for bid ~~form~~ shall be sent to any interested party upon request as well as to entities on a list maintained by the State Surplus Property ~~Office.~~ Office compiled from individuals who have previously expressed an interest in similar sales.

Authority G.S. 143-64.01; 143-64.04.

01 NCAC 43A .0319 SURPLUS WEAPONS AND FIREARMS

(a) Subject to G.S. 20-187.2, Surplus weapons and firearms possessed by the North Carolina State Highway Patrol, North Carolina Department of Correction, North Carolina State Bureau of Investigation, State Capitol Police, and other non-military armed state security agencies shall be sold through the State Surplus Property Agency upon notification in writing from the selling entity to the State Surplus Property Agency that such weapons or firearms are surplus.

(b) The notification in writing from the selling entity shall list each weapon by description and serial number. include the following information:

- (1) weapon by description;
- (2) serial number of each weapon; and
- (3) any federal or state restrictions on the sale of non-firearm weapons.

(c) Weapons and firearms are subject to transfer between non-military armed state security agencies.

~~(d) The selling agency is responsible for notifying the State Surplus Property Agency of any federal or state restrictions on sale of non-firearm weapons.~~

~~(d)(e)~~ The State Surplus Property Agency, if requested, shall make available to federally licensed firearms dealers a list of firearms to be sold and a statement of the times and locations at which they may be inspected.

~~(e)(f)~~ Surplus weapons and firearms sales shall be made by competitive bids. public sale.

~~(f)(g) When payment has been received in full by the State Surplus Property Agency, the~~ The State Surplus Property Agency shall authorize the release of the weapons to the successful bidder; ~~provided, however, that no weapons shall be released to any person without the production of satisfactory proof of identification and, in the case of firearms, a valid federal firearms license. bidder upon receipt of the following information:~~

- (1) payment in full;
- (2) proof of identification; and
- (3) a valid federal firearms license, if the weapon is a firearm.

Authority G.S. 143-63.1; 143-64.01; 143-64.04.

01 NCAC 43A .0320 PAYMENT

~~(a) All payments must shall~~ be in the form of cash ~~(retail sales only), credit, debit, cashier's or certified check, postal money order, or other electronic payment methods as approved by the Department of Administration Fiscal Officer.~~

~~(b) Payment for retail sales items must shall be made at the time of purchase. purchase and shall be made at the retail site where the property is located.~~

~~(c) Payment in full for all other property purchases must shall be made by the time and date indicated on the notice of award. award and shall be made directly to the State Surplus Property Agency.~~

~~(d) Entities shall not accept payments on behalf of the State Surplus Property Agency.~~

~~(e) Extensions to pay or remove property must shall be in accordance with 01 NCAC 43A. 0314.~~

~~(f) No property may be removed by the successful bidder prior to full payment of the purchase price. Payments for retail sales shall be made at the retail site where the property is located. All other payments must be made directly to the State Surplus Property Agency. Agencies are not authorized to accept payments on behalf of the State Surplus Property Agency.~~

~~(g) If an agency releases~~ Entities shall not release property prior to receiving documentation verifying that payment in full has been made to the State Surplus Property Agency said agency entity shall assume all liability related to the release.

Authority G.S. 143-64.01; 143-64.04.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Department of Health and Human Services - Division of Health Service Regulation intends to readopt with substantive changes the rule cited as 10A NCAC 14G .0102 and repeal through readoption the rules cited as 10A NCAC 14G .0101, .0103, and .0104.

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://www2.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: November 1, 2019

Public Hearing:

Date: August 8, 2019

Time: 2:00 p.m.

Location: Dorothea Dix Park, Edgerton Building, Room 026, 809 Ruggles Drive, Raleigh, NC 27603

Reason for Proposed Action: Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of subchapter 10A NCAC 14G, Exemptions from Prohibitions of Self-Referrals by Health Care Providers for Underserved Areas, four rules were determined as “Necessary With Substantive Public Interest,” requiring readoption. Substantive revisions have been made to Rule 10A NCAC 14G .0102 to combine definitions, the application process and the criteria for an exemption into one simplified rule and to update outdated information. Since the requirements needed to apply for the exemption have been consolidated into rule, Rules 10A NCAC 14G .0101, .0103, and .0104 are redundant, therefore are proposed for readoption as a repeal because they are not necessary.

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

Comment period ends: August 30, 2019

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ($\geq \$1,000,000$)
- ☒ Approved by OSBM
- ☒ No fiscal note required

CHAPTER 14 - DIRECTOR, DIVISION OF HEALTH SERVICE REGULATION

SUBCHAPTER 14G - EXEMPTIONS FROM PROHIBITIONS OF SELF-REFERRALS BY HEALTH CARE PROVIDERS FOR UNDERSERVED AREAS

SECTION .0100 – GENERAL INFORMATION

10A NCAC 14G .0101 DEFINITIONS

Authority G.S. 90-408.

10A NCAC 14G .0102 APPLICATION

(a) The terms defined in G.S. 90-405 shall have the same meaning in this Rule.

(b) "Applicant" means a health care provider that submits an application to the Director of the Division of Health Service Regulation requesting an exemption from G.S. 90-406.

~~(a) An application must be submitted to the Department by any health care provider wishing to be exempt from G.S. 90-406.~~

~~(b)(c)~~ The application shall include the following information:

- (1) the name, mailing address, email address, and telephone number of the ~~health care provider~~ applicant;
- (2) a list of the designated health care services provided or to be provided by the applicant;
- ~~(2)(3)~~ the name, mailing address, email address, and telephone number of the manager of the entity to which the ~~health care provider wishes to be able~~ applicant wants to make referrals;
- ~~(3)(4)~~ ~~an explanation~~ a list of the ownership owners of the entity to which the applicant wants to make referrals ~~would be made including the names and ownership interests of all individuals or entities having an investment interest in the entity; referrals;~~
- ~~(4)(5)~~ a description list of the types of designated health care services provided or to be provided by the ~~entity; entity to which the applicant wants to make referrals;~~
- ~~(5)(6)~~ an analysis of the need for the health care service in the area sufficient to allow the

~~Department to determine that the area is an underserved area for the particular service to be provided; and evidence that there is a need for the proposed designated health care services in the county where the entity is or will be located; documentation of attempts made to obtain evidence that alternative financing is not available from other sources to develop the entity in which the health care provider has an interest and an explanation as to why any proposed alternative was not reasonable. to which the applicant wants to make referrals; and~~

- (8) a statement affirming that all health care providers located in the county where the entity is or will be located shall be offered access to the entity.

~~(c)(d) Applications shall be sent to the Director's Office, Division of Health Service Regulation, North Carolina Department of Human Resources, 701 Barbour Drive, P.O. Box 29530, Raleigh, N.C. 27626-0530, and shall indicate the purpose of the application: be:~~

- (1) mailed to the Office of the Director, Division of Health Service Regulation, Department of Health and Human Services, 2701 Mail Service Center, Raleigh, NC 27699-2701; or
- (2) delivered in person to the Office of the Director, Division of Health Service Regulation, Department of Health and Human Services, 809 Ruggles Drive, Raleigh, NC 27603.

Authority G.S. 90-408.

10A NCAC 14G .0103 CRITERIA FOR AN UNDERSERVED AREA EXEMPTION - NEW ENTITY

10A NCAC 14G .0104 CRITERIA FOR AN UNDERSERVED AREA EXEMPTION - EXISTING ENTITY

Authority G.S. 90-408.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to adopt the rule cited as 15A NCAC 07H .0313 and amend the rules cited as 15A NCAC 07H .0304 and .0309.

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

Proposed Effective Date: November 1, 2019

Public Hearing:
Date: July 17, 2019

Time: 1:15 p.m.

Location: NOAA/NCNERR Auditorium, 101 Pivers Island Road, Beaufort, NC 28516

Date: September 18, 2019

Time: 1:15 p.m.

Location: New Hanover County Government Center, 230 Government Center Drive, Wilmington, NC 28403

Reason for Proposed Action: *The Coastal Resources Commission proposes to amend its administrative rules to comply with a legislative mandate (S.L. 2015-241) related to the removal of specific areas from the Inlet Hazard Area of Environmental Concern (AEC). The amendments will provide greater flexibility to local governments and state agencies protecting life and property from the hazardous forces inherent to the oceanfront shoreline. 15A NCAC 7H .0304 contains the CRC's definitions of the Ocean Hazard Areas AEC. 15A NCAC 7H .0309 contains the setback exceptions to the Coastal Area Management Act for permits in the Ocean Hazard AECs. 15A NCAC 7H .0313 establishes the creation of a new AEC for lands adjacent to the two deep draft inlets providing access to the State's ports.*

Amendments are also proposed to 15A NCAC 7H .0309 to facilitate maintenance of existing stormwater outfalls on ocean beaches.

Comments may be submitted to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557; email Braxton.Davis@ncdenr.gov

Comment period ends: September 18, 2019

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. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- ☒ State funds affected
- ☒ Local funds affected
- ☐ Substantial economic impact ($\geq \$1,000,000$)
- ☒ Approved by OSBM
- ☐ No fiscal note required

CHAPTER 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 to 180 feet landward from the first line of stable and natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>.
- (2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet migrates, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties and channelization. The areas on the maps identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are

incorporated by reference and are hereby designated as Inlet Hazard Areas, except for:

- (a) ~~the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and~~
- (b) ~~the former location of Mad Inlet, which closed in 1997.~~
- (a) the location of a former inlet which has been closed for at least 15 years;
- (b) inlets that due to shoreline migration, no longer include the current location of the inlet; and
- (c) inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule. ~~Photocopies are available at no charge.~~

- (3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable and natural vegetation is present may be designated as ~~an~~ Unvegetated Beach Area Areas on either a permanent or temporary basis as follows:
 - (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.
 - (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the

re-establishment of the vegetation, the area shall return to its pre-storm designation.

- (4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the United States Army Corps of Engineers. These areas are unique due to the influence of federally-maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward as designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management, and on the internet at the website referenced in Sub-item (1)(a) of this Rule.

Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124.

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of ~~the Subchapter~~ this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet;
- (4) beach accessways consistent with Rule .0308(c) of this ~~Subchapter~~ Section;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands;
- (8) sand fences; and
- (9) swimming pools.

In all cases, this development shall be permitted only if it is landward of the vegetation line or static vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback requirements of this Subchapter.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this ~~Subchapter~~ Section would preclude

placement of permanent substantial structures on lots existing as of June 1, 1979, buildings shall be permitted seaward of the applicable setback line in ocean erodible ~~areas~~, areas and State Ports Inlet Management Areas, but not inlet hazard areas or unvegetated beach areas, if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line or static vegetation line, whichever is applicable;
- (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this ~~Subchapter~~, Section.
 - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
 - (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
 - (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases concrete, asphalt or turfstone may also be used;
 - (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent building. When the geometry or orientation of a lot precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, static vegetation line or measurement

line, whichever is applicable, a distance no less than 60 feet.

- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.

(c) Reconfiguration and development of lots and projects that have a grandfather status under Paragraph (b) of this Rule shall be allowed provided that the following conditions are met:

- (1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;
- (2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences.

For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.

(d) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) piers providing public access; and
- (2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.

(e) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:

- (1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
- (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
- (3) The pier house shall be limited to a maximum of two stories;
- (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
- (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
- (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
- (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.

(f) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted on those non-oceanfront portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 15A NCAC 07K .0203.

(g) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule 07H .0305, .0305 of this Section, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
- (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

(h) Existing stormwater outfalls within the Ocean Hazard AEC that are owned or maintained by a State agency or local government, may be extended oceanward subject to the provisions contained within 15A NCAC 07J .0200. Outfalls may be extended below mean low water, and may be maintained in accordance with 15A NCAC 07K .0103. Shortening or lengthening of outfall structures within the authorized dimensions, in response to changes in beach width, is considered maintenance under 15A NCAC 07K .0103. Outfall extensions may be marked with signage, and shall not prevent pedestrian or vehicular access along the beach. This Paragraph does not apply to existing stormwater outfalls that are not allowed or maintained by a State agency or local government.

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

15A NCAC 07H .0313 USE STANDARDS FOR STATE PORTS INLET MANAGEMENT AREAS

Development within State Ports Inlet Management areas, as defined by Rule .0304 of this Section, shall be permitted in accordance with the following standards:

(a) All development in the State Ports Inlet Management Areas shall be set back from the first line of stable and natural vegetation, static vegetation line, or measurement line at a distance in accordance with Rule .0305(a)(5) of this Section, except for development exempted under Rule .0309 of this Section.

(b) Notwithstanding the use standards for temporary erosion control structures described in Rule .0308(a)(2) of this Section, a local or state government may apply for a permit to seek

protection of an imminently threatened frontal or primary dune, public and private structures and/or infrastructure within a State Ports Inlet Management Area. For the purpose of this Rule, a frontal or primary dune, structure, or infrastructure shall be considered imminently threatened in a State Ports Inlet Management Area if:

- (1) its foundation, septic system, right-of-way in the case of roads, or waterward toe of the dune is less than 20 feet away from the erosion scarp;
or
- (2) site conditions, such as flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure as determined by the Director of the Division of Coastal Management; or
- (3) the frontal or primary dune or infrastructure will be imminently threatened within six months as certified by persons meeting all applicable State occupational licensing requirements; or
- (4) the rate of erosion from the erosion scarp or shoreline within 100 feet of the infrastructure, structure, frontal or primary dune was greater than 20 feet over the preceding 30 days.

Permit applications to protect property where no structures are imminently threatened require consultation with the US Army Corps of Engineers.

(c) Temporary erosion control structures constructed by a local or state government shall have a base width not exceeding 20 feet, and a height not to exceed six feet. Individual sandbags shall be tan in color and be a minimum of three feet wide and seven feet in length when measured flat.

(d) Established common-law and statutory public rights of access to the public trust lands and waters in State Ports Inlet Management Areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

(e) Except where inconsistent with the above standards, all other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the State Ports Inlet Management Areas.

(f) In addition to the types of development excepted under Rule .0309 of this Section, small-scale, non-essential development that does not induce further growth in the State Ports Inlet Management Areas, such as the construction of single-family piers and small-scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated State Ports Inlet Management Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small-scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100 and .1200.

Authority G.S. 113A-107, 113A-107.1; 113A-113; 113A-124.

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 May 16, 2019 Meeting.

**REGISTER CITATION TO THE
NOTICE OF TEXT****NATURAL AND CULTURAL RESOURCES, DEPARTMENT OF**

<u>Qualifications for Grant Eligibility</u>	07 NCAC 02I .0201*	G.S. 150B-21.5(a)(4)
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ELECTIONS AND ETHICS ENFORCEMENT, BOARD OF

<u>Appeal to the State Board of Elections</u>	08 NCAC 02 .0112*	31:23 NCR
<u>New Elections Ordered by State Board of Elections</u>	08 NCAC 02 .0113*	31:23 NCR
<u>Voter Complaints</u>	08 NCAC 03 .0101*	31:23 NCR
<u>Charges</u>	08 NCAC 03 .0102*	31:23 NCR
<u>Hearing</u>	08 NCAC 03 .0103*	31:23 NCR
<u>Rights</u>	08 NCAC 03 .0104*	31:23 NCR
<u>Scope</u>	08 NCAC 03 .0105*	31:23 NCR
<u>Witnesses</u>	08 NCAC 03 .0106*	31:23 NCR
<u>Filing Charges: Adoption of Procedures</u>	08 NCAC 03 .0201*	31:23 NCR
<u>Hearings Date and Disposition</u>	08 NCAC 03 .0202*	31:23 NCR
<u>Operation and Matter of Voting on Voting Systems</u>	08 NCAC 04 .0304*	31:23 NCR
<u>Instruction of Precinct Officials and Voters in the use o...</u>	08 NCAC 04 .0305*	31:23 NCR
<u>Duties of Custodians of Voting Systems</u>	08 NCAC 04 .0306*	31:23 NCR
<u>Testing of Voting System Before use in an Election</u>	08 NCAC 04 .0307*	31:23 NCR
<u>Arrangement of Official Ballots</u>	08 NCAC 06B .0103*	31:23 NCR
<u>Late Changes in Ballots</u>	08 NCAC 06B .0104*	31:23 NCR
<u>Counting of Official Ballots</u>	08 NCAC 06B .0105*	31:23 NCR
<u>General Guidelines</u>	08 NCAC 09 .0106*	31:23 NCR
<u>Recount of Optical Scan/Marksense/Punchcard Ballots</u>	08 NCAC 09 .0107*	31:23 NCR
<u>Direct Record Electronic and Lever (Direct Record Mechani...</u>	08 NCAC 09 .0108*	31:23 NCR

HHS - HEALTH BENEFITS, DIVISION OF

<u>Quality Assurance</u>	10A NCAC 23A .0103*	33:13 NCR
<u>Application Processing Standards</u>	10A NCAC 23C .0201*	33:13 NCR
<u>Mandatory Groups</u>	10A NCAC 23D .0101	33:13 NCR
<u>Optional Groups</u>	10A NCAC 23D .0102	33:13 NCR
<u>Classification</u>	10A NCAC 23D .0201	33:13 NCR
<u>Age</u>	10A NCAC 23E .0101	33:13 NCR
<u>United States Citizen</u>	10A NCAC 23E .0102	33:13 NCR
<u>Residence</u>	10A NCAC 23E .0103*	33:13 NCR
<u>Deprivation</u>	10A NCAC 23E .0104	33:13 NCR
<u>Blindness</u>	10A NCAC 23E .0106*	33:13 NCR
<u>Caretaker Relative</u>	10A NCAC 23E .0107	33:13 NCR
<u>Inmate of Public Institution or Private Psychiatric Hospital</u>	10A NCAC 23E .0108	33:13 NCR
<u>Applying for all Benefits and Annuities</u>	10A NCAC 23E .0201*	33:13 NCR
<u>Countable Income</u>	10A NCAC 23E .0203*	33:13 NCR

APPROVED RULES

<u>Personal Needs Allowance</u>	10A NCAC 23E .0204	33:13 NCR
<u>Budget Unit Membership</u>	10A NCAC 23E .0205*	33:13 NCR
<u>Financial Responsibility and Deeming</u>	10A NCAC 23E .0206	33:13 NCR
<u>Whose Resources are Counted</u>	10A NCAC 23E .0207*	33:13 NCR
<u>Calculating Income</u>	10A NCAC 23E .0208*	33:13 NCR
<u>Deductible</u>	10A NCAC 23E .0209*	33:13 NCR
<u>Patient Liability</u>	10A NCAC 23E .0210*	33:13 NCR
<u>Alien Sponsor Deeming</u>	10A NCAC 23E .0211*	33:13 NCR
<u>Certification and Authorization</u>	10A NCAC 23G .0101	33:13 NCR
<u>General</u>	10A NCAC 23G .0201*	33:13 NCR
<u>Corrective Actions</u>	10A NCAC 23G .0202*	33:13 NCR
<u>Responsibility for Errors</u>	10A NCAC 23G .0204*	33:13 NCR
<u>Recommendation</u>	10A NCAC 23G .0303	33:13 NCR
<u>Liability of Persons with Access</u>	10A NCAC 23H .0106	33:13 NCR
<u>Right of Access</u>	10A NCAC 23H .0107*	33:13 NCR
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<u>Consent for Release</u>	10A NCAC 23H .0110	33:13 NCR
<u>Disclosure Without Client Consent</u>	10A NCAC 23H .0111*	33:13 NCR
<u>Documentation of Consent or Disclosure</u>	10A NCAC 23H .0112	33:13 NCR
<u>Persons Designated to Disclose Information</u>	10A NCAC 23H .0113	33:13 NCR
<u>Medical Services</u>	10A NCAC 25A .0201*	33:13 NCR
<u>Standards for Participation</u>	10A NCAC 25H .0203*	33:13 NCR
<u>Pharmacy Services</u>	10A NCAC 25K .0201	33:13 NCR
<u>Patient Counseling</u>	10A NCAC 25K .0401*	33:13 NCR
<u>Inpatient Hospital Services</u>	10A NCAC 25M .0201	33:13 NCR
<u>Inpatient Hospital Services</u>	10A NCAC 25P .0201	33:13 NCR
<u>Outpatient Hospital Services</u>	10A NCAC 25P .0301	33:13 NCR
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SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Time Req/Completion/Basic Law Enforcement Training Course</u>	12 NCAC 10B .0503*	33:10 NCR
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Site Specific Water Quality Management Plan for the Goose...</u>	15A NCAC 02B .0601*	32:21 NCR
<u>Site Specific Water Quality Management Plan for the Goose...</u>	15A NCAC 02B .0602*	32:21 NCR
<u>Site Specific Water Quality Management Plan for the Goose...</u>	15A NCAC 02B .0603	32:21 NCR
<u>Site Specific Water Quality Management Plan for the Goose...</u>	15A NCAC 02B .0604*	32:21 NCR
<u>Site Specific Water Quality Management Plan for the Goose...</u>	15A NCAC 02B .0605*	32:21 NCR
<u>Site Specific Water Quality Management Plan for the Goose...</u>	15A NCAC 02B .0606*	32:21 NCR
<u>Site Specific Water Quality Management Plan for the Goose...</u>	15A NCAC 02B .0608*	32:21 NCR
<u>Managing Activities within Riparian Buffers: Definitions</u>	15A NCAC 02B .0610*	32:21 NCR
<u>Managing Activities within Riparian Buffers: Authorizatio...</u>	15A NCAC 02B .0611*	32:21 NCR
<u>Managing Activities within Riparian Buffers: Forest Harve...</u>	15A NCAC 02B .0612*	32:21 NCR
<u>Neuse River Basin: Nutrient Sensitive Waters Management S...</u>	15A NCAC 02B .0715*	32:21 NCR
<u>Randleman Nutrient Strategy: Purpose and Scope</u>	15A NCAC 02B .0720*	32:21 NCR
<u>Randleman Lake Water Supply Watershed: Stormwater Require...</u>	15A NCAC 02B .0721*	32:21 NCR
<u>Randleman Lake Water Supply Watershed: Wastewater Dischar...</u>	15A NCAC 02B .0722*	32:21 NCR
<u>Tar-Pamlico River Basin-Nutrient Sensitive Waters Managem...</u>	15A NCAC 02B .0735*	32:21 NCR

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<u>Applicability</u>	15A NCAC 02H .0501*	32:21 NCR
<u>Filing Application</u>	15A NCAC 02H .0502*	32:21 NCR
<u>Public Notice and Public Hearing</u>	15A NCAC 02H .0503*	32:21 NCR
<u>Hearing</u>	15A NCAC 02H .0504	32:21 NCR
<u>Decision on Application for Certification</u>	15A NCAC 02H .0507*	32:21 NCR
<u>Scope and Purpose</u>	15A NCAC 02H .1301*	32:21 NCR
<u>Filing Applications</u>	15A NCAC 02H .1302*	32:21 NCR
<u>Public Notice and Public Hearing</u>	15A NCAC 02H .1303*	32:21 NCR
<u>Decision on Applications for Permits or Certificates of C...</u>	15A NCAC 02H .1304*	32:21 NCR
<u>Soil Series</u>	15A NCAC 02H .1306*	32:21 NCR
<u>Purpose and Scope</u>	15A NCAC 02L .0401*	33:12 NCR
<u>Definitions</u>	15A NCAC 02L .0402	33:12 NCR
<u>Rule Application</u>	15A NCAC 02L .0403*	33:12 NCR
<u>Required Initial Abatement Actions By Responsible Party</u>	15A NCAC 02L .0404*	33:12 NCR
<u>Requirements for Limited Site Assessment</u>	15A NCAC 02L .0405*	33:12 NCR
<u>Discharge or Release Classifications</u>	15A NCAC 02L .0406*	33:12 NCR
<u>Reclassification of Risk Levels</u>	15A NCAC 02L .0407*	33:12 NCR
<u>Assessment and Remediation</u>	15A NCAC 02L .0408*	33:12 NCR
<u>Notification Requirements</u>	15A NCAC 02L .0409*	33:12 NCR
<u>Departmental Listing of Discharges or Releases</u>	15A NCAC 02L .0410*	33:12 NCR
<u>Establishing Maximum Soil Contamination Concentrations</u>	15A NCAC 02L .0411*	33:12 NCR
<u>Analytical Procedures for Soil Samples</u>	15A NCAC 02L .0412*	33:12 NCR
<u>Analytical Procedures for Ground Water Samples</u>	15A NCAC 02L .0413*	33:12 NCR
<u>Required Laboratory Certification</u>	15A NCAC 02L .0414	33:12 NCR
<u>Discharges or Releases from Other Sources</u>	15A NCAC 02L .0415*	33:12 NCR
<u>Purpose and Scope</u>	15A NCAC 02L .0501*	33:12 NCR
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<u>Required Initial Response and Abatement Actions by Respon...</u>	15A NCAC 02L .0504*	33:12 NCR
<u>Requirements for Limited Site Assessment</u>	15A NCAC 02L .0505*	33:12 NCR
<u>Discharge or Release Classifications</u>	15A NCAC 02L .0506*	33:12 NCR
<u>Reclassification of Risk Levels</u>	15A NCAC 02L .0507*	33:12 NCR
<u>Assessment and Remediation Procedures</u>	15A NCAC 02L .0508*	33:12 NCR
<u>Notification Requirements</u>	15A NCAC 02L .0509*	33:12 NCR
<u>Departmental Listing of Discharges or Releases</u>	15A NCAC 02L .0510	33:12 NCR
<u>Establishing Maximum Soil Contamination Concentrations</u>	15A NCAC 02L .0511*	33:12 NCR
<u>Analytical Procedures for Soil Samples</u>	15A NCAC 02L .0512*	33:12 NCR
<u>Analytical Procedures for Groundwater Samples</u>	15A NCAC 02L .0513*	33:12 NCR
<u>Required Laboratory Certification</u>	15A NCAC 02L .0514*	33:12 NCR
<u>Discharges or Releases form Other Sources</u>	15A NCAC 02L .0515*	33:12 NCR

WILDLIFE RESOURCES COMMISSION

<u>Manner of Taking Nongame Fishes: Purchase and Sale</u>	15A NCAC 10C .0401	33:11 NCR
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TRANSPORTATION, DEPARTMENT OF

<u>Construction of Railroad Tracks Across Right of Way</u>	19A NCAC 02B .0150*	33:16 NCR
<u>Signalization of Existing Grade Crossing</u>	19A NCAC 02B .0152	33:16 NCR
<u>Signalization of New Grade Crossing</u>	19A NCAC 02B .0153*	33:16 NCR

APPROVED RULES

<u>Cost of Railroad Separation Structures</u>	19A NCAC 02B .0154*	33:16 NCR
<u>Construction and Maintenance of Railroad Crossing</u>	19A NCAC 02B .0155*	33:16 NCR
<u>Paving of Roadway Surface Crossing Railroad Tracks</u>	19A NCAC 02B .0156*	33:16 NCR
<u>Cost of Changing Elevation of Railroad Facilities</u>	19A NCAC 02B .0157*	33:16 NCR
<u>Changing Grade of Road When Grade of RR Tracks is Changed</u>	19A NCAC 02B .0158*	33:16 NCR
<u>Negotiation With Municipalities and Municipal Agreements</u>	19A NCAC 02B .0315*	33:16 NCR
<u>Curb and Gutter and Underground Drainage on Highways</u>	19A NCAC 02D .0402*	33:16 NCR
<u>Use of Dust Allaying Materials</u>	19A NCAC 02D .0403*	33:16 NCR
<u>Examples of Construction and Maintenance Activities</u>	19A NCAC 02D .0405	33:16 NCR
<u>Rental of Supplemental Equipment</u>	19A NCAC 02D .0410	33:16 NCR
<u>Location of Garbage Collection Containers</u>	19A NCAC 02D .0414*	33:16 NCR
<u>Installation of Driveway Pipe</u>	19A NCAC 02D .0421*	33:16 NCR
<u>Federal Disaster Assistance</u>	19A NCAC 02D .0425	33:16 NCR
<u>Ferry Reservations</u>	19A NCAC 02D .0535*	33:16 NCR
<u>Vehicle Weight Limitations</u>	19A NCAC 02D .0538	33:16 NCR
<u>Vehicle Physical Dimension Limitations</u>	19A NCAC 02D .0539	33:16 NCR
<u>Unzoned Industrial Area</u>	19A NCAC 02E .0301*	33:16 NCR
<u>Fees</u>	19A NCAC 02E .0303	33:16 NCR

SUPPLEMENTAL RETIREMENT BOARD OF TRUSTEES/STATE TREASURER, DEPARTMENT OF

<u>Administrative Fees: NC 401(K) and NC 457 Plans</u>	20 NCAC 11 .0101	33:14 NCR
<u>Administrative Fee: NC 403(b) Program</u>	20 NCAC 11 .0102*	33:14 NCR

LANDSCAPE CONTRACTORS' LICENSING BOARD

<u>Practice of Landscape Contracting; Display of License Number</u>	21 NCAC 28B .0103	33:11 NCR
<u>Annual Reports</u>	21 NCAC 28B .0104*	33:11 NCR
<u>Applications for Licensure</u>	21 NCAC 28B .0201*	33:11 NCR
<u>Reciprocity</u>	21 NCAC 28B .0202	33:11 NCR
<u>Qualifier/Qualifying Party; Use of Assumed Name</u>	21 NCAC 28B .0303	33:11 NCR
<u>Continuing Education Units</u>	21 NCAC 28B .0402*	33:11 NCR
<u>Continuing Education Records; Audit</u>	21 NCAC 28B .0403*	33:11 NCR
<u>General</u>	21 NCAC 28B .0501	33:11 NCR
<u>Low-Voltage Lighting; Pools</u>	21 NCAC 28B .0507	33:11 NCR
<u>Fee Schedule</u>	21 NCAC 28B .0601	33:11 NCR
<u>Subpoenas</u>	21 NCAC 28B .0803	33:11 NCR
<u>Rulemaking Petition</u>	21 NCAC 28B .0901	33:11 NCR

APPRAISAL BOARD

<u>Continuing Education</u>	21 NCAC 57A .0204*	33:12 NCR
<u>Supervision of Trainees</u>	21 NCAC 57A .0407*	33:12 NCR
<u>Instructor Requirements</u>	21 NCAC 57B .0306*	33:12 NCR
<u>Course Operational Requirements</u>	21 NCAC 57B .0606*	33:12 NCR

REAL ESTATE COMMISSION

<u>Retention of Records</u>	21 NCAC 58A .0108	33:14 NCR
<u>Provisional Broker to be Supervised by Broker</u>	21 NCAC 58A .0506*	33:14 NCR
<u>Complaints/Inquiries/Motions/Other Pleadings</u>	21 NCAC 58A .0601*	33:14 NCR
<u>Presiding Officer</u>	21 NCAC 58A .0612	33:14 NCR

<u>Postlicensing Education Requirement</u>	21 NCAC 58A .1902*	33:14 NCR
<u>Waiver of 90-Hour Postlicensing Education Requirement</u>	21 NCAC 58A .1905*	33:14 NCR
<u>Escrow Account</u>	21 NCAC 58A .2002	33:14 NCR
<u>Application for Original Licensure of a Private Real Esta...</u>	21 NCAC 58H .0203	33:14 NCR
<u>Prelicensing and Postlicensing Course Enrollment</u>	21 NCAC 58H .0209	33:14 NCR
<u>Expiration and Renewal of a School Approval or License</u>	21 NCAC 58H .0214	33:14 NCR
<u>Application and Criteria for Original Perlicensing, Postl...</u>	21 NCAC 58H .0302*	33:14 NCR

RESPIRATORY CARE BOARD

<u>Fees</u>	21 NCAC 61 .0204*	33:13 NCR
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TITLE 07 – DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

07 NCAC 02I .0201 QUALIFICATIONS FOR GRANT ELIGIBILITY

Libraries requesting funding from the Aid to Public Libraries Fund shall submit annually to the State Library of North Carolina an application for State Aid and supporting documentation including financial and statistical reports as required by this Rule and shall meet the following eligibility requirements:

- (1) Be established pursuant to Article 14, Chapter 153A of the North Carolina General Statutes;
- (2) Provide library services in compliance with applicable State and federal law to all residents of the political subdivision(s) supporting the library. Public library services shall be provided from at least one designated facility with a cataloged collection that is open to the public a minimum of 40 hours per week;
- (3) Employ a full-time library director having or eligible for North Carolina public librarian certification. For the purpose of this Rule, "full-time" means working a minimum of 35 hours per week;
- (4) Secure operational funds from local government sources at least equal to the average amount budgeted and available for expenditure for the previous three years. A grant to a local library system from the Aid to Public Libraries Fund shall not be terminated but shall be reduced proportionately by the Department if the amount budgeted and available for expenditure by local government is below the average of the previous three fiscal years. State funds shall not replace local funds budgeted and available for expenditure for public library operations;
- (5) Secure aggregate operational funds from local sources that are at least equal to State aid;
- (6) Expend funds as authorized in the budget adopted by the Board of Trustees of a Regional Library, a County, or a Municipality. Any library having an unencumbered operational balance of more than 17 percent of the previous

- (7) year's operating receipts shall have the difference deducted from its State allocation; Pay salaries for professional positions funded from the Aid to Public Libraries Fund at least at the minimum rate of a salary grade of GN10, or equivalent, as established by the Office of State Human Resources;
- (8) Provide to the State Library of North Carolina an annual audit of the political subdivision(s) funding the library consistent with generally accepted accounting principles;
- (9) Submit to the State Library of North Carolina a copy of the bylaws of the library system's Board(s) of Trustees;
- (10) Submit a current long-range plan of service to the State Library of North Carolina. For the purpose of this Rule, a "long-range plan of service" is a plan of at least five years. Upon request, the library shall submit an assessment of a community's library needs to the State Library of North Carolina;
- (11) Submit a copy of the agreement establishing the library system, if composed of more than one local governmental unit; and
- (12) Meet the following when establishing a new library or re-establishing eligibility for the Aid to Public Libraries Fund:
 - (a) meet all requirements of this Rule on July 1 of the year prior to the fiscal year that the library plans to receive State aid;
 - (b) continue to meet all requirements of this Rule from July 1 to June 30 of that year, which shall be known as the "demonstration year"; and
 - (c) file a complete application for State Aid by the June 30 deadline at the close of the demonstration year in order to receive State aid in the next fiscal year.

History Note: Authority G.S. 125-7; Eff. April 1, 2011;

*Pursuant to G.S. 150B-21.3A, rule is necessary without Amended Eff. June 1, 2019.
substantive public interest Eff. July 22, 2017;*

TITLE 08 – STATE BOARD OF ELECTIONS

08 NCAC 02 .0112 APPEAL TO THE STATE BOARD OF ELECTIONS

All appeals of a county board of election protest decision must use the following form available on the State Board of Elections' website:

APPEAL OF ELECTION PROTEST TO STATE BOARD OF ELECTIONS

(Use of this form is required by G. S. 163-182.11 (a))

A copy of this appeal must be given to the county board of elections within 24 hours (weekends and holidays excluded) after the county board files its written decision at its office. This same appeal must be filed with or mailed to the State Board of Elections by the end of the second day following the county board decision if the protest involves a first primary. As to a protest of any other election, this appeal must be filed or deposited in the mail by the end of the fifth day following the county board decision. See G.S. 163-182.11 (a). A copy of the original election protest form with attachments must be filed with this appeal. A copy of the county board decision must be filed with this appeal. The county board will provide the record on appeal. As many additional sheets as are necessary to answer the questions below may be attached, but they must be numbered. Please print or type your answers.

1. Full name, mailing address, home and business phone, fax number, and e-mail address of undersigned.

2. Are you the person who filed the original protest, a candidate or office holder adversely affected by the county decision, or someone else whose interest has been adversely affected by the county decision?

3. State the date, place, kind of election, and results of the election protested (if different from the information on the election and its results as set out in the attached original protest form).

4. State the name, mailing address, home phone, and business phone of all candidates involved in the protested election.

5. State the date of the county board hearing

6. State the legal and factual basis for your appeal.

7. Is there any material submitted with this appeal that was not presented to and considered by the county board? If so, please identify and state why it was not presented to the county board. Why do you think the State Board of Elections should consider it?

8. Normally the State Board will make its decision in an appeal based upon the record from the county board. If you desire the record in this matter to be supplemented, additional evidence to be considered, or a completely new hearing, please state such desire and why it should be allowed in this appeal. See G.S. 163-182.11 (b).

9. What relief do you seek? Why?

10. Have you read and reviewed G.S. 163-182.11 through G.S. 163-182.14 and the current North Carolina State Board of Elections regulations on appeals of election protests?

11. Besides a copy of the original protest and the county board decisions, this appeal includes ___ pages of additional answers and ___ pages of exhibits and documents not included in the original protest and decision.

Signature of Person Appealing

Date Appeal Signed

Date appeal received by State Board of Elections

(To be entered by the State Board of Elections staff)

Send your appeal to, or if you have questions contact: North Carolina State Board of Elections, P.O. Box 27255, Raleigh, NC 27611-7255, (919) 733-7173.

*History Note: Authority G.S. 163-22; 163-182.11;
Temporary Adoption Eff. April 15, 2002;*

*Eff. August 1, 2004;
Readopted Eff. June 1, 2019.*

**08 NCAC 02 .0113 NEW ELECTIONS ORDERED
BY STATE BOARD OF ELECTIONS**

- (a) Eligibility to vote in a new election ordered in accordance with G.S. 163-182.13 shall be governed by G.S. 163-82.6.
- (b) The date of any new non-municipal election shall be set by the State Board no earlier than 75 days after the date of the order for a new election. In the case of a municipal election where absentee ballots are allowed, a new election shall not be set earlier than 55 days after the date of the order for a new election.
- (c) If a new primary is ordered by the State Board, no person who voted in the initial primary of one party shall be allowed to vote in the new primary of another party. County board documentation of the voter's participation in the initial primary shall be prima facie evidence sufficient to disallow the voter from participating in the primary of another party in the new election.

*History Note: Authority G.S. 163-22; 163-182.13(c);
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019.*

**08 NCAC 03 .0101 VOTER COMPLAINTS
AGAINST A MEMBER OF A COUNTY BOARD OF
ELECTIONS**

(a) Any voter desiring to prefer charges of a violation of these Rules or of Chapter 163 of the North Carolina General Statutes with the State Board of Elections against a member of any county board of elections may do so by filing with the Board a statement, in writing, signed and sworn under oath or affirmation of the voter, which statement shall contain:

- (1) the name, residence address, and county of the member against whom the charges are preferred;
- (2) a statement of the facts constituting the violation alleged, with a reference to the date and place of such misconduct; and
- (3) the names and addresses, so far as may be known to the persons filing the charges, of persons who have knowledge or information of the matters referred to in the charges as filed.

(b) The statement shall be filed on the form available on the Board's website.

*History Note: Authority G.S. 163-22(c);
Eff. March 12, 1976;
Readopted Eff. June 1, 2019.*

08 NCAC 03 .0102 CHARGES

(a) Upon receipt of a charge filed against a county board member in accordance with Rule .0101 of this Section, the State Board of Elections shall set a hearing if the charges preferred includes prima facie evidence of any of the following:

- (1) a violation of these Rules or of any election law under Chapter 163 of the North Carolina General Statutes;
- (2) a breach of a duty imposed by Chapter 163; or
- (3) participation in irregularities, incapacity or incompetency to discharge the duties of the office.

(b) The State Board of Elections shall give notice by mail to the county board member against whom the charges are preferred, by mail of such charges and name a day and place for the hearing thereof.

*History Note: Authority G.S. 163-22(c);
Eff. March 12, 1976;
Readopted Eff. June 1, 2019.*

08 NCAC 03 .0103 HEARING

Before acting on any charges filed in accordance with Rule .0101, the State Board shall hold a hearing. At such hearing the voter preferring such charges shall appear, and present the evidence, including any affidavits, tending to support the charges in accordance with any order of proceedings issued by the Board. All affidavits must be served on the member against whom such charges have been filed in accordance with G.S. 1A-1, Rule 5, by the person filing the charges, at least three days before the time set for the hearing thereof.

*History Note: Authority G.S. 163-22(c);
Eff. March 12, 1976;
Readopted Eff. June 1, 2019.*

08 NCAC 03 .0104 RIGHTS

The member against whom charges are preferred shall have the right to respond to the charges preferred against him by submitting an affidavit in denial, rebuttal, explanation, or extenuation of the charges, and additional evidence may be presented in accordance with any order of proceedings issued by the Board.

*History Note: Authority G.S. 163-22;
Eff. March 12, 1976;
Readopted Eff. June 1, 2019.*

08 NCAC 03 .0105 SCOPE

The Board's investigation into the charges filed in accordance with Rule .0101 of this Section shall be confined to the charges as filed, but the Board may on its own motion investigate any matter listed in Rule .0102(1) through (3) of this Section upon receiving any additional evidence as the result of investigating or hearing said charges.

*History Note: Authority G.S. 163-22(c);
Eff. March 12, 1976;
Readopted Eff. June 1, 2019.*

08 NCAC 03 .0106 WITNESSES

(a) Either the voter or the member may request in writing to the chair of the Board for subpoenas for witnesses to be heard orally at the hearing held according to Rule .0103 of this Section. The application shall include the following information:

- (1) the name or names of the witnesses;
- (2) a statement of one page or less of what is expected to be proved by each witness; and
- (3) the reason the testimony cannot be presented to the Board in the form of an affidavit of such witness or witnesses.

(b) If, upon such application for subpoenas, the chair of the Board is of the opinion that the oral evidence of such witnesses will be helpful to the board, a subpoena shall be issued for the personal appearance of the witnesses, and if required by the subpoena, the witnesses shall produce such books, papers, or records as may be called for in said subpoena.

*History Note: Authority G.S. 163-22(c); 163-23;
Eff. March 12, 1976;
Readopted Eff. June 1, 2019.*

08 NCAC 03 .0201 FILING COMPLAINTS AGAINST A PRECINCT OFFICIAL

(a) Any voter may file with the chair of the county board of elections a complaint against any precinct election official appointed pursuant to G.S. 163-41. The complaint shall be made in writing, signed and sworn under oath or affirmation, and shall include the information required by Rule .0101 of this Chapter. The complaint may be made on the form available on the State Board's website.

(b) Following the receipt of a complaint against a precinct official, the county board of elections shall conduct a hearing in the same manner as set forth in Section .0100 of this Chapter.

*History Note: Authority G.S. 163-22;
Eff. March 12, 1976;
Readopted Eff. June 1, 2019.*

08 NCAC 03 .0202 HEARING DATE AND DISPOSITION

(a) Upon the filing of a complaint against a precinct official in accordance with Rule .0201 of this Section, the chair of the county board of elections shall set the date for the hearing and provide the following information to the State Board of Elections within one business day:

- (1) a copy of the complaint;
- (2) the date and time of the hearing, if known;
- (3) following the hearing, the county board of elections shall provide the Board the final disposition made by the county board of elections.

(b) The voter or precinct official may appeal the decision of the county board of elections to the State Board of Elections. The appeal must be received by the State Board of Elections within five days of the entry of the county board of elections of its written decision. The appeal shall be in writing and state the reason for the appeal. Copies of the original complaint form and the county

board of elections' decision shall be filed with the appeal. The county board shall provide the record on appeal.

*History Note: Authority G.S. 163-22;
Eff. March 12, 1976;
Readopted Eff. June 1, 2019.*

08 NCAC 04 .0304 OPERATION AND MATTER OF VOTING ON VOTING SYSTEMS

(a) Prior to the opening of the polls, the precinct officials shall open the voting system and examine the ballot for accuracy and examine the counters or other method to determine there is a zero balance. Any persons interested in viewing this procedure may observe but shall not interfere or impede the process. If the system prints a zero tape or other paper document, the document shall be maintained and secured in the manner prescribed by the manufacturer and the county board of elections.

(b) The voter shall follow the instructions contained on the voting system. Only official ballots shall be introduced into the voting system. Spoiled or damaged ballots shall not be introduced into the voting system. If a voter improperly marks or damages a ballot, it shall be returned to the precinct official, marked as spoiled and maintained as specified by the county board of elections. The voter may not receive a replacement ballot until the spoiled or damaged ballot is returned to the precinct official. The voter shall not be given more than three replacement ballots.

(c) Except as provided for curbside voting in G.S. 163-166.9, official ballots shall not leave the voting enclosure during the time that voting is being conducted there.

*History Note: Authority G.S. 163-22; 163-165.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019.*

08 NCAC 04 .0305 INSTRUCTION OF PRECINCT OFFICIALS AND VOTERS IN THE USE OF VOTING SYSTEMS

(a) The chair of the county board of elections in a county where a voting system is used shall conduct an instructional meeting before any primary or election to instruct the precinct officials in the use of the voting system. The chair may use any persons deemed knowledgeable or useful to the instruction of the precinct officials. The instructions on the use and operation of the voting system shall be according to manufacturer's instructions furnished with the voting system, whether the system is purchased or leased by the county board of elections. The training shall be sufficient such that the precinct officials shall be qualified to instruct the voters on the use of the voting system.

(b) The chair of the county board of elections shall not permit a voting system to be used in any precinct in any election unless the chair is satisfied that the precinct officials of the precinct have learned to use and operate the system in accordance with the manufacturer's instructions. The county board of elections may require that precinct officials receive additional instruction on the use and operation of voting systems.

(c) A voter may request instruction for the proper use of the voting system from a precinct official. The precinct official shall provide such technical instruction to the voter but shall not seek to influence or intimidate the voter in any manner.

History Note: Authority G.S. 163-22; 163-165.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019.

08 NCAC 04 .0306 DUTIES OF CUSTODIANS OF VOTING SYSTEMS

(a) The chair of the county board of elections shall be responsible for the safekeeping, storage, maintenance and care of the voting system. The voting system shall be stored in a location such that access is restricted to county board of elections staff and the system cannot be tampered with when not in use on election day. The county board of elections may appoint as many persons as determined necessary for the maintenance, storage and care of the voting system and for the preparation and testing of the voting system and delivery to the voting precincts preceding a primary or an election. Persons employed for this purpose shall be compensated for their services as authorized by the county board of elections.

(b) On election day when the system is used for voting purposes and until the chair of the county board collects the system, the voting system shall be under the supervision and control of the chief judge unless the county board of elections authorizes another elections official to have supervision and control.

History Note: Authority G.S. 163-23; 163-165.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019.

08 NCAC 04 .0307 TESTING OF VOTING SYSTEM BEFORE USE IN AN ELECTION

(a) The county board of elections shall test, or supervise the testing, of each voting system or unit that will be used in the election to ensure that the system is operational and has been programmed to count votes accurately. For the purpose of this Rule, "accurately" means in accordance with the procedures for Logic and Accuracy Testing as outlined in the North Carolina State Topical Elections Processes and Procedures (STEPPS) manual. There shall be a record maintained along with the voted and unvoted ballots at the county board of elections office that shall include, at a minimum, the following information:

- (1) the dates, times and method of testing used;
- (2) the results of the test; and
- (3) the names of the persons conducting the test.

(b) Any interested person may observe the testing of the voting system but shall not interfere with or impede the process. For the purpose of testing a voting system prior to the purchase or lease of the system, testing at a one-stop absentee voting site shall fulfill the requirement to test the voting system in a precinct within the county.

History Note: Authority G.S. 163-22; 163-165.7;
Temporary Adoption Eff. April 15, 2002;

Eff. August 1, 2004;
Readopted Eff. June 1, 2019.

08 NCAC 06B .0103 ARRANGEMENT OF OFFICIAL BALLOTS

(a) After the close of the filing period, the State Board of Elections shall certify to the county boards of elections the order of the offices and candidate names to be voted on the official ballot. The State Board of Elections shall provide the text and arrangement of referenda to be voted on the official ballot.

(b) The order of precedence for candidate ballot items shall be as follows:

- (1) Federal Offices;
- (2) State Offices in the order certified by the State Board of Elections;
- (3) District and local offices;
- (4) Non-partisan offices; and
- (5) Referenda, unless the voting system design requires referenda to be before candidate ballot items.

Ballot items for full terms of an office shall be listed before ballot items for partial terms of the same office. The term of the unexpired office only shall be listed as part of the title of the office.

(c) Names of candidates shall be printed in the exact form either certified by the State Board of Elections for those candidates who are required to file the Notice of Candidacy with the State Board of Elections, by convention or by petition. Candidates for all offices shall provide their name as it is to appear on the ballot. Candidates may request in writing a change in the manner that their name is to appear on the ballot during the time the filing period is open.

History Note: Authority G.S. 163-22; 163-165.6;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019.

08 NCAC 06B .0104 LATE CHANGES IN BALLOTS

After the official ballots for a general or special election have been printed and the absentee voting period has begun, the death, resignation, or disqualification of a candidate whose name appears on the official ballots shall not require that the ballots be reprinted. If the vacancy occurs before the absentee voting period begins, the responsible county board of elections, or State Board of Elections if the contests spans more than one county, may determine whether it is practical to have the ballots reprinted with the name of the replacement nominee as authorized by G.S. 163-114. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on the ballot shall be counted as a vote for the replacement nominee.

History Note: Authority G.S. 163-22; 163-165.3;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019.

08 NCAC 06B .0105 COUNTING OF OFFICIAL BALLOTS

(a) Following the close of the polls the official ballots shall be counted in accordance with G.S. 163-182.1(a). Precinct officials shall follow the procedures specified by the voting system manufacturer and in compliance with G.S. 163-182.1 and 163-182.2. The counting of the ballots shall be completed in the presence of the precinct election officials, observers, and any persons desiring to observe the count. All official ballots shall be counted at the precinct unless authorized by the State Board of Elections.

(b) The counting of the ballots at the precinct shall be continuous until completed. From the time the counting of the ballots is begun until the votes are counted and the requisite documentation, including results tapes, is signed, certified as required, and delivered to the chief judge or judge chosen to deliver the documentation to the county board of elections, the precinct chief judge and judges shall not separate, nor shall any of them leave the voting place except for unavoidable necessity, in which case the chief judge or judge who left the polling place shall not be permitted to return to the polling place. Unavoidable necessity means an emergency as determined by the departing precinct official.

(d) When the counting is completed the chief judge or his or her designee shall verbally announce the results at the precinct. The announcement of the results shall state the results are unofficial. The unofficial results shall be transmitted to the county board of elections in the manner determined by the county board of elections and the voting system. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow. As soon as the precinct reports are received, the chair, secretary or designee shall publish the unofficial reports to the news media.

(e) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

History Note: Authority G.S. 163-22; 163-47(a); 163-182.1; 163-182.2;

Temporary Adoption Eff. April 15, 2002;

Eff. August 1, 2004;

Readopted Eff. June 1, 2019.

08 NCAC 09 .0106 GENERAL GUIDELINES

(a) Prior to each recount under G.S. 163-182.7, the county board of elections or State Board shall inform the political parties and candidates of the recount and describe to them the process of conducting recounts.

(b) In the case of tie votes, the winner shall be determined by lot only in the case set out in G.S. 163-182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to

request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.

(c) During the conduct of recounts, ballots shall be counted in accordance with the principles in G.S. 163-182.1(a).

(d) In conducting recounts of direct record electronic machines and any other types of voting machines that require a county board member or designated official to reprint tapes and to read the totals and another board member to record the totals for each candidate such recount shall be conducted by a bi-partisan team of four: two officials (one from each of the two parties having the largest number of registered voters in the state) reading and confirming the totals per machine and two officials (one from each of the two parties having the largest number of registered voters in the state) recording the results simultaneously.

(e) In conducting hand to eye recounts or recounts of paper ballots, a bi-partisan team of four shall be used: two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the results of the ballot, and two officials (one from each of the two parties in the State with the largest number of registered voters) recording the tally of votes for each candidate on paper while stating aloud after each choice is read on the fifth tally for a particular candidate, the word "tally."

(f) The county board of elections shall conduct recounts only as follows:

- (1) the recount is mandatory under G.S. 163-182.7(b) or (c); or
- (2) the recount is not mandatory but the county board of elections or the State Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to complete the canvass a recount is necessary.

(g) A candidate shall have the right to call for a hand-eye recount, as to elections conducted by optical scan systems within 24 hours after a mandatory or discretionary recount or by noon on the next business day of the county board office, whichever is later, if the apparent winner is the apparent loser after the first recount, unless human error resulted in the vote count change.

(h) Any candidate shall have the right to file an election protest within 24 hours after a recount or by noon of the next business day of the county board office, whichever is later.

History Note: Authority G.S. 163-22; 163-182.7;

Temporary Adoption Eff. April 15, 2002;

Eff. August 1, 2004;

Readopted Eff. June 1, 2019.

08 NCAC 09 .0107 RECOUNT OF OPTICAL SCAN BALLOTS

(a) In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all ballots that were originally counted by the optical scan equipment shall be counted again by the optical scan equipment producing another machine count. A "machine count" total is a ballot count produced by a voting system that uses machines. All ballots that were rejected for tabulation purposes by the machines - commonly called "outstacked" or center bin ballots - shall be recounted by a bi-partisan team of four in accordance with 08 NCAC 09. 0106(f).

(b) When the first recount, including absentee and provisional ballot recount totals, has been completed, the board of elections shall determine if a second recount is necessary as follows:

- (1) Determine whether the first recount produces a change in the winner in accordance with the following:
 - (A) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount, by hand and eye, of all ballots; and
 - (B) If the apparent winner after the initial balloting remains the apparent winner after the first recount, the county board shall proceed according to Subparagraph (2) of this Paragraph;
- (2) Determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount in accordance with the following:
 - (A) If the machine totals from the initial balloting and the first recount are the same, no second recount is necessary; and
 - (B) If the machine totals from the initial balloting and the first recount are not the same, the county board shall proceed according to Subparagraph (3) of this Paragraph;
- (3) Determine if the discrepancy in the machine total between the initial balloting and the first recount can be reconciled. The county board shall examine all outstacked or center bin ballots from the first recount, determine how each ballot shall be counted according to Rule .0106(c) of this Section, and reconcile the count with the machine count on the initial balloting in accordance with the following:
 - (A) If this reconciliation produces the same machine total for the first recount as the machine total in the initial balloting, no second recount is necessary; and
 - (B) If the reconciliation produces a different machine total for the first recount than the machine total in the initial balloting, the losing candidate is entitled to demand a second recount, by hand-to-eye, of all ballots.

record electronic voting machine shall be retabulated and results provided. The results provided shall be re-read using the team of four rules outlined in Rule .0106(e) of this Section.

(b) When the first recount has been completed, the board of elections shall proceed in accordance with the following in order to determine if a second recount is necessary:

- (1) Determine whether the first recount produces a change in the winner;
 - (A) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount; and
 - (B) If the apparent winner after the initial balloting remains the apparent winner after the first recount, the county board shall proceed in accordance with Subparagraph (2) of this Paragraph;
- (2) Determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount in accordance with the following:
 - (A) If the unit totals from the initial balloting and the first recount are the same, no second recount is necessary; and
 - (B) If the unit totals from the initial balloting and the first recount are not the same, the county board shall proceed to the step in Subparagraph (3) of this Paragraph;
- (3) Determine if the discrepancy in the unit totals between the initial balloting and the first recount can be explained. Possible acceptable explanations may include problems with the setup of the ballot, problems with the software or other unit malfunction.
- (4) Determine if the discrepancy in the machine total between the initial balloting and the first recount can be reconciled in accordance with the following:
 - (A) If the reconciliation produces the same unit total for the first recount as the unit total in the initial balloting, no second recount is necessary; and
 - (B) If the reconciliation produces a different unit total for the first recount than the unit total in the initial balloting, the losing candidate is entitled to demand a second recount by the county board of elections.

(c) The second recount shall be a manual recount, by hand-to-eye, unless, due to a voting machine error, no second recount is possible.

*History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019.*

**08 NCAC 09 .0108 RECOUNT OF DIRECT
RECORD ELECTRONIC VOTING MACHINES**

(a) In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all votes cast on each direct

*History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019.*

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 23A .0103 QUALITY ASSURANCE

(a) County department of social services eligibility actions on active and negative cases, as defined by 42 C.F.R. 431.804, which is incorporated by reference including subsequent amendments and editions, and available free of charge at <https://www.ecfr.gov/>, shall be subject to review under State and federal quality control (QC) procedures by the Division's Office of Compliance and Program Integrity (OCPI). A statistical sample shall be selected from both active and negative case actions.

(b) The purpose of the QC review is to identify client eligibility errors and erroneous payments resulting from:

- (1) Ineligibility;
- (2) Recipient liability understated or overstated by the client or county;
- (3) Third-party liability; and
- (4) Claims processing errors.

(c) A report of an error discovered in a QC case shall be sent to the county agency for corrective action.

(d) If the county agency has verification, as defined by Rule .0102 of this Subchapter, that disputes a QC finding of error, it may submit the verification to OCPI for review. OCPI shall determine whether the error shall be coded client-responsible, county-responsible, or State-responsible. Upon its review, OCPI shall notify the county agency of its decision regarding responsibility for the error.

History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 431, Subpart P;

Eff. September 1, 1984;

Amended Eff. August 1, 1990;

Transferred from 10A NCAC 21A .0501 Eff. May 1, 2012;

Readopted Eff. June 1, 2019.

10A NCAC 23C .0201 APPLICATION PROCESSING STANDARDS

(a) The county department of social services shall comply with the following standards in processing applications:

- (1) A decision shall be made within the timeframes set out in G.S. 108A-70.37;
- (2) Only require information or verification to establish eligibility for assistance;
- (3) Make a minimum of two requests for all information from the applicant or third party;
- (4) Allow a minimum of 12 calendar days between the initial request and a follow-up request and at least 12 calendar days between the follow-up request and denial of the application;
- (5) Inform the client in writing of the right to request help in obtaining information requested from the client. The county department of social services shall not discourage any client from requesting such help;
- (6) An application may pend up to six months for verification that the deductible, as defined in

10A NCAC 23A .0102 has been met or disability established; and

- (7) When a hearing decision reverses the decision of the county department of social services on an application, pursuant to 10A NCAC 21A .0303, the application shall be reopened within five business days from the date the final appeal decision is received by the county department of social services. If the county department of social services has all of the information needed to process the application, the application shall be processed within five additional business days. If additional information is needed pursuant to the final decision, the county shall make such requests in accordance with this Rule. The first request for the additional information shall be made within five business days of receipt of the final appeal decision. The application shall be processed within five business of receipt of the last piece of required information.

(b) The county department of social services shall obtain verification, as defined by 10A NCAC 23A .0102, other than the applicant's statement for the following:

- (1) Any element requiring medical verification. This includes verification of disability, incapacity, emergency dates for aliens referenced in the Medicaid State Plan, incompetence, and approval of institutional care;
- (2) Proof a deductible has been met;
- (3) Legal alien status;
- (4) Proof of the rebuttal value for resources and of the rebuttal of intent to transfer resources to become eligible for Medicaid. When a client disagrees with the determination of the county department of social services on the value of an asset, then the client must provide proof of what the value of the asset is;
- (5) Proof of designation of liquid assets for burial;
- (6) Proof of legally binding agreement limiting resource availability;
- (7) Proof of valid social security number or application for a social security number;
- (8) Proof of reserve reduction when resources exceed the allowable reserve limit for Medicaid;
- (9) Proof of earned and unearned income, including deductions, exclusions, and operational expenses when the applicant or caseworker has or can obtain the verification; and
- (10) Any other information for which the applicant does not know or cannot give an estimate.

(c) The county department of social services shall be responsible for verifying or obtaining an item of information when:

- (1) A fee must be paid to obtain the verification;
- (2) It is available within the agency;

- (3) The county department of social services is required by federal law to assist or to use interagency or intra-agency verification aids;
- (4) The applicant requests assistance; or
- (5) A representative has not agreed to obtain the information and the applicant is:
 - (A) physically or mentally incapable of obtaining the information;
 - (B) unable to speak English or read and write in English; or
 - (C) housebound, hospitalized, or institutionalized.

History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.911; 42 C.F.R. 435.912; 42 C.F.R. 435.952; *Alexander v. Flaherty*, V.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order Filed 15 December 1989; *Alexander v. Flaherty* Consent Order filed February 14, 1992; *Alexander v. Bruton* Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. April 1, 1993; August 1, 1990; Temporary Amendment Eff. March 1, 2003; Amended Eff. August 1, 2004; Transferred from 10A NCAC 21B .0203 Eff. May 1, 2012; Readopted Eff. June 1, 2019.

10A NCAC 23D .0101 MANDATORY GROUPS

History Note: Authority G.S. 108A-54; 42 U.S.C. 1396a(a)(10); 42 U.S.C. 1396a(e)(4); 42 U.S.C. 1396a(f); 42 C.F.R. 435.110; 42 C.F.R. 435.112; 42 C.F.R. 435.113; 42 C.F.R. 435.114; 42 C.F.R. 435.115; 42 C.F.R. 435.116; 42 C.F.R. 435.117; 42 C.F.R. 435.118; 42 C.F.R. 435.121; 42 C.F.R. 435.131; 42 C.F.R. 435.132; 42 C.F.R. 435.133; Eff. September 1, 1984; Amended Eff. January 1, 1995; March 1, 1993; January 4, 1993; April 1, 1992; Temporary Amendment September 13, 1999; Temporary Amendment Expired June 27, 2000; Temporary Amendment September 12, 2000; Amended Eff. August 1, 2002; Transferred from 10A NCAC 21B .0101 Eff. May 1, 2012; Repealed Eff. June 1, 2019.

10A NCAC 23D .0102 OPTIONAL GROUPS

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.210; 42 C.F.R. 435.222; 42 C.F.R. 435.230; 42 C.F.R. 435.301; 42 C.F.R. 435.308; 42 C.F.R. 435.322; 42 C.F.R. 435.330; 42 U.S.C. 1396(a)(10)(A)(ii); 42 U.S.C. 1396a(a)(10)(C); S.L. 1983, c. 1034, s. 62.2; S.L. 1987, c. 738, s. 69 and 70; S.L. 1989, c. 752, s. 133; Eff. September 1, 1984; Amended Eff. February 1, 1992; July 1, 1991; August 1, 1990; Temporary Amendment Eff. September 12, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Temporary Amendment Eff. October 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 1, 1995;
Temporary Amendment Eff. February 23, 1999;
Amended Eff. August 1, 2000;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. April 1, 2003;
Transferred from 10A NCAC 21B .0102 Eff. May 1, 2012;
Repealed Eff. June 1, 2019.

10A NCAC 23D .0201 CLASSIFICATION

History Note: Filed as a Temporary Amendment Eff. October 1, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Filed as a Temporary Amendment Eff. September 12, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Authority G.S. 108A-54; 42 C.F.R. 435.2; 42 C.F.R. 435.4; Eff. September 1, 1984;
 Amended Eff. January 1, 1995; August 1, 1990;
 Temporary Amendment Eff. September 13, 1999;
 Temporary Amendment Expired June 27, 2000;
 Temporary Amendment Eff. September 12, 2000;
 Amended Eff. August 1, 2002;
 Transferred from 10A NCAC 21B .0408 Eff. May 1, 2012;
 Repealed Eff. June 1, 2019.

10A NCAC 23E .0101 AGE

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.520; *Alexander v. Flaherty* Consent Order filed February 14, 1992; Eff. September 1, 1984; Amended Eff. April 1, 1993; August 1, 1990; Transferred from 10A NCAC 21B .0301 Eff. May 1, 2012; Repealed Eff. June 1, 2019.

10A NCAC 23E .0102 UNITED STATES CITIZEN

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.402; 8 U.S.C. 1161; 8 U.S.C. 1255a; 42 U.S.C. 1396b(v); Eff. September 1, 1984; Amended Eff. August 1, 2000; December 1, 1991; August 1, 1990; Transferred from 10A NCAC 21B .0302 Eff. May 1, 2012; Repealed Eff. June 1, 2019.

10A NCAC 23E .0103 RESIDENCE

- (a) The requirements stated in 42 CFR 435.403 shall apply to determine residence in the State except for provisions in Paragraph (b) of this Rule.
- (b) Residents of the state of Georgia who enter a long term care facility in NC within 40 miles of the resident state's border shall retain residence in Georgia. Residents of NC who enter a long term care facility in Georgia within 40 miles of the NC border retain NC residency.
- (c) An individual visiting without intent to reside in the State shall be ineligible for NC Medicaid.

(d) An individual who moves to another state and intends to reside in that state shall not be eligible for NC Medicaid.

(e) County residence:

- (1) Any client who moves from one county to another North Carolina county shall continue to receive assistance so long as eligibility continues.
- (2) An individual has residence in the county in which he or she resides. However, if he or she is in a hospital, mental institution, intermediate care facility, skilled nursing home, boarding home, penal institution, or similar facility, the county where the facility is located shall not be his or her legal residence. Except for (e)(3) in this Rule, the county of legal residence shall be the county where the individual lived in a private living arrangement prior to entering a facility.
- (3) If an individual who became disabled prior to age 18 has remained in a facility, he or she remains a resident of the county and state where his or her parent(s) had residence immediately prior to his or her reaching age 18. If, as an adult, he or she is applying for assistance and it is not possible for the individual to trace his or her county of residence as a minor, he or she shall establish residence based on where he or she intends to reside, regardless of his or her parent's current legal residence.

History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-55.3; 42 C.F.R. 435.403; Eff. September 1, 1984; Amended Eff. August 1, 1990; Transferred from 10A NCAC 21B .0303 Eff. May 1, 2012; Readopted Eff. June 1, 2019.

10A NCAC 23E .0104 DEPRIVATION

History Note: Authority G.S. 108A-28; 108A-54; 42 C.F.R. 435.510; 89 CVS 922; Eff. September 1, 1984; Amended Eff. October 1, 1991; August 1, 1990; Temporary Amendment Eff. August 5, 1999; Amended Eff. March 19, 2001; Transferred from 10A NCAC 21B .0304 Eff. May 1, 2012; Repealed Eff. June 1, 2019.

10A NCAC 23E .0106 BLINDNESS

(a) To qualify for Medicaid under the category of Aid to the Blind, the client shall meet one of the following conditions:

- (1) receipt of Medicaid on the basis of blindness in December 1973, has continued to meet December 1973 eligibility criteria for each consecutive month thereafter, and determined by the Disability Determination Services Section to have visual acuity of 20/100 in the better eye with correction or visual field

limitation in the better eye of 30 percent or less; or

- (2) applied for Medicaid since January 1, 1974 and meets the definition of blindness, vocational, and medical factors applied under the Supplemental Security Income program, pursuant to 20 CFR 404, Subpart P.

(b) For clients applying for Medicaid since January 1, 1974, that do not meet the criteria in 20 CFR 404, Subpart P, blindness shall be determined by one of the following methods pursuant to 42 CFR 435.530 and 435.531:

- (1) Documentary evidence including SDX, BENDEX, or an award letter that social security benefits, supplemental security income, or veterans benefits have been awarded on the basis of blindness; or
- (2) A written decision from the physician consultant of the Division of Services for the Blind based on review of a medical eye examination report.

(c) Blindness shall be reverified for clients determined eligible under Paragraph (b) of this Rule at each review of the client's eligibility or when reexamination is recommended by the physician consultant in his or her professional opinion.

(d) The client shall cease to qualify for Medicaid as a blind individual when evidence is received from any of the sources described in Paragraphs (a)(1) or (b) of this Rule that the client no longer meets the conditions of blindness set out in this Rule and the Medicaid State Plan.

History Note: Authority G.S. 108A-54; 108A-54.1B; 20 C.F.R. 404, Subpart P; 42 C.F.R. 435.530; 42 C.F.R. 435.531; Eff. September 1, 1984; Amended Eff. August 1, 1990; Transferred from 10A NCAC 21B .0306 Eff. May 1, 2012; Readopted Eff. June 1, 2019.

10A NCAC 23E .0107 CARETAKER RELATIVE

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.310; Eff. September 1, 1984; Amended Eff. April 1, 1993; August 1, 1990; Transferred from 10A NCAC 21B .0307 Eff. May 1 2012; Repealed Eff. June 1, 2019.

10A NCAC 23E .0108 INMATE OF PUBLIC INSTITUTION OR PRIVATE PSYCHIATRIC HOSPITAL

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.1008; 42 C.F.R. 435.1009; S.L. 1987, c. 758, s. 69; Eff. September 1, 1984; Amended Eff. August 1, 1990; Transferred from 10A NCAC 21B .0308 Eff. May 1, 2012; Repealed Eff. June 1, 2019.

10A NCAC 23E .0201 APPLYING FOR ALL BENEFITS AND ANNUITIES

(a) Clients shall follow all processes and procedures set forth by any financial institution or agency to obtain any annuities,

pensions, retirement and disability benefits to which they are entitled, pursuant to 42 CFR 435.608, which is incorporated by reference including subsequent amendments and editions and available free of charge at <https://www.ecfr.gov/>, unless they have good cause for not doing so as determined by the county department of social services. For purposes of this Rule, good cause shall be limited to physical or mental incapability to make such effort.

(b) If a client fails to comply with Paragraph (a) and does not show good cause, the client's eligibility benefits shall be terminated.

*History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.608;
Eff. September 1, 1984;
Amended Eff. August 1, 1990;
Transferred from 10A NCAC 21B .0309 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.*

10A NCAC 23E .0203 COUNTABLE INCOME

(a) For Family and Children's medically needy cases, income from the following sources shall be counted in the calculation of financial eligibility:

- (1) Unearned.
 - (A) RSDI, as defined in 10A NCAC 23A .0102;
 - (B) Veteran's Administration;
 - (C) Railroad Retirement;
 - (D) Pensions or retirement benefits;
 - (E) Worker's Compensation;
 - (F) Unemployment Insurance Benefits;
 - (G) All support payments, including child and spousal support;
 - (H) Contributions;
 - (I) Dividends or interest from stocks, bonds, and other investments;
 - (J) Trust fund income;
 - (K) Private disability or employment compensation;
 - (L) The portion of educational loans, grants, and scholarships for maintenance;
 - (M) Work release;
 - (N) Lump sum payments;
 - (O) Military allotments;
 - (P) Brown Lung benefits
 - (Q) Black Lung benefits
 - (R) Trade Adjustment benefits;
 - (S) SSI when the client is in long-term care;
 - (T) VA Aid and Attendance when the client is in long-term care;
 - (U) Foster Care Board payments in excess of State maximum rates for M-AF clients who serve as foster parents;
 - (V) Income allocated from an institutionalized spouse to the client who is the community spouse as stated in 42 U.S.C. 1396r-5(d);

- (W) Income allowed from an institutionalized spouse to the client who is a dependent family member as stated in 42 U.S.C. 1396r-5(d);
- (X) Sheltered Workshop income;
- (Y) Loans, if repayment of a loan and not counted in reserve; and
- (Z) Income deemed to Family and Children's clients.

(2) Earned Income.

- (A) Income from wages, salaries, and commissions;
- (B) Farm income;
- (C) Small business income including self-employment;
- (D) Rental income for use of real or personal property;
- (E) Income for room and board in the household;
- (F) Earned income of a child client who is a part-time student and a full-time employee;
- (G) Supplemental payments in excess of State maximum rates for Foster Care Board payments paid by the county to Family and Children's clients who serve as foster parents; and
- (H) VA Aid and Attendance paid to a budget unit member who provides the aid and attendance.

(3) Additional sources of income not listed in Subparagraphs (a)(1) or (2) of this Rule shall be considered available unless specifically excluded by Paragraph (b) of this Rule, or by State or federal regulation or statute.

(b) For Family and Children's medically needy cases, income from the following sources shall not be counted in the calculation of financial eligibility:

- (1) Earned income of a child who is a part-time student but is not a full-time employee;
- (2) Earned income of a child who is a full-time student;
- (3) Incentive payments and training allowances made to Work Incentives Network (WIN) training participants;
- (4) Payments for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as VISTA volunteers, foster grandparents, senior health aides, senior companions, Service Corps of Retired Executives, Active Corps of Executives, Retired Senior Volunteer Programs, Action Cooperative Volunteer Program, University Year for Action Program, and other programs under Titles I, II, and III of Public Law 93-113;
- (5) Foster Care Board payments equal to or below the State maximum rates for Family and Children's clients who serve as foster parents;

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| <p>(6) Income that is unpredictable, such as unplanned and arising only from time to time. Examples include occasional yard work and sporadic babysitting;</p> <p>(7) Relocation payments;</p> <p>(8) Value of the coupon allotment under the Food and Nutrition Program (FNS);</p> <p>(9) Food (vegetables, dairy products, and meat) grown by or given to a member of the household. The amount received from the sale of home grown produce is earned income;</p> <p>(10) Benefits received from the Nutrition Program for the Elderly;</p> <p>(11) Food Assistance under the Child Nutrition Act and National School Lunch Act;</p> <p>(12) Assistance provided in cash or in kind under any governmental, civic, or charitable organization whose purpose is to provide social services or vocational rehabilitation. This includes V.R. incentive payments for training, education, and allowance for dependents, grants for tuition, chore services under Title XX of the Social Security Act, and VA aid and attendance or aid to the home bound if the individual is in a private living arrangement;</p> <p>(13) Loans or grants such as the GI Bill, civic, honorary and fraternal club scholarships, loans, or scholarships granted from private donations to the college, except for any portion used or designated for maintenance;</p> <p>(14) Loans, grants, or scholarships to undergraduates for educational purposes made or insured under any program administered by the U.S. Department of Education;</p> <p>(15) Benefits received under Title VII of the Older Americans Act of 1965;</p> <p>(16) Payments received under the Housing Choice Voucher (HCV) Program, formerly known as the Experimental Housing Allowance Program (EHAP);</p> <p>(17) In-kind shelter and utility contributions paid directly to the supplier;</p> <p>(18) Shelter, utilities, or household furnishings made available to the client at no cost;</p> <p>(19) Food/clothing contributions (except for food allowance for persons temporarily absent in medical facilities up to 12 months);</p> <p>(20) Income of a child under 21 in the budget unit who is participating in the Job Training Partnership Act and is receiving Medicaid as a child;</p> <p>(21) Housing Improvement Grants approved by the N.C. Commission of Indian Affairs or funds distributed per capital or held in trust for Indian tribe members under P.L. 92-254, P.L. 93-134 or P.L. 94-540;</p> <p>(22) Payments to Indian tribe members as permitted under P.L. 94-114;</p> | <p>(23) Payments made by Medicare to a home renal dialysis patient as medical benefits;</p> <p>(24) SSI, except for individuals in long-term care;</p> <p>(25) HUD Section 8 benefits when paid directly to the supplier or jointly to the supplier and client;</p> <p>(26) Benefits received by a client who is a representative payee for another individual who is incompetent or incapable of handling his or her affairs. Such benefits shall be accounted for by the county department of social services separate from the payee's own income and resources;</p> <p>(27) Special one time payments such as energy, weatherization assistance, or disaster assistance that is not designated as medical;</p> <p>(28) The value of the U.S. Department of Agriculture donated foods (surplus commodities);</p> <p>(29) Payments under the Alaska Native Claims Settlement Act, P.L. 92-203;</p> <p>(30) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;</p> <p>(31) HUD Community Development Block Grant funds received to finance the renovation of a privately owned residence;</p> <p>(32) Reimbursement for transportation expenses incurred as a result of participation in the Community Work Experience Program or for use of client's own vehicle to obtain medical care or treatment;</p> <p>(33) Adoption assistance;</p> <p>(34) Incentive payments made to a client participating in a vocational rehabilitation program;</p> <p>(35) Title XX funds received to pay for services rendered by another individual or agency;</p> <p>(36) Any amount received as a refund of taxes paid;</p> <p>(37) The first fifty-dollars (\$50) of each child support/spousal obligation or military allotment paid monthly to the budget unit in a private living arrangement; and</p> <p>(38) Income from an Achieving a Better Life Experience (ABLE) program account, pursuant to Chapter 147, Article 6F of the North Carolina General Statutes.</p> <p>(c) For aged, blind, and disabled cases, income counted in the determination of financial eligibility shall be based on standards and methodologies in Title XVI of the Social Security Act.</p> <p>(d) For aged, blind, and disabled cases, income from the following sources shall not be counted:</p> <p>(1) Any Cost of Living Allowance (COLA) increase or receipt of RSDI benefit, that resulted in the loss of SSI for those qualified disabled and working individuals described at 42 U.S.C. 1396d(s);</p> <p>(2) Earnings for those individuals who have a plan for achieving self-support (PASS) that is</p> |
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- approved by the Social Security Administration; and
- (3) Income from an Achieving a Better Life Experience (ABLE) program account, pursuant to Chapter 147, Article 6F of the North Carolina General Statutes.

(e) Income levels for purposes of establishing eligibility are those amounts approved by the N.C. General Assembly and stated in the Appropriations Act for categorically needy and medically needy classifications, except for the following:

- (1) The income level shall be reduced by one-third when an aged, blind, or disabled individual lives in the household of another person and does not pay his or her proportionate share of household expenses. The one-third reduction shall not apply to children under 19 years of age who live in the home of their parents;
- (2) An individual living in a long-term care facility or other medical institution shall be allowed as income level deduction for personal needs described under the Medicaid State Plan; and
- (3) The income level to be applied for Qualified Medicare Beneficiaries described in 42 U.S.C. 1396d and individuals described in 42 U.S.C. 1396e shall be based on the income level for one; or two for a married couple who live together and both receive Medicare.

(f) Income for Family and Children's categorically needy cases is determined pursuant to 42 C.F.R. 435.603.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-54.1B; 42 C.F.R. 435.135; 42 C.F.R. 435.603; 42 C.F.R. 435.733; 42 C.F.R. 435.811; 42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 C.F.R. 435.1007; 45 C.F.R. 233.20; 42 U.S.C 1383c(b); 42 U.S.C 1383c(d); P.L. 99-272, Section 12202; *Alexander v. Flaherty Consent Order* filed February 14, 1992;

Eff. September 1, 1984;

Temporary Rule Effective July 1, 1987, for a period of 120 days to expire on October 31, 1987;

Amended Eff. January 1, 1996; January 1, 1995; September 1, 1994; September 1, 1993;

Temporary Amendment Eff. February 23, 1999;

Amended Eff. August 1, 2000;

Transferred from 10A NCAC 21B .0312 Eff. May 1, 2012;

Readopted Eff. June 1, 2019.

10A NCAC 23E .0204 PERSONAL NEEDS ALLOWANCE

History Note: Authority G.S. 108A-25(b); 42 C.F.R. 435.135; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.831; 42 U.S.C. 1383c(b); 42 U.S.C. 1383c(d);

Eff. September 1, 1994;

Transferred from 10A NCAC 21B .0313 Eff. May 1, 2012;

Repealed Eff. June 1, 2019.

10A NCAC 23E .0205 BUDGET UNIT MEMBERSHIP

In aged, blind, and disabled cases and medically needy cases, the budget unit shall include individuals who are required by federal

and State law to be financially responsible for the support of each other or other dependents. In all other categorically needy cases, the budget unit shall be determined pursuant to 42 C.F.R. 435.603, which is incorporated by reference with subsequent amendments and editions and available free of charge at <https://www.ecfr.gov/>.

History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.602; 42 C.F.R. 435.603; 45 C.F.R. 233.51;

Eff. September 1, 1984;

Amended Eff. August 1, 1990;

Transferred from 10A NCAC 21B .0401 Eff. May 1, 2012;

Readopted Eff. June 1, 2019.

10A NCAC 23E .0206 FINANCIAL RESPONSIBILITY AND DEEMING

History Note: Authority G.S. 108A-54; 143-127.1; S.L. 1983, c. 761, s. 60(6); S.L. 1983, c. 1034; S.L. 1983, c. 1116; 42 C.F.R. 435.602; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.823;

Eff. September 1, 1984;

Temporary Amendment Eff. April 1, 1990 for a period of 180 days to expire on September 30, 1990;

Amended Eff. January 1, 1995; September 1, 1992; October 1, 1990; August 1, 1990;

Temporary Amendment Eff. January 1, 2003;

Temporary Amendment Expired October 12, 2003;

Transferred from 10A NCAC 21B .0402 Eff. May 1, 2012;

Repealed Eff. June 1, 2019.

10A NCAC 23E .0207 WHOSE RESOURCES ARE COUNTED

(a) The value of resources held by the client or by a financially responsible person shall be considered by the county department of social services to be available to the client in determining countable reserve for the budget unit.

(b) Jointly owned resources shall be counted as follows:

- (1) The value of resources owned jointly with a person who is not a member of the client's budget unit who is a recipient of another public assistance budget unit shall be divided in parts of equal value between the budget units.
- (2) The value of liquid assets and personal property owned jointly with a person who is not a member of the client's budget unit who is also not a client of another public assistance budget unit shall be available to the client if he or she can dispose of the resource without the consent and participation of the joint-owner or the joint-owner consents to and, if necessary, participates in the disposal of the resource.
- (3) The client's share of the value of real property owned jointly with a person who is not a member of the client's budget unit who is also not a member of another public assistance budget unit shall be available to the client if he or she can dispose of his or her share of the resource without the consent and participation of the joint-owner or the joint-owner consents

to and, if necessary, participates in the disposal of the resource.

(c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or court order shall take precedence over ownership of resources as stated in Paragraphs (a) and (b) of this Rule, except as provided in Paragraph (g) of this Rule.

(d) For all aged, blind, and disabled cases, the resource limit, financial responsibility, and countable and non-countable assets shall be based on standards and methodology in Title XVI of the Social Security Act except as specified in Rule .0202 of this Section.

(e) Countable resources for Family and Children's medically needy cases shall be determined as follows:

- (1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve allowance if:
 - (A) the spouses live together; or
 - (B) one spouse is temporarily absent for twelve months or less in long-term care and the spouse is not a member of another public assistance budget unit;
- (2) The resources of a client and a financially responsible parent or parents shall be counted in the budget unit's reserve limit if:
 - (A) the parents live together; or
 - (B) one parent is temporarily absent for 12 months or less in long-term care and the parent is not a member of another public assistance budget unit;
- (3) The resources of the parent or parents shall not be considered if a child under age 21 requires care and treatment in a medical institution and his or her physician certifies that the care and treatment are expected to exceed 12 months.

(f) For a married individual:

- (1) Resources available to the individual are available to his or her spouse who is a noninstitutionalized applicant or recipient and who is either living with the individual or temporarily absent for twelve months or less from the home, irrespective of the terms of any will, deed, contract, antenuptial agreement, or other agreement, and irrespective of whether or not the individual actually contributed the resources to the applicant or recipient. All resources available to an applicant or recipient under the rules of this Section must be considered by the county department of social services when determining his or her countable reserve.
- (2) For an institutionalized spouse as defined in 42 U.S.C. 1396r-5(h), available resources shall be determined in accordance with 42 U.S.C. 1396r-5(c), except as specified in Paragraph (g) of this Rule.

(g) For an institutionalized individual, the availability of resources shall be determined in accordance with 42 U.S.C.

1396r-5. Resources of the community spouse shall not be counted for the institutionalized spouse when:

- (1) Resources of the community spouse cannot be determined or cannot be made available to the institutionalized spouse because the community spouse cannot be located by the county department of social services; or
- (2) The couple has been continuously separated for 12 months at the time the institutionalized spouse enters the institution.

History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-55; 42 U.S.C. 1396r-5; 42 U.S.C. 1396a(a)(17); 42 U.S.C. 1396a(a)(51); 42 C.F.R. 435.602; 42 C.F.R. 435.725; 42 C.F.R. 435.726; 42 C.F.R. 435.733; 42 C.F.R. 435.735; 42 C.F.R. 435.840; 42 C.F.R. 435.832; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Correll v. DSS/DMA/DHR, 418 S.E.2d 232 (1992); Schweiker v. Gray Panthers, 453 U.S. 34, 101 S.Ct. 2633, 69 L. Ed.2d 460 (1981);

Eff. September 1, 1984;

Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; April 1, 1993;

Temporary Amendment Eff. September 13, 1999;

Temporary Amendment Expired June 27, 2000;

Temporary Amendment Eff. September 12, 2000;

Amended Eff. August 1, 2002;

Transferred from 10A NCAC 21B .0403 Eff. May 1, 2012;

Readopted Eff. June 1, 2019.

10A NCAC 23E .0208 CALCULATING INCOME

(a) Income that is actually available and the client or someone acting in his or her behalf has the legal authority to make available for support and maintenance shall be counted as income.

(b) Only income actually available or predicted by the county department of social services to be available to the budget unit for the certification period, as defined in 10A NCAC 23A .0102, for which eligibility is being determined shall be counted as income.

(c) For aged, blind, and disabled cases allowable disregards from income shall be based on Title XVI of the Social Security Act.

(d) Deductions subtracted after allowable disregards shall be:

- (1) Incapacitated adult care not to exceed one hundred and seventy-five dollars (\$175.00) per adult for Family and Children's medically needy cases.
- (2) Child care not to exceed one hundred and seventy-five dollars (\$175.00) per child over two years of age or two hundred dollars (\$200.00) per child under two years of age for Family and Children's medically needy cases.
- (3) A standard deduction of ninety dollars (\$90.00) from the total earned income of each budget unit member for Family and Children's medically needy cases.
- (4) For aged, blind, and disabled cases allowable deductions from income are based on Title XVI of the Social Security Act.

(e) Except for M-PW, as defined in 10A NCAC 23A .0102, the monthly amount of wages, income, and deductions shall be

calculated by converting the amount received by frequency into a monthly amount as follows:

- (1) If received weekly, multiply by 4.3.
- (2) If received bi-weekly, multiply by 2.15.
- (3) If received semi-monthly, multiply by 2.
- (4) If received monthly, use the monthly gross.
- (5) If salaried, and contract renewed annually, divide annual income by 12.

(f) For M-PW cases, the budget unit's actual income for the calendar month of eligibility shall be verified by the county department of social services.

History Note: Authority G.S. 108A-25(b); 108A-54; 108.54.1B; 42 C.F.R. 435.121; 42 C.F.R. 435.401; 42 C.F.R. 435.603; 42 C.F.R. 435.831; 45 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Eff. September 1, 1984; Amended Eff. January 1, 1995; August 1, 1990; March 1, 1986; Temporary Amendment Eff. August 22, 1996; Amended Eff. August 1, 1998; Transferred from 10A NCAC 21B .0404 Eff. May 1, 2012; Readopted Eff. June 1, 2019.

10A NCAC 23E .0209 DEDUCTIBLE

(a) A deductible shall apply to a client in the following arrangements:

- (1) In private living quarters in the community;
- (2) In a residential group facility; or
- (3) In a long-term care living arrangement when the client:
 - (A) Has enough income monthly to pay the Medicaid reimbursement rate for 31 days, but does not have enough income to pay the private rate plus all other anticipated medical costs;
 - (B) Is under a sanction due to a transfer of resources as specified in the Medicaid State Plan;
 - (C) Does not yet have documented prior approval for Medicaid payment of nursing home care;
 - (D) Resided in a facility in the facility's month of certification;
 - (E) Chooses to remain in a decertified facility beyond the last date of Medicaid payment; or
 - (F) Is under a Veterans Administration (VA) contract for payment of cost of care in the nursing home.

(b) The client or his or her representative shall be responsible for providing bills, receipts, insurance benefit statements, or Medicare EOBs to establish incurred medical expenses and his or her responsibility for payment. If the client has no representative and he or she is physically or mentally incapable of accepting this responsibility, the county department of social services shall assist him or her in obtaining verification.

(c) Expenses shall be applied to the deductible when they meet the following criteria:

- (1) They are for medical care or service recognized under State or federal tax law;
- (2) They are incurred by a budget unit member; and
- (3) They are incurred:
 - (A) During the certification period for which eligibility is being determined and the requirements of Paragraph (d) of this Rule are met; or
 - (B) Prior to the certification period and the requirements of Paragraph (e) of this Rule are met.

(d) Medical expenses incurred during the certification period shall be applied to the deductible if the requirements in Paragraph (c) of this Rule are met and:

- (1) The expenses are not subject to payment by any third party including insurance, government agency or program, except when the program is entirely funded by State or local government funds, or private source;
- (2) The private insurance has not paid the expenses by the end of the application time standard;
- (3) For certified cases, the insurance has not paid by the time that incurred expenses equal the deductible amount; or
- (4) The third party has paid and the client is responsible for a portion of the charges.

(e) The unpaid balance of a medical expense incurred prior to the certification period shall be applied to the deductible if the requirements in Paragraph (c) of this Rule are met and:

- (1) The medical expense was:
 - (A) Incurred within 24 months immediately prior to:
 - (i) The month of application for prospective or retroactive certification period or both; or
 - (ii) The first month of any subsequent certification period; or
 - (B) Incurred prior to the period described in Part (e)(1)(A) of this Rule, and a payment was made on the bill during that period; and
- (2) The medical expense:
 - (A) Is a current liability;
 - (B) Has not been applied to a previously met deductible; and
 - (C) Insurance has paid any amount of the expense covered by the insurance.

(f) The county department of social services shall apply incurred medical expenses to the deductible in chronological order of charges except that:

- (1) If medical expenses for Medicaid covered services and non-covered services occur on the same date, apply charges for non-covered services first;
- (2) If both hospital and other covered medical services are incurred on the same date, apply hospital charges first; and

- (3) If a portion of charges is still owed after insurance payment has been made for lump sum charges, compute incurred daily expense to be applied to the deductible as follows:
- (A) Determine the average daily charge, calculated by adding the charges and dividing by the number of days, excluding discharge date from hospitals;
 - (B) Determine the average daily insurance payment, calculated by adding the insurance payments and dividing by the number of days, for the same number of days; and
 - (C) Subtract average daily insurance payment from the average daily charge to establish client's daily responsibility.

(g) Eligibility shall begin on the day that incurred medical expenses reduce the deductible to \$0, except that the client is financially liable for the portion of medical expenses incurred on the first day of eligibility that were applied to reduce the deductible to \$0. If hospital charges were incurred on the first day of eligibility, notice of the amount of those charges applied to meet the deductible shall be sent to the hospital for deduction on the hospital's bill to Medicaid.

(h) The receipt of proof of medical expenses and other verification shall be documented by the county department of social services in the case record.

History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.831; Alexander v. Flaherty, U.S.D.C., W.D.N.C., File Number C-C-74-483; Alexander v. Flaherty Consent Order filed February 14, 1992; Eff. September 1, 1984; Amended Eff. June 1, 1994; September 1, 1993; April 1, 1993; August 1, 1990; Transferred from 10A NCAC 21B .0406 Eff. May 1, 2012; Redopted Eff. June 1, 2019.

10A NCAC 23E .0210 PATIENT LIABILITY

(a) Patient liability shall apply to clients who live in facilities for skilled nursing, intermediate nursing, intermediate care facility for individuals with an intellectual disability, or other medical institutions.

(b) The client's patient liability for cost of care shall be computed as a monthly amount after deducting the following from his or her total income:

- (1) An amount for his or her personal needs as established under the Medicaid State Plan;
- (2) Income given to the community spouse to provide him or her a total monthly income from all sources, equal to the "minimum monthly maintenance needs allowance" as defined in 42 U.S.C. 1396r-5(d)(3)(A);
- (3) Income given to family members described in 42 U.S.C. 1396r-5(d)(1), to provide each, from all sources of income, a total monthly income equal to:

- (A) One-third of the amount established under 42 U.S.C. 1396r-5(d)(3)(A)(i); or
- (B) Where there is no community spouse, an amount for the number of dependents, based on the income level for the corresponding budget unit number, as approved by the NC General Assembly and stated in the Appropriations Act for categorically and medically needy classifications;

- (4) The income maintenance level provided by 42 U.S.C. 1396r-5(d)(3)(A)(i) or State statute for a single individual in a private living arrangement with no spouse or dependents at home, for whom the physician of record has provided a written statement that the required treatment is such that the patient is expected to return home within six months, shall be allowed by the county department of social services; and
- (5) An amount for unmet medical needs as determined under Paragraph (f) of this Rule.

(c) Patient liability shall apply to institutional charges incurred from the date of admission or the first day of the month and shall not be prorated by days if the client lives in more than one institution during the month.

(d) The county department of social services shall notify the client, the institution, and the State of the amount of the monthly liability and any changes or adjustments.

(e) When the patient liability as calculated in Paragraph (b) of this Rule exceeds the Medicaid reimbursement rate for the institution for a 31-day month:

- (1) The patient liability shall be the institution's Medicaid reimbursement rate for a 31-day month; and
- (2) The client shall be placed on a deductible determined in accordance with regulations, Rules .0208 and .0209 of this Section, and the Medicaid State Plan.

(f) The amount deducted from income for unmet medical needs shall be determined as follows:

- (1) Unmet medical needs shall be the costs of:
 - (A) Medical care covered by the program that exceeds limits on coverage of that care and is not subject to payment by a third party;
 - (B) Medical care recognized under State and federal tax law that is not covered by the program and that is not subject to payment by a third party; and
 - (C) Medicare and other health insurance premiums, deductibles, or coinsurance charges that are not subject to payment by a third party.
- (2) The amount of unmet medical needs deducted from the patient's monthly income shall be limited to monthly charges for Medicare and other health insurance premiums.

- (3) The actual amount of incurred costs that are the patient's responsibility shall be deducted when reported from the patient's liability for one or more months.
- (4) Incurred costs shall be reported by the end of the six-month Medicaid certification period following the certification period in which they were incurred.

History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 435.733; 42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 U.S.C. 1396r-5; Eff. September 1, 1984; Amended Eff. September 1, 1994; March 1, 1991; August 1, 1990; March 1, 1990; Transferred from 10A NCAC 21B .0407 Eff. May 1, 2012; Readopted Eff. June 1, 2019.

10A NCAC 23E .0211 ALIEN SPONSOR DEEMING

- (a) For purposes of this Rule, a "sponsored alien" means an alien who is lawfully admitted for permanent residence sponsored by an individual who has signed an Affidavit of Support required by U.S. Citizenship and Immigration Services.
- (b) For purposes of this Rule, a "sponsor" means a person who signed an Affidavit of Support on behalf of an alien as a condition of the alien's entry or admission to the United States. The sponsor is financially responsible for the alien, and the sponsor's income shall be counted by the county department of social services in determining an alien's eligibility for medical assistance.
- (c) An indigent alien shall be exempt from Paragraph (b) of this Rule if the sum of Subparagraphs (1), (2), and (3) of this Paragraph does not exceed 130 percent of the poverty income guidelines, which are incorporated by reference with subsequent amendments and editions, available free of charge at <https://aspe.hhs.gov/poverty-guidelines>.
 - (1) The sum of the sponsored alien's own income;
 - (2) The cash contributions of the sponsor and others; and
 - (3) The value of any in-kind assistance the sponsor and others provide the alien.
- (d) The countable income of a sponsor shall be determined in accordance with Rules .0203 and .0208 of this Section and the Medicaid State Plan.
- (e) The countable resources of a sponsor shall be determined in accordance with Rules .0202 and .0207 of this Section.
- (f) Verification, as defined by 10A NCAC 23A .0102, by a third party shall be required for:
 - (1) sponsorship;
 - (2) a sponsor's income; and
 - (3) a sponsor's resources.

The application shall be denied if verification is not received by the processing deadline set out in 42 C.F.R. 435.912.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-54.1B; 108A-55; P.L. 104-208, Title II; P.L. 105-33, Title IV; Temporary Adoption Eff. July 3, 2003; Eff. March 1, 2004; Transferred from 10A NCAC 21B .0410 Eff. May 1, 2012; Readopted Eff. June 1, 2019.

10A NCAC 23G .0101 CERTIFICATION AND AUTHORIZATION

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.112; 42 C.F.R. 435.914; Eff. September 1, 1984; Amended Eff. March 1, 1993; August 1, 1990; Transferred from 10A NCAC 21B .0405 Eff. May 1, 2012; Repealed Eff. June 1, 2019.

10A NCAC 23G .0201 GENERAL

- (a) The county department of social services shall correct prior actions according to Rules .0202 and .0203 in this Section when the county department of social services discovers that prior actions were eligibility errors, as defined by 42 CFR 431.804, which is incorporated by reference with subsequent amendments and editions, available free of charge at <https://www.ecfr.gov/>, or the recipient's circumstances have changed from the last eligibility determination.
- (b) Information leading to corrections may be reported by the recipient, medical providers, State agencies, or any other source with knowledge about the recipient's circumstances that impact eligibility.

History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 431.246; 42 C.F.R. 435.916; Eff. September 1, 1984; Amended Eff. June 1, 1990; Transferred from 10A NCAC 21A .0601 Eff. May 1, 2012; Readopted Eff. June 1, 2019.

10A NCAC 23G .0202 CORRECTIVE ACTIONS

- (a) Corrections in an applicant's or recipient's case shall be made by the county department of social services when:
 - (1) An individual was discouraged from filing an application, as described in 10A NCAC 23C .0101;
 - (2) An appeal or court decision overturns an earlier adverse decision;
 - (3) The certification periods of financially responsible persons need to be adjusted to coincide with the individual's certification period;
 - (4) Information received from any source undergoes verification, as defined in 10A NCAC 23A .0102, by the county department of social services and is found to change the amount of the recipient's deductible, patient liability, authorization period, or otherwise affect the recipient's eligibility status;
 - (5) Additional medical bills or medical expenses that are verified by the county department of social services establish an earlier Medicaid effective date;
 - (6) The agency made an administrative error including:
 - (A) An eligibility error, as defined by 42 CFR 431.804, that resulted in

- assistance being incorrectly terminated or denied;
- (B) Failure to act on information received; or
- (C) Incorrect determination of the authorization period, Medicaid effective date, or erroneous data entry;
- (7) Monitoring of application processing by the Division of Health Benefits (Division), as required by 42 C.F.R. 431, Subpart P, shows an application was denied, withdrawn, or a person was discouraged from applying for assistance; or
- (8) The Division determines the county failed to follow federal regulations or State rules to authorize eligibility.

(b) Corrections in an applicant's or recipient's case shall be made by the Division when:

- (1) Information is received from county departments of social services, medical providers, the public, clients, or Division staff showing that a terminated case has errors in the Medicaid eligibility segments, Medicare Buy-In effective date, eligible household members, Community Alternatives Program (CAP) indicators and effective dates, or other data that is causing valid claims to be denied;
- (2) The county department of social services fails to take required corrective actions; or
- (3) An audit report from State auditors or the Division shows verified errors in the Medicaid eligibility history.

History Note: Authority G.S. 108A-54; 108A-54.1B; 42 C.F.R. 431.246; 42 C.F.R. 431, Subpart P; 42 C.F.R. 435.903; Eff. June 1, 1990;
Temporary Amendment Eff. March 1, 2003;
Amended Eff. August 1, 2004;
Transferred from 10A NCAC 21A .0602 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.

10A NCAC 23G .0204 RESPONSIBILITY FOR ERRORS

(a) The Division shall be financially responsible for costs resulting from the erroneous issuance of benefits and Medicaid claims payments when:

- (1) Policy guidance given by the Division or its agents is erroneous and the Division determines that is the sole cause of any erroneous benefits or payments;
- (2) A systems failure at the State computer center occurs on the last cutoff date of the month preventing the county DSS from data entering case terminations or adverse actions; or
- (3) Any other failure or error the Division determines is attributable solely to the State occurs.

(b) The county department of social services shall be financially responsible for costs resulting from the erroneous issuance of benefits and Medicaid claims payments when it:

- (1) Authorizes retroactive eligibility outside the dates permitted by federal regulations or Rule .0203 of this Section;
- (2) Fails to send required notices of patient liability or deductible balance to medical providers;
- (3) Fails to end-date special coverage indicators such as Community Alternatives Program (CAP) in the State eligibility information system;
- (4) Enters an authorization date in the eligibility system that is earlier than the effective date of eligibility;
- (5) Fails to determine the availability of or fails to enter data on third-party resource information in the State eligibility information system;
- (6) Terminates a case or individual after the Medicaid ID card has been issued;
- (7) Fails to initiate application for Medicare Part B coverage for recipients who are eligible, but refuse or are unable to apply for themselves; or
- (8) Takes any other action that requires payment of Medicaid claims for an ineligible individual, for ineligible dates, or for an amount that includes a recipient's liability and for which the State cannot claim federal participation.

(c) The amounts to be charged back shall be determined pursuant to G. S. 108A-25.1A(c).

History Note: Authority G.S. 108A-25.1A; 108A-54; 108A-54.1B; 42 C.F.R. 433.32; 42 C.F.R. 435.903;
Eff. June 1, 1990;
Amended Eff. May 1, 1992;
Transferred from 10A NCAC 21A .0604 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.

10A NCAC 23G .0303 RECOMMENDATION

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.919;
Eff. September 1, 1984;
Amended Eff. August 1, 1990;
Transferred from 10A NCAC 21B .0503 Eff. May 1, 2012;
Repealed Eff. June 1, 2019.

10A NCAC 23H .0106 LIABILITY OF PERSONS WITH ACCESS

- (a) Failure to comply with the rules in this Subchapter is unlawful pursuant to G.S. 108A-80.
- (b) Individuals employed by the Division and county departments of social services and governed by the State Personnel Act are subject to suspension, dismissal, or disciplinary action for failure to comply with these Rules.
- (c) Individuals other than employees, including volunteers and students who are agents of the Department of Health and Human Services and who have access to client information, shall be liable in the same manner as employees.

History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-80; 42 C.F.R. 431, Subpart F;
Eff. September 1, 1984;

*Amended Eff. August 1, 1990;
Transferred from 10A NCAC 21A .0406 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.*

10A NCAC 23H .0107 RIGHT OF ACCESS

(a) An individual has the right to obtain information about his or her own case. Upon written or verbal request, the client shall be able to review or obtain without charge a copy of the information in his or her records with the following exceptions:

- (1) Information that the agency is required to keep confidential by State or federal statutes, rules, or regulations;
- (2) Confidential information originating from another agency as set forth in Rule .0104 of this Section; and
- (3) Information that would breach another individual's right to confidentiality under State or federal statutes, rules, or regulations as determined by the Division or the county department of social services.

(b) The agency shall provide access within five business days.

*History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-80; 42 C.F.R. 431.306;
Eff. September 1, 1984;
Transferred from 10A NCAC 21A .0407 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.*

10A NCAC 23H .0108 WITHHOLDING INFORMATION FROM THE CLIENT

(a) When the director or a delegated representative determines on the basis of the exceptions in Rule .0107 of this Section to withhold information from the client, this reason shall be documented in the client record.

(b) The director or delegated representative shall inform the client that information is being withheld, and upon which of the exceptions specified in Rule .0107 of this Section the decision to withhold the information is based. If confidential information originating from another agency is being withheld, the client shall be referred to that agency for access to the information.

(c) When a delegated representative determines to withhold client information, the decision to withhold shall be reviewed by the supervisor of the person making the initial determination.

*History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-80;
Eff. September 1, 1984;
Amended Eff. August 1, 1990;
Transferred from 10A NCAC 21A .0408 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.*

10A NCAC 23H .0110 CONSENT FOR RELEASE

(a) As a part of the application process for Medicaid, the client shall be informed of the need for and give consent to release of information for verification of statements to establish eligibility.

(b) No individual shall release any client information that is owned by the Division of Health Benefits or the county departments of social services, or request the release of information regarding the client from other agencies or

individuals, without obtaining a signed consent for release of information. The procedure for disclosure without obtaining consent shall be in accordance with Rule .0111 of this Section.

(c) The consent for release of information shall contain the following:

- (1) The name of the provider and the recipient of the information;
- (2) The extent of information to be released;
- (3) The name and dated signature of the client;
- (4) A statement that the consent is subject to revocation at any time except to the extent that action has been taken in reliance on the consent; and
- (5) The length of time the consent is valid.

(d) The client may alter the form to contain other information, including:

- (1) A statement specifying the date, event, or condition upon which the consent may expire even if the client does not expressly revoke the consent; or
- (2) A specific purpose for the release.

(e) The following persons may consent to the release of information:

- (1) The client;
- (2) The legal guardian if the client has been judged incompetent; or
- (3) The county department of social services if the client is a minor and in the custody of the county department of social services.

(f) Prior to obtaining a consent for release of information, the director or delegated representative shall explain the meaning of informed consent. The client shall be told the following:

- (1) Contents to be released;
- (2) That the information is needed to verify eligibility;
- (3) That the client can give or withhold the consent and the consent is voluntary; and
- (4) That there are statutes, rules, and regulations protecting the confidentiality of the information.

*History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-80; 42 C.F.R. 431.304; 42 C.F.R. 431.306;
Eff. September 1, 1984;
Amended Eff. August 1, 1990;
Transferred from 10A NCAC 21A .0410 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.*

10A NCAC 23H .0111 DISCLOSURE WITHOUT CLIENT CONSENT

(a) Client information from the Medicaid record may be disclosed without the consent of the client under the following circumstances:

- (1) To other employees of the county department of social services for purpose of making referrals, supervision, consultation, or determination of eligibility;

- (2) To other county departments of social services when the client moves to that county and requests Medicaid;
- (3) Between the county departments of social services and the Division of Health Benefits for purposes of supervision and reporting.

(b) Client information may be disclosed without client consent to individuals approved by the Division to conduct studies of client records. The request to conduct the study shall be in writing, and shall be approved based upon:

- (1) An explanation of how the findings of the study are expected to expand knowledge and improve professional practices among those who work in the field studied;
- (2) A description of how the study will be conducted and how the findings will be used;
- (3) The individual's credentials in the area of investigation;
- (4) A description of how the individual will safeguard the information; and
- (5) An assurance that no report will contain the names of individuals or other information that makes individuals identifiable.

(c) Client information may be disclosed without consent to federal, State, or county employees for the purpose of monitoring, auditing, evaluating, or to facilitate the administration of other State and federal programs, provided that the need for the disclosure of confidential information is justifiable for the purpose and that adequate safeguards, as described in 42 C.F.R. 431.300, which is incorporated by reference with subsequent amendments and editions and available free of charge at <https://www.ecfr.gov/>, are maintained to protect the information from re-disclosure.

(d) Client information may be disclosed without consent for purposes of complying with other State and federal statutes, rules, and regulations and court orders.

(e) When information is released without the client's consent, the client shall be informed of the disclosure in writing to explain what information was released, how it was released, and how to contact the privacy official. The writing informing the client of the disclosure shall be documented in the record.

History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-80; 42 C.F.R. 431.306;
Eff. September 1, 1984;
Transferred from 10A NCAC 21A .0411 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.

10A NCAC 23H .0112 DOCUMENTATION OF CONSENT OR DISCLOSURE

Whenever client information is disclosed in accordance with rules of this Subchapter, the director or delegated representative shall document the disclosure in the client record.

History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-80;
Eff. September 1, 1984;
Transferred from 10A NCAC 21A .0412 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.

10A NCAC 23H .0113 PERSONS DESIGNATED TO DISCLOSE INFORMATION

Only directors of county departments of social services and their designated representatives may disclose client information in accordance with rules of this Subchapter. The process for delegation is set out in G.S. 108A-14(b).

History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-14(b); 108A-80;
Eff. September 1, 1984;
Amended Eff. August 1, 1990;
Transferred from 10A NCAC 21A .0413 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.

10A NCAC 25A .0201 MEDICAL SERVICES

Pursuant to the State Plan, all medical services performed shall be medically necessary and may not be experimental in nature. Medical necessity shall be determined by generally accepted North Carolina community practice standards as verified by independent Medicaid consultants.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-54.1B; 42 C.F.R. 440.230(d);
Eff. March 1, 1990;
Transferred from 10A NCAC 22O .0301 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.

10A NCAC 25H .0203 STANDARDS FOR PARTICIPATION

(a) Dentists who provide services under the Medicaid program shall meet the following standards:

- (1) be licensed by the appropriate state authority;
- (2) comply with State and federal statutes, rules, and regulations of the Medicaid program; and
- (3) agree that the State Medicaid Agency or its designated agents may audit Medicaid dental records.

(b) Dentists who provide services under the Medicaid program shall ensure all services:

- (1) are offered in accordance with Title VI of the 1964 Civil Rights Act, which is incorporated by reference with subsequent amendments and editions and available free of charge at <http://uscode.house.gov/>;
- (2) are offered in accordance with Section 504 of the Rehabilitation Act of 1973, which is incorporated by reference with subsequent amendments and editions and available free of charge at <http://uscode.house.gov/>; and
- (3) are within accepted dental standards for quality in the community and medically necessary pursuant to 10A NCAC 25A .0201.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-54.1B;
Eff. February 1, 1976;
Readopted Eff. October 31, 1977;

*Amended Eff. February 29, 1980;
Transferred from 10A NCAC 22O .0202 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.*

10A NCAC 25K .0201 PHARMACY SERVICES

*History Note: Authority G.S. 90-85.26; 108A-25(b); 108A-54; 42 C.F.R. 440.90; 42 CFR 447.331; S.L. 1985, c. 479, s. 86; 42 U.S.C. 1396r-8(d)(1)(A); S.L 2009-451; Eff. September 30, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. January 1, 1984;
Recodified from 10 NCAC 26B .0116 Eff. October 1, 1993;
Recodified from 10 NCAC 26B .0117 Eff. January 1, 1998;
Amended Eff. May 1, 2010;
Transferred from 10A NCAC 22O .0118 Eff. May 1, 2012;
Repealed Eff. June 1, 2019.*

10A NCAC 25K .0401 PATIENT COUNSELING

(a) Rule 21 NCAC 46 .2504, as adopted by the North Carolina Board of Pharmacy, shall apply to Medicaid, and is hereby incorporated by reference including subsequent amendments and editions.

(b) If a pharmacy fails to comply with the requirements of 21 NCAC 46 .2504, any claim for reimbursement associated with the pharmacy's non-compliance shall be denied, or if already paid, shall be recouped.

*History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-68; 42 U.S.C. 1396r-8(g)(2)(A)(ii); Eff. June 1, 1993;
Amended Eff. March 1, 2010;
Transferred from 10A NCAC 22M .0201 Eff. May 1, 2012;
Readopted Eff. June 1, 2019.*

10A NCAC 25M .0201 INPATIENT HOSPITAL SERVICES

*History Note: Authority G.S. 108A-25(b); 108A-54; S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.10; 42 C.F.R. 440.230(d); 42 C.F.R.447.253; 42 C.F.R. 456.1; Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. October 1, 1986; August 1, 1986; October 1, 1982;
Temporary Amendment Eff. October 15, 1999;
Temporary Amendment Expired July 28, 2000;
Temporary Amendment Eff. September 25, 2000;
Temporary Amendment Expired June 29, 2001;
Paragraphs (a)-(d) transferred from 10A NCAC 22O .0401 Eff. May 1, 2012.
Paragraph (e) transferred from 10A NCAC 22O .0114 Eff. May 1, 2012 (Previously recodified from 10 NCAC 26B .0112 Eff. October 1, 1993 and recodified from 10 NCAC 26B .0113 Eff. January 1, 1998);
Repealed Eff. June 1, 2019.*

10A NCAC 25P .0201 INPATIENT HOSPITAL SERVICES

*History Note: Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d); 42 C.F.R.447.253; 42 C.F.R. 456.1; Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. October 1, 1986; August 1, 1986; October 1, 1982;
Temporary Amendment Eff. October 15, 1999;
Temporary Amendment Expired July 28, 2000;
Temporary Amendment Eff. September 25, 2000;
Temporary Amendment Expired June 29, 2001;
Transferred from 10A NCAC 22O .0401(e) Eff. May 1, 2012;
Repealed Eff. June 1, 2019.*

10A NCAC 25P .0301 OUTPATIENT HOSPITAL SERVICES

*History Note: Authority G.S. 108A-25(b); 42 C.F.R. 440.20; 42 C.F.R. 440.230(d); 42 C.F.R. 456.1; Eff. February 1, 1976;
Readopted Eff. October 31, 1977;
Amended Eff. October 1, 1986;
Transferred from 10A NCAC 22O .0402 Eff. May 1, 2012;
Repealed Eff. June 1, 2019.*

10A NCAC 25P .0402 CLINIC SERVICES

*History Note: Authority G.S. 108A-25(b); 108A-54; 42 C.F.R. 440.20; Eff. February 1, 1976;
Amended Eff. September 30, 1977;
Readopted Eff. October 31, 1977;
Amended Eff. January 1, 1984;
Recodified from 10 NCAC 26B .0113 Eff. October 1, 1993;
Recodified from 10 NCAC 26B .0114 Eff. January 1, 1998;
Transferred from 10A NCAC 22O .0115 Eff. May 1, 2012;
Repealed Eff. June 1, 2019.*

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 10B .0503 TIME REQ/COMPLETION/BASIC LAW ENFORCEMENT TRAINING COURSE

(a) Each deputy sheriff holding temporary or probationary certification shall complete a Commission-certified basic training course pursuant to 12 NCAC 09B .0405, within one year from the date of his or her Oath of Office. Any deputy sheriff who does not comply with this Rule or other training provisions of this Chapter shall not exercise the powers of a deputy sheriff, including the power of arrest. If, however, an officer has enrolled in a Commission-certified basic law enforcement training program that concludes later than the end of the officer's probationary period, the Commission may extend the probationary period for a period not to exceed 12 months. In determining whether to grant an extension, the Commission shall consider the circumstances that created the need for the extension.

(b) Any person who has completed a Commission-certified basic law enforcement training program, but has not been duly appointed and certified in a sworn law enforcement position within one year of completion of the course, shall complete a

subsequent Commission-certified basic recruit training program and pass the State Comprehensive Examination within the 12 month probationary period. The Director shall waive this requirement and accept a course that was completed outside of the one year time period as set forth in Paragraph (a) of this Rule unless he or she determines that a delay in applying for certification was due to negligence on the part of the applicant or employing agency. The extension of the one year period shall not exceed 30 days from the expiration date of a commission-certified basic training program.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 1989; Amended Eff. January 1, 2006; January 1, 1996; January 1, 1994; January 1, 1991; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018; Amended Eff. June 1, 2019.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02B .0601 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): PURPOSE

(a) The Goose Creek watershed in the Yadkin Pee-Dee River Basin provides habitat for an aquatic animal species that is listed as federally endangered by the U.S. Fish and Wildlife Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544. Maintenance and recovery of the water quality conditions required to sustain and recover the federally-listed endangered species protects the biological integrity of the waters. The Goose Creek watershed, which includes Goose Creek (Index # 13-17-18), Stevens Creek (Index # 13-17-18-1), Paddle Branch (Index # 13-17-18-2), Duck Creek (Index # 13-17-18-3), and all tributaries, shall be protected by the site-specific management strategy described in Rules .0601 through .0608 of this Section.

(b) The purpose of the actions required by this site-specific management strategy is for the maintenance and recovery of the water quality conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona decorata*) species. Management of the streamside zones to stabilize streambanks and prevent sedimentation are critical measures to restore water quality to sustain and enable recovery of the federally endangered Carolina heelsplitter. Site-specific management strategies shall be implemented to:

- (1) control stormwater for projects disturbing one acre or more of land as described in Rule .0602 of this Section;
- (2) control wastewater discharges as described in Rule .0603 of this Section;
- (3) control toxicity to streams supporting the Carolina heelsplitter as described in Rule .0604 of this Section; and
- (4) maintain riparian buffers as described in Rules .0605 through .0608 of this Section.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.3(c); 143-215.8A; Eff. January 1, 2009; Readopted Eff. June 1, 2019.

15A NCAC 02B .0602 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): STORMWATER CONTROL REQUIREMENTS

(a) Any new development activity that disturbs one acre or more of land within the Goose Creek watershed and will add built-upon area shall control and treat the difference in the stormwater runoff from the predevelopment and post-development conditions for the one-year, 24-hour storm, with stormwater control measures (SCMs), with the exception of NC Department of Transportation activities that shall be regulated in accordance with provisions of that agency's National Pollutant Discharge Elimination System (NPDES) Stormwater Permit. Development and redevelopment shall implement stormwater management measures that promote infiltration of flows and groundwater recharge for the purpose of maintaining stream base flow or the delegated local government shall maintain a written explanation when it is not practical to use infiltration methods.

(b) SCMs shall meet the relevant Minimum Design Criteria (MDC) set forth in 15A NCAC 02H .1050 through .1062.

(c) Local governments may submit a written request to the Commission for delegation authority to implement and enforce the State's stormwater protection requirements of G.S. 143-214.7 and S.L. 2006-246 within their jurisdiction. The written request shall be accompanied by information that shows:

- (1) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer scale map(s);
- (2) The local government has the administrative organization, staff, legal authority, financial, and other resources necessary to implement and enforce the State's stormwater requirements based on its size and projected amount of development;
- (3) The local government has adopted ordinances, resolutions, or regulations to establish and maintain the State's stormwater requirements; and
- (4) The local government has provided a plan to address violations with civil or criminal remedies and actions, as well as remedies that shall restore buffer functions on violation sites and provide a deterrent against the occurrence of future violations.

(d) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government based on standards as set out in Paragraph (c) of this Rule whether it has been approved, approved with modifications, or denied.

(e) The Commission, upon determination that a delegated local authority is failing to implement or enforce the requirements in keeping with a delegation, shall notify the delegated local authority in writing of the local program's deficiencies. If the

delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the state's stormwater requirements.

(f) The Division shall have jurisdiction to the exclusion of local governments to implement the state's stormwater protection requirements for the following types of activities:

- (1) Activities undertaken by the State;
- (2) Activities undertaken by the United States;
- (3) Activities undertaken by multiple jurisdictions; and
- (4) Activities undertaken by units of local government.

(g) Delegated local authorities shall maintain on-site records for a minimum of five years and shall furnish a copy of these records to the Director within 30 days of receipt of a written request for them. The Division of Energy, Mineral, and Land Resources shall audit local stormwater programs to ensure that the programs are being implemented and enforced in keeping with an approved delegation.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.8A; S.L. 2006-246;
Eff. February 1, 2009;
Readopted Eff. June 1, 2019.

15A NCAC 02B .0603 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): WASTEWATER CONTROL REQUIREMENTS

No new National Pollutant Discharge Elimination System "NPDES" wastewater discharges or expansions to existing discharges shall be permitted.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;
Eff. January 1, 2009;
Readopted Eff. June 1, 2019.

15A NCAC 02B .0604 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): CONTROL TOXICITY INCLUDING AMMONIA

No activity that results in direct or indirect discharge shall be allowed if it causes toxicity to the Carolina heelsplitter (*Lasmigona decorata*) endangered mussel. For any direct or indirect discharge that is determined by the Division to cause ammonia toxicity to the Carolina heelsplitter freshwater mussel, action shall be taken to reduce ammonia (NH₃-N) inputs to achieve 0.5 milligrams per liter or less of total ammonia based on chronic toxicity defined in Rule .0202 of this Subchapter. This level of total ammonia is based on ambient water temperature equal to or greater than 25 degrees Celsius.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;
Eff. February 1, 2009;
Readopted Eff. June 1, 2019.

15A NCAC 02B .0605 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): RIPARIAN BUFFER WIDTHS

In the Goose Creek watershed, riparian buffers are required within 200 feet of waterbodies within the 100-Year Floodplain and within 100 feet of waterbodies that are not within the 100-Year Floodplain. The 100-Year Floodplain is the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Department of Public Safety. The riparian buffer shall consist of a vegetated area that is undisturbed except for uses provided in Rule .0607 of this Section.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;
Eff. January 1, 2009;
Readopted Eff. Pending Delayed Effective Date.

15A NCAC 02B .0606 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): AUTHORIZATION CERTIFICATES

(a) PURPOSE. The following requirements shall apply to persons who wish to undertake uses designated as allowable upon authorization, allowable with mitigation upon authorization, or allowable with exception within the protected riparian buffer area as specified in Rule .0607 of this Section.

(b) AUTHORIZATION CERTIFICATES. Persons who wish to undertake uses designated in Rule .0607 of this Section as allowable upon authorization or allowable with mitigation upon authorization shall submit an application requesting an Authorization Certificate from the Authority.

- (1) The application shall specify:
 - (A) The name, address, and phone number of the applicant;
 - (B) If the applicant is not the property owner(s), the name, address, and phone number of the property owner;
 - (C) If the applicant is a corporation, the name and address of the North Carolina process agency, and the name, address, and phone number of the individual who is the authorized agent of the corporation and responsible for the activity for which certification is sought. The corporation must be authorized to do business in NC;
 - (D) The nature of the activity to be conducted by the applicant;
 - (E) The location of the activity, including the jurisdiction;
 - (F) A map that is legible to the reviewer and of sufficient detail to delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the

- activity, and the extent of riparian buffers on the land;
- (G) An explanation of why this plan for the activity cannot be practically accomplished, reduced, relocated, or reconfigured to avoid or better minimize disturbance to the riparian buffer, preserve aquatic life and habitat, and protect water quality;
- (H) Plans for any best management practices proposed to be used to control the impacts associated with the activity; and
- (I) For uses designated as allowable with mitigation upon authorization or allowable with exception, a mitigation proposal in accordance with Rule .0295 of this Subchapter.
- (2) The applicant shall demonstrate that the project meets all the following criteria:
 - (A) The basic project purpose cannot be practically accomplished in a manner that would avoid or better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
 - (B) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
 - (C) Best management practices shall be used to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- (3) The Authority shall consider whether the proposed impacts may affect conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona decorata*).
- (4) The Authority shall issue an Authorization Certificate, deny the application, or request additional information within 60 calendar days after receipt of an application that meets the requirements as described in Subparagraph (b)(1) through (b)(3) of this Rule. When the Authority requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Authority. Failure to issue the Authorization Certificate, deny the application, or request additional information within 60 calendar days shall be construed as issuance of an Authorization Certificate by the Authority to the applicant unless one of the following occurs:
 - (A) The applicant agrees, in writing, to a longer period;
 - (B) The applicant fails to furnish information necessary for the Authority's decision;
 - (C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or
 - (D) Information necessary for the Authority's decision is unavailable.
- (5) The Authority may attach conditions to the Authorization Certificate that ensure compliance with the riparian buffer protection program.
- (6) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Request for appeals of Authorization Certificates issued by the delegated local authority shall be made pursuant to the local authority's ordinance.
- (c) **AUTHORIZATION CERTIFICATES WITH EXCEPTIONS.** Persons who wish to undertake uses designated in Rule .0607 of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The Authorization Certificate with Exception review procedure shall be as follows:
 - (1) All of the following conditions must be met in order to qualify for an Authorization Certificate with Exception:
 - (A) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements.
 - (B) If the applicant complies with the provisions of the riparian buffer requirements, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the Authorization Certificate with Exception would allow a greater profit from the property shall not be considered adequate justification for an Authorization Certificate with Exception. Moreover, the Authority shall consider whether the Authorization Certificate with Exception is the minimum possible deviation from the terms of the riparian buffer requirements that will make reasonable use of the property possible.
 - (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography.
 - (D) The applicant did not cause the hardship.
 - (E) The requested Authorization Certificate with Exception is

consistent with the general spirit, purpose, and intent of the State's riparian buffer protection requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.

- (2) MINOR EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.

- (A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2), and (c)(1) of this Rule, the Authority shall issue an Authorization Certificate with Minor Exception if the Authority determines that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Minor Exception.

- (3) MAJOR EXCEPTIONS. An Authorization Certificate with Major Exception request pertains to allowable with exception activities that are proposed to impact greater than one-third of an acre of the riparian buffer.

- (A) Authorization Certificate with Major Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall prepare a preliminary finding as to whether the criteria in Subparagraphs (b)(2), and (c)(1) of this Rule have been met.
- (C) Notice of each pending complete application for an Authorization Certificate with Major Exception, including the preliminary findings prepared by the Authority, shall be posted on the Division's website and sent to all individuals on the Mailing

List, as described in 15A NCAC 02H .0503 (g), at least 30 calendar days prior to proposed final action by the Authority on the application. If the Authority is not the Division, then the Authority shall forward the required notice information to the Division for posting.

- (D) Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have been met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Major Exception.

- (4) The Authority may attach conditions to the Authorization Certificate with Exception that ensure compliance with the riparian buffer protection program.
- (5) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception issued by the delegated local authority shall be made pursuant to the local authority's ordinance.

*History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;
Eff. February 1, 2009;
Readopted Eff. Pending Delayed Effective Date. (The provisions of paragraph (b) of this Rule were previously codified in 15A NCAC 02B .0607(e)).*

15A NCAC 02B .0608 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MANAGE ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS

(a) PURPOSE. The following requirements shall apply to all forest harvesting operations and forestry-related land-disturbing activities subject to riparian buffer requirements under Rules .0601 through .0608 of this Section.

(b) REQUIREMENTS THROUGHOUT THE BUFFER. The following requirements shall apply:

- (1) All forest harvest activities within the buffer shall comply with Forest Practices Guidelines Related to Water Quality as defined in 02 NCAC 60C;
- (2) Logging decks and sawmill sites shall not be placed in the riparian buffer;

- (3) Timber felling shall be directed away from the stream or water body;
- (4) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts;
- (5) Individual trees may be treated to maintain or improve their health, form, or vigor;
- (6) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation is allowed, when approved by the North Carolina Forest Service for a specific site in accordance with G.S. 106-920 through G.S. 106-926. The North Carolina Forest Service must notify the Division of all approvals within 60 calendar days;
- (7) Removal of individual trees that are in danger of causing damage to structures or human life is allowed;
- (8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer is allowed provided that the soil disturbance is minimized;
- (9) Prescribed burns shall be allowed when conducted for forest management purposes; and
- (10) A one-time fertilizer application at agronomic rates in the riparian buffer is allowed to establish replanted vegetation. No runoff from this one-time application in the riparian buffer is allowed in the surface water.

(c) **SELECTIVE HARVEST.** Selective forest harvesting is allowed provided that:

- (1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or the forest lands have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request by the North Carolina Forest Service or the Division;
- (2) Tracked or wheeled vehicles are only used for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees;
- (3) No tracked or wheeled vehicles shall be used to conduct site preparation activities;
- (4) Trees are removed in a manner that minimizes disturbance to the soil and remaining vegetation;
- (5) The first 10 feet of the riparian buffer directly adjacent to the stream or waterbody shall be undisturbed, except for the removal of individual high value trees. The removal of individual high value trees shall only be allowed provided that no trees with exposed roots visible in the streambank are cut, unless

they meet Subparagraphs (b)(6) or (b)(7) of this Rule;

- (6) In the area from 10 feet to 50 feet of the riparian buffer, a maximum of 50 percent of the trees greater than five inches diameter breast height (DBH) may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations as defined in 15A NCAC 02B .0610, where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible; and
- (7) In the outer riparian buffer (landward of 50 feet), harvesting and regeneration of the forest stand shall be allowed, provided that ground cover is established and maintained to provide for diffusion and infiltration of surface runoff.

(d) **EXCEPTIONS.** Persons who wish to undertake forest harvesting operations or practices different from the requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0606 of this Section.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;
Eff. February 1, 2009;
Readopted Eff. Pending Delayed Effective Date.

**15A NCAC 02B .0610 MANAGING ACTIVITIES
 WITHIN RIPARIAN BUFFERS: DEFINITIONS**

For the purposes of this Section, the following words and phrases shall mean:

- (1) "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility," "airport," or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution. The term shall include:
 - (a) airports;
 - (b) airport maintenance facilities;
 - (c) aeronautic industrial facilities that require direct access to the airfield;
 - (d) clear zones;
 - (e) drainage ditches;
 - (f) fields;
 - (g) hangars;
 - (h) landing lighting;
 - (i) airport and airport-related offices;
 - (j) parking facilities;
 - (k) related navigational and signal systems;

- (l) runways;
- (m) stormwater outfalls;
- (n) terminals;
- (o) terminal shops;
- (p) all appurtenant areas used or suitable for airport buildings or other airport facilities; and
- (q) all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe operation thereof and any combination of any or all of such facilities.

The following shall not be included in the definition of "airport facilities": Satellite parking facilities; retail and commercial development outside of the terminal area, such as rental car facilities; and other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority, in which case they are included in the definition of "airport facilities."

- (2) "Archaeological activities" means activities conducted by a Registered Professional Archaeologist (RPA).
- (3) "Authority" means either the Division or a local government that has been delegated pursuant this Section to implement a riparian buffer program.
- (4) "Bridge" means any spanning structure that begins and ends at the outer edge of the approach slabs and includes any support structures such as bents, pilings, footings, etc.
- (5) "Built-upon area" means the term as defined in G.S. 143-214.7(b2).
- (6) "Channel" means a natural water-carrying trough cut vertically into low areas of the land

surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.

- (7) "Coastal wetlands" means marshland as defined in G.S. 113-229.
- (8) "Dam" means the term as defined in G.S. 143-215.25.
- (9) "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.
- (10) "Development" means the term as defined in G.S. 143-214.7.
- (11) "Director" means the Director of the Division.
- (12) "Ditch or canal" means a man-made, open drainage way or channel other than a modified natural stream in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either ephemeral, intermittently, or perennially. On the coastal plain, ditches are typically dug through inter-stream divide areas.
- (13) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.
- (14) "Ephemeral stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the perched or seasonal high water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.
- (15) "Existing lot" in Randleman Lake watershed means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to the effective date of a local ordinance or ordinances enforcing Rule .0724 of this Subchapter. For activities listed in Rule .0724(12)(b) of this Subchapter, "existing lot" in the Randleman Lake watersheds means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to April 1, 1999. "Existing lot" in the Neuse and Tar-Pamlico river basins means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to August 1, 2000.
- (16) "Existing utility line maintenance corridor" means the portion of a utility right of way that was established as a permanent maintenance corridor prior to the effective date of the Rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or

- Variance issued by the Authority, and in which the vegetation has been maintained (e.g. can be mowed without a chainsaw or bush-hog).
- (17) "Fertilizer" means the term as defined in Rule .0202 of this Subchapter.
- (18) "Forest management plan" means the term as defined in G.S. 160A-458.5.
- (19) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a forest plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.
- (20) "Forest vegetation" means the term as defined in Rule .0202 of this Subchapter.
- (21) "Freshwater" means the term as defined in Rule .0202 of this Subchapter.
- (22) "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including boardwalks, steps, rails, and signage, and that generally run parallel to the surface water.
- (23) "High value tree" means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for non-pine species, 16-inch DBH or greater or 24-inch or greater stump diameter.
- (24) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the perched or seasonal high water table. The flow may be supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.
- (25) "Local government" means the term as defined in Rule .0202 of this Subchapter.
- (26) "Modified natural stream" means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with at least an intermittent conveyance of water.
- (27) "Natural drainageway" means any water course, channel, ditch, or similar physiographic feature draining water from land to down gradient areas.
- (28) "Normal water level" means the water level within a pond, lake, or other type of impoundment, natural or man-made (including beaver ponds), at the elevation of the outlet structure or spillway (i.e., the elevation of the permanent pool). The normal water level is typically identified by the lowest edge of the terrestrial vegetation.
- (29) "Perched water table" means the term as defined in 15A NCAC 18A .1935.
- (30) "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the perched or seasonal high water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
- (31) "Perennial waterbody" means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean.
- (32) "Perpendicular" means leading toward the nearest subject surface water at an angle between 75 and 105 degrees.
- (33) "Pruning" means the removal of dead tree or shrub branches or live tree or shrub branches with a diameter of less than four inches.
- (a) Pruning for Deciduous Trees: If pruning must be done on deciduous trees, then it shall only be performed once a year during the dormant season or following an "act of God" situation, such as a hurricane or ice storm that causes tree damage. Dead branches on trees may be removed any time.
- (b) Pruning for Coniferous Trees: Conifers may be pruned any time of year. Dead branches on trees may be removed any time.
- (c) Pruning for Shrubs: Shrubs may be pruned by selectively removing branches while maintaining the natural shape of the plant. Cutting the branches of a shrub down to its main trunk is not a selective removal of branches.
- (34) "Seasonal high water table" means the term as defined in 15A NCAC 02H .1002.
- (35) "Streambank or shoreline stabilization" is the in-place stabilization of an eroding streambank or shoreline.
- (36) "Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP," means the term as defined in 15A NCAC 02H .1002.
- (37) "Stump diameter" means the diameter of a tree measured at six inches above the ground surface level.
- (38) "Temporary road" means a road constructed temporarily for access or to maintain public

- traffic during construction and is restored upon completion of construction.
- (39) "Transportation facility" means the existing road surface, road shoulders, fill slopes, ferry terminal fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly associated with the road.
- (40) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.
- (41) "Wetlands" means the same as defined in Rule .0202 of this Subchapter.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); 143-215.8A; S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413, S.L. 2015, c. 246;

Readopted Eff. Pending Delayed Effective Date (The provisions of this Rule were previously codified in 15A NCAC 02B .0233(2), 15A NCAC 02B .0243(2), 15A NCAC 02B .0250(2) and 15A NCAC 02B .0259(2)).

**15A NCAC 02B .0611 MANAGING ACTIVITIES
WITHIN RIPARIAN BUFFERS: AUTHORIZATION
CERTIFICATES**

(a) **PURPOSE.** The following requirements shall apply to persons who wish to undertake uses designated as allowable upon authorization, allowable with mitigation upon authorization, or allowable with exception within the protected riparian buffer area as specified in the applicable riparian buffer protection rule of this Section and Section .0700 of this Subchapter.

(b) **AUTHORIZATION CERTIFICATES.** Persons who wish to undertake uses designated in the applicable riparian buffer protection rule of this Section as allowable upon authorization or allowable with mitigation upon authorization shall submit an application requesting an Authorization Certificate from the Authority.

- (1) The application shall specify:
- (A) The name, address, and phone number of the applicant;
 - (B) If the applicant is not the property owner(s), the name, address, and phone number of the property owner;
 - (C) If the applicant is a corporation, the name and address of the North Carolina process agency, and the name, address, and phone number of the individual who is the authorized agent of the corporation and responsible for the activity for which certification is sought. The corporation must be authorized to do business in NC;
 - (D) The nature of the activity to be conducted by the applicant;
 - (E) The location of the activity, including the jurisdiction;
 - (F) A map that is legible to the reviewer and of sufficient detail to delineate the

boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;

- (G) An explanation of why this plan for the activity cannot be practically accomplished, reduced, relocated, or reconfigured to avoid or better minimize disturbance to the riparian buffer, preserve aquatic life and habitat, and protect water quality;
 - (H) Plans for any best management practices proposed to be used to control the impacts associated with the activity; and
 - (I) For uses designated as allowable with mitigation upon authorization or allowable with exception, a mitigation proposal in accordance with Rule .0295 of this Subchapter.
- (2) The applicant shall demonstrate that the project meets all the following criteria:
- (A) The basic project purpose cannot be practically accomplished in a manner that would avoid or better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
 - (B) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
 - (C) Best management practices shall be used to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- (3) The Authority shall issue an Authorization Certificate, deny the application, or request additional information within 60 calendar days after receipt of an application that meets the requirements as described in Subparagraphs (b)(1) and (b)(2) of this Rule. When the Authority requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Authority. Failure to issue the Authorization Certificate, deny the application, or request additional information within 60 calendar days shall be construed as issuance of an Authorization Certificate by the Authority to the applicant unless one of the following occurs:
- (A) The applicant agrees, in writing, to a longer period;
 - (B) The applicant fails to furnish information necessary for the Authority's decision;

- (C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or
- (D) Information necessary for the Authority's decision is unavailable.
- (4) The Authority may attach conditions to the Authorization Certificate that ensure compliance with the riparian buffer protection program.
- (5) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates issued by the delegated local authority shall be pursuant to the local authority's ordinance.

(c) **AUTHORIZATION CERTIFICATES WITH EXCEPTION.** Persons who wish to undertake uses designated in the applicable riparian buffer protection rule of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The Authorization Certificate with Exception review procedure shall be as follows:

- (1) All of the following conditions must be met in order to qualify for an Authorization Certificate with Exception:
 - (A) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements.
 - (B) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the Authorization Certificate with Exception would allow a greater profit from the property shall not be considered adequate justification for an Authorization Certificate with Exception. Moreover, the Authority shall consider whether the Authorization Certificate with Exception is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;
 - (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography;
 - (D) The applicant did not cause the hardship;
 - (E) The requested Authorization Certificate with Exception is consistent with the general spirit, purpose, and intent of the State's riparian buffer protection requirements, will protect water quality, will secure public safety and

welfare, and will preserve substantial justice.

- (2) **MINOR EXCEPTIONS.** An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.
 - (A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
 - (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2), and (c)(1) of this Rule, the Authority shall issue an Authorization Certificate with Minor Exception if the Authority determines that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Minor Exception.
- (3) **MAJOR EXCEPTIONS.** An Authorization Certificate with Major Exception request pertains to allowable with exception activities that are proposed to impact greater than one-third of an acre of riparian buffer.
 - (A) Authorization Certificate with Major Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
 - (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2), and (c)(1) of this Rule, the Authority shall prepare a preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this Rule have been met.
 - (C) Notice of each pending complete application for an Authorization Certificate with Major Exception, including the preliminary finding prepared by the Authority, shall be posted on the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503(g), at least 30 calendar days prior to proposed final action by the Authority on the application. If the Authority is not the Division, then the

- Authority shall forward the required notice information to the Division for posting.
- (D) Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have been met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Major Exception.
- (4) The Authority may attach conditions to the Authorization Certificate with Exception that ensure compliance with the riparian buffer protection program.
- (5) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception issued by the delegated local authority shall be made pursuant to the local authority's ordinance.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); 143-215.8A; S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413; S.L. 2015, c. 246;

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**15A NCAC 02B .0612 MANAGING ACTIVITIES
WITHIN RIPARIAN BUFFERS: FOREST HARVESTING
REQUIREMENTS**

(a) **PURPOSE.** The following requirements shall apply to all forest harvesting operations and forestry-related land-disturbing activities subject to riparian buffer requirements in the following River Basins and Watersheds:

- (1) Catawba River Basin as specified in 15A NCAC 02B .0614;
- (2) Neuse River Basin as specified in 15A NCAC 02B .0714;
- (3) Randleman Lake Watershed as specified in 15A NCAC 02B .0724; and
- (4) Tar-Pamlico River Basin as specified in 15A NCAC 02B .0734.

(b) **REQUIREMENTS THROUGHOUT THE BUFFER.** The following requirements shall apply:

- (1) All forest harvest activities within the buffer shall comply with Forest Practices Guidelines

- Related to Water Quality as defined in 02 NCAC 60C;
- (2) Logging decks and sawmill sites shall not be placed in the riparian buffer;
- (3) Timber felling shall be directed away from the stream or waterbody;
- (4) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts;
- (5) Individual trees may be treated to maintain or improve their health, form, or vigor;
- (6) Harvesting of dead or infected trees or application of pesticides as necessary to prevent or control the spread of tree pest and disease infestation shall be allowed. These practices must be approved by the North Carolina Forest Service for a specific site in accordance with G.S. 106-920 through G.S. 106-926. The North Carolina Forest Service must notify the Division of all approvals within 60 calendar days;
- (7) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;
- (8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized;
- (9) Prescribed burns shall be allowed when conducted for forest management purposes; and
- (10) A one-time fertilizer application at agronomic rates in the riparian buffer is allowed to establish replanted vegetation. No runoff from this one-time application in the riparian buffer is allowed in the surface water.

(c) **REQUIREMENTS IN ZONE 1 OF THE BUFFER.** Selective forest harvesting is allowed in Zone 1, as defined by the applicable Rule of this Section, provided that:

- (1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or the forest lands have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request by the North Carolina Forest Service or the Division;
- (2) Tracked or wheeled vehicles are only used for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees;
- (2) No tracked or wheeled vehicles shall be used to conduct site preparation activities;
- (3) Trees are removed in a manner that minimizes disturbance to the soil and remaining vegetation;
- (4) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed,

- (5) except for the removal of individual high value trees. The removal of individual high value trees shall only be allowed provided that no trees with exposed primary roots visible in the streambank are cut, unless they meet Subparagraphs (b)(6) or (b)(7) of this Rule; and A maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations as defined in 15A NCAC 02B .0610 where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.

(d) **REQUIREMENTS IN ZONE 2 OF THE BUFFER.** In Zone 2, harvesting and regeneration of the forest stand shall be allowed, provided that ground cover is established and maintained to provide for diffusion and infiltration of surface runoff.

(e) **EXCEPTIONS.** Persons who wish to undertake forest harvesting operations or practices different from the requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0611 of this Subchapter.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); 143-215.8A; S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413, S.L. 2015, c. 246;

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15A NCAC 02B .0241 .0715 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

(a) **PURPOSE.** This Rule sets out the requirements for delegation of the responsibility for implementing and enforcing the Neuse Basin riparian buffer protection program, as described in Rule .0714 of this Section, to local governments.

(b) **PROCEDURES FOR GRANTING DELEGATION.** The Commission shall grant local government delegation of the Neuse River Basin Riparian Buffer Protection requirements, as described in Rule .0714 of this Section, according to the following procedures:

- (1) Local governments within the Neuse River Basin may submit a written request to the Commission for authority to implement and enforce the Neuse River Basin riparian buffer protection requirements within their jurisdiction by establishing a riparian buffer program to meet the requirements of Rule .0714 of this Section. The written request to establish a riparian buffer program shall include the following:
- (A) Documentation that the local government has land use jurisdiction

for the riparian buffer. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);

- (B) Documentation that the local government has the administrative organization, staff, legal authority, financial resources, and other resources necessary to implement and enforce the Neuse River Basin riparian buffer protection requirements based on its size and projected amount of development;
- (C) The local government ordinances, resolutions, or regulations necessary to establish a riparian buffer program meet the requirements of Rule .0714 of this Section and G.S. 143-214.23A;
- (D) Documentation that the local government's riparian buffer program shall comply with all requirements set forth in G.S. 143-214.23A; and
- (E) A plan to address violations with site-specific remedies and actions including civil or criminal remedies that shall restore riparian buffer nutrient removal functions on violation sites and provide a deterrent against the occurrence of future violations.

- (2) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.

(c) **APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR.** Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator(s) who shall coordinate the implementation and enforcement of the program. The Administrator(s) shall attend an initial training session by the Division and be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator(s) shall ensure that local government staff working directly with the program receive training to understand, implement, and enforce the program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have anyone on staff certified to make on-site determinations pursuant to G.S. 143-214.25A, it shall notify the Division within 30 calendar days and provide a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(d) **PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH MITIGATION UPON AUTHORIZATION.** Upon receiving delegation, local governments shall review applications requesting an

Authorization Certificate pursuant to the requirements set forth in Rule .0611 of this Section.

(e) **EXCEPTIONS.** Upon receiving delegation, local governments shall review applications requesting an Authorization Certificate with Exception pursuant to the requirements set forth in Rule .0611 of this Section.

(f) **LIMITS OF DELEGATED LOCAL AUTHORITY.** The Division shall have jurisdiction to the exclusion of local governments to implement the State's riparian buffer protection requirements for the following types of activities:

- (1) Activities conducted under the authority of the State;
- (2) Activities conducted under the authority of the United States;
- (3) Activities conducted under the authority of multiple jurisdictions;
- (4) Activities conducted under the authority of units of local government;
- (5) Forest harvesting activities described in Rule .0612 of this Section; and
- (6) Agricultural activities.

(g) **RECORD-KEEPING REQUIREMENTS.** Delegated local governments shall maintain on-site records for a minimum of five years and shall furnish a copy of these records to the Division within 30 calendar days of receipt of a written request for them. Each delegated local governments records shall include the following:

- (1) A copy of all Authorization Certificate with Exception requests;
- (2) Findings on all Authorization Certificate with Exception requests;
- (3) The results of all Authorization Certificate with Exception proceedings;
- (4) A record of complaints and action taken as a result of the complaints;
- (5) Records for on-site determinations as described in Rule .0714(4) of this Section; and
- (6) Copies of all requests for authorization, records approving authorization, and Authorization Certificates.

(h) **AUDITS OF LOCAL AUTHORITIES.** The Division shall audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0714 of this Section. The audit shall consist of a review of all local government activities with regards to implementation of this Rule and Rule .0714 of this Section.

(i) **PROCEDURES FOR RESCINDING DELEGATION.** Upon determination by the Division that a delegated local government is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with the request approved under Paragraph (b) of this Rule, the Commission shall notify the delegated local government in writing of the local program's deficiencies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Neuse River Basin riparian buffer protection requirements within their jurisdiction.

(j) **DELEGATION.** The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Neuse River Basin riparian buffer protection requirements, in whole or in part, to the Director.

History Note: Authority 143-214.1; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); 143-215.3(a)(4); 143B-282(d); S.L. 1998, c. 221;

Eff. August 1, 2000;

Readopted Eff. Pending Delayed Effective Date (The provisions of this Rule were transferred from 15A NCAC 02B .0241).

15A NCAC 02B ~~.0248~~ .0720 RANDLEMAN NUTRIENT STRATEGY: PURPOSE AND SCOPE

(a) **PURPOSE.** The purpose of the Randleman nutrient strategy is to attain the designated uses of Randleman Lake. All waters of the Randleman Lake (Deep River) water supply watershed are classified for water supply uses and designated by the Environmental Management Commission as a Critical Water Supply Watershed pursuant to G.S. 143-214.5(b).

(b) **SCOPE AND LIMITATION.** The Randleman nutrient strategy rules require controls to reduce nutrient sources throughout the Randleman Lake watershed. These Rules do not address sources for which there is insufficient scientific knowledge to support regulation. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies to more fully address nutrient sources to Randleman Lake.

(c) **RULES ENUMERATED.** The following rules, which together shall constitute the Randleman nutrient strategy, shall be implemented for the entire drainage area upstream of the Randleman Lake Dam:

- (1) Rule .0721 of this Section for Urban Stormwater Management;
- (2) Rule .0722 of this Section for Wastewater Discharges; and
- (3) Rule .0724 of this Section for Protection and Maintenance of Riparian Areas.

(d) **PENALTIES.** Failure to meet the requirements of the Rules in this Section may result in the imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;

Eff. April 1, 1999;

Amended Eff. May 1, 2010;

Readopted Eff. Pending Delayed Effective Date (The provisions of this Rule were transferred from 15A NCAC 02B .0248).

15A NCAC 02B ~~.0251~~ .0721 RANDLEMAN LAKE WATER SUPPLY WATERSHED: STORMWATER REQUIREMENTS

The following is the stormwater management strategy for the Randleman Lake watershed:

- (1) **IMPLEMENTING AUTHORITY.** The requirements of this Rule shall be implemented by local governments that have land use

- authority within the Randleman Lake watershed. State agencies shall also comply with this Rule insofar as required by G.S. 143-214.5 and in accordance with Rule .0622 of this Subchapter.
- (2) **SUBWATERSHEDS.** For the purpose of this Rule, the Randleman Lake Watershed is divided into subwatersheds as follows:
- (a) the upper portion of the watershed is defined as those waters and lands of the Deep River watershed that drain to the Oakdale-Cotton Mill Dam;
 - (b) the lower portion of the watershed are those waters and lands of the Deep River upstream and draining to the Randleman Lake Dam, from the Oakdale-Cotton Mill Dam to the Randleman Dam;
 - (c) Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake;
 - (d) High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam; and
 - (e) Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam.
- (3) **COMPREHENSIVE STORMWATER MANAGEMENT PLANS.** All local governments with jurisdiction in the Randleman Lake watershed shall implement and maintain stormwater management plans that meet or exceed the criteria set forth in this Item of this Rule. Stormwater management plans shall include the following:
- (a) evaluation of existing land use within Oak Hollow Lake subwatershed, High Point Lake subwatershed, and Deep River 1 subwatershed in the Randleman Lake watershed with recommendations that show how overall built-upon area (for existing and future development) for each subwatershed can be minimized and high intensity land uses can be targeted away from surface waters and sensitive receiving waters as defined by 15A NCAC 02H .0150. This evaluation shall be done by the local governments having jurisdiction in those watersheds, working in cooperation with the Piedmont Triad Regional Water Authority;
 - (b) coordination between all affected jurisdictions to encourage their development in the existing urban areas. The planning effort shall include provisions for areas of contiguous open space to be protected through conservation easements or other long-term protection measures and provisions to direct infrastructure growth towards existing urban development corridors rather than to rural lands;
 - (c) evaluation of existing ordinances, municipal programs (maintenance, street cleaning, etc.), and other local policies to identify opportunities for stormwater quality improvements, including reducing the amount of built-upon area that is required for uses such as parking, building setbacks, road widths, and cul-de-sacs. The evaluations shall consider development options such as multiple story buildings, mixed use to encourage pedestrian travel and mass transit, and an identification of municipal activities and procedures that may be modified to allow for stormwater pollution prevention opportunities;
 - (d) implementation of watershed protection public education programs;
 - (e) identification and removal of illegal discharges; and
 - (f) identification of suitable locations for potential stormwater retrofits (such as riparian areas) that may be funded by various sources.
- (4) **RANDLEMAN LAKE WATERSHED ORDINANCES.** Local governments with jurisdiction in the Randleman Lake watershed shall implement local ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule in accordance with their location in the Randleman Lake watershed and in coordination with the Piedmont Triad Regional Water Authority. All revisions to these local ordinances shall be submitted to the Commission for review and approval. Ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule shall be approved by the Commission.
- (5) **REQUIREMENTS FOR THE UPPER PORTION OF THE WATERSHED.** Local governments with jurisdiction in the upper portion of the Randleman Lake watershed shall adopt ordinances that meet or exceed the State's minimum rules for a Class WS-IV watershed as specified in 15A NCAC 02B .0216 and 15A NCAC 02B .0620 through .0624 in addition to meeting the riparian area protection requirements of 15A NCAC 02B .0724.

- (6) REQUIREMENTS FOR THE LOWER PORTION OF THE WATERSHED. Local governments with jurisdiction in the lower portion of the Randleman Lake watershed shall adopt ordinances that meet the riparian area protection requirements set forth in 15A NCAC 02B .0723. Local ordinances shall also meet or exceed the State's minimum requirements for a Class WS-IV watershed set forth in 15A NCAC 02B .0620 through .0624 except that the following requirements shall supersede the equivalent provisions of 15A NCAC 02B .0624, as specified:

Location in the Watershed	Maximum Allowable Project Density or Minimum Lot Size		
	Low Density Development		High Density Development
	Single-family detached residential	Non-residential and all other residential	All types
Critical Area	1 dwelling unit per 2 acres or 80,000 square foot lot or 6% built-upon area	6% built-upon area	6 to 30% built-upon area
Protected Area	1 dwelling unit per acre or 40,000 square foot lot or 12% built-upon area	12% built-upon area	12 to 50% built-upon area;

- (a) the following maximum allowable project densities and minimum lot sizes shall supersede the requirements of 15A NCAC 02B .0624(3) and shall apply to a project according to its relative location in the watershed (Critical Area versus Protected Area), its project density (low density versus high density), and the type of development (single-family detached residential versus all other types):

- (b) for high density development, the following vegetated setback requirements shall be in addition to the riparian area protection requirements set forth in 15A NCAC 02B .0723 and shall supersede the requirements of 15A NCAC 02B .0624(11):

- (i) vegetated setbacks for high density development shall be located at least 100 feet from perennial waterbodies and perennial streams indicated on the most recent versions of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute) quadrangle topographic maps, which is herein incorporated by reference and are available at no cost at <http://www.usgs.gov/pubprod/>, or the most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture, which are herein incorporated by reference and are available at no cost at

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/>;

- (ii) the width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;
- (iii) vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation; and
- (iv) no new built-upon area shall be allowed in the vegetated setback except for publicly-funded linear projects such as roads, greenways, and sidewalks, water dependent structures such as docks, and minimal footprint uses such as poles, signs, utility appurtenances, and security lights where it is not practical to locate the built-upon area elsewhere. Built-upon area

- associated with these uses shall be minimized and the channelization of stormwater runoff shall be avoided.
- (c) outside of the critical areas, as defined in 15A NCAC 02B .0202, a local government may submit an alternative high density option to the Commission as part of the submittal of the local water supply watershed protection ordinance in order to allow development to exceed 50 percent built-upon area. The alternative ordinance shall be approved by the Commission if the Commission determines that it provides equal or greater water quality protection to the Randleman Lake reservoir and its tributaries;
 - (d) no new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed in the critical areas; and
 - (e) no new landfills shall be allowed in the critical areas.
- (7) Local governments shall have the option to develop more stringent local stormwater management plans and watershed ordinances. Local stormwater management programs and ordinances, and modifications to these programs and ordinances, shall be submitted to the Commission for review and approval and kept on file by the Division. The Commission shall approve the local stormwater management plans and watershed ordinances if they meet or exceed the requirements set forth in this Rule.
- (8) If a local government fails to implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 02H .0126 which shall include:
- (a) subject local governments shall be required to develop and implement comprehensive stormwater management programs for both existing and new development;
 - (b) these stormwater management programs shall provide all components that are required of local government stormwater programs in this Rule; and
 - (c) local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component

of their water supply watershed protection program for consideration and approval by the Commission. Revised ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule shall be approved by the Commission.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. April 1, 1999; Readopted Eff. Pending Delayed Effective Date (The provisions of this Rule were transferred from 15A NCAC 02B .0251).

15A NCAC 02B ~~.0249~~ .0722 RANDLEMAN LAKE WATER SUPPLY WATERSHED: WASTEWATER DISCHARGE REQUIREMENTS

- (a) The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management strategy for the Randleman Lake watershed.
- (b) For purposes of this Rule, permitted wastewater discharges means those facilities permitted to discharge domestic wastewater or wastewaters containing phosphorus.
- (c) There shall be no new or expanding permitted wastewater discharges in the watershed with the exception that the City of High Point Eastside Wastewater Treatment Plant may be allowed to expand provided that any new permit contains concentration and mass limits predicted through water quality modeling or other analysis that shows to the Director that discharges will provide a level of water quality in the Randleman Lake that meets all designated uses of those waters.

History Note: Authority G. S. 143-214.1; 143-214.5; 143-215.3(a)(1); Eff. April 1, 1999; Readopted Eff. Pending Delayed Effective Date (The provisions of this Rule were transferred from 15A NCAC 02B .0249).

15A NCAC 02B ~~.0261~~ .0735 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

This Rule sets out the requirements for delegation of the responsibility for implementing and enforcing the Tar-Pamlico River Basin riparian buffer protection program, as described in Rule .0734 of this Section, to local governments:

- (1) **PROCEDURES FOR GRANTING DELEGATION.** The Commission shall grant local government delegation of the Tar-Pamlico River Basin Riparian Buffer Protection requirements, as described in Rule .0734 of this Section according to the following procedures:
 - (a) Local governments within the Tar-Pamlico River Basin may submit a written request to the Commission for authority to implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements within

their jurisdiction by establishing a riparian buffer program to meet the requirements of Rule .0734 of this Section. The written request to establish a riparian buffer program shall include the following:

- (i) Documentation that the local government has land use jurisdiction for the riparian buffer. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);
- (ii) Documentation that the local government has the administrative organization, staff, legal authority, financial resources, and other resources necessary to implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements based on its size and projected amount of development;
- (iii) The local government ordinances, resolutions, or regulations necessary to establish a riparian buffer program meet the requirements of Rule .0734 of this Section and G.S. 143-214.23A;
- (iv) Documentation that the local government's riparian buffer program shall comply with all requirements set forth in G.S. 143-214.23A; and
- (v) A plan to address violations with site-specific remedies and actions including civil or criminal remedies that shall restore riparian buffer nutrient removal functions on violation sites and provide a deterrent against the occurrence of future violations.
- (b) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.
- (2) **APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR.** Upon

receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator(s) who shall coordinate the implementation and enforcement of the program. The Administrator(s) shall attend an initial training session by the Division and be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator(s) shall ensure that local government staff working directly with the program receive training to understand, implement, and enforce the program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have anyone on staff certified to make on-site determinations pursuant to G.S. 143-214.25A, it shall notify the Division within 30 calendar days and provide a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(3) **PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH MITIGATION UPON AUTHORIZATION.** Upon receiving delegation, local governments shall review applications requesting an Authorization Certificate pursuant to the requirements set forth in Rule .0611 of this Subchapter.

(4) **EXCEPTIONS.** Upon receiving delegation, local governments shall review applications requesting an Authorization Certificate with Exception pursuant to the requirements set forth in Rule .0611 of this Subchapter.

(5) **LIMITS OF DELEGATED LOCAL AUTHORITY.** The Division shall have jurisdiction to the exclusion of local governments to implement the Tar-Pamlico River Basin riparian buffer protection requirements for the following types of activities:

- (a) Activities conducted under the authority of the State;
- (b) Activities conducted under the authority of the United States;
- (c) Activities conducted under the authority of multiple jurisdictions;
- (d) Activities conducted under the authority of units of local government;
- (e) Forest harvesting activities described in Rule .0612 of this Subchapter; and
- (f) Agricultural activities.

(6) **RECORD-KEEPING REQUIREMENTS.** Delegated local governments shall maintain on-site records for a minimum of 5 years and shall furnish a copy of these records to the Division

within 30 calendar days of receipt of a written request for them. Each delegated local government's records shall include the following:

- (a) A copy of all Authorization Certificate with Exception requests;
 - (b) Findings on all Authorization Certificate with Exception requests;
 - (c) The results of all Authorization Certificate with Exception proceedings;
 - (d) A record of complaints and action taken as a result of the complaints;
 - (e) Records for on-site determinations as described in Rule .0734(4) of this Section; and
 - (f) Copies of all requests for authorization, records approving authorization, and Authorization Certificates.
- (7) **AUDITS OF LOCAL AUTHORITIES.** The Division shall audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0734 of this Section. The audit shall consist of a review of all local government activities with regards to implementation of this Rule and Rule .0734 of this Section.
- (8) **PROCEDURES FOR RESCINDING DELEGATION.** Upon determination by the Division that a delegated local government is failing to implement or enforce the Tar-Pamlico River Basin riparian buffer protection requirements in keeping with the request approved under Sub-Item (1)(b) of this Rule, the Commission shall notify the delegated local government in writing of the local program's deficiencies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements within their jurisdiction.
- (9) **DELEGATION.** The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Tar-Pamlico River Basin riparian buffer protection requirements, in whole or in part, to the Director.

Readopted Eff. Pending Delayed Effective Date (The provisions of this Rule were transferred from 15A NCAC 02B .0261).

15A NCAC 02H .0501 APPLICABILITY AND DEFINITIONS

(a) This Section outlines the application and review procedures for activities that require State water quality certifications (certifications) pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341). Certifications are required for a federally permitted or licensed activity including, but not limited to, the construction or operation of facilities, which may result in a discharge into navigable waters. Failure to obtain a required certification is enforceable by the Department pursuant to Chapter 143, Article 21, Part 1.

(b) Water quality certifications may be issued for individual activities (individual certifications) or issued for specific types or groups of activities (general certifications):

- (1) Individual certifications shall be issued on a case-by-case basis using the procedures outlined in this Section.
- (2) General certifications may be developed by the Division and issued by the Director for specific types or groups of activities that are similar in nature and considered to have minimal impact. All activities that receive a Certificate of Coverage under a general certification from the Division shall be covered under that general certification. When written approval is required in the general certification, the application and review procedures for requesting a Certificate of Coverage under a general certification from the Division for the proposed activity are the same as the procedures outlined in this Section for individual certifications.

(c) The terms used in this Section shall be as defined in G.S. 143-212 and G.S. 143-213 and as follows:

- (1) "Certification" means the State water quality certification pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341).
- (2) "Class SWL wetland" means the term as defined at 15A NCAC 02B .0101.
- (3) "Class UWL wetland" means the term as defined at 15A NCAC 02B .0101.
- (4) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities, regardless of what entities undertake such other actions.
- (5) "Department" means the Department of Environmental Quality and the Secretary of the Department of Environmental Quality.
- (6) "Director" means the Director of the Division.
- (7) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.
- (8) "Secondary impact" means indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still

History Note: Authority G.S. 143-214.1; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); 143-215.3(a)(4); 143B-282(d); S.L. 1999; c. 329, s. 7.1; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000;

reasonably foreseeable to the applicant or the Division.

- (9) "Wetland" means the term as defined in 15A NCAC 02B .0202.

History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u); S.L 2017, c. 145, s. 2(b); RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity; Eff. October 1, 1996; Readopted Eff. June 1, 2019.

15A NCAC 02H .0502 FILING APPLICATIONS

(a) Any person needing issuance of an individual water quality certification or Certificate of Coverage under a general certification required by this Section and Section 401 of the Clean Water Act shall file with the Director, at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617 or 512 N. Salisbury Street, Raleigh, NC 27604, one complete copy of an application for certification or submit one complete copy of an application electronically via the following website: https://edocs.deq.nc.gov/Forms/DWR_Wetlands_Online_Submittal_Page. The application shall be made on a form provided or approved by the Division or the U.S. Army Corps of Engineers, available electronically via the following website: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application>. The application shall include at a minimum the following:

- (1) the date of application;
- (2) the name, address, and phone number of the applicant. If the applicant is not the property owner(s), the name, address, and phone number of the property owner(s);
- (3) if the applicant is a corporation, the name and address of the North Carolina process agency, and the name, address, and phone number of the individual who is the authorized agent of the corporation and responsible for the activity for which certification is sought. The corporation must be registered with the NC Secretary of State's Office to conduct business in NC;
- (4) the nature of the activity to be conducted by applicant;
- (5) whether the discharge has occurred or is proposed;
- (6) the location of the discharge, stating the municipality, if applicable; the county; the drainage basin; the name of the receiving waters; and the location of the point of discharge with regard to the receiving waters;
- (7) a description of the receiving waters, including type (creek, river, swamp, canal, lake, pond, or estuary) if applicable; nature (fresh, brackish, or salt); and wetland classification;
- (8) a description of the type of waste treatment facilities, if applicable;
- (9) a map(s) or sketch(es) with a scale(s) and a north arrow(s) that is legible to the reviewer and of sufficient detail to delineate the boundaries

of the lands owned or proposed to be utilized by the applicant in carrying out the activity; the location, dimensions, and type of any structures erected or to be erected on the lands for use in connection with the activity; and the location and extent of the receiving waters, including wetlands within the boundaries of the lands;

- (10) an application fee as required by G.S. 143-215.3D(e); and

- (11) a signature by the applicant for the federal permit or license or an agent authorized by the applicant. If an agent is signing for the applicant, an agent authorization letter must be provided. In signing the application, the applicant certifies that all information contained therein or in support thereof is true and correct to the best of their knowledge.

(b) Submission of an application to the Division of Coastal Management for a permit to develop in North Carolina's coastal area in accordance with the rules of 15A NCAC 07J .0200 shall suffice as an application for a water quality certification or certificate of coverage under a general certification upon receipt by the Division from the Division of Coastal Management.

(c) The Division may request in writing, and the applicant shall furnish, any additional information necessary to clarify the information provided in the application under Paragraph (a) of this Rule, or to complete the evaluation in Rule .0506 of this Section.

(d) If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a), (b) and (c) of this Rule, then the applicant shall submit an explanation detailing the reasons for omission of the information. The final decision regarding the completeness of the application shall be made by the Division based upon the information required in Paragraphs (a), (b) and (c) of this Rule, and any explanation provided by the applicant regarding omitted information provided in this Paragraph.

(e) Pursuant to G.S. 143-215.3(a)(2), the staff of the Division shall conduct such investigation as the Division deems necessary to clarify the information provided in the application under Paragraph (a) of this Rule or to complete the evaluation in Rule .0506 of this Section. The applicant shall allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable for those places, upon the presentation of credentials.

History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u); Eff. February 1, 1976; Amended Eff. December 1, 1984; January 1, 1979; RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity; Recodified from 15A NCAC 2H .0501 Eff. October 1, 1996; Amended Eff. October 1, 1996; Readopted Eff. June 1, 2019.

15A NCAC 02H .0503 PUBLIC NOTICE AND PUBLIC HEARING

(a) The Division shall provide public notice for proposed General Certifications. This notice shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and posted on the Division's website: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-notices>. Notice shall be made at least 30 calendar days prior to issuance of the General Certification by the Division. Public notice shall not be required for those activities covered by Certificates of Coverage under a General Certification.

(b) Notice of each pending application for an individual certification shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and shall be posted on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final action by the Division on the application.

(c) The notice shall set forth:

- (1) the name and address of the applicant;
- (2) the action requested in the application;
- (3) the nature and location of the discharge; and
- (4) the proposed date of final action to be taken by the Division on the application.

The notice shall also state where additional information is available online and on file with the Division. Information on file shall be made available upon request between 8:00 am and 5:00 pm, Monday through Friday, excluding State holidays, and copies shall be made available upon payment of the cost thereof to the Division pursuant to G.S. 132-6.2.

(d) The public notice requirement for an individual certification as described in Paragraph (b) of this Rule may be satisfied by a joint notice with the Division of Coastal Management (15A NCAC 07J .0206) or the U.S. Army Corps of Engineers according to their established procedures.

(e) Any person who desires a public hearing on a General Certification or an individual certification application shall so request in writing to the Division at the address listed in Rule .0502 of this Section. The request must be received by the Division within 30 calendar days following the Public Notice.

(f) If the Director determines that there is significant public interest in holding a hearing, based upon such factors as the reasons why a hearing was requested, the nature of the project, and the proposed impacts to waters of the State, the Division shall notify the applicant in writing that there will be a hearing. The Division shall also provide notice of the hearing to all individuals on the mailing list as described in Paragraph (g) of this Rule and shall post the notice on the Division's website. The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state the time, place, and format of the hearing. The notice can be combined with the notice required under Paragraph (c) of this Rule. The hearing shall be held within 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of 30 calendar days after the public hearing to receive public comments.

(g) Any person may request that he or she be emailed copies of all public notices required by this Rule. The Division shall add the email address of any such person to an email listerv and shall email copies of notices to all persons on the list.

(h) Any public hearing held pursuant to this Rule may be coordinated with other public hearings held by the Department or the U.S. Army Corps of Engineers.

History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u); Eff. February 1, 1976; Amended Eff. December 1, 1984; September 1, 1984; RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity; Recodified from 15A NCAC 02H .0502 Eff. October 1, 1996; Amended Eff. October 1, 1996; Readopted Eff. June 1, 2019.

15A NCAC 02H .0504 HEARING

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u); Eff. February 1, 1976; Amended Eff. July 1, 1988; December 1, 1984; RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity; Recodified from 15A NCAC 2H .0503 Eff. October 1, 1996; Amended Eff. October 1, 1996; Repealed Eff. June 1, 2019.

15A NCAC 02H .0507 DECISION ON APPLICATION FOR CERTIFICATION

(a) The Director shall issue the certification, deny the application, provide notice of hearing pursuant to Rule .0503 of this Section, or request additional information within 60 calendar days after receipt of an application for certification. When the Director requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Director. Failure to issue the certification, deny the application, provide notice of hearing, or request additional information within 60 calendar days shall result in a waiver of the certification requirement by the Director, unless:

- (1) The applicant agrees, in writing, to a longer period;
- (2) The final decision is to be made pursuant to a public hearing;
- (3) The applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Director's decision; or
- (4) Information necessary for the Director's decision is unavailable.

(b) The Director shall issue the certification, deny the application, or request additional information within 60 calendar days following the close of the record for the public hearing. Failure to take action within 60 calendar days shall result in a waiver of the certification requirement by the Director, unless Subparagraphs (a)(1), (3), or (4) of this Rule apply.

(c) Any certification issued pursuant to this Section may contain such conditions as the Director shall deem necessary to ensure compliance with Sections 301, 302, 303, 306, and 307 of the Clean Water Act and with State water law. The conditions included in the certification shall become enforceable by the

Department pursuant to Chapter 143, Article 21, Part 1 when the federal permit or license is issued.

(d) Modification or Revocation of Certification:

- (1) Any certification issued pursuant to this Section may be subject to revocation or modification by the Director for violation of Sections 301, 302, 303, 306, or 307 of the Clean Water Act or State water law.
- (2) Any certification issued pursuant to this Section may be subject to revocation or modification by the Director upon a determination that information contained in the application or presented in support thereof is incorrect or if the conditions under which the certification was made have changed.

(e) The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application, the Director shall specify the reasons for the denial. A copy of the notification shall be sent to the appropriate federal licensing or permitting agency and EPA.

(f) The issuance or denial is a final agency decision that is subject to administrative review pursuant to G.S. 150B-23.

History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u);

Eff. February 1, 1976;

Amended Eff. July 1, 1988; December 1, 1984;

RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;

Recodified from 15A NCAC 2H .0504 Eff. October 1, 1996;

Amended Eff. October 1, 1996;

Readopted Eff. June 1, 2019.

15A NCAC 02H .1301 SCOPE AND PURPOSE

(a) The provisions of this Section shall apply to Division of Water Resources (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require State review after October 22, 2001 and that require a Division determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Section, "discharge" shall be the deposition of dredged or fill material (e.g. fill, earth, construction debris, soil, etc.).

(b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters that have been listed in 15A NCAC 02B .0300. If the U.S. Army Corps of Engineers or its designee determines that a particular water is not regulated under Section 404 of the Clean Water Act, then discharges to that water or wetland shall be covered by this Section. If the U.S. Army Corps of Engineers or its designee determines that a particular wetland is not regulated under Section 404 of the Clean Water Act and that wetland is a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: [https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-](https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual)

manual), then discharges to that wetland shall be covered by this Section. The Division shall verify the determination, extent, and location of isolated wetlands and isolated classified surface waters using the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1) and subsequent regional supplements and the Division publication, Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010).

(c) Activities that result in a discharge may be deemed permitted as described in Rule .1305(b) of this Section or authorized by the issuance of either an individual permit or a Certificate of Coverage to operate under a general permit:

- (1) Individual permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These Individual permits do not require approval by the U.S. Environmental Protection Agency.
- (2) General permits may be developed by the Division and issued by the Director for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General permits do not require approval by the U.S. Environmental Protection Agency. All activities that receive a Certificate of Coverage under a general permit from the Division shall be covered under that general permit. When written approval is required in the general permit, the application and review procedures for requesting a Certificate of Coverage under a general permit from the Division for the proposed activity are the same as the procedures outlined in this Section for individual permits.

(d) Discharges resulting from activities that receive an individual permit or Certificate of Coverage under a general permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated surface waters.

(e) The following are exempt from this Section:

- (1) Activities described in 15A NCAC 02B .0230;
- (2) Discharges to isolated man-made ponds or isolated man-made ditches constructed for stormwater management purposes;
- (3) Discharges to any man-made isolated pond;
- (4) Discharges to any wetland not regulated under Section 404 of the Clean Water Act that is not a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: <https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual>);
- (5) Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities that receive NPDES Permits or State Non-Discharge Permits;
- (6) Discharges for water dependent structures as defined in 15A NCAC 02B .0202; and

- (7) A discharge resulting from an activity if:
 - (A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and these were issued prior to October 22, 2001;
 - (B) The project requires a State permit, such as landfills, NPDES discharges of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that has begun construction or are under contract to begin construction and have received all required State permits prior to October 22, 2001;
 - (C) The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to October 22, 2001; or
 - (D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project that has established a Vested Right under North Carolina law prior to October 22, 2001.

(f) The terms used in this Section shall be as defined in G.S. 143-212 and G.S. 143-213 and as follows:

- (1) "Class SWL wetland" means the term as defined at 15A NCAC 02B .0101.
- (2) "Class UWL wetland" means the term as defined at 15A NCAC 02B .0101.
- (3) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities, regardless of what entities undertake such other actions.
- (4) "Director" means the Director of the Division.
- (5) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.
- (6) "Secondary impact" means indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable to the applicant or the Division.
- (7) "Wetland" means the term as defined in 15A NCAC 02B .0202.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b)(3); 143-215.3(a)(1); 143-215.3(c); S.L. 2014-120, s. 54; S.L. 2015-286, s. 4.18;

Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;

Temporary Adoption Eff. October 22, 2001;

Eff. April 1, 2003;

Readopted Eff. Pending Delayed Effective Date.

15A NCAC 02H .1302 FILING APPLICATIONS

(a) Any person needing issuance of an individual permit or Certificate of Coverage under a general permit for discharges resulting from activities that affect isolated classified surface waters or isolated wetlands shall file with the Director, at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617, or 512 N Salisbury Street, Raleigh, NC 27604, an original and one copy of an application for a Permit or submit one complete copy of an application electronically via the following website: https://edocs.deq.nc.gov/Forms/DWR_Wetlands_Online_Submittal_Page. The application shall be made on a form provided or approved by the Division, available electronically via the following website: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application>. The application shall include at a minimum the following:

- (1) the date of application;
- (2) the name, address, and phone number of the property applicant. If the applicant is not the property owner(s), name, address, and phone number of the property owners(s);
- (3) if the applicant is a corporation, the name and address of the North Carolina process agency, and the name, address, and phone number of the individual who is the authorized agent of the corporation and responsible for the activity for which certification is sought. The corporation must be registered with the NC Secretary of State's Office to conduct business in NC;
- (4) the nature of the discharge, including cumulative impacts to isolated and non-isolated wetlands and isolated and non-isolated waters that cause or will cause a violation of downstream water quality standards resulting from an activity to be conducted by the applicant;
- (5) whether the discharge has occurred or is proposed;
- (6) the location and extent of the discharge, stating the municipality, if applicable, the county; the drainage basin; the name of the nearest named surface waters; and the location of the point of discharge with regard to the nearest named surface waters;
- (7) an application fee as required by G.S. 143-215.3D. If payment of a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule;
- (8) a map(s) with scales and north arrows that is legible to the reviewer and of sufficient detail to delineate the boundaries of the lands owned or proposed to be utilized by the applicant in carrying out the discharge; the location, dimensions, and type of any structures that affect isolated wetlands or waters for use in connection with the discharge; and the location and extent of the isolated waters including wetlands within the boundaries of said lands; and

- (9) a signature by the applicant or an agent authorized by the applicant. If an agent is signing for the applicant, an agent authorization letter must be provided. In signing the application, the applicant certifies that all information contained therein or in support thereof is true and correct to the best of their knowledge.

(b) The Division may request in writing, and the applicant shall furnish, any additional information necessary to clarify the information provided in the application under Paragraph (a) of this Rule, or to complete the evaluation in Rule .1305 of this Section.

(c) If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a) and (b) of this Rule, then the applicant shall submit an explanation detailing the reasons for omission of the information. The final decision regarding the completeness of the application shall be made by the Division based upon the information required in Paragraphs (a) and (b) of this Rule, and any explanation provided by the applicant regarding omitted information provided in this Paragraph.

(d) Pursuant to G.S. 143-215.3(a)(2), the staff of the Division shall conduct such investigation as the Division deems necessary to clarify the information provided in the application under Paragraph (a) of this Rule or to complete the evaluation in Rule .1305 of this Section. The applicant shall allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable for those places, upon the presentation of credentials.

(e) Other applications for permitting or certification by a division of the Department shall suffice for application for this Permit as long as the application contains all of the information specified in this Rule and it is specifically requested to the Division by the applicant that authorization is sought under this Rule. This application must be submitted by the applicant to the Division for review under this Permit.

History Note: Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1);

Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;

Temporary Adoption Eff. October 22, 2001;

Eff. April 1, 2003;

Readopted Eff. June 1, 2019.

15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING

(a) The Division shall provide public notice for proposed general permits. This notice shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and posted on the Division's website: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-notices>. Notice shall be made at least 30 calendar days prior to issuance of the general permit by the Division. Public notice shall not be required for those activities covered by Certificates of Coverage under a general permit.

(b) Notice of each pending application for an individual permit shall be sent to all individuals on the mailing list described in

Paragraph (g) of this Rule and shall be posted on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final action by the Division on the application.

(c) The notice shall set forth:

- (1) the name and address of the applicant;
- (2) the action requested in the application;
- (3) the nature and location of the discharge; and
- (4) the proposed date of final action to be taken by the Division on the application.

The notice shall also state where additional information is available online and on file with the Division. Information on file shall be made available upon request between 8:00 am and 5:00 pm, Monday through Friday, excluding State holidays, and copies shall be made available upon payment of the cost thereof to the Division pursuant to G.S. 132-6.2.

(d) This public notice requirement for an individual permit as described in Paragraph (b) of this Rule may be satisfied by a joint notice with the Division of Coastal Management (15A NCAC 07J .0206, the U.S. Army Corps of Engineers according to their established procedures, or by a joint notice by the Division for an individual permit in accordance with Rule .0503 of this Subchapter.

(e) Any person who desires a public hearing on a general permit or an individual permit application shall so request in writing to the to the Division at the address listed in Rule .1302 of this Section. The request must be received by the Division within 30 calendar days following the Public Notice.

(f) If the Director determines that there is significant public interest in holding a hearing, based upon such factors as the reasons why a hearing was requested, the nature of the project, and the proposed impacts to waters of the State, the Division shall notify the applicant in writing that there will be a hearing. The Division shall also provide notice of the hearing to all individuals on the mailing list as described in Paragraph (g) of this Rule and shall post the notice on the Division's website. The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state the time, place, and format of the hearing. The notice can be combined with the notice required under Paragraph (c) of this Rule. The hearing shall be held within 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of 30 calendar days after the public hearing to receive public comments.

(g) Any person may request that he or she be emailed copies of all public notices required by this Rule. The Division shall add the email address of any such person to an email listerv and follow procedures set forth in Rule .0503(g) of this Subchapter.

(h) Any public hearing held pursuant to this Rule may be coordinated with other public hearings held by the Department or the U.S. Army Corps of Engineers.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(c);

Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;

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Readopted Eff. June 1, 2019.

15A NCAC 02H .1304 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF COVERAGE

(a) The Director shall issue the permit or Certificate of Coverage, deny the application, provide notice of hearing pursuant to Rule .1303 of this Section, or request additional information within 60 calendar days after receipt of the application. When the Director requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Director. Failure to issue the permit or Certificate of Coverage, deny the application, provide notice of hearing, or request additional information within 60 calendar days shall result in the waiver of the permit requirement by the Director, unless:

- (1) The applicant agrees, in writing, to a longer period;
- (2) The final decision is to be made pursuant to a public hearing;
- (3) The applicant refuses the staff access to its records or premises for the purpose of gathering information necessary to the Director's decision; or
- (4) Information necessary to the Director's decision is unavailable.

(b) The Director shall issue the permit or Certificate of Coverage, deny the application, or request additional information within 60 calendar days following the close of the record for the public hearing. Failure to take action within 60 calendar days shall result in the waiver of the permit requirement by the Director, unless Subparagraphs (a)(1), (3), or (4) of this Rule apply.

(c) Any permit or Certificate of Coverage issued pursuant to this Section may contain such conditions as the Director shall deem necessary to ensure compliance with this Section, including written post-discharge notification to the Division.

(d) Modification or Revocation of permit or Certificate of Coverage:

- (1) Any permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification by the Director for violation of conditions of the permit or Certificate of Coverage; and
- (2) Any permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification by the Director upon a determination that information contained in the application or presented in support thereof is incorrect or if the Director finds that the discharge has violated or may violate a downstream water quality standard.

(e) The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application, the Director shall specify the reasons for the denial.

(f) Individual permits and Certificates of Coverage for general permits shall be issued for a period of five years, after which time the Permit shall be void, unless the discharge is complete or an extension is granted pursuant to Paragraph (g) of this Rule. The permit shall become enforceable when issued.

(g) Permit or Certificate of Coverage renewals shall require a new complete application. The applicant may request in writing that the Division grant an extension before the permit expires. An

extension may be granted by the Division based on the new complete application for a time period of one additional year, provided that the construction has commenced or is under contract to commence before the permit expires.

(h) The issuance or denial is a final agency decision that is subject to administrative review pursuant to G.S. 150B-23.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c);

Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;

Temporary Adoption Eff. October 22, 2001;

Eff. April 1, 2003;

Readopted Eff. June 1, 2019.

15A NCAC 02H .1306 SOIL SERIES

For purposes of implementing the rules in this Section, the Natural Resources Conservation Service of the U.S. Department of Agriculture have categorized soil series that occur in North Carolina as follows:

- (1) Soil series in the Mountain Region shall include the following: Alarka, Anakeesta, Arkaqua, Ashe, Balsam, Bandana, Biltmore, Braddock, Bradson, Brasstown, Breakneck, Brevard, Brownwood, Buladean, Burton, Cades, Calvin, Cashiers, Cataloochee, Cataska, Chandler, Cheoah, Chester, Chestnut, Chestoa, Chiltoskie, Cleveland, Clifffield, Clifford, Clifton, Clingman, Coderus, Colvard, Comus, Cowee, Craggey, Crossnore, Cruso, Cullasaja, Cullowhee, Dellwood, Dillard, Dillsboro, Ditney, Edneytown, Edneyville, Ela, Ellijay, Elsinboro, Evard, Fannin, Farner, Fontaflora, French, Greenlee, Guyot, Harmiller, Hatboro, Hayesville, Heintooga, Hemphill, Hiwassee, Horsetrough, Hunt Dale, Iotla, Jeffrey, Junaluska, Kanuga, Keener, Kinkora, Lauada, Leatherwood, Longhope, Lonon, Lostcove, Luftee, Mars Hill, Maymead, Micaville, Nantahala, Nikwasi, Northcove, Nowhere, Oconaluftee, Ostin, Oteen, Peaks, Pigeonroost, Pineola, Pinnacle, Plott, Porters, Pullback, Rabun, Reddies, Rosman, Saluda, Santeetlah, Saunook, Sauratown, Shinbone, Skyuka, Smokemont, Snowbird, Soco, Spivey, Statler, Stecoah, Suches, Swannanoa, Sylco, Sylva, Tanasee, Tate, Thunder, Thurmont, Toccoa, Toecane, Toxaway, Transylvania, Trimont, Tsali, Tuckasegee, Tusquitee, Unaka, Unicoi, Unison, Walnut, Watauga, Wayah, Wesser, Whiteoak, Whiteside, and Zillico.
- (2) Soil series in the Piedmont Region shall include the following: Alamance, Altavista, Appling, Appomattox, Armenia, Ashlar, Augusta, Ayersville, Badin, Banister, Bannertown, Belews Lake, Bentley, Bether, Bethlehem, Biscoe, Brickhaven, Buncombe, Callison, Carbondon, Cartecay, Casville, Cecil, Chewacla, Cid, Claycreek, Cliffside, Clover,

- Colfax, Congaree, Coronaca, Creedmoor, Cullen, Dan River, Danripple, Davidson, Davie, Delila, Devotion, Dorian, Durham, Elbert, Enon, Enott, Exway, Fairview, Georgeville, Goldston, Granville, Green Level, Grover, Gwinnett, Halifax, Hallison, Haw River, Helena, Herndon, Hibriten, Hiwassee, Hornsboro, Hulett, Iredell, Jackland, Kinkora, Kirksey, Lackstown, Leaksville, Lignum, Lloyd, Louisa, Louisburg, Madison, Mandale, Masada, Mattaponi, Mayodan, McQueen, Meadowfield, Mecklenburg, Merry Oaks, Misenheimer, Mocksville, Monacan, Moncure, Montonia, Mooshaunee, Nanford, Nason, Nathalie, Oak Level, Oakboro, Orange, Ostin, Pacolet, Pactolus, Peakin, Peawick, Penhook, Pfafftown, Picture, Pilot Mountain, Pinkston, Pinoka, Pittsboro, Poindexter, Polkton, Poplar Forest, Rasalo, Rhodhiss, Rion, Riverview, Ronda, Rowan, Saw, Secrest, Sedgefield, Siloam, Skyuka, Spartanburg, Spray, Spriggs, Starr, Stoneville, Stott Knob, Tarrus, Tatum, Tillery, Toast, Toccoa, Tomlin, Totier, Turbeville, Tussahaw, Uwharrie, Vance, Wadesboro, Wake, Warne, Wate, Wateree, Wedowee, Wehadkee, Westfield, White Store, Wickham, Wilkes, Winnsboro, Woolwine, Worsham, Wynott, Yadkin, and Zion.
- (3) Soil series in the Coastal Region shall include the following: Acredale, Ailey, Alaga, Alpin, Arapahoe, Argent, Augusta, Autryville, Aycock, Backbay, Ballahack, Barclay, Bayboro, Baymeade, Belhaven, Bertie, Bethera, Bibb, Bladen, Blaney, Blanton, Bohicket, Bojac, Bolling, Bonneau, Bragg, Brookman, Butters, Byars, Cainhoy, Candor, Cape Fear, Cape Lookout, Caroline, Carteret, Centenary, Chapanoke, Charleston, Chastain, Chenneby, Chesapeake, Chipley, Chowan, Conaby, Conetoe, Corolla, Cowarts, Coxville, Craven, Croatan, Currituck, Dare, Deloss, Delway, Dogue, Dorovan, Dothan, Dragston, Duckston, Dunbar, Duplin, Echaw, Emporia, Engelhard, Exum, Faceville, Foreston, Fork, Fortescue, Fripp, Fuquay, Gertie, Gilead, Goldsboro, Grantham, Grifton, Gritney, Gullrock, Hobonny, Hobucken, Hyde, Hydeland, Icaria, Invershiel, Johns, Johnston, Kalmia, Kenansville, Kinston, Kureb, Lakeland, Leaf, Lenoir, Leon, Liddell, Lillington, Longshoal, Lucy, Lumbee, Lynchburg, Lynn Haven, Mandarin, Mantachie, Marlboro, Marvyn, Masontown, Maxton, Mayodan, McColl, Meggett, Mooshaunee, Muckalee, Munden, Murville, Myatt, Nahunta, Nakina, Nankin, Nawney, Neeses, Newhan, Newholland, Nimmo, Nixonton, Noboco, Norfolk, Ocilla, Onslow, Orangeburg, Osier, Ousley, Pactolus, Pamlico,

Pantego, Pasquotank, Paxville, Peakin, Pelion, Pender, Perquimans, Pettigrew, Plummer, Pocalla, Polawana, Ponzer, Portsmouth, Pungo, Rains, Rimini, Roanoke, Roper, Rumford, Rutlege, Scuppernong, Seabrook, Seagate, Shellbluff, Stallings, State, Stockade, Suffolk, Tarboro, Tetotum, Thursa, Toisnot, Tomahawk, Tomotley, Torhunta, Troup, Uchee, Valhalla, Varina, Vacluse, Wagram, Wahee, Wakulla, Wando, Wasda, Weeksville, Wilbanks, Winton, Woodington, Wrightsboro, Wysocking, Yaupon, Yeopim, and Yonges.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014-120, s. 54; S.L. 2015-286, s. 4.18;

Readopted Eff. Pending Delayed Effective Date.

15A NCAC 02L .0401 PURPOSE

(a) The purpose of this Section is to establish procedures for risk-based assessment and corrective action sufficient to:

- (1) protect human health and the environment;
- (2) abate and control contamination of the waters of the State as deemed necessary to protect human health and the environment;
- (3) permit management of the State's groundwaters to protect their designated current usage and potential future uses;
- (4) provide for anticipated future uses of the State's groundwater;
- (5) recognize the diversity of contaminants, the State's geology and the characteristics of each individual site; and
- (6) accomplish these goals in a cost-efficient manner to assure the best use of the limited resources available to address groundwater pollution within the State.

(b) Section .0100 of this Subchapter shall apply to this Section unless specifically excluded.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;

Recodified from 15A NCAC 02L .0115(a);

Amended Eff. December 1, 2005;

Readopted Eff. June 1, 2019.

15A NCAC 02L .0402 DEFINITIONS

The definitions as set out in Rule .0102 of this Subchapter shall apply to this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;

Eff. December 1, 2005;

Readopted Eff. June 1, 2019.

15A NCAC 02L .0403 RULE APPLICATION

This Section shall apply to any discharge or release from a "commercial underground storage tank" or a "noncommercial underground storage tank," as those terms are defined in G.S. 143-215.94A, that is reported on or after January 2, 1998. The requirements of this Section shall apply to the owner and operator of the underground storage tank from which the discharge or release occurred, a landowner seeking reimbursement from the Commercial Leaking Underground Storage Tank Fund or the Noncommercial Leaking Underground Storage Tank Fund under G.S. 143-215.94E, and any other person responsible for the assessment or cleanup of a discharge or release from an underground storage tank, including any person who has conducted or controlled an activity that results in the discharge or release of petroleum or petroleum products as defined in G.S. 143-215.94A(10) to the groundwaters of the State or in proximity thereto; these persons shall be collectively referred to for purposes of this Section as the "responsible party." This Section shall be applied in a manner consistent with the rules found in 15A NCAC 02N in order to assure that the State's requirements regarding assessment and cleanup from underground storage tanks are no less stringent than Federal requirements.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(b); Amended Eff. December 1, 2005; Readopted Eff. June 1, 2019.

15A NCAC 02L .0404 REQUIRED INITIAL ABATEMENT ACTIONS BY RESPONSIBLE PARTY

(a) Upon a discharge or release of petroleum from a commercial underground storage tank the responsible party shall:

- (1) take action to prevent all further discharge or release of petroleum from the underground storage tank; identify and mitigate all fire, explosion, and vapor hazards; remove any free product; and comply with the requirements of 15A NCAC 02N .0601 through .0604, .0701 through .0703, and .0705 within 24 hours of discovery;
- (2) incorporate the requirements of 15A NCAC 02N .0704 into the submittal required under Subparagraph (3) of this Paragraph or the limited site assessment report required under Rule .0405 of this Section, whichever is applicable. The submittals shall constitute compliance with the reporting requirements of 15A NCAC 02N .0704(b); and
- (3) submit within 90 days of the discovery of the discharge or release a soil contamination report containing information sufficient to show that remaining unsaturated soil in the side walls and at the base of the excavation does not contain contaminant levels that exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to Rule .0411 of this

Section, whichever is lower. If the showing is made, the discharge or release shall be classified as low risk by the Department as defined in Rules .0406 and .0407 of this Section.

(b) Upon a discharge or release of petroleum from a noncommercial underground storage tank the responsible party shall:

- (1) take necessary actions to protect public health, safety, and welfare and the environment, including actions to prevent all further discharge or release of petroleum from the noncommercial underground storage tank; identify and mitigate all fire, explosion, and vapor hazards; and report the release within 24 hours of discovery, in compliance with G.S. 143-215.83(a), G.S. 143-215.84(a), G.S. 143-215.85(b), and G.S. 143-215.94E; and
- (2) provide or otherwise make available any information required by the Department to determine the site risk as described in Rules .0405, .0406, and .0407 of this Section.

(c) The Department shall notify the responsible party for a discharge or release of petroleum from a noncommercial underground storage tank that no cleanup, no further cleanup, or no further action shall be required without additional soil remediation pursuant to Rule .0408 of this Section if the site is determined by the Department to be low risk. This classification is based on information provided to the Department that:

- (1) describes the source and type of the petroleum release, site-specific risk factors, and risk factors present in the surrounding area as defined in Rules .0406 and .0407 of this Section;
- (2) demonstrates that no remaining risk factors are present that are likely to be affected per G.S. 143-215.94V(b); or
- (3) documents that soils remaining onsite do not contain contaminant levels that exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to Rule .0411 of this Section, whichever is lower.

The Department shall reclassify the site as high risk, as defined in Rule .0406(1) of this Section, upon receipt of new information related to site conditions indicating that the discharge or release from a noncommercial underground storage tank poses an unacceptable risk or a potentially unacceptable risk to human health or the environment, as described in Rule .0407 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(c)(1)-(3); Amended Eff. December 1, 2005; Temporary Amendment Eff. September 29, 2017; Readopted Eff. June 1, 2019.

15A NCAC 02L .0405 REQUIREMENTS FOR LIMITED SITE ASSESSMENT

(a) If the required showing for a commercial underground storage tank cannot be made or if the Department determines that a release from a noncommercial underground storage tank represents an unacceptable risk under Rule .0404 of this Section, the responsible party shall submit within 120 days of the discovery of the discharge or release, a report containing information needed by the Department to classify the level of risk to human health and the environment posed by a discharge or release under Rule .0406 of this Section.

(b) The responsible party may submit a written request for an extension to the 120 day deadline set forth in Paragraph (a) of this Rule to the Department for the Department's consideration prior to the deadline. The request for deadline extension by the responsible party shall demonstrate that the extension, if granted by the Department, would not increase the risk posed by the release. When considering a request from a responsible party for additional time to submit the report, the Department shall consider the following:

- (1) the extent to which the request for additional time is due to factors outside of the control of the responsible party;
- (2) the previous history of the person submitting the report in complying with deadlines established under the Commission's rules;
- (3) the technical complications associated with assessing the extent of contamination at the site or identifying potential receptors; and
- (4) the necessity for action to eliminate an imminent threat to public health or the environment.

(c) The report shall include:

- (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source area of a confirmed release or discharge and depicting all water supply wells, surface waters, and designated wellhead protection areas as defined in 42 U.S.C. 300h-7(e) within the 1500-foot radius. 42 U.S.C. 300h-7(e), is incorporated by reference including subsequent amendments and editions. Copies may be obtained at no cost from the U.S. Government Bookstore's website at <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap6A-subchapXII-partC-sec300h-7.htm>. The material is available for inspection at the Department of Environmental Quality, UST Section, 217 West Jones Street, Raleigh, NC 27603. For purposes of this Section, "source area" means the point of release or discharge from the underground storage tank system;
- (2) a determination of whether the source area of the discharge or release is within a designated wellhead protection area as defined in 42 U.S.C. 300h-7(e);
- (3) if the discharge or release is in the Coastal Plain physiographic region as designated on a map

entitled "Geology of North Carolina" published by the Department in 1985, incorporated by reference including subsequent amendments or editions and may be obtained electronically free of charge from the Department's website at <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/north-carolina-geological-survey/ncgs-maps/1985-geologic-map-of-nc>, a determination of whether the source area of the discharge or release is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer that is being used or may be used as a source of drinking water;

- (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to the accumulation of vapors in a confined space or pose any other serious threat to public health, public safety, or the environment;
- (5) scaled site maps showing the location of the following that are on or adjacent to the property where the source is located:
 - (A) site boundaries;
 - (B) roads;
 - (C) buildings;
 - (D) basements;
 - (E) floor and storm drains;
 - (F) subsurface utilities;
 - (G) septic tanks and leach fields;
 - (H) underground and aboveground storage tank systems;
 - (I) monitoring wells;
 - (J) water supply wells;
 - (K) surface water bodies and other drainage features;
 - (L) borings; and
 - (M) the sampling points;
- (6) the results from a limited site assessment that shall include:
 - (A) the analytical results from soil samples collected during the construction of a monitoring well installed in the source area of each confirmed discharge or release from a noncommercial or commercial underground storage tank and either the analytical results of a groundwater sample collected from the well or, if free product is present in the well, the amount of free product in the well. The soil samples shall be collected every five feet in the unsaturated zone unless a water table is encountered at or greater than a depth of 25 feet from land surface in which case soil samples shall be collected every 10 feet in the unsaturated zone. The soil samples shall be collected from suspected worst-case locations exhibiting visible

- contamination or elevated levels of volatile organic compounds in the borehole;
- (B) if any constituent in the groundwater sample from the source area monitoring well installed in accordance with Part (A) of this Subparagraph, for a site meeting the high risk classification in Rule .0406(1) of this Section, exceeds the standards or interim standards established in Rule .0202 of this Subchapter by a factor of 10 and is a discharge or release from a commercial underground storage tank, the analytical results from a groundwater sample collected from each of three additional monitoring wells or, if free product is present in any of the wells, the amount of free product in such well. The three additional monitoring wells shall be installed as follows: one upgradient of the source of contamination and two downgradient of the source of contamination. The monitoring wells installed upgradient and downgradient of the source of contamination shall be located such that groundwater flow direction can be determined; and
- (C) potentiometric data from all required wells;
- (7) the availability of public water supplies and the identification of properties served by the public water supplies within 1500 feet of the source area of a confirmed discharge or release;
- (8) the land use, including zoning if applicable, within 1500 feet of the source area of a confirmed discharge or release;
- (9) a discussion of site-specific conditions or possible actions that could result in lowering the risk classification assigned to the release. The discussion shall be based on information known or required to be obtained under this Paragraph; and
- (10) names and current addresses of all owners and operators of the underground storage tank systems for which a discharge or release is confirmed, the owners of the land upon which such systems are located, and all potentially affected real property owners.

15A NCAC 02L .0406 DISCHARGE OR RELEASE CLASSIFICATIONS

The Department shall classify the risk of each known discharge or release as high, intermediate, or low risk unless the discharge or release has been classified under Rule .0404(a)(3) or (c) of this Section. For purposes of this Section:

- (1) "High risk" means that:
 - (a) a water supply well, including one used for non-drinking purposes, has been contaminated by a release or discharge;
 - (b) a water supply well used for drinking water is located within 1000 feet of the source area of a confirmed discharge or release from a commercial underground storage tank or a noncommercial underground storage tank of 1100 gallons or less in capacity used for storing motor fuel for noncommercial purposes;
 - (c) a water supply well not used for drinking water is located within 250 feet of the source area of a confirmed discharge or release from a commercial underground storage tank or a noncommercial underground storage tank of 1100 gallons or less in capacity used for storing motor fuel for noncommercial purposes;
 - (d) the groundwater within 500 feet of the source area of a confirmed discharge or release from a commercial underground storage tank or a noncommercial underground storage tank of 1100 gallons or less in capacity used for storing motor fuel for noncommercial purposes has the potential for future use in that there is no source of water supply other than the groundwater;
 - (e) a water supply well, including one used for non-drinking purposes, is located within 150 feet of the source area of a confirmed discharge or release from a noncommercial underground storage tank storing heating oil for consumptive use on the premises;
 - (f) the vapors from a discharge or release pose a serious threat of explosion due to accumulation of the vapors in a confined space; or
 - (g) a discharge or release poses an imminent danger to public health, public safety, or the environment.
- (2) "Intermediate risk" means that:
 - (a) surface water is located within 500 feet of the source area of a confirmed discharge or release from a

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(c)(4); Amended Eff. December 1, 2005; Temporary Amendment Eff. September 29, 2017; Readopted Eff. June 1, 2019.

- commercial underground storage tank and the maximum groundwater contaminant concentration exceeds the applicable surface water quality standards and criteria found in 15A NCAC 02B .0200 by a factor of 10;
- (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, the source area of a confirmed discharge or release from a commercial underground storage tank is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer that the Department determines is being used or may be used as a source of drinking water;
- (c) the source area of a confirmed discharge or release from a commercial underground storage tank is within a designated wellhead protection area, as defined in 42 U.S.C. 300h-7(e);
- (d) the levels of groundwater contamination associated with a confirmed discharge or release from a commercial underground storage tank for any contaminant except ethylene dibromide, benzene, and alkane and aromatic carbon fraction classes exceed 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in Rule .0202 of this Subchapter, whichever is lower; or
- (e) the levels of groundwater contamination associated with a confirmed discharge or release from a commercial underground storage tank for ethylene dibromide and benzene exceed 1,000 times the federal drinking water standard set out in 40 CFR 141. 40 CFR 141 is incorporated by reference including subsequent amendments and editions. Copies may be obtained at no cost from the U.S. Government Bookstore's website at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title40-vol23/pdf/CFR-2015-title40-vol23-part141.pdf>. The material is available for inspection at the Department of Environmental Quality, UST Section, 217 West Jones Street, Raleigh, NC 27603.
- (3) "Low risk" means that:

- (a) the risk posed does not fall within the high risk category for any underground storage tank, or within the intermediate risk category for a commercial underground storage tank; or
- (b) based on review of site-specific information, limited assessment, or interim corrective actions, the discharge or release poses no significant risk to human health or the environment.

If the criteria for more than one risk category applies, the discharge or release shall be classified at the highest risk level identified in Rule .0407 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(d); Amended Eff. December 1, 2005; Temporary Amendment Eff. September 29, 2017; Readopted Eff. June 1, 2019.

15A NCAC 02L .0407 RECLASSIFICATION OF RISK LEVELS

- (a) Each responsible party shall have the continuing obligation to notify the Department of any changes that may affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party, including changes in zoning of real property, use of real property, or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release.
- (b) The Department shall reclassify the risk posed by a release if warranted by further information concerning the potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed conditions at the site. After initial classification of the discharge or release, the Department may require limited assessment, interim corrective action, or other actions that the Department believes will result in a lower risk classification.
- (c) If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party shall comply with the assessment and cleanup requirements of Rule .0106(c), (g), and (h) of this Subchapter and 15A NCAC 02N .0706 and .0707. The goal of a required corrective action for groundwater contamination shall be restoration to the level of the groundwater standards set forth in Rule .0202 of this Subchapter, or as closely thereto as is economically and technologically feasible. In a corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the maximum extent possible, when the benefits of its use do not increase the risk to the environment and human health. If the responsible party demonstrates that natural attenuation prevents the further migration of the plume, the Department may approve a groundwater monitoring plan.
- (d) If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the responsible party shall comply with the assessment requirements of Rule .0106(c)

and (g) of this Subchapter and 15A NCAC 02N .0706. As part of the comprehensive site assessment, the responsible party shall evaluate, based on site-specific conditions, whether the release poses a significant risk to human health or the environment. If the Department determines, based on the site-specific conditions, that the discharge or release does not pose a significant threat to human health or the environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall, at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination thereof, meeting the cleanup standards of this Paragraph and containing the information required in Rule .0106(h) of this Subchapter and 15A NCAC 02N .0707. Discharges or releases that are classified as intermediate risk shall be remediated, at a minimum, to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in Rule .0202 of this Subchapter, whichever is lower, for any groundwater contaminant except ethylene dibromide, benzene and alkane and aromatic carbon fraction classes. Ethylene dibromide and benzene shall be remediated to a cleanup level of 1,000 times the federal drinking water standard as referenced in 15A NCAC 18C .1518 incorporated by reference including subsequent amendments and editions, and available free of charge at http://reports.oah.state.nc.us/ncac/title_15a_-_environmental_quality/chapter_18_-_environmental_health/subchapter_c/15a_ncac_18c_.1518.pdf. Additionally, if a corrective action plan or groundwater monitoring plan is required under this Paragraph, the responsible party shall demonstrate that the groundwater cleanup levels are sufficient to prevent a violation of:

- (1) the rules contained in 15A NCAC 02B;
- (2) the standards contained in Rule .0202 of this Subchapter in a deep aquifer as described in Rule .0406(2)(b) of this Section; and
- (3) the standards contained in Rule .0202 of this Subchapter at a location no closer than one year time of travel upgradient of a well within a designated wellhead protection area, based on travel time and the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater migration that exists or will be installed by the person making the request.

In any corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the maximum extent possible, if the benefits of its use do not increase the risk to the environment and human health.

(e) If the risk posed by a discharge or release is determined to be a low risk, the Department shall notify the responsible party that no cleanup, no further cleanup, or no further action is required by the Department unless the Department later determines that the discharge or release poses an unacceptable risk or a potentially unacceptable risk to human health or the environment. No notification shall be issued pursuant to this Paragraph, however, until the responsible party has:

- (1) completed soil remediation pursuant to Rule .0408 of this Section or as closely thereto as economically or technologically feasible;

- (2) submitted proof of public notification, if required pursuant to Rule .0409(b) of this Section; and
- (3) recorded all required land-use restrictions pursuant to G.S. 143B-279.9 and 143B-279.11.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(e)-(h); Amended Eff. December 1, 2005; Readopted Eff. June 1, 2019.

15A NCAC 02L .0408 ASSESSMENT AND REMEDIATION PROCEDURES

Assessment and remediation of soil contamination shall be addressed as follows:

- (1) At the time that the Department determines the risk posed by the discharge or release, the Department shall also determine, based on site-specific information, whether the site is "residential" or "industrial/commercial." For the purposes of this Section, a site is presumed residential, but may be classified as industrial/commercial if the Department determines based on site-specific information that exposure to the soil contamination is limited in time due to the use of the site and does not involve exposure to children. For the purposes of this Paragraph, "site" means both the property upon which the discharge or release occurred and any property upon which soil has been affected by the discharge or release.
- (2) For a discharge or release from a commercial underground storage tank, or for a discharge or release from a noncommercial underground storage tank classified by the Department as high risk, the responsible party shall submit a report to the Department assessing the vertical and horizontal extent of soil contamination in excess of the lower of:
 - (a) the residential or industrial/commercial maximum soil contaminant concentration, whichever is applicable, that has been established by the Department pursuant to Rule .0411 of this Section; or
 - (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been established by the Department pursuant to Rule .0411 of this Section.
- (3) For a discharge or release from a commercial underground storage tank classified by the Department as low risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to either the residential or industrial/commercial maximum

soil contaminant concentration established by the Department pursuant to Rule .0411 of this Section, whichever is applicable.

- (4) For a discharge or release classified by the Department as high or intermediate risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to the lower of:
- (a) the residential or industrial/commercial maximum soil contaminant concentration, whichever is applicable, that has been established by the Department pursuant to Rule .0411 of this Section; or
 - (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been established by the Department pursuant to Rule .0411 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(i); Amended Eff. December 1, 2005; Temporary Amendment Eff. September 29, 2017; Readopted Eff. June 1, 2019.

15A NCAC 02L .0409 NOTIFICATION REQUIREMENTS

(a) A responsible party who submits a corrective action plan that proposes natural attenuation, to cleanup groundwater contamination to a standard other than a standard as set forth in Rule .0202 of this Subchapter, or to cleanup soil other than to the standard for residential use or soil-to-groundwater contaminant concentration established pursuant to this Section, whichever is lowest, shall give notice to:

- (1) the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;
- (2) all property owners and occupants within or contiguous to the area containing the contamination; and
- (3) all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.

The notice shall describe the nature of the plan and the reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the corrective action plan. Approval of the corrective action plan by the Department shall be postponed for a period of 60 days following receipt of the request so that the Department may receive and consider comments. The responsible party shall, within 30 days, provide the Department with a copy of the notice and proof of receipt of each required notice or of refusal by the addressee to accept delivery of a required notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party shall give notice as provided in G.S. 1A-1, Rule 4(j) or 4(j1). If notice is made to occupants by posting, the responsible party shall provide the

Department with a copy of the posted notice and a description of the manner in which such posted notice was given.

(b) A responsible party who receives a notice from the Department pursuant to Rule .0404(c) or .0407(e) of this Section for a discharge or release that has not been remediated to the groundwater standards or interim standards established in Rule .0202 of this Subchapter or to the lower of the residential or soil-to-groundwater contaminant concentrations established under Rule .0411 of this Section, shall, within 30 days of the receipt of such notice, provide a copy of the notice to:

- (1) the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;
- (2) all property owners and occupants within or contiguous to the area containing the contamination; and
- (3) all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.

Notification shall be made by certified mail. The responsible party shall, within 60 days of receipt of the original notice from the Department, provide the Department with proof of receipt of the copy of the notice or of refusal by the addressee to accept delivery of the copy of the notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party shall give notice as provided in G.S. 1A-1, Rule 4(j) or 4(j1). If notice is made to occupants by posting, the responsible party shall provide the Department with a description of the manner in which the posted notice was given.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(j) and (k); Amended Eff. December 1, 2005; Temporary Amendment Eff. September 29, 2017; Readopted Eff. June 1, 2019.

15A NCAC 02L .0410 DEPARTMENTAL LISTING OF DISCHARGES OR RELEASES

The Department shall maintain in each of the Department's regional offices a list of all petroleum underground storage tank discharges or releases discovered and reported to the Department within the region on or after the effective date of this Section and all petroleum underground storage tank discharges or releases for which notification was issued under Rule .0407(e) of this Section by the Department on or after the effective date of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(l); Amended Eff. December 1, 2005; Readopted Eff. June 1, 2019.

15A NCAC 02L .0411 ESTABLISHING MAXIMUM SOIL CONTAMINATION CONCENTRATIONS

The Department shall publish on the Department website and annually revise maximum soil contaminant concentrations to be

used as soil cleanup levels for contamination from petroleum underground storage tank systems. The Department shall establish maximum soil contaminant concentrations for residential, industrial/commercial, and soil-to-groundwater exposures as follows:

- (1) The following equations and references shall be used in establishing residential maximum soil contaminant concentrations. Equation 1 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2, C, D or E. Equation 2 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2 or C. The maximum soil contaminant concentration shall be the lower of the concentrations derived from Equations 1 and 2.

- (a) Equation 1: Non-cancer Risk-based Residential Ingestion Concentration

Soil mg/kg = $[0.2 \times \text{oral chronic reference dose} \times \text{body weight, age 1 to 6} \times \text{averaging time noncarcinogens}] / [\text{exposure frequency} \times \text{exposure duration, age 1 to 6} \times (\text{soil ingestion rate, age 1 to 6} / 10^6 \text{ mg/kg})]$.

- (b) Equation 2: Cancer Risk-based Residential Ingestion Concentration

Soil mg/kg = $[\text{target cancer risk of } 10^{-6} \times \text{averaging time carcinogens}] / [\text{exposure frequency} \times (\text{soil ingestion factor, age adjusted} / 10^6 \text{ mg/kg}) \times \text{oral cancer slope factor}]$. The age adjusted soil ingestion factor shall be calculated by: $[(\text{exposure duration, age 1 to 6} \times \text{soil ingestion rate, age 1 to 6}) / (\text{body weight, age 1 to 6})] + [(\text{exposure duration, total} - \text{exposure duration, age 1 to 6}) \times \text{soil ingestion, adult}] / (\text{body weight, adult})]$.

- (c) The exposure factors selected in calculating the residential maximum soil contaminant concentrations shall be within the recommended ranges specified in the following references or the most recent version of these references:

- (i) EPA, 2011. Exposure Factors Handbook, incorporated by reference including subsequent amendments or editions and may be obtained electronically free of charge from the United States Environmental Protection Agency website at <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252>;

- (ii) EPA, 1991. Risk Assessment Guidance for Superfund: Volume I Human Health Evaluation Manual (Part B, Development of Risk Based Preliminary Remediation Goals), incorporated by reference including subsequent amendments or editions and may be obtained electronically free of charge from the United States Environmental Protection Agency website at <https://www.epa.gov/risk/risk-assessment-guidance-superfund-rags-part-b>;

- (iii) EPA. Regional Screening Level Generic Tables (RSL) and User's Guide, incorporated by reference including subsequent amendments or editions and may be obtained electronically free of charge from the United States Environmental Protection Agency website at <https://www.epa.gov/risk/regional-screening-levels-rsls>; and

- (iv) EPA, 2018. Region 4 Human Health Risk Assessment Supplemental Guidance, incorporated by reference including subsequent amendments or editions and may be obtained electronically free of charge from the United States Environmental Protection Agency website at https://www.epa.gov/sites/production/files/2018-03/documents/hhra_regional_supplemental_guidance_report-march-2018_update.pdf.

- (d) The following references or the most recent version of these references, in order of preference, shall be used to obtain oral chronic reference doses and oral cancer slope factors:

- (i) EPA. Integrated Risk Information System (IRIS) Computer Database, incorporated by reference including subsequent amendments or editions and

- may be obtained electronically free of charge from the United States Environmental Protection Agency website at <https://www.epa.gov/iris>;
- (ii) EPA. Health Effects Assessment Summary Tables (HEAST), incorporated by reference including subsequent amendments or editions and may be obtained electronically free of charge from the United States Environmental Protection Agency website at <https://epa-heast.ornl.gov>;
 - (iii) EPA. Regional Screening Level Generic Tables (RSL) and User's Guide;
 - (iv) EPA, 2018. Region 4 Human Health Risk Assessment Supplemental Guidance; and
 - (v) Other scientifically valid peer-reviewed published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.
- (2) The following equations and references shall be used in establishing industrial/commercial maximum soil contaminant concentrations. Equation 1 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2, C, D or E. Equation 2 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2 or C. The maximum soil contaminant concentration shall be the lower of the concentrations derived from Equations 1 and 2.
- (a) Equation 1: Non-cancer Risk-based Industrial/Commercial Ingestion Concentration

$$\text{Soil mg/kg} = \frac{[0.2 \times \text{oral chronic reference dose} \times \text{body weight, adult} \times \text{averaging time noncarcinogens}] / [\text{exposure frequency} \times \text{exposure duration, adult} \times (\text{soil ingestion rate, adult} / 10^6 \text{ mg/kg}) \times \text{fraction of contaminated soil ingested}]}{1}$$
 - (b) Equation 2: Cancer Risk-based Industrial/Commercial Ingestion Concentration

$$\text{Soil mg/kg} = \frac{[\text{target cancer risk of } 10^{-6} \times \text{body weight, adult} \times \text{averaging time carcinogens}] / [\text{exposure frequency} \times \text{exposure duration, adult} \times (\text{soil ingestion rate, adult} / 10^6 \text{ mg/kg}) \times \text{fraction of contaminated soil ingested}]}{1}$$
- (c) The exposure factors selected in calculating the industrial/commercial maximum soil contaminant concentrations shall be within the recommended ranges specified in the following references or the most recent version of these references:
- (i) EPA, 2011. Exposure Factors Handbook;
 - (ii) EPA, 1991. Risk Assessment Guidance for Superfund: Volume I Human Health Evaluation Manual (Part B, Development of Risk Based Preliminary Remediation Goals);
 - (iii) EPA. Regional Screening Level Generic Tables (RSL) and User's Guide; and
 - (iv) EPA, 2018. Region 4 Human Health Risk Assessment Supplemental Guidance.
- (d) The following references or the most recent version of these references, in order of preference, shall be used to obtain oral chronic reference doses and oral cancer slope factors:
- (i) EPA. Integrated Risk Information System (IRIS) Computer Database;
 - (ii) EPA. Health Effects Assessment Summary Tables (HEAST);
 - (iii) EPA. Regional Screening Level Generic Tables (RSL) and User's Guide;
 - (iv) EPA, 2018. Region 4 Human Health Risk Assessment Supplemental Guidance; and
 - (v) Other scientifically valid peer-reviewed published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.
- (3) The following equations and references shall be used in establishing the soil-to-groundwater maximum contaminant concentrations:
- (a) Organic Constituents:

$$\text{Soil mg/kg} = \text{groundwater standard or interim standard} \times [(.02 \times \text{soil organic carbon-water partition coefficient}) + 4 + (1.733 \times 41 \times \text{Henry's Law Constant (atm.-m}^3/\text{mole)})]$$
 - (i) If no groundwater standard or interim standard has been established under Rule .0202

- of this Subchapter, the practical quantitation limit shall be used in lieu of a standard to calculate the soil-to-groundwater maximum contaminant concentrations.
- (ii) The following references or the most recent version of these references, in order of preference, shall be used to obtain soil organic carbon-water partition coefficients and Henry's Law Constants:
- (A) EPA. Superfund Chemical Data Matrix (SCDM), incorporated by reference including subsequent amendments or editions and may be obtained electronically free of charge from the United States Environmental Protection Agency website at <https://www.epa.gov/superfund/superfund-chemical-data-matrix-scdm>;
- (B) EPA, 1991. Risk Assessment Guidance for Superfund: Volume I Human Health Evaluation Manual (Part A), incorporated by reference including subsequent amendments or editions and may be obtained electronically free of charge from the United States Environmental Protection Agency website at <https://www.epa.gov/risk/risk-assessment-guidance-superfund-rags-part/>; it is Volume I of the three-volume set called Risk Assessment Guidance for Superfund; Agency for Toxic Substances and Disease Registry, "Toxicological Profile for [individual chemical]," incorporated by reference including subsequent amendments or editions and may be obtained electronically free of charge from the United States Agency for Toxic substances and Disease Registry website at <https://www.atsdr.cdc.gov/substances/index.asp>;
- (C) Montgomery, J.H., 2007. Groundwater Chemicals Desk Reference. CRC Press. This document is incorporated by reference including subsequent amendments and editions, and may be obtained for a charge of two hundred ninety six dollars (\$296.00) at <https://www.crcpress.com/Groundwater-Chemicals-Desk-Reference/Montgomery/p/book/9780849392764/> or a copy may be reviewed at the Division of Waste Management, Underground Tank Storage Tank Section office at 217 West Jones Street, Raleigh, N.C. 27603; and

- (E) Other scientifically valid peer-reviewed published data.
- (b) Inorganic Constituents:
 Soil mg/kg = groundwater standard or interim standard x [(20 x soil-water partition coefficient for pH of 5.5) + 4 + (1.733 x 41 x Henry's Law Constant (atm.-m3/mole))].
- (i) If no groundwater standard or interim standard has been established under Rule .0202 of this Subchapter, the practical quantitation limit shall be used in lieu of a standard to calculate the soil-to-groundwater maximum contaminant concentrations.
- (ii) The following references or the most recent version of these references, in order of preference, shall be used to obtain soil-water partition coefficients and Henry's Law Constants:
- (A) EPA. Superfund Chemical Data Matrix (SCDM);
- (B) Baes, C.F., III, R.D. Sharp, A.L. Sjoreen, and R.W. Shor, 1984. A Review and Analysis of Parameters for Assessing Transport of Environmentally Released Radionuclides Through Agriculture. Oak Ridge National Laboratory, incorporated by reference including subsequent amendments or editions and may be obtained electronically free of charge from the United States Nuclear Regulatory Commission website at <https://www.nrc.gov>;
- (C) Agency for Toxic Substances and Disease Registry, "Toxicological Profile for [individual chemical];" and
- (D) Other scientifically valid peer-reviewed published data.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(m); Amended Eff. December 1, 2005; Readopted Eff. June 1, 2019.

15A NCAC 02L .0412 ANALYTICAL PROCEDURES FOR SOIL SAMPLES

(a) Analytical procedures for soil samples required under this Section shall be methods accepted by the US EPA as suitable for determining the presence and concentration of petroleum hydrocarbons for the type of petroleum released.

(b) Soil samples collected, including the most contaminated sample, shall be analyzed as follows in order to determine the risks of the constituents of contamination:

- (1) soil samples collected from a discharge or release of low boiling point fuels, including gasoline, aviation gasoline, and gasohol, shall be analyzed for volatile organic compounds and additives, including isopropyl ether and methyl tertiary butyl ether, using EPA Method 8260;
- (2) soil samples collected from a discharge or release of high boiling point fuels, including kerosene, diesel, varsol, mineral spirits, naphtha, jet fuels, and fuel oil no. 2, shall be analyzed for volatile organic compounds using EPA Method 8260 and semivolatile organic compounds using EPA Method 8270;
- (3) soil samples collected from a discharge or release of heavy fuels shall be analyzed for semivolatile organic compounds using EPA Method 8270;
- (4) soil samples collected from a discharge or release of used and waste oil shall be analyzed for volatile organic compounds using EPA Method 8260, semivolatile organic compounds using EPA Method 8270, polychlorinated biphenyls using EPA Method 8080, and chromium and lead using procedures specified in Subparagraph (6) of this Paragraph;
- (5) soil samples collected from a discharge or release subject to this Section shall be analyzed for alkane and aromatic carbon fraction classes using methods approved by the Director under 15A NCAC 02H .0805(a)(1);
- (6) analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph shall be performed as specified in the following references or the most recent version of these references: Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods, November 1990, U.S. Environmental Protection Agency publication number SW-846, is incorporated by reference and may be purchased for a cost of three hundred sixty seven dollars (\$367.00) from the Superintendent of Documents, U.S. Government Printing Office (GPO),

- Washington, DC 20402; or in accordance with other methods or procedures approved by the Director under 15A NCAC 02H .0805(a)(1);
- (7) other EPA-approved analytical methods may be used if the methods include the same constituents as the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph and meet the detection limits of the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph; and
- (8) metals and acid extractable organic compounds shall be eliminated from analyses of soil samples collected pursuant to this Section if these compounds are not detected in soil samples collected during the construction of the source area monitoring well required under Rule .0405 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1;

Recodified from 15A NCAC 02L .0115(n);

Amended Eff. December 1, 2005;

Readopted Eff. June 1, 2019.

15A NCAC 02L .0413 ANALYTICAL PROCEDURES FOR GROUNDWATER SAMPLES

(a) Analytical procedures for groundwater samples required under this Section shall be methods accepted by the US EPA as suitable for determining the presence and concentration of petroleum hydrocarbons for the type of petroleum released.

(b) Groundwater samples, including the most contaminated sample, shall be analyzed as follows in order to determine the risks of the constituents of contamination:

- (1) groundwater samples collected from a discharge or release of low boiling point fuels, including gasoline, aviation gasoline, and gasohol, shall be analyzed for volatile organic compounds, including xylenes, isopropyl ether, and methyl tertiary butyl ether, using Standard Method 6200B or EPA Methods 601 and 602. Samples shall also be analyzed for ethylene dibromide using EPA Method 504.1 and lead using Standard Method 3030C preparation. 3030C metals preparation, using a 0.45 micron filter, shall be completed within 72 hours of sample collection;
- (2) groundwater samples collected from a discharge or release of high boiling point fuels, including kerosene, diesel, varsol, mineral spirits, naphtha, jet fuels, and fuel oil no. 2, shall be analyzed for volatile organic compounds using EPA Method 602 and semivolatile organic compounds plus the 10 largest non-target peaks identified using EPA Method 625;
- (3) groundwater samples collected from a discharge or release of heavy fuels shall be analyzed for semivolatile organic compounds

- (4) plus the 10 largest non-target peaks identified using EPA Method 625;
- (5) groundwater samples collected from a discharge or release of used or waste oil shall be analyzed for volatile organic compounds using Standard Method 6200B, semivolatile organic compounds plus the 10 largest non-target peaks identified using EPA Method 625, and chromium and lead using Standard Method 3030C preparation. 3030C metals preparation, using a 0.45 micron filter, shall be completed within 72 hours of sample collection;
- (6) groundwater samples collected from a discharge or release subject to this Section shall be analyzed for alkane and aromatic carbon fraction classes using methods approved by the Director under 15A NCAC 02H .0805(a)(1);
- (7) analytical methods specified in Subparagraphs (1), (2), (3) and (4) of this Paragraph shall be performed as specified in the following references or the most recent version of these references:

- (A) Guidelines Establishing Test Procedures for the Analysis of Pollutants under the Clean Water Act, 40 CFR Part 136, is incorporated by reference and may be obtained electronically free of charge from the United States Environmental Protection Agency website at <https://www.epa.gov/cwa-methods>;
- (B) Standard Methods for the Examination of Water and Wastewater, published jointly by American Public Health Association, American Water Works Association and Water Pollution Control Federation, is incorporated by reference and is available for purchase from the American Water Works Association (AWWA), 6666 West Quincy Avenue, Denver, CO 80235 for a charge of one hundred sixty dollars (\$160.00) for the 18th Edition, one hundred eighty dollars (\$180.00) for the 19th Edition, and two hundred dollars (\$200.00) for the 20th Edition; or
- (C) in accordance with methods or procedures approved by the Director under 15A NCAC 02H .0805(a)(1);
- (7) other EPA-approved analytical methods may be used if the methods include the same constituents as the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph and meet the detection limits of the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph; and

- (8) metals and acid extractable organic compounds shall be eliminated from analyses of groundwater samples collected pursuant to this Section if these compounds are not detected in the groundwater sample collected from the source area monitoring well installed pursuant to Rule .0405 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(o); Amended Eff. December 1, 2005; Readopted Eff. June 1, 2019.

15A NCAC 02L .0414 REQUIRED LABORATORY CERTIFICATION

In accordance with 15A NCAC 02H .0804, laboratories shall obtain North Carolina Division of Water Resources laboratory certification for parameters that are required to be reported to the State in compliance with the State's surface water, groundwater, and pretreatment rules.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(p); Amended Eff. December 1, 2005; Readopted Eff. June 1, 2019.

15A NCAC 02L .0415 DISCHARGES OR RELEASES FROM OTHER SOURCES

This Section shall not relieve any person responsible for assessment or cleanup of contamination from a source other than a commercial or noncommercial underground storage tank from its obligation to assess and clean up contamination resulting from the discharge or releases.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(q); Amended Eff. December 1, 2005; Readopted Eff. June 1, 2019.

15A NCAC 02L .0501 PURPOSE

(a) The purpose of this Section is to establish procedures for risk-based assessment and corrective action sufficient to:

- (1) protect human health and the environment;
- (2) abate and control contamination of the waters of the State as deemed necessary to protect human health and the environment;
- (3) permit management of the State's groundwaters to protect their designated current usage and potential future uses;
- (4) provide for anticipated future uses of the State's groundwater;

- (5) recognize the diversity of contaminants, the State's geology, and the characteristics of each individual site; and
- (6) accomplish these goals in a cost-efficient manner to assure the best use of the limited resources available to address groundwater pollution within the State.

(b) Section .0100 of this Subchapter shall apply to this Section unless specifically excluded.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282; Eff. March 1, 2016; Readopted Eff. June 1, 2019.

15A NCAC 02L .0502 DEFINITIONS

The definitions as set out in Rule .0102 of this Subchapter and the following definitions shall apply throughout this Section:

- (1) "Aboveground storage tank" or "AST" means any one or a combination of tanks, including pipes connected thereto, that is used to contain an accumulation of petroleum.
- (2) "AST system" means an aboveground storage tank, connected piping, ancillary equipment, and containment system, if any.
- (3) "Discharge" includes any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil into groundwater or surface water or upon land in such proximity to such water that it is likely to reach the water and any discharge upon land which is intentional, knowing, or willful.
- (4) "Non-UST means as defined in G.S. 143-215.104AA(g) and excludes underground storage tank releases governed by G.S. 143-215.94V.
- (5) "Operator" means any person in control of or having responsibility for the daily operation of the AST system.
- (6) "Owner" means any person who owns a petroleum aboveground storage tank or other non-UST petroleum tank, stationary or mobile, used for storage, use, dispensing, or transport.
- (7) "Person" means an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.
- (8) "Petroleum" or "petroleum products" means as defined in G.S. 143-215.94A(10).
- (9) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing into groundwater, surface water, or surface or subsurface soils.
- (10) "Tank" means a device used to contain an accumulation of petroleum and constructed of

non-earthen materials, such as concrete, steel, or plastic, that provides structural support.

History Note: Authority G.S. 143-212(4); 143-215.3(a)(1); 143-215.77; 143-215.84; 143-215.104AA; 143B-282; Eff. March 1, 2016; Readopted Eff. June 1, 2019.

15A NCAC 02L .0503 RULE APPLICATION

The requirements of this Section shall apply to the owner and operator of a petroleum aboveground storage tank or other non-UST petroleum tank, stationary or mobile, from which a discharge or release occurred and to any person determined to be responsible for assessment and cleanup of a discharge or release from a non-UST petroleum source, including any person who has conducted or controlled an activity that results in the discharge or release of petroleum or petroleum products (as defined in G.S. 143-215.94A(10)) to the groundwaters of the State or in proximity thereto. These persons shall be collectively referred to as the "responsible party" for purposes of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282; Eff. March 1, 2016; Readopted Eff. June 1, 2019.

15A NCAC 02L .0504 REQUIRED INITIAL RESPONSE AND ABATEMENT ACTIONS BY RESPONSIBLE PARTY

Upon a discharge or release of petroleum from a non-UST petroleum source the responsible party shall:

- (1) take actions to prevent all further discharge or release of petroleum from the non-UST petroleum source; identify and mitigate all fire, explosion, or vapor hazard; and report the release within 24 hours of discovery, in compliance with G.S. 143-215.83(a), 84(a), and 85(b);
- (2) perform initial abatement actions to measure for the presence of a release where contamination is most likely to be present; confirm the source of the release; investigate to determine the possible presence of free product; begin free product removal; and to continue to monitor and mitigate all additional fire, explosion, or vapor hazards posed by vapors or by free product; and submit a report to the Department of Environmental Quality, UST Section, Regional Office Supervisor in accordance with 15A NCAC 02B .0309 and .0311, within 20 days after release confirmation summarizing these initial abatement actions;
- (3) remove contaminated soil that would act as a continuing source of contamination to groundwater. For a new release, no further action shall be necessary if:
 - (a) initial abatement actions involving control and removal of contaminated materials are initiated within 48 hours

from discovery and before contaminated materials begin to impact groundwater; and

- (b) analysis, in accordance with the approved methods in Rule .0412 of this Subchapter, of representative samples of remaining soils shows concentrations:
 - (i) at or below the more stringent of the soil-to-groundwater concentration value and the residential maximum soil contamination concentration value; or
 - (ii) using other EPA-approved analytical methods in accordance with Rule .0412(b)(7) of this Subchapter, concentration values below the more stringent of the soil-to-groundwater concentration alkane and aromatic carbon fraction class values and the residential maximum soil contamination concentration alkane and aromatic carbon fraction class values;

For new releases, if the abatement actions cannot be initiated within 48 hours of discovery or if soil concentrations remain above the values in this Paragraph, the responsible party shall conduct all activities under Items (1) through (5) of this Rule;

- (4) conduct initial site assessment, assembling information about the site and the nature of the release, including the following:
 - (a) a site history and site characterization, including data on nature and estimated quantity of release and data from available sources and site investigations concerning surrounding populations, water quality, use, and approximate locations of wells, surface water bodies, and subsurface structures potentially affected by the release, subsurface soil conditions, locations of subsurface utilities, climatological conditions, and land use;
 - (b) the results of free product investigations and free product removal, if applicable;
 - (c) the results of groundwater and surface water investigations, if applicable;
 - (d) a summary of initial response and abatement actions; and

- (5) submit as required in Item (2) of this Rule, within 90 days of the discovery of the discharge or release:
- (a) an initial assessment and abatement report as required in Item (4) of this Rule;
 - (b) soil assessment information sufficient to show that remaining unsaturated soil in the side walls and at the base of the excavation does not contain contaminant levels that exceed either the soil-to-groundwater or the residential maximum soil contaminant concentrations established by the Department pursuant to Rule .0511 of this Section, whichever is lower; and
 - (c) documentation to show that neither bedrock nor groundwater was encountered in the excavation or, if groundwater was encountered, that contaminant concentrations in groundwater were equal to or less than the groundwater quality standards established in Rule .0202 of this Subchapter. If such showing is made, the discharge or release shall be classified as low risk by the Department.

- (3) the technical complications associated with assessing the extent of contamination at the site or identifying potential receptors; and
 - (4) the necessity for action to eliminate an imminent threat to public health or the environment.
- (c) The report shall include:
- (1) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source area of a confirmed release or discharge and depicting all water supply wells, surface waters, and designated "wellhead protection areas" as defined in 42 U.S.C. 300h-7(e) within the 1500-foot radius. 42 U.S.C. 300h-7(e), is incorporated by reference including subsequent amendments and editions. Copies may be obtained at no cost from the U.S. Government Bookstore's website at <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap6A-subchapXII-partC-sec300h-7.htm>. The material is available for inspection at the Department of Environmental Quality, UST Section, 217 West Jones Street, Raleigh, NC 27603. For purposes of this Section, "source area" means point of release or discharge from the non-UST petroleum source, or if the point of release cannot be determined precisely, "source area" means the area of highest contaminant concentrations;
 - (2) a determination of whether the source area of the discharge or release is within a designated "wellhead protection area" as defined in 42 U.S.C. 300h-7(e);
 - (3) if the discharge or release is in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, incorporated by reference including subsequent amendments or editions and may be obtained electronically free of charge from the Department's website at <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/north-carolina-geological-survey/ncgs-maps/1985-geologic-map-of-nc>, a determination of whether the source area of the discharge or release is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer that is being used or may be used as a source of drinking water;
 - (4) a determination of whether vapors from the discharge or release pose a threat of explosion due to the accumulation of vapors in a confined space; pose a risk to public health from exposure; or pose any other threat to public health, public safety, or the environment;
 - (5) scaled site maps showing the location of the following that are on or adjacent to the property where the source is located:

History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282; Eff. March 1, 2016; Adopted Eff. June 1, 2019.

15A NCAC 02L .0505 REQUIREMENTS FOR LIMITED SITE ASSESSMENT

- (a) If the required showing cannot be made by the responsible party under Rule .0504 of this Section, the responsible party shall submit within 120 days of the discovery of the discharge or release, a report as required in Rule .0504 of this Section, containing information needed by the Department to classify the level of risk to human health and the environment posed by a discharge or release under Rule .0506 of this Section.
- (b) The responsible party may submit a written request an extension to the 120 day deadline set forth in Paragraph (a) of this Rule to the Department for the Department's consideration prior to the deadline. The request for deadline extension by the responsible party shall demonstrate that the extension, if granted by the Department, would not increase the risk posed by the release. When considering a request from a responsible party for additional time to submit the report, the Department shall consider the following:
- (1) the extent to which the request for additional time is due to factors outside of the control of the responsible party;
 - (2) the previous history of the person submitting the report in complying with deadlines established under the Commission's rules;

- (A) site boundaries;
 - (B) roads;
 - (C) buildings;
 - (D) basements;
 - (E) floor and storm drains;
 - (F) subsurface utilities;
 - (G) septic tanks and leach fields;
 - (H) underground and aboveground storage tank systems;
 - (I) monitoring wells;
 - (J) water supply wells;
 - (K) surface water bodies and other drainage features;
 - (L) borings; and
 - (M) the sampling points;
- (6) the results from a limited site assessment that shall include the following actions:
- (A) determine the presence, the lateral and vertical extent, and the maximum concentration levels of soil and, if possible, groundwater contamination and free product accumulations;
 - (B) install monitoring wells constructed in accordance with 15A NCAC 02C .0108 within the area of maximum soil or groundwater contamination to determine the groundwater flow direction and maximum concentrations of dissolved groundwater contaminants or accumulations of free product. During well construction, the responsible party shall collect and analyze soil samples that represent the suspected highest contaminant-level locations by exhibiting visible contamination or elevated levels of volatile organic compounds from successive locations at five-foot depth intervals in the boreholes of each monitoring well within the unsaturated zone; collect potentiometric data from each monitoring well; and collect and analyze groundwater or measure the amount of free product, if present, in each monitoring well;
- (7) the availability of public water supplies and the identification of properties served by the public water supplies within 1500 feet of the source area of a confirmed discharge or release;
- (8) the land use, including zoning if applicable, within 1500 feet of the source area of a confirmed discharge or release;
- (9) a discussion of site-specific conditions or possible actions that may result in lowering the risk classification assigned to the release. Such discussion shall be based on information known or required to be obtained under this Item; and

- (10) names and current addresses of all responsible parties for all petroleum sources for which a discharge or release is confirmed, the owners of the land upon which such petroleum sources are located, and all potentially affected real property owners. Documentation of ownership of ASTs or other sources and of the property upon which a source is located shall be provided.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282; Eff. March 1, 2016; Readopted Eff. June 1, 2019.

15A NCAC 02L .0506 DISCHARGE OR RELEASE CLASSIFICATIONS

The Department shall classify the risk of each known discharge or release as high, intermediate, or low risk, unless the discharge or release has been classified under Rule .0504 of this Section. For purposes of this Section:

- (1) "High risk" means that:
 - (a) a water supply well, including one used for non-drinking purposes, has been contaminated by a release or discharge;
 - (b) a water supply well used for drinking water is located within 1000 feet of the source area of a confirmed discharge or release;
 - (c) a water supply well not used for drinking water is located within 250 feet of the source area of a confirmed discharge or release;
 - (d) the groundwater within 500 feet of the source area of a confirmed discharge or release has the potential for future use in that there is no source of water supply other than the groundwater;
 - (e) the vapors from a discharge or release pose a serious threat of explosion due to accumulation of the vapors in a confined space or pose a risk to public health from exposure; or
 - (f) a discharge or release poses an imminent danger to public health, public safety, or the environment.
- (2) "Intermediate risk" means that:
 - (a) surface water is located within 500 feet of the source area of a confirmed discharge or release and the maximum groundwater contaminant concentration exceeds the applicable surface water quality standards and criteria found in 15A NCAC 02B .0200 by a factor of 10;
 - (b) in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina"

- published by the Department in 1985, the source area of a confirmed discharge or release is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer that the Department determines is being used or may be used as a source of drinking water;
- (c) the source area of a confirmed discharge or release is within a designated wellhead protection area, as defined in 42 U.S.C. 300h-7(e);
 - (d) the levels of groundwater contamination for any contaminant except ethylene dibromide, benzene, and alkane and aromatic carbon fraction classes exceed 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in Rule .0202 of this Subchapter, whichever is lower; or
 - (e) the levels of groundwater contamination for ethylene dibromide and benzene exceed 1,000 times the federal drinking water standard as referenced in 15A NCAC 18C .1518, incorporated by reference including subsequent amendments and editions and is available free of charge at <http://reports.oah.state.nc.us/ncac/title 15a - environmental quality/chapter 18 - environmental health/subchapter c/15a ncac 18c .1518.pdf>.
- (3) "Low risk" means that:
- (a) the risk posed does not fall within the high or intermediate risk categories; or
 - (b) based on review of site-specific information, limited assessment, or interim corrective actions, the discharge or release poses no significant risk to human health or the environment.

If the criteria for more than one risk category applies, the discharge or release shall be classified at the highest risk level identified in Rule .0507 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282;
 Eff. March 1, 2016;
 Readopted Eff. June 1, 2019.

15A NCAC 02L .0507 RECLASSIFICATION OF RISK LEVELS

(a) Each responsible party shall have the continuing obligation to notify the Department of any changes that may affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party,

including changes in zoning of real property, use of real property, or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release.

(b) The Department shall reclassify the risk posed by a release if warranted by further information concerning the potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed conditions at the site. After initial classification of the discharge or release, the Department may require limited assessment, interim corrective action, or other actions that the Department believes will result in a lower risk classification.

(c) Remediation of sites with off-site migration shall be subject to the provisions of G.S. 143-215.104AA.

(d) If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party shall comply with the assessment and cleanup requirements of Rule .0106(c), (g), and (h) of this Subchapter. The goal of a required corrective action for groundwater contamination shall be restoration to the level of the groundwater standards set forth in Rule .0202 of this Subchapter, or as closely thereto as is economically and technologically feasible. In a corrective action plan submitted pursuant to this Paragraph, natural attenuation may be used when the benefits of its use do not increase the risk to the environment and human health. If the responsible party demonstrates that natural attenuation prevents the further migration of the plume, the Department may approve a groundwater monitoring plan.

(e) If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the responsible party shall comply with the assessment requirements of Rule .0106(c) and (g) of this Subchapter. As part of the comprehensive site assessment, the responsible party shall evaluate, based on site specific conditions, whether the release poses a significant risk to human health or the environment. If the Department determines, based on the site-specific conditions, that the discharge or release does not pose a significant threat to human health or the environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall, at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination thereof, meeting the cleanup standards of this Paragraph and containing the information required in Rule .0106(h) of this Subchapter. Discharges or releases that are classified as intermediate risk shall be remediated, at a minimum, to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in Rule .0202 of this Subchapter, whichever is lower, for any groundwater contaminant except ethylene dibromide, benzene, and alkane and aromatic carbon fraction classes. Ethylene dibromide and benzene shall be remediated to a cleanup level of 1,000 times the federal drinking water standard as referenced in 15A NCAC 18C .1518, incorporated by reference including subsequent amendments and editions and available free of charge at <http://reports.oah.state.nc.us/ncac/title 15a - environmental quality/chapter 18 - environmental health/subchapter c/15a ncac 18c .1518.pdf>. Additionally, if a corrective action plan or groundwater monitoring plan is required under this Paragraph, the responsible party shall demonstrate that the groundwater cleanup levels are sufficient to prevent a violation of:

- (1) the rules contained in 15A NCAC 02B;

- (2) the standards contained in Rule .0202 of this Subchapter in a deep aquifer as described in Rule .0506(2)(b) of this Section; and
- (3) the standards contained in Rule .0202 of this Subchapter at a location no closer than one year time of travel upgradient of a well within a designated wellhead protection area, based on travel time and the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater migration that exists or will be installed by the person making the request.

In any corrective action plan submitted pursuant to this Paragraph, natural attenuation may be used if the benefits of its use does not increase the risk to the environment and human health and shall not increase the costs of the corrective action.

(f) If the risk posed by a discharge or release is determined to be a low risk, the Department shall notify the responsible party that no cleanup, no further cleanup, or no further action is required by the Department, unless the Department later determines that the discharge or release poses an unacceptable risk or a potentially unacceptable risk to human health or the environment. No notification shall be issued pursuant to this Paragraph, however, until the responsible party has:

- (1) completed soil remediation pursuant to Rule .0508 of this Section or as closely thereto as economically or technologically feasible;
- (2) submitted proof of public notification, if required pursuant to Rule .0409(b) of this Section;
- (3) recorded all required land-use restrictions pursuant to G.S. 143B-279.9 and 143B-279.11; and
- (4) paid any applicable statutorily authorized fees.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282; Eff. March 1, 2016; Amended Eff. March 1, 2017; Readopted Eff. June 1, 2019.

15A NCAC 02L .0508 ASSESSMENT AND REMEDIATION PROCEDURES

Assessment and remediation of soil contamination shall be addressed as follows:

- (1) At the time that the Department determines the risk posed by the discharge or release, the Department shall also determine, based on site-specific information, whether the site is "residential" or "industrial/commercial." For the purposes of this Section, a site is presumed residential, but may be classified as industrial/commercial if the Department determines based on site-specific information that exposure to the soil contamination is limited in time due to the use of the site and does not involve exposure to children. For the purposes of this Item, "site" means both the property upon which the discharge or release

occurred and any property upon that soil has been affected by the discharge or release.

- (2) For a discharge or release the responsible party shall submit a report to the Department assessing the vertical and horizontal extent of soil contamination.
- (3) For a discharge or release classified by the Department as low risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to either the residential or industrial/commercial maximum soil contaminant concentration established by the Department pursuant to Rule .0511 of this Section, whichever is applicable.
- (4) For a discharge or release classified by the Department as high or intermediate risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to the lower of:
 - (a) the residential or industrial/commercial maximum soil contaminant concentration, whichever is applicable, that has been established by the Department pursuant to Rule .0511 of this Section; or
 - (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been established by the Department pursuant to Rule .0511 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282; Eff. March 1, 2016; Readopted Eff. June 1, 2019.

15A NCAC 02L .0509 NOTIFICATION REQUIREMENTS

(a) A responsible party who submits a corrective action plan that proposes natural attenuation, to cleanup groundwater contamination to a standard other than a standard as set forth in Rule .0202 of this Subchapter, or to cleanup soil other than to the standard for residential use or soil-to-groundwater contaminant concentration established pursuant to this Section, whichever is lowest, shall give notice to:

- (1) the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;
- (2) all property owners and occupants within or contiguous to the area containing the contamination; and
- (3) all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.

The notice shall describe the nature of the plan and the reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the corrective action plan. Approval of the corrective action plan by the Department shall be postponed for a period of 30 days following receipt of the request

so that the Department may receive and consider comments. The responsible party shall, within 60 days, provide the Department with a copy of the notice and proof of receipt of each required notice or of refusal by the addressee to accept delivery of a required notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party shall give notice as provided in G.S. 1A-1, Rule 4(j) or 4(j1). If notice is made to occupants by posting, the responsible party shall provide the Department with a copy of the posted notice and a description of the manner in which such posted notice was given.

(b) A responsible party who receives a notice pursuant to Rule .0507(e) of this Section for a discharge or release that has not been remediated to the groundwater standards or interim standards established in Rule .0202 of this Subchapter or to the lower of the residential or soil-to-groundwater contaminant concentrations established under Rule .0511 of this Section, shall, within 30 days of the receipt of such notice, provide a copy of the notice to:

- (1) the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs;
- (2) all property owners and occupants within or contiguous to the area containing contamination; and
- (3) all property owners and occupants within or contiguous to the area where the contamination is expected to migrate.

Notification shall be made by certified mail. The responsible party shall, within 60 days, provide the Department with proof of receipt of the copy of the notice or of refusal by the addressee to accept delivery of the copy of the notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party shall give notice as provided in G.S. 1A-1, Rule 4(j) or 4(j1). If notice is made to occupants by posting, the responsible party shall provide the Department with a description of the manner in which such posted notice was given.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.104AA; 143B-282;
Eff. March 1, 2016;
Readopted Eff. June 1, 2019.*

15A NCAC 02L .0510 DEPARTMENTAL LISTING OF DISCHARGES OR RELEASES

The Department shall maintain in each of the Department's regional offices a list of all non-UST petroleum discharges or releases discovered and reported to the Department within the region.

*History Note: Authority G.S. 143-215.3(a)(1); 143B-282;
Eff. March 1, 2016;
Readopted Eff. June 1, 2019.*

15A NCAC 02L .0511 ESTABLISHING MAXIMUM SOIL CONTAMINATION CONCENTRATIONS

For the purposes of risk-based assessment and remediation for non-UST petroleum releases, establishment of maximum soil contamination concentrations shall be in accordance with Rule .0411 of this Subchapter.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282;
Eff. March 1, 2016;
Readopted Eff. June 1, 2019.*

15A NCAC 02L .0512 ANALYTICAL PROCEDURES FOR SOIL SAMPLES

For the purposes of risk-based assessment and remediation for non-UST petroleum releases, analytical procedures for soil samples shall be in accordance with Rule .0412 of this Subchapter.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282;
Eff. March 1, 2016;
Readopted Eff. June 1, 2019.*

15A NCAC 02L .0513 ANALYTICAL PROCEDURES FOR GROUNDWATER SAMPLES

For the purposes of risk-based assessment and remediation for non-UST petroleum releases, analytical procedures for groundwater samples shall be in accordance with Rule .0413 of this Subchapter.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282;
Eff. March 1, 2016;
Readopted Eff. June 1, 2019.*

15A NCAC 02L .0514 REQUIRED LABORATORY CERTIFICATION

In accordance with 15A NCAC 02H .0804, laboratories shall obtain North Carolina Division of Water Resources laboratory certification for parameters that are required to be reported to the State in compliance with the State's surface water, groundwater, and pretreatment rules.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282;
Eff. March 1, 2016;
Readopted Eff. June 1, 2019.*

15A NCAC 02L .0515 DISCHARGES OR RELEASES FROM OTHER SOURCES

This Section shall not relieve any person responsible for assessment or cleanup of contamination from a source other than a non-UST petroleum release from its obligation to assess and clean up contamination resulting from the discharge or releases.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.84; 143-215.104AA; 143B-282;
Eff. March 1, 2016;
Readopted Eff. June 1, 2019.*

15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North

Carolina in any manner other than with hook and line, grabbling, or special device with a special device fishing license.

(b) Nongame fishes may be taken by hook and line, grabbling, or special device with a special device fishing license at any time without restriction as to size limits or creel limits, except as designated in this Rule.

(c) Special devices may only be used to take nongame fishes with a special device fishing license in those counties and waters with open season designated in 15A NCAC 10C .0407.

(d) Archery equipment may only be used for the take of catfish on Pee Dee River downstream of Blewett Falls Dam to the South Carolina state line and all tributaries.

(e) Set hooks, jug hooks, and trotlines may be used to take nongame fishes as designated in 15A NCAC 10C .0206.

(f) The season for taking nongame fishes by hook and line in designated public mountain trout waters is the same as the trout fishing season. Trout seasons are designated in 15A NCAC 10C .0316.

(g) Freshwater mussels, including the Asiatic clam (*Corbicula fluminea*), may be taken only from impounded waters, except mussels shall not be taken in:

- (1) Lake Waccamaw in Columbus County; and
- (2) University Lake in Orange County.

The daily possession limit for freshwater mussels is 200 in the aggregate, except there is no daily possession limit for the Asiatic clam (*Corbicula fluminea*).

(h) Blue crabs shall have a minimum carapace width of five inches (point to point) and it is unlawful to possess more than 50 crabs per person per day or to exceed 100 crabs per vessel per day.

(i) While boating on or fishing in the following inland fishing waters, no person shall take river herring (alewife and blueback herring) that are greater than six inches in length, or possess such herring regardless of origin in:

- (1) Roanoke River downstream of Roanoke Rapids Dam;
- (2) Tar River downstream of Rocky Mount Mill Dam;
- (3) Neuse River downstream of Falls Lake Dam;
- (4) Cape Fear River downstream of Buckhorn Dam;
- (5) Pee Dee River downstream of Blewett Falls Dam;
- (6) Lumber River, including Drowning Creek;
- (7) all the tributaries to the rivers listed above; and
- (8) all other inland fishing waters east of I-95.

(j) In waters that are stocked and managed for catfish and located on game lands, on Commission-owned property, or on the property of a cooperator, including waters within the Community Fishing Program, it is unlawful to take channel, white, or blue catfish by means other than hook and line; the daily creel limit is six catfish in aggregate. Waters where this creel limit applies shall be posted on-site with signs indicating the creel limit.

(k) The daily creel limit for blue catfish greater than 32 inches is one fish in the following reservoirs:

- (1) Lake Norman;
- (2) Mountain Island Lake;
- (3) Lake Wylie;
- (4) Badin Lake;
- (5) Lake Tillery;

(6) John H. Kerr Reservoir (North Carolina portion);

(7) Lake Gaston (North Carolina portion); and

(8) Roanoke Rapids Reservoir.

(l) The daily creel limit is five catfish in aggregate on the Pee Dee River downstream of Blewett Falls Dam to the South Carolina state line and all tributaries.

(m) The daily creel limit for American eels taken from or possessed, regardless of origin, while boating on or fishing in inland fishing waters is 25, and the minimum size limit is 9 inches.

(n) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Mountain Island Reservoir, and Lake Wylie, except that one fish per day may be taken with archery equipment.

(o) Grass carp shall not be taken or possessed on Lake Norman and the North Carolina portion of John H. Kerr Reservoir, except for scientific study by permit issued by the Wildlife Resources Commission.

(p) In inland fishing waters, gray trout (weakfish) recreational seasons, size limits, and creel limits are the same as those established by Marine Fisheries Commission rule or proclamations issued by the Fisheries Director in adjacent joint or coastal fishing waters.

(q) No person while fishing shall remove the head or tail or otherwise change the appearance of any nongame fish specified in Paragraphs (h), (i), (k), (m), and (p) of this Rule having a size limit so as to render it impractical to measure its total original length. No person while fishing shall change the appearance of any nongame fish specified in Paragraphs (g), (h), (j), (k), (l), (m), (n), (o), and (p) of this Rule having a daily creel limit so as to obscure its identification or render it impractical to count the number of fish in possession.

(r) Nongame fishes taken by hook and line, grabbling, or by special device with a special device fishing license may be sold, with the following exceptions:

- (1) alewife and blueback herring, excluding those less than six inches in length collected from Kerr Reservoir (Granville, Vance, and Warren counties);
- (2) blue crab; and
- (3) bowfin.

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976;

Amended Eff. July 1, 1994; July 1, 1993; May 1, 1992;

Temporary Amendment Eff. December 1, 1994;

Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2002; July 1, 2001;

Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);

Temporary Amendment Eff. June 1, 2003;

Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);

Amended Eff. August 1, 2019; August 1, 2018; August 1, 2016; August 1, 2015; August 1, 2014; August 1, 2013; August 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.

TITLE 19A - DEPARTMENT OF TRANSPORTATION**19A NCAC 02B .0150 RAILROAD RIGHT OF WAY
DEFINITIONS**

The following definitions apply to Rules .0150 through .0158 of this Subchapter.

- (1) "At-grade crossing" means an intersection where roadways and railroads join or cross at the same level.
- (2) "Closed crossing" means a location where a previous crossing no longer exists because either the railroad tracks have been removed, or each pathway or roadway approach to the crossing has been removed, leaving behind no intersection of railroad tracks with either a pathway or roadway. A grade-separated highway-rail crossing that has been removed shall be considered a closed crossing.
- (3) "Crossing Agreement" means a written agreement between the Department and a railroad through which the railroad permits the Department to build a road across the railroad's tracks.
- (4) "Facilities" means real or personal property, or any interest in that property, that is situated for the provision of a freight or passenger rail fixed guideway facility or system. The term includes all property or interests necessary or convenient for the acquiring, providing, using, or equipping of a rail fixed guideway facility or system, including rights-of-way, trackwork, train controls, stations, and maintenance facilities.
- (5) "Flange guard" means a protective edge, rib, or rim made of rubber, steel, timber, or any other composite material on any object such as the base of a rail, on the top and bottom horizontal parts of a beam, or girder.
- (6) "Grade" means the rate of ascent or descent of a roadway, expressed as a percentage and calculated by the change in roadway elevation per unit of horizontal length.
- (7) "Grade point" means the point where the new construction of a facility ties into and terminates at the existing facility.
- (8) "Grade separation" means a crossing of a highway and a railroad at different levels that allows unimpeded traffic movement.
- (9) "Railroad" means an entity that owns or maintains the track through the at-grade crossing, or an entity that operates one or more trains through an at-grade crossing or grade separated crossing on or connected to the general railroad system of transportation.
- (10) "Separated" means the travelways of two transportation facilities, such as two highways or a highway and a railroad, that are disconnected by means of a bridge so that

traffic on one shall not conflict with traffic on the other.

- (11) "Separation structure" means the bridge structure that separates the travelways of the two transportation facilities.
- (12) "Track" means an assembly of rails, ties, and fastenings that cars, locomotives, and trains traverse.
- (13) "Traffic control device" means a sign, signal, marking, or other device placed on or adjacent to a street or highway by authority of a public body or official having jurisdiction to regulate, warn, or guide traffic.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; 150B-2(8a)(h);
Eff. July 1, 1978;
Amended Eff. December 1, 2012;
Readopted Eff. June 1, 2019.

**19A NCAC 02B .0152 SIGNALIZATION OF EXISTING
GRADE CROSSING**

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; 150B-21.3A;
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Repealed Eff. June 1, 2019.

19A NCAC 02B .0153 NEW AT-GRADE CROSSING

(a) It shall be unlawful to construct a railroad track across any portion of the State highway system without the Secretary of Transportation or the Secretary's designee providing a written statement of approval. The Secretary or designee's determination shall consider rail crossing engineering standards for safety, location, sight lines, traffic volume, grade, horizontal alignment, curvature, cant and the number of traffic lanes.

(b) A crossing agreement shall be required for any construction or relocation of railroad track across the State highway system, and any construction or relocation of the State highway system across already existing railroad track. The crossing agreement shall list the construction, maintenance, safety device installation, and funding responsibilities of each party.

(c) Where the construction of a new road or the relocation of an existing road involves an additional or a new crossing and does not involve the elimination of an existing crossing, the railroad shall not be required to bear any costs of signalization or separation, either at the time of the initial construction or within a 20-year period from the execution of the Crossing Agreement if the Department determines during that 20-year period that a signalization or a separation structure shall be required.

(d) If a crossing in existence prior to December 3, 1966 shall be eliminated by the relocation of an existing road, Rule .0155 of this Section shall apply.

(e) The following shall be required for the construction of a new municipal street across an already existing railroad track, or railroad tracks across the municipal street system.

- (1) If a municipality and railroad seek to enter into an agreement for the construction of a new

- municipal street, meaning a street forming a part of the municipal street system consisting of those streets or highways that are not a part of the State highway system, across a railroad track, at-grade, the municipality or public authority responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for the municipal street system shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the municipality anticipates there to be less than 60 days between the negotiations and execution of the agreement, the municipality shall notify the Director upon commencement of agreement negotiations.
- (2) If a municipality and railroad seek to enter into an agreement for the construction of a new railroad track across the municipal street system, at-grade, the municipality or public authority responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for the municipal street system shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the municipality anticipates there to be less than 60 days between the negotiations and execution of the agreement, the municipality shall notify the Director upon commencement of agreement negotiations.
- (3) If a private developer and a railroad seek to enter into an agreement for the construction of a railroad track across the municipal street system, at-grade, or a new municipal street across a railroad track, at-grade, the private developer shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the private developer anticipates there to be less than 60 days between the negotiations and execution of the agreement, the private developer shall notify the Director upon commencement of agreement negotiations.
- (4) Notice shall be in writing and shall be effective upon receipt by the Rail Division Director. Notice may be delivered personally, by email, sent by overnight courier with recipient's signature or other electronic acknowledgement of receipt from the recipient requested, or by certified or registered mail, postage prepaid. Please address all physical copies of the required notice to the Rail Division Director at 1553 Mail Service Center, Raleigh, NC 27699-1553. The Rail Division Director's email address may be found, free of charge, at <https://apps.ncdot.gov/dot/directory/authenticated/UnitPage.aspx?id=3393>.
- (5) Notice shall include the following information:

- (A) the name, address, telephone number, and email address of the entity submitting the notice;
- (B) a description of the anticipated crossing, including whether the agreement is for the construction of a railroad track across the municipal street system, or the construction of a municipal street across an already existing railroad track;
- (C) the county, city, or political subdivision where the crossing will be located;
- (D) the railroad milepost number, if an already existing railroad track; and
- (E) the State maintained road number or name, if an already existing road.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; 136-20.1; 136-66.1; 136-195; Eff. July 1, 1978; Amended Eff. December 1, 1993; Readopted Eff. June 1, 2019.

19A NCAC 02B .0154 RAILROAD SEPARATION STRUCTURES

- (a) Whenever any highway project provides for the construction of a separation structure over or under the railroad, the Department shall construct the separation structure to provide for an additional track upon the request of the railroad and the furnishing of the justification or enter into an agreement with the railroad to provide for the additional track if such tracks are constructed and placed in use within a 20-year period from the signing of the agreement.
- (b) If a grade crossing that was in existence prior to December 3, 1966, is separated, the railroad shall pay five percent of the cost of the separation structure and approaches from grade point to grade point.
- (c) If the separation structure eliminated the crossing at-grade, the railroad shall pay five percent of the total costs of the separation structure and approaches from grade point to grade point as constructed initially and five percent of the costs of the widening of the structure within the 20-year period.
- (d) If the separation structure is an additional or new crossing and no existing crossing is closed, the Board of Transportation shall pay the entire cost of the structure including the provision for additional tracks on request by the railroad with justification, or will pay the entire cost of widening the structure within the aforementioned 20-year period.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; Eff. July 1, 1978; Readopted Eff. June 1, 2019.

19A NCAC 02B .0155 EXISTING AT-GRADE CROSSING

- (a) If the construction, reconstruction, or maintenance of an existing at-grade crossing causes any road, street, or highway forming a part of the State highway system to cross or intersect

any railroad, including an industrial siding, at the same level or grade, the railroad shall be responsible for the following:

- (1) construction and maintenance of the crossing and the area between the ends of the ties and the edge of the pavement of the main traveled lanes plus a maximum of 10 feet of the usable shoulders; and
- (2) construction cost of the crossing for the pavement width and maintenance for the entire area herein described at its own expense.

(b) Pursuant to G.S. 136-20(h), the railroad shall be responsible for 50 percent of annual maintenance costs of grade crossing signals.

(c) A railroad, county, city, or other political subdivision of the State may identify and propose at-grade crossings for potential closure by submitting a Crossing Closure Request to the Rail Division Director as follows:

- (1) The Crossing Closure Request shall be addressed to the Rail Division Director, 1553 Mail Service Center, Raleigh, North Carolina, 27699-1553 and contain the following information:
 - (A) name of the entity submitting the request;
 - (B) name of the county, city, or political subdivision where the crossing is located;
 - (C) Association of American Railroads (AAR) crossing number;
 - (D) railroad milepost number;
 - (E) State maintained road number or name; and
 - (F) any existing protection at the crossing.
- (2) The Rail Division shall review the Crossing Closure Request and make a final recommendation to the Board of Transportation upon the consideration of transportation impacts, including emergency access, safety, feasibility, and public convenience.
- (3) If upon the consideration of the Rail Division's final recommendation, the Board of Transportation approves the at-grade closure, the Rail Division shall give notice to the governing body within which the at-grade crossing is located, direct the Railroad to close or remove the crossing within 60 days, and coordinate with the Railroad the responsibilities for removal.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0156 PAVING OF ROADWAY SURFACE CROSSING RAILROAD TRACKS

When any road, street or highway forming a link in the State highway system is being surfaced or resurfaced, the Department of Transportation shall, pave the roadway surface across the

crossing upon request by the railroad. The railroad shall provide and place at its own expense the necessary crossing flange guards on rail guards and otherwise adjust the facilities to meet the level of the finished road surface.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0157 COST OF CHANGING ELEVATION OF RAILROAD FACILITIES

When the grade of any road, street, or highway requires a change in the elevation of the railroad's tracks or facilities, except those changes required by surfacing or resurfacing, the Department shall pay for the necessary change in the railroad facilities that may be required to meet the grade of the finished road surface.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; Eff. July 1, 1978;
Amended Eff. October 1, 1993;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0158 CHANGING GRADE OF ROAD WHEN GRADE OF RR TRACKS IS CHANGED

When any railroad changes the grades of its tracks where the tracks cross or intersect any road, street, or highway of the State highway system, the railroad shall be responsible for adjusting, at its own expense, the grade of such road, street or highway as required to meet the change in grade of the railroad's tracks or facilities. Any adjustment of the road, street or highway shall be made in accordance with Departmental engineering standards. A minimum of ten feet runoff shall be required for each inch of difference in elevation between track grade and road grade. The Department may contract with the railroad to perform the asphalt run-off work on a 100 percent reimbursement basis.

History Note: Authority G.S. 136-18(5); 136-18(11); 136-20; Eff. July 1, 1978;
Amended Eff. October 1, 1993; November 1, 1991;
Readopted Eff. June 1, 2019.

19A NCAC 02B .0315 NEGOTIATION WITH MUNICIPALITIES AND MUNICIPAL AGREEMENTS

Transportation projects within municipalities shall be constructed in accordance with a municipal agreement that is executed by the municipality and the Board when the construction includes any financial participation by the municipality in project costs, or the municipality requests additional work that results in maintenance responsibilities or financial participation by the municipality. If there is no financial participation by the municipality, no additional work requested by the municipality, and no maintenance requirements by the municipality, then a municipal agreement shall not be required under the terms of this Rule. If a municipal agreement is necessary in accordance with this Rule, then the agreement shall set forth conditions including whether the Department or the municipality will acquire the right-of-way, and shall identify any financial participation by the municipality.

History Note: Authority G.S. 136-18(2); 136-19; 136-66.3; 143B-24; 143B-350(f)(g); Eff. July 1, 1978; Transferred and Recodified from 19A NCAC 2B .0119 Eff. October 1, 1993; Amended Eff. December 1, 1993; Readopted Eff. June 1, 2019.

19A NCAC 02D .0402 CURB AND GUTTER AND UNDERGROUND DRAINAGE ON HIGHWAYS

(a) The following Subparagraphs are applicable to Projects included in the State Transportation Improvement Program.

- (1) If curb and gutter or underground storm drainage facilities are not included in a State highway improvement project, such facilities may be added as part of the programmed project if the additional cost of these facilities are paid by the adjacent property owner(s) or the municipality.
- (2) The Department shall approve participation by the property owner(s) or the municipality in cases where the property owner(s) or the municipality agree to have curb and gutter and underground storm drainage, if required, on both sides of the project for a minimum distance of one block or, if no intersections are present, for a minimum distance of 1000 feet. The State shall pay the cost of widening the present or proposed pavement out to the curb and gutter so provided.
- (3) The property owner(s) or the municipality shall submit in advance of the project construction a certified check for the additional cost of the approved curb and gutter and storm drainage facilities.

(b) Other Existing Paved Roads. Along existing paved State highway system routes where no construction project is proposed and the adjacent property owner(s) or the municipality construct curb and gutter and underground drainage facilities as approved by the Board of Transportation, the Department of Transportation shall bear the cost of widening the existing pavement as required for the proper location and installation of such facilities. Approval of curb and gutter or underground storm drainage facilities that are located along the State highway system, where no construction projects are proposed, shall be determined according to the engineering standards of the Department, and based on:

- (1) adequacy of the facilities to handle drainage requirements;
- (2) adequacy of the resulting roadway cross section to handle existing and anticipated traffic demands;
- (3) conformance of the proposed street cross section with engineering standards as established by the Board of Transportation;
- (4) a minimum distance of one block length or, if no intersections are present, for a minimum distance of 1000 feet provided this requirement is not in conflict with local municipal

ordinances. In cases of conflict, the local ordinance shall prevail; and

- (5) availability of State funds to widen the existing pavement, when applicable.

(c) Unpaved Roads. Construction of curb and gutter along unpaved State highway system routes shall not be permitted.

History Note: Authority G.S. 136-44.1; 136-66.1; 143B-350(f); 143B-350(g); Eff. July 1, 1978; Amended Eff. November 1, 1993; Readopted Eff. June 1, 2019.

19A NCAC 02D .0403 USE OF DUST ALLAYING MATERIALS

(a) Requests for calcium chloride dust treatments shall be addressed to the County Maintenance Yard having jurisdiction in the county where the work is proposed.

(b) Calcium chloride dust treatments shall only be placed on State highway system roads and streets provided:

- (1) prior approval is obtained from the Division Engineer or the Division Engineer's authorized designee having jurisdiction in the county where the dust treatment is proposed; and
- (2) calcium chloride is furnished by the person requesting the dust treatment and placed by the Department or its agents.

(c) The Division Engineer or the Division Engineer's authorized designee shall approve requests for calcium chloride dust treatments unless conditions are wet, rendering the dust treatment ineffective, and if the dust treatment would worsen road surface conditions.

(d) The person requesting the dust treatment shall purchase and deliver the calcium chloride as directed by the Division Engineer or his or her designee.

History Note: Authority G.S. 136-18(1); 136-18(27); 143B-346; Eff. July 1, 1978; Amended Eff. November 1, 1993; Readopted Eff. June 1, 2019.

19A NCAC 02D .0405 EXAMPLES OF CONSTRUCTION AND MAINTENANCE ACTIVITIES

History Note: Authority G.S. 136-66.1; 143B-346; 143B-350(f); 143B-350(g); 150B-21.3A; Eff. July 1, 1978; Amended Eff. November 1, 1993; Repealed Eff. June 1, 2019.

19A NCAC 02D .0410 RENTAL OF SUPPLEMENTAL EQUIPMENT

The Department of Transportation, in accordance with its needs and the availability of state-owned equipment, may supplement its own equipment requirements by the rental of privately-owned equipment. Operators may also be furnished with equipment.

History Note: Authority G.S. 143B-346; 143B-350(f); 143B-350(g);
 Eff. July 1, 1978;
 Amended Eff. November 1, 1993; November 1, 1991;
 Readopted Eff. June 1, 2019.

19A NCAC 02D .0414 LOCATION OF GARBAGE COLLECTION CONTAINERS

- (a) An encroachment agreement between the Department and non-Departmental parties shall be required for a garbage collection container site on any State highway rights-of-way.
- (b) No garbage collection container shall be located within 500 feet of an occupied dwelling unless the applicant obtains written permission from the owner of the dwelling.
- (c) Information on initiating the encroachment agreement process for the placement of garbage collection containers on any State highway rights-of-way may be obtained from the State Utilities Manager.
- (d) Guidelines for container sites are as follows:
 - (1) the county or municipality negotiating and executing the encroachment agreement shall be responsible for any work to be performed in preparation of the site, and any work performed by the Department, on the site, shall be on a reimbursable basis; and
 - (2) container sites adjacent to unpaved roads shall be prepared with materials similar to those existing on the traveled portion of the roadway.
- (e) If container sites are located adjacent to the roadway, sight distances shall be provided for any vehicle to safely enter the road from the container site.
- (f) Container sites shall be permitted adjacent to roadways only if lateral clearances can be provided from the edge of pavement to the container.
- (g) The county or municipality that holds an executed agreement for the placement of garbage collection containers, as set forth in this Rule, shall maintain a collection schedule in order to prevent container spillage or overflow, and shall keep the site free from all garbage and trash, other than that which is within the garbage collection containers. Garbage and trash collection located within the garbage collection containers shall be authorized by the encroachment agreement. The encroachment agreement shall provide that the District Engineers shall give written notice to the county or municipality of any failure to comply with this requirement. The encroachment agreement shall also provide that, if a county or municipality that is so notified and does not bring the site within compliance of the requirement within 30 days of receipt of the written notice, the encroachment agreement shall automatically terminate, and the District Engineer shall arrange for the disposal of the garbage collection containers.

History Note: Authority G.S. 136-18.3; 136-18(10);
 Legislative Objection [(a)] Lodged Eff. August 19, 1980;
 Legislative Objection [(a)] Removed Eff. April 23, 1981;
 Eff. July 1, 1978;
 Amended Eff. March 1, 2013; November 1, 1993; October 1, 1991; April 3, 1981; April 11, 1980;
 Readopted Eff. June 1, 2019.

19A NCAC 02D .0421 INSTALLATION OF DRIVEWAY PIPE

(a) The Department of Transportation shall be responsible for the installation and costs of pipe lines in the drainage ditch along State-maintained roads and within State-maintained right-of-way or easement at entrances to private residential property where the pipe is furnished and delivered to the installation site by the property owner at the property owner's expense if the following requirements are met:

- (1) the opening of the side ditch is needed to provide drainage;
 - (2) the pipe to be installed shall be restricted to a minimum inside diameter of 15 inches long and maximum inside diameter of 48 inches unless otherwise directed by the Department;
 - (3) the minimum length of pipe to be installed shall be 20 feet with additional length as may be necessary to accommodate earth side slopes. The pipe shall not be lengthened for the purpose of eliminating typical side ditches;
 - (4) the property does not already have ingress and egress;
 - (5) the proposed location for the driveway entrance does not present safety hazards such as insufficient sight distance, proximity to other intersections, increased traffic congestion, poor roadway facility operations, decreased highway capacity, driver and pedestrian confusion, or other risks associated with vehicular traffic entering, leaving, and parking adjacent to accesses for residential property; and
 - (6) the property is limited to farm entrances and property owned by the individual currently living on the property or owned by the individual proposing to use the property for residential purposes. This does not include property being developed for sale.
- (b) "Commercial property" includes:
- (1) any property currently being used for commercial or industrial purposes;
 - (2) property that is being developed for commercial or industrial purposes; and
 - (3) property that is being developed for sale.
- (c) The Department shall install pipe lines in the drainage ditch along the side of State-maintained roads and within State-maintained right-of-way or easements at entrances to commercial property when the pipe is furnished and delivered to the installation site by the property owner at the property owner's expense if the following requirements are met:
- (1) prior to installation, the property owner shall submit to the Department an application for installation of a commercial driveway pipe together with a payment in the amount of ten dollars (\$10.00) per linear foot of pipe to be installed. The application shall contain the following:
 - (A) description of the property location;
 - (B) description of the property use;

- (C) acknowledgment that the driveway or street entrance shall be constructed and maintained in absolute conformance with the current "NCDOT Policy on Street and Driveway Access to North Carolina Highways;"
 - (D) acknowledgment that no signs or objects shall be placed on or over the public right-of-way other than those approved by the Department;
 - (E) acknowledgment that the driveway(s) or street(s) shall be constructed as shown on the attached plans;
 - (F) acknowledgment that the driveway(s) or street(s) shall include any approach tapers, storage lanes, or speed change lanes as deemed necessary by the Department;
 - (G) acknowledgment that if any future improvements to the roadway become necessary, the portion of driveway(s) or street(s) located on public right-of-way shall be considered the property of the Department, and the property owner shall not be entitled to reimbursement or have any claim for present expenditures for driveway or street construction;
 - (H) acknowledgement that the permit shall become void if construction of driveway(s) or street(s) is not completed within the time specified by the NCDOT Policy on Street and Driveway Access to North Carolina Highways;
 - (I) requirement that a fifty dollar (\$50.00) construction inspection fee be paid by the property owner to the Department, and reimbursed to the property owner by the Department if the application is denied;
 - (J) acknowledgment that the construction and maintenance of the driveway(s) or street(s) shall be performed in a safe manner so as not to interfere with or endanger the traveling public.
 - (K) acknowledgment that signage, signals, flaggers, and other warning devices shall be provided during construction and in conformance with the current Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD);
 - (L) acknowledgment that the Department shall be indemnified and saved harmless from all damages and claims for damage that may arise by reason of construction;
 - (M) requirement that the property owner shall provide a Performance and Indemnity Bond in the amount specified by the Division of Highways for any construction proposed on the State Highway system;
 - (N) acknowledgment that the permit shall be granted subject to the regulatory powers of the Department as provided by law and as set forth in the NCDOT Policy on Street and Driveway Access to North Carolina Highways and shall not be construed as a contract access point;
 - (O) requirement that the property owner shall notify the District Engineer when the proposed work has begun and is completed; and
 - (P) signatures of the property owner, property owner's authorized agent, and their respective witnesses, and receipt and approval signatures of the Department.
- (2) applications for commercial driveway permits shall be approved or denied in accordance with the engineering standards and guidelines provided in the NCDOT Policy on Street and Driveway Access to North Carolina Highways. This policy may be accessed at no cost to the public by visiting <https://connect.ncdot.gov/projects/Roadway/RoadwayDesignAdministrativeDocuments/Policy%20on%20Street%20and%20Driveway%20Access.pdf>; and
- (3) prior to installation, the property owner shall have received an approved commercial driveway permit from the Department. In the event the permit application is denied, the Department shall return to the applicant the payment referenced in Subparagraph (c)(1) of this Rule.
- (d) The commercial property owner may elect to have driveway pipe installed by private contractors if the following requirements are met:
- (1) prior to installation, the property owner shall submit to the Department an application for installation of a commercial driveway pipe together with a payment of fifty dollars (\$50.00) to cover the cost of the inspection of the pipe installation by Department personnel;
 - (2) prior to installation, the property owner shall have received an approved commercial driveway permit from the Department. In the event the permit application is denied, the Department will return to the applicant the payment referenced in Subparagraph (d)(1) of this Rule;
 - (3) the workmanship, materials, and final installation shall be subject to approval by the

Department's District Engineer in accordance with current Department of Transportation standards. In the event the pipe installation does not meet the approval of the District Engineer, the Department shall remove the pipe at the expense of the property owner; and

- (4) signing, barricades, and other devices necessary to mitigate traffic at or adjacent to the installation site shall be provided by the property owner or contractor. Traffic mitigation shall meet the requirements of the Manual on Uniform Traffic Control Devices for Streets and Highways as as by the District Engineer.

(e) Department installation of pipe shall include necessary excavation, complete pipe placement, and sufficient backfill to provide a pipe line and grade protection. The Department of Transportation is not obligated to construct a finished driveway.

(f) The Department shall be responsible for the installation and costs of residential and commercial driveway pipe if the Department caused the need by relocating or revising the elevation of side ditches for the improvement of highway drainage.

(g) See Rule .0102 of this Subchapter for provisions related to pipe size.

History Note: Authority G.S. 136-18(1); 136-30; 136-92; 136-93; 156-88;
Eff. July 1, 1978;
Amended Eff. November 1, 1993; October 1, 1983;
Readopted Eff. June 1, 2019.

19A NCAC 02D .0425 FEDERAL DISASTER ASSISTANCE

History Note: Authority G.S. 136-4; 136-18; 143B-350; 150B-21.3A;
Eff. October 1, 1991;
Amended Eff. April 1, 1997; November 1, 1993;
Repealed Eff. June 1, 2019.

19A NCAC 02D .0535 FERRY RESERVATIONS

(a) Reservations for space shall only be available for the Cedar Island-Ocracoke, Swan Quarter-Ocracoke, and Passenger Ferry from Hatteras-Ocracoke ferry operations. All other operations are on a "first come-first served" basis.

(b) Reservations shall be made by in person at the ferry terminal, online at <https://ferry.ncdot.gov> or by telephone as follows:

- (1) For the main reservation line, call: (800) 293-3779.
- (2) For departures from Ocracoke, call: (252) 996-6201.
- (3) For departures from Cedar Island, call: (252) 463-7046.
- (4) For departures from Swan Quarter, call: (252) 791-3302.
- (5) Office hours shall be from 6:00 am until 5:00 pm, year-round.

(c) Reservations may be made any time within 90 days of the departure date and shall not be transferable. Name of the driver

and vehicle license number shall be required. A credit or debit card shall be required for advance reservations to secure passage and space aboard a ferry vessel. It shall not be required that the credit or debit card be in the name of the driver.

(d) Reservations shall be claimed at least 30 minutes prior to the scheduled departure. Reservations not claimed prior to this time shall be cancelled and the space reassigned.

(e) Vehicles shall remain in the staging area once ticketed, and until boarding begins.

(f) In case of departure cancellation due to mechanical failure, inclement weather, or other unavoidable causes, the customer may reschedule the reservation for either the earliest possible departure or or for another time convenient for the customer.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Readopted Eff. June 1, 2019.

19A NCAC 02D .0538 VEHICLE WEIGHT LIMITATIONS

(a) Maximum weights permissible for 150-foot Hatteras Class ferries are as follows:

- (1) 2 axles plus front steer axle with standard load and length of 35 feet: 40,000 lbs.;
- (2) 3 axles plus front steer axle with standard load and length of 40 feet: 60,000 lbs.;
- (3) 4 axles plus front steer axle with standard load and length of 65 feet: 80,000 lbs.; and
- (4) 5 axles plus front steer axle with standard load and length of 65 feet: 80,000 lbs.

(b) Maximum weights permissible for 180-foot River Class, and 220-foot Sound Class ferries are as follows:

- (1) 2 axles plus front steer axle with standard load and length of 35 feet: 40,000 lbs.;
- (2) 3 axles plus front steer axle with standard load and length of 40 feet: 60,000 lbs.;
- (3) 4 axles plus front steer axle with standard load and length of 65 feet: 80,000 lbs.;
- (4) 5 axles plus front steer axle with standard load and length of 65 feet: 92,000 lbs.;
- (5) 6 axles plus front steer axle with heavy load or extra-long lowboy: 108,000 lbs.; and
- (6) 7 axles plus front steer axles with heavy load or extra-long lowboy: 120,000 lbs.

History Note: Authority G.S. 136-82; 143B-10(j);
Eff. July 1, 1978;
Amended Eff. November 1, 1991;
Readopted Eff. June 1, 2019.

19A NCAC 02D .0539 VEHICLE PHYSICAL

DIMENSION LIMITATIONS

(a) Maximum physical dimensions shall be 65 feet in length, 12 feet in width, and 13.5 feet in height for vehicles on each of the following ferry vessels:

- (1) Silver Lake;
- (2) Cedar Island;
- (3) Carteret;
- (4) Swan Quarter;
- (5) Sea Level;
- (6) Governor Daniel Russel;
- (7) Southport;
- (8) Neuse;
- (9) Lupton;
- (10) Fort Fisher;
- (11) W. Stanford White;
- (12) Croatoan;
- (13) Hatteras;
- (14) Kinnakeet;
- (15) Frisco;
- (16) Chicamacomico;
- (17) Cape Point;
- (18) Ocracoke;
- (19) Roanoke;
- (20) Thomas A. Baum, out-of-service effective September 2020;
- (21) Governor James Baxter Hunt, Jr.;
- (22) Rodanthe, in-service effective March 2019;
- (23) Avon, in-service effective March 2020; and
- (24) Salvo, in-service effective August 2020.

(b) Vehicles having overall dimensions requiring an Oversized/Overweight Permit, pursuant to Section .0600 of this Subchapter, shall carry that permit within the vehicle; otherwise, loading aboard a ferry vessel shall not be permitted.

History Note: Authority G.S. 20-119; 136-82; 143B-10(j); Eff. July 1, 1978; Amended Eff. December 1, 1993; November 1, 1991; Readopted Eff. June 1, 2019.

19A NCAC 02E .0301 UNZONED INDUSTRIAL AREA

(a) For purposes of this Section and the Junkyard Control Act, "Unzoned industrial area" means the land occupied by an industrial activity, including its building, parking lot, storage or processing, and that land located within 1,000 feet thereof that is:

- (1) located on the same side of the highway as the principal part of the industrial activity;
- (2) not used for residential or commercial purposes; and
- (3) not zoned by State or local law, rule, or ordinance.

(b) For the purposes of this Section and the Junkyard Control Act, "Industrial activity" means an activity that the nearest zoning authority within the State permits in industrial zones or zones that are less restrictive. An activity is also industrial if the nearest zoning authority within the State has prohibited the activity but the activity is generally recognized as industrial by other zoning authorities within the State. None of the following shall be considered industrial activities:

- (1) outdoor advertising structures;
- (2) agricultural activities including ranching, farming, grazing, and such necessarily related activities as are generally carried on by a farmer on the farmer's own premises, including wayside fresh produce stands;
- (3) forestry activities that include the growing of timber, thinning, felling, and logging of timber or pulpwood;
- (4) transient or temporary activities;
- (5) activities not visible from the traffic lanes of the main-traveled way;
- (6) activities more than 1,000 feet from the nearest edge of the right of way;
- (7) activities conducted in a building used as a residence;
- (8) railroad tracts other than yards, minor sidings, and passenger depots; and
- (9) junkyards, as defined in Section 136, Title 23, of the United States Code.

History Note: Authority G.S. 136-151; 23 U.S.C. 136; Eff. July 1, 1978; Amended Eff. December 1, 1993; Readopted Eff. June 1, 2019.

19A NCAC 02E .0303 FEES

(a) The application fee for the Application for Junkyard payment shall be fifteen dollars (\$15.00).

(b) The Application for Junkyard Permit is available from the Division Engineer having jurisdiction in the county where the proposed or existing junkyard is located. The Application for Junkyard Permit allows an applicant to request a permit number for the establishment or continued maintenance of a junkyard in accordance with the provisions of the Junkyard Control Act, Article 12, Chapter 136 of the General Statutes of North Carolina (Junkyard Control Act). Applications for Junkyard Permits shall require the applicant to provide the following information:

- (1) applicant's name and address;
- (2) whether the junkyard is proposed or already existing;
- (3) if already existing, the date the junkyard was established;
- (4) the proposed or already existing location of the junkyard; and
- (5) certification by the applicant that approval for the proposed or already existing junkyard operations have been obtained from the owner of the real property, or the property owner's authorized agent, on which the junkyard is located or proposed to be located.

(c) Permit numbers shall only be provided to an applicant upon payment of the application fee, and approval by the District Engineer that the junkyard is in compliance with the Junkyard Control Act. If the junkyard is proposed, meaning the Application for Junkyard Permit is to establish a junkyard, the Division Engineer will keep the application on file at the district office. Once the junkyard is in existence, the District Engineer shall approve the Application for Junkyard Permit if, upon inspection,

the junkyard is found to conform to the provisions of the Junkyard Control Act.

(d) An annual renewal of each permit shall be required to maintain junkyards within 1,000 feet of the right-of-way of interstate and federal-aid primary highways. In December of each year, the Department will send to the permittee a renewal invoice for payment of the junkyard permit annual renewal fee. The renewal fee shall be five dollars (\$5.00), due on December 15th of each year, and paid to the District Engineer having jurisdiction. The permit shall be renewed upon payment of the annual renewal fee.

*History Note: Authority G.S. 136-149; 136-151;
Eff. July 1, 1978;
Amended Eff. December 1, 1993;
Readopted Eff. June 1, 2019.*

TITLE 20 - DEPARTMENT OF STATE TREASURER

20 NCAC 11 .0101 ADMINISTRATIVE FEES: NC 401(K) AND NC 457 PLANS

(a) The Board and the Department shall charge an administrative fee at an annual rate of 0.025 percent of the assets in each account in the Supplemental Retirement Income Plan of North Carolina and in each account in the North Carolina Public Employee Deferred Compensation Plan.

(b) The Board and the Department may waive the administrative fee in Paragraph (a) of this Rule for a period of up to 12 months based upon the following factors:

- (1) The balance of the administrative expense account for the plans;
- (2) Department projections of future expenses to administer the plans; and
- (3) Department projections of future receipts available for the administration of the plans.

(c) The Board and the Department shall provide notice of a fee waiver on the plans' website and on participants' quarterly statements.

*History Note: Authority G.S. 135-91(e); 143B-426.24(h2);
Eff. June 1, 2019.*

20 NCAC 11 .0102 ADMINISTRATIVE FEES: NC 403(B) PROGRAM

(a) The Board and the Department shall charge an administrative fee at an annual rate of 0.050 percent of the assets in each account in the North Carolina Public School Teachers' and Professional Educators' Investment Plan.

(b) The Board and the Department may waive the administrative fee in Paragraph (a) of this Rule for a period of up to 12 months based upon the following factors:

- (1) The balance of the administrative expense account for the plan;
- (2) Department projections of future expenses to administer the plan; and
- (3) Department projections of future receipts available for the administration of the plan.

(c) The Board and the Department shall provide notice of a fee waiver on the plan's website and on participants' quarterly statements.

*History Note: Authority G.S. 115C-341.2(c);
Eff. June 1, 2019.*

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 28 - LANDSCAPE CONTRACTORS' LICENSING BOARD

21 NCAC 28B .0103 PRACTICE OF LANDSCAPE CONTRACTING; DISPLAY OF LICENSE NUMBER

(a) An individual who is "readily available to exercise supervision over the landscape construction and contracting work" as set forth in G.S. 89D-12(a) and G.S. 89D-17(f) is an individual who is physically located no more than 100 miles from where the construction or contract project is located or who is available electronically with the ability to view the construction or contract project.

(b) The contractor's license number shall be displayed in accordance with G.S. 89D-12(3). License numbers displayed on vehicles used in the contractor's landscaping business shall be a minimum of one inch in height.

*History Note: Authority G.S. 89D-12(a) and (e); 89D-15(2);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016;
Amended Eff. June 1, 2019.*

21 NCAC 28B .0104 ANNUAL REPORTS

(a) On or before October 31 of each year, the Board shall prepare and file reports required pursuant to G.S. 93B-2. The Board shall file reports in the manner requested by receiving agency or committee.

(b) The Board shall maintain an escrow account at the financial institution used for deposits and checks. Fees tendered during a period of suspension under G.S. 93B-2(d) shall be deposited into this escrow account.

*History Note: Authority G.S. 89D-15; 93B-2;
Eff. June 1, 2019.*

21 NCAC 28B .0201 APPLICATIONS FOR LICENSURE

(a) All applicants for licensure or examination shall submit an application to the Board. The application form shall be available on the Board website or may be obtained by contacting the Board office. The application shall require the following:

- (1) The Social Security Number of applicant;
- (2) The applicant's contact information;
- (3) The name of business under which licensee will be operating, if any;
- (4) Information about all crimes of which the applicant has been convicted;

- (5) Documentation regarding all crimes of which the applicant has been convicted;
- (6) Information indicating whether the applicant has any disciplinary history with any other occupational licensing, registration or certification board or agency;
- (7) Three personal letters of reference;
- (8) Two professional letters of reference;
- (9) The corporate surety bond or an irrevocable letter of credit as prescribed by G.S. 89D-16(a)(4);
- (10) The application fee as set forth in Rule .0601 of this Subchapter.

(b) All letters of reference as required by Subparagraphs (a)(7) and (a)(8) of this Rule shall include the following information for the person providing the reference:

- (1) Name;
- (2) Address;
- (3) Phone number; and
- (4) Email address.

(c) Once an applicant has submitted a complete application and has been determined to have met the minimum qualifications set forth in G.S. 89D-16(a), the Board will notify the applicant that the applicant's qualifier is permitted to take an examination. Prior to taking the examination, the applicant shall submit an examination fee as set forth in Rule .0601 of this Subchapter. In order for a qualifier to be permitted to take an examination, an applicant shall submit a complete application no less than 30 days prior to a scheduled examination date.

(d) All applications shall be notarized. Incomplete applications shall not be processed. Application fees are non-refundable.

(e) A qualifier shall take and pass an examination within one year from the date an application is approved by the Board.

(f) If a license expires pursuant to G.S. 89D-20(a) and is not renewed within one year of the date of expiration, the licensee must submit a new application pursuant to this Rule.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-16; 89D-20;

Temporary Adoption Eff. January 1, 2016;

Eff. September 1, 2016;

Amended Eff. June 1, 2019.

21 NCAC 28B .0202 RECIPROCITY

(a) All applicants for licensure by reciprocity shall submit an application to the Board. The application form shall be available on the Board website or may be obtained by contacting the Board office located as described in Rule .0101 of this Subchapter.

(b) All applications shall include the following:

- (1) The license by reciprocity application fee as set forth in Rule .0601 of this Subchapter;
- (2) Documentation establishing that the qualifier for the applicant holds an active license, certification, or registration as a landscape contractor in another state or country;
- (3) Information indicating whether the applicant or qualifier has any disciplinary history with any other occupational licensing, registration or certification board or agency;

- (4) The surety bond or an irrevocable letter of credit as prescribed by G.S. 89D-16(a)(4);
- (5) Contact information for three personal references;
- (6) Contact information for two professional references; and
- (7) Documentation regarding all crimes of which the applicant has been convicted.

If there is any evidence to show that the applicant has committed any acts that would constitute a violation under G.S. 89D-22, the applicant shall not be licensed by reciprocity.

(c) Once an applicant has submitted a complete application and the Board has determined that the requirements for licensure, certification, or registration in the applicant's home jurisdiction are substantially equivalent to the requirements in G.S. 89D-16, the Board shall issue a license to the applicant.

(d) All applications shall be notarized. Incomplete applications shall not be processed. Application fees are non-refundable.

History Note: Authority G.S. 89D-15(2); 89D-15(3); 89D-15(4); 89D-16; 89D-19; 89D-22;

Temporary Adoption Eff. January 1, 2016;

Eff. September 1, 2016;

Amended Eff. June 1, 2019.

21 NCAC 28B .0303 QUALIFIER/QUALIFYING PARTY; USE OF ASSUMED NAME

(a) Each license shall have a person associated with the license who shall be deemed the "qualifier" or the "qualifying party." The qualifier shall be an individual who has passed the Board's examination in accordance with the Board's statutes and rules.

(b) If the license is an individual license, the qualifier shall be the same person as the person holding the individual license name. If the licensee is a legal entity authorized under the Board's practice act, the qualifier shall be as follows:

- (1) If a corporation, the qualifier shall be an officer or a full-time employee;
- (2) If a limited liability company, the qualifier shall be a manager as defined in G.S. 57D-1-03 or a full-time employee;
- (3) If a partnership, the qualifier shall be a general partner or full-time employee; and
- (4) If the holder of an assumed or designated trade name, the qualifier shall be an owner of no less than 50 percent of the business or a full-time employee.

(c) If a qualifier ceases his relationship with the licensee and pursuant to G.S. 89D-17(h) seeks additional time to acquire a qualifier, the licensee shall submit a written request to the Board. If more than 30 days pass without a qualifier and no written request is submitted, the license is automatically suspended. If more than one year passes and the license is not renewed, the license shall be revoked pursuant to G.S. 89D-20.

(d) "Full-time employee" means a person who is paid a salary or wage and is engaged in the work of the licensee a minimum of 20 hours per week or a majority of the hours operated by the applicant, whichever is less. A qualifier shall not be an independent contractor.

(e) Any applicant or licensee seeking to operate under an assumed name shall submit to the Board a Certificate of Assumed Name filed in accordance with Chapter 66, Article 14A of the General Statutes. Applications submitted to the Board on behalf of corporations, limited liability companies and partnerships shall be accompanied by a copy of any documents required to be filed with the North Carolina Secretary of State's office, such as Articles of Incorporation or Certificate of Authority.

(f) All licensees shall comply with the requirements of G.S. 66-71.4 and shall notify the Board within 30 days of any change in the name in which the licensee is conducting business in the State of North Carolina.

(g) No applicant or licensee shall use or adopt an assumed name used by any other licensee, or any name so similar to an assumed name used by another licensee that could confuse or mislead the public.

History Note: Authority G.S. 66-71-4; 89D-16; 89D-17; 89D-20;
Eff. June 1, 2019.

21 NCAC 28B .0402 CONTINUING EDUCATION UNITS

(a) A licensee shall complete in-person seven continuing education units (CEUs) during the year preceding renewal. Beginning with renewals filed after August 1, 2016, at least three of the seven CEUs must be technical credits and at least two of the seven CEUs must be business credits. If the information provided to the Board as required by this Section is unclear, the Board may request additional information from a licensee in order to assure compliance with continuing education requirements.

(b) For the purposes of this Rule:

- (1) "technical credits" are defined as credits relating directly to the subject matter of landscape contracting as described in G.S. 89D-11(3); and
- (2) "business credits" are defined as credits relating to general business practices, including business planning, contracts, liability exposure, human resources, basic accounting, financial statements, and safety.

(c) CEUs shall be determined as follows:

Type of Qualifying Activity	Minimum time required for 1 CEU
Live course	50 minutes
Online course	50 minutes
Trade Shows, Field Days, and Tours	4 hours
Green Industry Board Member Service	1 hour
Teaching or instructing	1 hour
In-house or Green Industry training	1 hour

(d) No more than two CEU credits shall be given for qualifying teaching or instructing in one year.

(e) No more than four CEU credits shall be given for pesticide credits issued by the North Carolina Department of Agriculture and Consumer Services in one year.

(f) Credit shall not be given in increments of less than .5 CEUs. Breaks in courses shall not be counted towards CEU credit.

(g) Requests for pre-approval as set forth in Rule .0405 of this Subchapter shall be submitted at least 45 days prior to the first day of the course or event.

(h) All continuing education shall be taken in-person by the individual receiving credit.

(i) A licensee shall not take the same CEU course within two consecutive licensing years.

(j) A licensee licensed less than 12 months shall not be subject to continuing education requirements for the initial renewal date as set forth in this Rule.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016;
Amended Eff. June 1, 2019.

21 NCAC 28B .0403 CONTINUING EDUCATION RECORDS; AUDIT

(a) A licensee shall maintain records of attendance at continuing education programs for which CEUs have been approved for two years following the processing date of the renewal application to which the CEUs were applied.

(b) Compliance with annual CEU requirements shall be determined through a random audit process conducted by the Board. Licensees selected for auditing shall provide the Board with the following documentation of the CEU activities claimed for the renewal period:

- (1) Attendance verification records; and
- (2) Information regarding course content, instructors, and sponsoring organization.

(c) Licensees selected for audit shall submit all requested information to the Board within 21 calendar days after the date the licensee was notified by the Board of the audit.

(d) Failure to maintain compliance with the Board's continuing education requirements shall result in the licensee's status being changed to inactive.

History Note Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b);
Temporary Adoption Eff. January 1, 2016;
Eff. September 1, 2016;
Amended Eff. June 1, 2019.

21 NCAC 28B .0501 GENERAL

(a) Prior to commencing work, services performed by a licensed landscape contractor ("licensed contractor") that exceed five thousand dollars (\$5,000) in value shall be described in a written agreement. This agreement may be authored by either party and shall contain:

- (1) The business name, license number, business address, and telephone number of the licensed contractor;
- (2) The name and address of client or customer;

- (3) The address or location of work to be performed, if different from the client or customer's address;
- (4) The date of the proposal;
- (5) The description of the work to be performed;
- (6) The total value in lump sum, unit price, or time and material price;
- (7) The estimated time of completion unless already identified in an original prime contract, if applicable;
- (8) The terms of payment;
- (9) The terms of warranty (if any);
- (10) The terms of maintenance, including the party responsible for maintenance;
- (11) The signatures of all parties by individuals legally authorized to act on behalf of the parties;
- (12) Affixation of a seal described in G.S. 89D-12(d) or a statement that the licensed contractor is licensed by the Board and the current address and phone number of the Board; and
- (13) The date of signing.

Contracts that are lump sum and have no breakout of cost for services that are either covered or noncovered under G.S. 89D-11 through G.S. 89D-13 shall be inclusive of covered services under G.S. 89D-13(5).

(b) All work performed by a licensed contractor shall meet all applicable building codes, local ordinances, and project specifications. All work performed by a licensed contractor shall meet manufacturer's specifications.

(c) If project plans or specifications prepared by someone other than the licensed contractor do not meet pertinent codes and ordinances, the licensed contractor shall bring this to the attention of the client or customer.

(d) If the licensed contractor observes a condition while the work is being performed that requires attention beyond the original scope of work, the contractor shall report the condition to a supervisor, the owner, or the person responsible for authorizing the work.

(e) The licensed contractor shall call for utility location services pursuant to the Underground Utility Safety and Damage Prevention Act, G.S. 87-115 et seq., also known as the N.C. 811 law.

(f) The licensed contractor shall maintain a worksite that meets state and local standards for a safe workplace.

History Note: Authority G.S. 89D-13(5); 89D-15(2); 89D-15(16);

Temporary Adoption Eff. January 1, 2016;

Eff. September 1, 2016;

Amended Eff. June 1, 2019.

21 NCAC 28B .0507 LOW-VOLTAGE LIGHTING; POOLS

(a) When installing low-voltage landscape lighting systems, the licensed contractor shall:

- (1) Insure that all wire connections are waterproof;
- (2) Only use weather-proof fixtures;
- (3) Supply lamps per the manufacturer's specifications with all fixtures;

- (4) Ensure that the total lamp wattage of each circuit does not exceed the National Electrical Code (NEC) standard for the size of wire being used;
- (5) Not load a wire to more than 80 percent of the wire's capacity;
- (6) Connect all exterior low-voltage wiring to a ground fault circuit interrupter (GFCI) circuit;
- (7) Mount transformers a minimum of 18 inches above grade;
- (8) Perform a post-installation inspection to verify that the lighting system is fully operational as intended per the manufacturer's recommendations; and
- (9) Provide literature to the client about the lighting components that lists lamps per the manufacturer's specifications for fixtures.

(b) All garden pools shall be installed in accordance with state and local codes. A garden pool is an ornamental water feature that is not defined as a swimming pool under any state or local code.

History Note: Authority G.S. 89D-15(2); 89D-15(16);

Temporary Adoption Eff. January 1, 2016;

Eff. September 1, 2016;

Amended Eff. June 1, 2019.

21 NCAC 28B .0601 FEE SCHEDULE

(a) The Board shall charge the following fees:

- (1) Application: \$75.00;
- (2) Examination: \$150.00;
- (3) Individual license fee: \$60.00;
- (4) Corporate license fee: \$60.00;
- (5) License renewal: \$60.00;
- (6) Late renewal: \$25.00;
- (7) Individual license reinstatement: \$100.00;
- (8) Corporate license reinstatement: \$100.00;
- (9) License by reciprocity: \$100.00; and
- (10) Duplicate license: \$25.00.

(b) If the Board elects to use a testing service for the preparation, administration, or grading of examinations, the Board shall charge the applicant the actual cost of the examination services and a prorated portion of the examination fee.

(c) The late renewal and reinstatement fees shall be imposed for renewal applications submitted after August 1. All licenses shall expire on August 1 unless renewed.

(d) All fees charged by the Board are non-refundable.

History Note: Authority G.S. 89D-15(2); 89D-15(10); 89D-21;

Temporary Adoption Eff. January 1, 2016;

Eff. September 1, 2016;

Amended Eff. June 1, 2019.

21 NCAC 28B .0803 SUBPOENAS

(a) Pursuant to G.S. 150B-39, the Board may issue subpoenas for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.

(b) After a notice of hearing in a contested case has been issued and served upon a licensee or, in a case concerning an application

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for licensure, the applicant, the respondent may request subpoenas for the attendance of witnesses and the production of evidence.

(c) Requests by a licensee or applicant for subpoenas shall be made in writing to the Board and shall include the following:

- (1) the name and home or business address of all persons to be subpoenaed; and
- (2) the identification of any documents or information being sought.

Upon submission of a written request containing the information in Subparagraphs (1) and (2) of this Paragraph, the Board shall issue the subpoenas to the requesting party within three business days of the Board's receipt of the request.

(d) Subpoenas shall be served by the party requesting the subpoena as provided by the Rules of Civil Procedure, G.S. 1A, Rule 45. The cost of service, fees, and expenses, including copying costs, of any witnesses or documents subpoenaed is prescribed by G.S. 150B-39.

History Note: Authority G.S. 89D-15(2); 89D-15(8); 150B-39; 150B-40(c);

Temporary Adoption Eff. January 1, 2016;

Eff. September 1, 2016;

Amended Eff. June 1, 2019.

21 NCAC 28B .0901 RULEMAKING PETITION

(a) Any person may petition the Board to adopt a rule by submitting to the Board a written request that shall include the following:

- (1) Petitioner's contact information including phone number and email address;
- (2) Proposed rule, proposed amendment, or rule to be repealed; and
- (3) An explanation of why the proposed adoption, amendment or repeal is being requested.

The request shall be submitted in writing to the Board office as set out in 21 NCAC 28B .0101.

(b) The Board shall consider a petition at its next regularly scheduled meeting unless the petition is filed less than 15 days prior to such meeting. If a petition is filed less than 15 days prior to the next regularly scheduled Board meeting, the Board shall consider the petition at the next subsequent Board meeting. In all cases, the Board shall make its decision within the timeframe set out in G.S. 150B-20(b).

(c) If the Board denies a petition, a copy of the decision shall be served upon the petitioner by one of the methods for service of process under G.S. 1A-1, Rule 5(b). If service is by registered, certified, or first-class mail, by signature confirmation as provided by the United States Postal Service, or by designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2) with delivery receipt, the copy shall be addressed to the petitioner at the latest address given by the petitioner to the Board. Service by one of the additional methods provided in G.S. 1A-1, Rule 5(b), is effective as provided therein and shall be accompanied by a certificate of service as provided in G.S. 1A-1, Rule 5(b)(1).

History Note: Authority G.S. 150B-20;

Eff. June 1, 2019.

21 NCAC 57A .0204 CONTINUING EDUCATION

(a) All registered trainees, real estate appraiser licensees, and certificate holders shall, upon the renewal of their registration, license, or certificate in every odd-numbered year, obtained continuing education, as required by this Rule. Trainees and appraisers who initially registered with the Board after January 1 of an odd numbered year are not required to show continuing education credit for renewal of their registration in that odd numbered year.

(b) Each trainee, licensee, and certificate holder who is required to complete continuing education pursuant to Paragraph (a) of this Rule shall complete 28 hours of continuing education before June 1 of every odd numbered year. Except as provided in Paragraphs (g) and (h) of this Rule, such education shall have been obtained by taking courses approved by the Board for continuing education purposes, at schools approved by the Board to offer such courses, as set forth in 21 NCAC 57B .0603. Such education shall relate to real estate appraisers maintaining and increasing their skill, knowledge, and competency in real property appraising. There is no exemption from the continuing education requirement for trainees or appraisers whose status has been upgraded to the level of licensed residential, certified residential, or certified general appraiser since the issuance or most recent renewal of their registration, license, or certificate. Trainees, licensees, and certificate holders shall not take the same continuing education course more than once during the two-year continuing education cycle.

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

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

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

(f) Course sponsors shall provide a certificate of course completion to each trainee, licensee, and certificate holder who completes a course, as set forth in 21 NCAC 57B .0603. In addition, course sponsors shall send to the Board a certified roster of all who completed the course. This roster shall be sent within

15 days of completion of the course, but not later than June 15 of each year. In order to renew a registration, license, or certificate in a timely manner, the Board must receive proof of satisfaction of the continuing education requirement prior to processing a registration, license, or certificate renewal application. Proof of satisfaction shall be made by receipt of a roster from a school or course sponsor showing the courses completed by the applicant or by submission of an original certificate of course completion. If proof of having satisfied the continuing education requirement is not provided, the registration, license, or certificate shall expire and the trainee, licensee, or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, licensee, or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee, or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$50.00) as set out in G.S. 93E-1-8(d) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, licensee, or certificate holder provides proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance as set forth in 21 NCAC 57B .0603. Appraisal education activities for which credit may be awarded include teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. Up to 14 hours of continuing education credit may be granted in each continuing education cycle for participation in appraisal education activities. Trainees, licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit are deemed to have taken an equivalent course and are not subject to the fee prescribed in G.S. 93E-1-8(d), provided they submit verification of having taught the course(s). A trainee, licensee, or certificate holder who teaches a Board approved continuing education course shall not receive continuing education credit for the same course more than once every two years, regardless of how often he or she teaches the course. Requests for equivalent approval for continuing education credit shall be received before June 15 of an odd-numbered year to be credited towards the continuing education requirement for that odd-numbered year. Equivalent approval shall be granted only for courses that are 7 hours or longer, and shall only be granted for a minimum of 7 hours.

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

(i) A licensee or certificate holder who resides in another state, is currently credentialed in another state, and is active on the National Registry in another state may satisfy the requirements of this Section, other than the seven hour National USPAP update course requirement in Paragraph (d) of this Rule, by providing a current letter of good standing from another state showing that the

licensee or certificate holder has met all continuing education requirements in the other state. A licensee or certificate holder who became licensed in North Carolina by licensure or certification with another state and now resides in North Carolina may renew by letter of good standing for his or her first renewal as a resident of North Carolina only if the appraiser moved to North Carolina on or after January 1 of an odd-numbered year. If an appraiser was a resident of this state before January 1 of an odd-numbered year, the appraiser shall comply with the requirements of this section regardless of how the license or certificate was obtained.

(j) A trainee, licensee, or certificate holder who returns from active military duty on or after February 1 of an odd-numbered year may renew his or her registration, license, or certificate in that odd-numbered year even if the required continuing education is not completed before June 1 of that year. All required continuing education shall be completed within 180 days of when the trainee, licensee, or certificate holder returns from active duty. The Board may revoke the registration, license, or certificate in accordance with 93E-1-12 if the required continuing education is not completed within 180 days. This Paragraph applies to an individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return.

History Note: Authority G.S. 93B-15; 93E-1-7(a); 93E-1-10; Eff. July 1, 1994;

Amended Eff. July 1, 2014; January 1, 2013; July 1, 2011; July 1, 2010; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; July 1, 2003; August 1, 2002; April 1, 1999;

Pursuant to G.S. 150B.21.3A, rule is necessary without substantive public interest Eff. October 3, 2017;

Amended Eff. July 1, 2019; July 1, 2018.

21 NCAC 57A .0407 SUPERVISION OF TRAINEES

(a) A certified real estate appraiser may engage a registered trainee to assist in the performance of real estate appraisals, provided that the appraiser:

- (1) has been certified for at least three years;
- (2) has no more than three trainees working under him or her at any one time as follows:
 - (A) a certified residential appraiser may have two trainees working under his or her supervision at any one time. Once at least one of those trainees has completed 50 percent of the required appraisal experience required by 21 NCAC 57A .0201(c), (d), or (e), a certified residential appraiser may add another trainee; and
 - (B) a certified general appraiser may have three trainees working under his or her supervision.
- (3) Prior to the date any trainee begins performing appraisals under his or her supervision, the supervisor shall inform the Board of the name of the trainee by filing a Supervisor Declaration Form with the Board. The form may be found on the Board's website at

www.ncappraisalboard.org. The supervisor shall also inform the Board when a trainee is no longer working under his or her supervision by using the Supervisor Declaration Form. The form shall include the following information:

- (A) name and registration number of trainee;
 - (B) name and certification number of supervisor;
 - (C) date the trainee completed the supervisor/trainee course;
 - (D) date the supervisor completed the supervisor/trainee course;
 - (E) whether the supervisor has had any disciplinary action within the past three years or pending complaints against his or her license;
 - (F) signature of both the supervisor and trainee (only required for association).
- (4) actively and personally supervises the trainee on all appraisal reports and appraisal related activities until the trainee is no longer under his or her supervision;
 - (5) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee is utilized, and assures that research of general and specific data has been conducted and reported, application of appraisal principles and methodologies has been applied, that the analysis is sound and reported, and that any analysis, opinions, or conclusions are developed and reported so that the appraisal report is not misleading;
 - (6) complies with all provisions of Rule .0405 of this Section regarding appraisal reports;
 - (7) reviews and signs the trainee's log of appraisals prepared in accordance with Paragraph (c) of this Rule. The supervisor shall make available to the trainee a copy of every appraisal report where the trainee performs more than 75 percent of the work on the appraisal; and
 - (8) has not received any disciplinary action against his or her appraisal license or certificate from the State of North Carolina or any other state within the previous three years. For the purposes of this Section, disciplinary action means an active suspension, a downgrade of a credential, a revocation, or any other action that restricts a supervisor's ability to engage in appraisal practice.

(b) Active and personal supervision includes direction, guidance, and support from the supervisor. The supervising appraiser shall have input into and knowledge of the appraisal report prior to its completion, and shall make any changes to the report before it is transmitted to the client. In addition, the supervisor shall accompany the trainee on the inspections of the subject property on the first 50 appraisal assignments or the first 1500 hours of experience, whichever comes first, for which the trainee will

perform more than 75 percent of the work. After that point, the trainee may perform the inspections without the presence of the supervisor provided that the supervisor is satisfied that the trainee is competent to perform those inspections, and that the subject property is less than 50 miles from the supervisor's primary business location. The supervisor shall accompany the trainee on all inspections of subject properties that are located more than 50 miles from the supervisor's primary business location.

(c) The trainee shall maintain a log on a form that includes each appraisal performed by the trainee, the type of property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the experience hours claimed, the name of the supervisor for that appraisal, the supervisor's license or certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject property. The log shall be updated at least every 30 days. A log form is available on the Board's website at www.ncappraisalboard.org.

(d) An appraiser shall attend an education program regarding the role of a supervisor before any supervision of a trainee. This course shall be taught only by instructors approved by the Board in accordance with 21 NCAC 57B .0614.

(e) Trainees shall ensure that the Appraisal Board has received the Supervisor Declaration Form on or before the day the trainee begins assisting the supervising appraiser by contacting the Board by telephone or email at ncab@ncab.org. The form may be found on the Board's website at www.ncappraisalboard.org. Trainees shall not receive appraisal experience credit for appraisals performed in violation of this Paragraph.

(f) Supervising appraisers shall not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest.

(g) If a trainee signs an appraisal report or provides significant professional assistance in the appraisal process and is noted in the report as having provided assistance, the appraiser signing the report shall have notified the Appraisal Board before the appraisal is signed that he or she is the supervisor for the trainee. If more than one appraiser signs the report, the appraiser with the highest level of credential shall be the declared supervisor for the trainee. If all appraisers signing the report have the same level of credential, at least one of them shall be declared as the trainee's supervisor before the report is signed.

(h) Only one trainee may receive credit for providing real property appraisal assistance on an appraisal report.

History Note: Authority G.S. 93E-1.6.1; 93E-1-10; 93E-1-12; Eff. July 1, 1994;

Amended Eff. January 1, 2015; July 1, 2014; January 1, 2013; July 1, 2010; September 1, 2008; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; August 1, 2002; April 1, 1999; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended Eff. July 1, 2019.

21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS

(a) Except for guest lecturers as set forth in Paragraph (b) of this Rule, all qualifying courses or courses deemed equivalent by the Board shall be taught by instructors who are found by the Board

to be equivalent to those listed below. The minimum qualifications are as follows:

- (1) for residential appraiser courses, the instructor shall:
 - (A) have completed 200 classroom hours of real estate appraisal education as set forth in Rules .0101 and .0102 of this Subchapter;
 - (B) have two years' full-time experience as a certified residential or general real estate appraiser within the previous five years, with at least one-half of the experience in residential property appraising; and
 - (C) be certified as a residential or general real estate appraiser.
- (2) for general appraiser courses, the instructor shall:
 - (A) have 300 classroom hours of real estate appraisal education as set forth in Rules .0101, .0102, and .0103 of this Subchapter;
 - (B) have three years' full-time experience as a general real estate appraiser within the previous five years, with at least one-half of the experience in income property appraising; and
 - (C) has been a certified general real estate appraiser for at least five years.
- (3) for USPAP courses, the instructor shall:
 - (A) be a certified residential or a certified general appraiser; and
 - (B) be certified by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course. If a USPAP instructor fails to renew or loses his or her certification by the Appraiser Qualifications Board, the instructor shall stop teaching and notify the Appraisal Board of the loss of certification.
- (4) for statistics, modeling and finance courses, the instructor shall:
 - (A) have previously completed this class; or
 - (B) have completed 3 semester hours of statistics from a regionally accredited college or university.

(b) Guest lecturers who do not possess the qualifications set forth in Paragraph (a) of this Rule may teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience in the subject area about which the lecturer is teaching.

(c) Instructors shall conduct their classes in a manner that demonstrates knowledge of the subject matter being taught and mastery of the following basic teaching skills:

- (1) The ability to communicate through speech, including the ability to speak at a rate of speed and with appropriate grammar and vocabulary;
 - (2) The ability to utilize illustrative examples, and to respond to questions from students;
 - (3) The ability to utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques;
 - (4) The ability to utilize instructional aids to enhance learning;
 - (5) The ability to maintain a learning environment and control of a class; and
 - (6) The ability to interact with adult students in a manner that does not offend or criticize them.
- (d) Upon request of the Board, an instructor or proposed instructor shall submit to the Board a recording that depicts the instructor teaching portions of a qualifying course.
- (e) The inquiry into determining whether to approve an instructor shall include consideration of whether the instructor has ever had any disciplinary action taken or has a disciplinary action pending against his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pled guilty to any criminal act or has criminal charges pending. An instructor shall not have received any disciplinary action against his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this Section, disciplinary action means a reprimand, suspension (whether active or inactive), or a revocation.
- (g) Proposed qualifying course instructors who do not meet the minimum appraisal education and experience qualifications listed in Paragraph (a) of this Rule, and who seek to have their qualifications determined by the Board to be equivalent to the qualifications listed in Paragraph (a) of this Rule, shall supply the Board with copies of sample appraisal reports or other evidence of experience.
- (h) Persons desiring to become instructors for qualifying courses shall file an instructor application for qualifying education and be approved by the Board. There is no fee for application for instructor approval. Once an instructor has been approved to teach a specific qualifying course, that person may teach the course at any school or for any course sponsor approved by the Appraisal Board to offer qualifying courses. The form shall include the following information:
- (1) instructor's name, address, phone number and email address;
 - (2) list of course provider(s) the instructor will be teaching for;
 - (3) programs the instructor is seeking approval for;
 - (4) instructor's Licensing/Certification History;
 - (5) whether the instructor has ever been denied a trainee registration, or appraiser license or certificate in NC or any other state;
 - (6) whether the instructor has any disciplinary action taken against a trainee registration, appraiser license or certificate in NC or any other state;
 - (7) whether the instructor has any current charges pending against any professional license in NC;

has had any disciplinary action within the past three years or pending complaints against his or her license;

(8) instructor's college education, appraisal education, appraisal experience, and description of work experience; and

(9) signature of applicant.

(i) Current Appraisal Board members shall not be eligible to teach qualifying courses during their term of office on the Board.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994;

Amended Eff. July 1, 2014; July 1, 2010; September 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; July 1, 2003; August 1, 2002;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017;

Amended Eff. July 1, 2019.

21 NCAC 57B .0606 COURSE OPERATIONAL REQUIREMENTS

Course sponsors shall maintain compliance with Rule .0603 of this Section and shall also comply with the following requirements:

(1) Courses shall be a maximum of eight classroom hours in any given day. A classroom hour shall consist of 50 minutes of classroom instruction and ten minutes of break time. For any class that exceeds 50 minutes in duration, breaks at the rate of ten minutes per hour shall be scheduled.

(2) Course sponsors shall not utilize advertising of any type that is false or misleading. Advertisements shall specify the number of continuing education credit hours awarded by the Board for the course.

(3) Course sponsors shall, upon request, provide any prospective student a description of the course content regarding the instruction to be provided in the course.

(4) Courses shall be conducted in a facility that meets the following requirements:

(a) is of sufficient size to accommodate all enrolled students;

(b) contains a student desk or worktable space for each student;

(c) is free of noise or visual distractions that disrupt class sessions; and

(d) complies with all applicable local, state and federal laws and regulations regarding safety, health and sanitation. Classes shall not be held in a personal residence under any circumstances.

(5) The course sponsor shall require students to attend at least 90 percent of the scheduled classroom hours in order to complete the course, even if the number of continuing education credit hours awarded by the Board for the course is less than the number of scheduled classroom hours. Attendance shall be

monitored during all class sessions to ensure compliance with the attendance requirement. Instruction shall be given for the number of hours for which credit is given. Instructors shall not accumulate unused break time to end the class early.

(6) Instructors shall require student attentiveness during class sessions. Students shall not be permitted to engage in activities that are not related to the instruction being provided.

(7) Course sponsors for which an application fee is required by Rules .0602(b) and .0611(b) of this Section shall administer course cancellation and fee refund policies. In the event a scheduled course is canceled, efforts shall be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students shall be refunded within 30 days of the date of cancellation or, with the student's permission, applied toward the fees for another course.

(8) Upon request of the Board, the course sponsor shall submit to the Board a recording that depicts the instructor teaching portions of any continuing education course.

(9) Course sponsors shall provide the Board with the dates and locations of all classes the sponsor is offering in the State of North Carolina at least 30 calendar days before the class is offered, unless circumstances beyond the control of the course sponsor require that the course be rescheduled, such as a weather emergency. If the dates or location of the classes change after such information is provided to the Board, the course sponsor shall notify the Board of such changes within five days of the rescheduled date.

(10) Course sponsors shall provide each student with contact information for the Appraisal Board.

(11) If an instructor has any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or if the instructor has been convicted of or pled guilty to any misdemeanor or felony, the school or course sponsor shall report that fact to the Board within 15 business days.

(12) All courses, except those taught on-line via the Internet, shall have a minimum number of five students enrolled in the course.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994;

Amended Eff. January 1, 2013; July 1, 2010; January 1, 2008; March 1, 2007; July 1, 2005; August 1, 2002;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017;

Amended Eff. July 1, 2019.

CHAPTER 58 - REAL ESTATE COMMISSION**21 NCAC 58A .0108 RETENTION OF RECORDS**

(a) Brokers shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, completed, or terminated. The broker shall retain records for three years after all funds held by the broker in connection with the transaction have been disbursed to the proper party or parties or the conclusion of the transaction, whichever occurs later. If the broker's agency agreement is terminated prior to the conclusion of the transaction, the broker shall retain such records for three years after the termination of the agency agreement or the disbursement of all funds held by or paid to the broker in connection with the transaction, whichever occurs later.

(b) Records shall include copies of the following:

- (1) contracts of sale;
- (2) written leases;
- (3) agency contracts;
- (4) options;
- (5) offers to purchase;
- (6) trust or escrow records;
- (7) earnest money receipts;
- (8) disclosure documents;
- (9) closing statements;
- (10) brokerage cooperation agreements;
- (11) declarations of affiliation;
- (12) broker price opinions and comparative market analyses prepared pursuant to G.S. 93A, Article 6, including any notes and supporting documentation;
- (13) sketches, calculations, photos, and other documentation used or relied upon to determine square footage;
- (14) advertising used to market a property; and
- (15) any other records pertaining to real estate transactions.

(c) All records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

(d) Brokers shall provide a copy of the written agency disclosure and acknowledgement thereof when applicable, written agency agreement, contract, offer, lease, rental agreement, option, or other related transaction document to the firm or sole proprietorship with which they are affiliated within three days of receipt.

History Note: Authority G.S. 93A-3(c);

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 2004; September 1, 2002; August 1, 1998; February 1, 1989; February 1, 1998;

Temporary Amendment Eff. October 1, 2012;

Amended Eff. July 1, 2018; July 1, 2016; April 1, 2013;

Readopted Eff. July 1, 2019.

21 NCAC 58A .0506 PROVISIONAL BROKER TO BE SUPERVISED BY BROKER-IN-CHARGE

(a) A provisional broker may engage in or hold himself or herself out as engaging in activities requiring a real estate license only while his or her license is on active status pursuant to Rule .0504 of this Section and he or she is supervised by the broker-in-charge of the real estate firm or office with which the provisional broker is affiliated. A provisional broker shall be supervised by only one broker-in-charge at a time.

(b) Upon a provisional broker's affiliation with a real estate broker or brokerage firm, the broker-in-charge of the office where the provisional broker will be engaged in the real estate business shall file with the Commission a License Activation and Broker Affiliation form that sets forth the:

(1) provisional broker's:

- (A) name;
- (B) license number, type of license, and current license status;
- (C) physical, mailing, and emailing addresses;
- (D) public and private phone numbers;
- (E) completed Postlicensing courses, if necessary;
- (F) completed continuing education courses, if necessary; and
- (G) signature.

(2) broker-in-charge's:

- (A) name;
- (B) license number;
- (C) firm's name and license number;
- (D) physical, mailing, and emailing addresses;
- (E) public and private phone numbers; and
- (F) signature.

(c) Upon the submission of the License Activation and Broker Affiliation form, the provisional broker may engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however, if the provisional broker and broker-in-charge do not receive from the Commission a written acknowledgment of the provisional broker supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the form, the provisional broker shall cease all real estate brokerage activities pending receipt of the written acknowledgment from the Commission.

(d) A broker-in-charge shall supervise the provisional broker in a manner that assures that the provisional broker performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a provisional broker as prescribed in this Rule may be subject to disciplinary action by the pursuant to Rule .0110 of this Subchapter.

(e) Upon the termination of the supervisory relationship between a provisional broker and his or her broker-in-charge, the provisional broker and the broker-in-charge shall provide written notification of the date of termination to the Commission not later than 10 days following the termination.

History Note: Authority G.S. 93A-2(b); 93A-3; 93A-9;

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;
Amended Eff. April 1, 2013; April 1, 2006; July 1, 2005; July 1, 2004; October 1, 2000; August 1, 1998; July 1, 1996; July 1, 1995; July 1, 1993;
Readopted Eff. July 1, 2019.

**21 NCAC 58A .0601 COMPLAINTS/INQUIRIES
 /MOTIONS/OTHER PLEADINGS**

(a) Any individual may file a complaint against a broker at any time. A complaint shall:

- (1) be in writing;
- (2) identify the respondent broker or firm; and
- (3) apprise the Commission of the facts which form the basis of the complaint.

(b) A complaint may be amended by submitting the revised complaint in writing to the Commission.

(c) When investigating a complaint, the scope of the Commission's investigation shall not be limited only to matters alleged in the complaint.

(d) All answers, motions, or other pleadings relating to contested cases before the Commission shall be:

- (1) in writing or made during the hearing as a matter of record; and
- (2) apprise the Commission of the matters it alleges or answers.

(e) During the course of an investigation, any broker that receives a Letter of Inquiry from the Commission shall submit a written response within 14 days of receipt. The Commission, through its legal counsel or other staff, may send a broker a Letter of Inquiry requesting a response. The Letter of Inquiry, or attachments thereto, shall set forth the subject matter being investigated. The response shall include:

- (1) a disclosure of all requested information; and
- (2) copies of all requested documents.

(f) Persons who make complaints are not parties to contested cases, but may be witnesses.

History Note: Authority G.S. 93A-3(c); 93A-6(a); 150B-38(h);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. July 1, 2000; August 1, 1998; May 1, 1992;
February 1, 1989; November 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Amended Eff. July 1, 2019.

21 NCAC 58A .0612 PRESIDING OFFICER

The Commission may designate any of its members to preside over the hearing in a contested case. When no designation is made, the Chairman of the Commission shall preside, or, in his or her absence, the Vice Chairman shall preside. The presiding officer shall rule on motions or other requests made in a contested case prior to the conduct of the hearing in that case except when the ruling on the motion would be dispositive of the case. When the ruling on a motion or request would be dispositive of the case, the presiding officer shall make no ruling and the motion or request shall be determined by a majority of the Commission.

History Note: Authority G.S. 93A-3(c); 150B-40(b);
Eff. May 1, 1992;
Amended Eff. October 1, 2000;
Readopted Eff. July 1, 2019.

21 NCAC 58A .1902 POSTLICENSING EDUCATION REQUIREMENT

(a) The 90-hour Postlicensing education program pursuant to G.S. 93A-4(a1) shall consist of the following three 30 instructional hour courses prescribed by the Commission:

- (1) Postlicensing Course 301;
- (2) Postlicensing Course 302; and
- (3) Postlicensing Course 303.

(b) A provisional broker as described in G.S. 93A-4(a1) shall complete all Postlicensing courses pursuant to Paragraph (a) of this Rule within 18 months following the date of initial licensure.

(c) If a provisional broker fails to complete the required Postlicensing courses pursuant to Paragraph (b) of this Rule, the provisional broker's license shall be placed on inactive status.

(d) A provisional broker seeking to activate a license that was placed on inactive status pursuant to Paragraph (c) of this Rule shall:

- (1) complete all three Postlicensing Courses described in Paragraph (a) of this Rule within the previous two years;
- (2) satisfy the continuing education requirements for license activation described in Rule .1703 of this Subchapter; and
- (3) file an activation form with the Commission pursuant to Rule .0504 of this Subchapter.

History Note: Authority G.S. 93A-4; 93A-4(a1);
Eff. April 1, 2006;
Amended Eff. January 1, 2012;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;
Amended Eff. July 1, 2020.

**21 NCAC 58A .1905 WAIVER OF 90-HOUR
 POSTLICENSING EDUCATION REQUIREMENT**

(a) A provisional North Carolina real estate broker may apply for a waiver of one or more of the three 30-hour Postlicensing courses described in Rule .1902 of this Section in the following circumstances:

- (1) the broker has obtained equivalent education to the Commission's Postlicensing course(s) pursuant to Rule .1902 of this Section. In this case, the waiver request shall include the course(s):
 - (A) jurisdiction of delivery;
 - (B) title;
 - (C) credit hours earned;
 - (D) beginning and end dates; and
 - (E) subject matter description.
- (2) the broker has obtained experience equivalent to 40 hours per week as a licensed broker or salesperson in another state for at least five of the seven years immediately prior to application for waiver, which shall include the applicant's:

- (A) employer;
 - (B) title at employer;
 - (C) dates of employment;
 - (D) hours per week devoted to brokerage;
 - (E) approximate number of transactions;
 - (F) areas of practice;
 - (G) approximate percentage of time devoted to each area of practice;
 - (H) description of applicant's role and duties;
 - (I) managing broker's name, telephone number, and email address; and
 - (J) official certification of licensure issued within the six months preceding application from a jurisdiction within a state, territory, or possession of the United States or Canada in which the applicant holds a current real estate license that has been active within the three years prior to application.
- (3) the broker has obtained experience equivalent to 40 hours per week as a licensed North Carolina attorney practicing in real estate matters for the two years immediately preceding application, which shall include the applicant's:
- (A) firm or practice name;
 - (B) law license number;
 - (C) dates of employment;
 - (D) hours per week devoted to real estate law practice;
 - (E) approximate number of closings conducted;
 - (F) description of practice; and
 - (G) manager or supervising attorney's name, telephone number, and email address, if applicable.

(b) The Commission shall not consider education or experience obtained in violation of any law or rule as fulfilling the requirements for waiver of the 90-hour postlicensing education requirement.

(c) A broker shall be ineligible for a waiver of the 90-hour postlicensing education requirement if the broker was issued a license pursuant to Rule .0511(b)(2) of this Section.

*History Note: Authority G.S. 93A-4(a1);
Eff. July 1, 2017;
Amended Eff. July 1, 2019.*

21 NCAC 58A .2002 ESCROW ACCOUNT

(a) The Commission shall establish an escrow account or accounts with a financial institution or institutions lawfully doing business in this State into which the Commission shall deposit and hold fees tendered during any period of time when, pursuant to G.S. 93B-2(d), the Commission's authority to expend funds has been suspended. The Commission shall keep funds deposited into its escrow account or accounts segregated from other assets, monies, and receipts for the duration of the suspension of the Commission's authority to expend funds.

(b) The Commission may deposit into and maintain in its escrow account such monies as may be required to avoid or eliminate costs associated with the account or accounts.

*History Note: Authority G.S. 93B-2(d);
Eff. July 1, 2010;
Readopted Eff. July 1, 2019.*

21 NCAC 58H .0203 APPLICATION FOR ORIGINAL LICENSURE OF A PRIVATE REAL ESTATE SCHOOL

(a) Any entity seeking original licensure as a private real estate school to conduct Prelicensing or Postlicensing courses shall apply to the Commission on a form available on the Commission's website and shall set forth the following criteria in addition to the requirements in G.S. 93A-34(b):

- (1) the physical, website, and email addresses and telephone number of the principal office of the school;
- (2) the proposed school director's legal name, real estate license number, if any, email and mailing address, and telephone number;
- (3) the type of school ownership entity and the name, title, real estate license number, if any, mailing address, and ownership percentage of each individual or entity holding at least 10% ownership in the entity;
- (4) the North Carolina Secretary of State Identification Number;
- (5) the criminal history and history of occupational license disciplinary actions of individual school owner(s);
- (6) the physical address of each proposed school location;
- (7) the source of real estate examinations to be used for each course offered;
- (8) a copy of a criminal background check for the previous seven years on the proposed school director;
- (9) a signed Consent to Service of Process and Pleadings form available on the Commission's website, if a foreign entity;
- (10) the Prelicensing or Postlicensing courses to be offered by the school;
- (11) the Update courses to be offered by the school; and
- (12) the signature and certification of the school owner(s).

(b) Private real estate school names shall contain the words "Real Estate" and other words identifying the entity as a school, such as "school," "academy," or "institute" that are distinguishable from other licensed private real estate schools and from continuing education course sponsors approved by the Commission.

(c) The school name shall be used in all school publications and advertising.

(d) Each school shall certify that its facilities and equipment are in compliance with all applicable local, state and federal laws and regulations regarding health, safety, and welfare, including the Americans with Disabilities Act.

- (e) The original license application fee shall be two hundred dollars (\$200.00) for each proposed school location.
- (f) The initial fee for a school to offer a Prelicensing or Postlicensing course at any of its locations during the licensing period shall be forty dollars (\$40.00) per Prelicensing or Postlicensing course.
- (g) Private real estate schools offering Prelicensing or Postlicensing courses pursuant to Paragraph (a) of this Rule shall be eligible to offer Update courses and continuing education courses.
- (h) If a school relocates any location during any licensing period, the school owner shall submit an original application for licensure of that location pursuant to this Rule.

*History Note: Authority G.S. 93A-4; 93A-33; 93A-34;
Eff. July 1, 2017;
Amended Eff. July 1, 2019.*

21 NCAC 58H .0209 POSTLICENSING COURSE ENROLLMENT

A school shall not enroll an individual in a Postlicensing course if:

- (1) the first day of the Postlicensing course occurs while the individual is enrolled in a Prelicensing course; or
- (2) the first day of the Postlicensing course occurs while the individual is taking another Postlicensing course at the same school or a different school if such enrollment results in the individual being in class for more than 30 instructional hours in any given seven day period.

*History Note: Authority G.S. 93A-4(a1); 93A-33;
Eff. July 1, 2017;
Amended Eff. July 1, 2019.*

21 NCAC 58H .0214 EXPIRATION AND RENEWAL OF A SCHOOL APPROVAL OR LICENSE

- (a) All Commission approvals and licenses issued to real estate schools shall expire annually on June 30 following issuance of approval or licensure.
- (b) A school shall file an electronic application for renewal of its approval or license within 45 days immediately preceding expiration of approval or licensure on a form available on the Commission's website. The school renewal application form shall include:
 - (1) the school name;
 - (2) the school number;
 - (3) the school director's name;
 - (4) the school's mailing address, telephone number, and web address, if applicable;
 - (5) all Commission approved courses offered by the school;
 - (6) any change in the school's business entity;
 - (7) court records of any conviction, guilty plea, or plea of no contest to, a misdemeanor or felony violation of state or federal law by a court of competent jurisdiction against the school

- owner(s) and school director since the last renewal;
- (8) records pertaining to any disciplinary action taken against the school owner(s) and school director by an occupational licensing board since the last renewal;
- (9) a copy of the current bulletin;
- (10) proof of bond as required in G.S. 93A-36; and
- (11) the school director's signature.

- (c) The private school license renewal fee shall be one hundred dollars (\$100.00) for each school location.
- (d) The renewal fee for a private real estate school to offer a Prelicensing or Postlicensing course at any of its locations during the licensed period shall be twenty-five dollars (\$25.00) per Prelicensing or Postlicensing course.
- (e) If a school approval or license has expired, the school shall submit an application for original approval or licensure.

*History Note: Authority G.S. 93A-4; 93A-33; 93A-34(b); 93A-35(b); 93A-36;
Eff. July 1, 2017;
Amended Eff. July 1, 2019.*

21 NCAC 58H .0302 APPLICATION AND CRITERIA FOR ORIGINAL PRELICENSING, POSTLICENSING, OR UPDATE COURSE INSTRUCTOR APPROVAL

- (a) An individual seeking original instructor approval shall submit an application on a form available on the Commission's website that shall require the instructor applicant to indicate the course(s) for which he or she is seeking approval and set forth the instructor applicant's:
 - (1) legal name, address, email address, and telephone number;
 - (2) real estate license number and instructor number, if any, assigned by Commission;
 - (3) criminal and occupational licensing history, including any disciplinary actions;
 - (4) education background, including specific real estate education;
 - (5) experience in the real estate business;
 - (6) real estate teaching experience, if any;
 - (7) a signed Consent to Service of Process and Pleadings for nonresident applicants; and
 - (8) signature.
- (b) An instructor applicant shall demonstrate that he or she possesses good reputation and character pursuant to G.S. 93A-34(c)(9) and has:
 - (1) a North Carolina real estate broker license that is not on provisional status;
 - (2) completed continuing education sufficient to activate a license under 21 NCAC 58A .1702;
 - (3) completed 60 semester hours of college-level education at an institution accredited by any college accrediting body recognized by the U.S. Department of Education;
 - (4) completed the New Instructor Seminar within the previous six months; and
 - (5) within the previous seven years has either:

- (A) two years full-time experience in real estate brokerage with at least one year in North Carolina;
- (B) three years of instructor experience at a secondary or post-secondary level;
- (C) real estate Prelicensing or Postlicensing instructor approval in another jurisdiction; or
- (D) qualifications found to be equivalent by the Commission, including a current North Carolina law license and three years' full time experience in commercial or residential real estate transactions or representation of real estate brokers or firms.

(c) In order to complete the New Instructor Seminar, a broker shall:

- (1) attend at least ninety percent of all scheduled hours; and
- (2) demonstrate the ability to teach a 15-minute block of a single Prelicensing topic in a manner consistent with the course materials.

(d) Instructors approved prior to July 1, 2019 shall be exempt from the New Instructor Seminar requirement pursuant to Paragraph (b)(4) of this Rule.

(e) Prior to teaching any Update course, an approved instructor shall take the Commission's annual Update Instructor Seminar for the current license period. The Update Instructor Seminar shall not be used to meet the requirement in Rule .0306(b)(4) of this Section.

*History Note: Authority G.S. 93A-3(f); 93A-4; 93A-10; 93A-33; 93A-34;
Eff. July 1, 2017;
Amended Eff. July 1, 2019.*

CHAPTER 61 - RESPIRATORY CARE BOARD

21 NCAC 61 .0204 FEES

(a) Fees are as follows:

- (1) For an initial application, a fee of fifty dollars (\$50.00);
- (2) For issuance of an active license, a fee of one hundred twenty-five dollars (\$125.00);
- (3) For the renewal of an active license, a fee of seventy-five dollars (\$75.00);
- (4) For the late renewal of any license, an additional late fee of seventy-five dollars (\$75.00);
- (5) For a license with a provisional or temporary endorsement, a fee of fifty dollars (\$50.00); and
- (6) For official verification of license status, a fee of twenty dollars (\$20.00).

(b) Fees shall be nonrefundable and shall be paid in the form of a credit card, cashier's check, certified check, or money order made payable to the North Carolina Respiratory Care Board. The Board shall also accept personal checks for payment of the fees set forth in Subparagraphs (a)(3), (a)(4), and (a)(6) of this Rule.

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

*History Note: Authority G.S. 90-652(2); 90-652(9); 90-660; 93B-2(d);
Temporary Adoption Eff. October 15, 2001;
Eff. August 1, 2002;
Amended Eff. December 1, 2010; March 1, 2008; March 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015;
Amended Eff. June 1, 2019.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission July 18, 2019 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
Brian P. LiVecchi

Appointed by House

Garth Dunklin (Chair)
Andrew P. Atkins
Anna Baird Choi
Paul Powell
Jeanette Doran (2nd Vice Chair)

COMMISSION COUNSEL

Amber Cronk May (919) 431-3074
Amanda Reeder (919) 431-3079
Ashley Snyder (919) 431-3081

RULES REVIEW COMMISSION MEETING DATES

July 18, 2019 August 15, 2019
September 19, 2019 October 17, 2019

AGENDA

RULES REVIEW COMMISSION

THURSDAY, JULY 18, 2019 9:00 A.M.

1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 163A-159(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Board of Elections - 08 NCAC 10B .0101, .0102, .0103, .0104, .0105, .0106, .0107 (May)
 - B. Social Services Commission - 10A NCAC 06R .0101, .0102, .0201, .0302, .0304, .0305, .0401, .0403, .0501, .0502, .0503, .0504, .0506, .0508, .0509, .0601, .0801, .0802, .0804, .0806, .0902, .0904; 06S .0101, .0102, .0203, .0204, .0301, .0302, .0402, .0403, .0404, .0405, .0501, .0508; 06T .0201 (Reeder)
 - C. DHHS/ Division of Health Benefits - 10A NCAC 23E .0105, .0202; 23G .0203, .0304; 23H .0109 (Reeder)
 - D. Commission for the Blind - 10A NCAC 63C .0203, .0204, .0403, .0601 (Reeder)
 - E. Social Services Commission - 10A NCAC 67A .0101, .0103, .0105, .0106, .0107, .0108, .0201, .0202, .0203, .0204, .0205, .0206; 68 .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0202, .0203, .0204, .0205, .0206, .0208, .0301, .0302, .0303; 69 .0101, .0102, .0201, .0202, .0203, .0204, .0205, .0301, .0302, .0303, .0304, .0305, .0306, .0401, .0402, .0403, .0404, .0405, .0406, .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0601, .0602, .0603, .0604, .0605; 72 .0101, .0102, .0201, .0202, .0203, .0301 (May)
 - F. Department of Justice - 12 NCAC 02I .0213, .0306 (Reeder)
 - G. Environmental Management Commission - 15A NCAC 02B .0402, .0403, .0404, .0406, .0407, .0408, .0501, .0502, .0503, .0504, .0505, .0506, .0508, .0511; 02H .0101, .0102, .0103, .0105, .0106, .0107, .0108, .0109, .0111, .0112, .0113, .0114, .0115, .0116, .0117, .0118, .0120, .0121, .0124, .0125, .0127, .0138, .0139, .0140, .0141, .0142, .0143, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .1201, .1202, .1203, .1204, .1205, .1206 (May)
 - H. Environmental Management Commission - 15A NCAC 02C .0101, .0102, .0105, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0116, .0117, .0118, .0119, .0201, .0202, .0203, .0204, .0206, .0207, .0208, .0209, .0210, .0211, .0217, .0218, .0219, .0220, .0221, .0222, .0223, .0224, .0225, .0226, .0227, .0228, .0229, .0230, .0240, .0241, .0242 (Reeder)
 - I. Environmental Management Commission - 15A NCAC 02T .1601, .1602, .1604, .1605, .1606, .1607, .1608 (Reeder)
 - J. Coastal Resources Commission - 15A NCAC 07J .0409 (May)

- K. State Human Resources Commission - 25 NCAC 01E .0210, 01I .1702, .1805, .1902, .1903, .1905, .2003, .2105, .2302, .2303, .2304, .2305, .2306, .2307, .2310 (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between May 21, 2019 through June 20, 2019
- Department of Administration (May)
 - Criminal Justice Education and Training Standards Commission (Snyder)
 - Sheriffs' Education and Training Standards Commission (May)
 - Department of Transportation (May)
 - Board of Dietetics/Nutrition (Reeder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VII. Commission Business
- N. Periodic Review and Expiration of Existing Rules Readoption Schedule
- Next meeting: Thursday, August 15, 2019
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**Commission Review
Log of Permanent Rule Filings
May 21, 2019 through June 20, 2019**

The rules in Subchapter 6F concern telecommunications facilities for broadband providers.

<u>Definitions</u>	01	NCAC	06F	.0101
Adopt*				
<u>Application</u>	01	NCAC	06F	.0102
Adopt*				
<u>Procedures</u>	01	NCAC	06F	.0103
Adopt*				
<u>Terms and Conditions</u>	01	NCAC	06F	.0104
Adopt*				
<u>Termination</u>	01	NCAC	06F	.0105
Adopt*				

The rules in Chapter 09 concern the division of intergovernmental relations including the balanced growth policy (.0400); and the state clearinghouse (.0500).

<u>Function</u>	01	NCAC	09	.0501
Readopt/Repeal*				
<u>Applicant Review</u>	01	NCAC	09	.0502
Readopt/Repeal*				

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

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

The rules in Subchapter 9A cover the Commission organization and procedure (.0100) and enforcement of the rules (.0200).

<u>Rule-Making and Administrative Hearing Procedures</u>	12	NCAC	09A	.0107
Amend*				
<u>Administrative Hearing Procedures</u>	12	NCAC	09A	.0207
Adopt*				

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

<u>Certification of Instructors</u> Amend*	12	NCAC	09B	.0301
<u>Terms and Conditions of General Instructor Certification</u> Amend*	12	NCAC	09B	.0303
<u>Terms and Conditions of Specialized Instructor Certification</u> Amend*	12	NCAC	09B	.0305
<u>Terms and Conditions of Specialized Instructor Certification</u> Amend*	12	NCAC	09B	.0305
<u>Suspension: Revocation: Denial/School Dir. Certification</u> Amend*	12	NCAC	09B	.0503
<u>Certification of Qualified Assistant</u> Adopt*	12	NCAC	09B	.0504
<u>Terms and Conditions of Qualified Assistant</u> Adopt*	12	NCAC	09B	.0505

The rules in Subchapter 9C concern the administration of criminal justice education and training standards including responsibilities of the criminal justice standards division (.0100); forms (.0200); certification of criminal justice officers (.0300); accreditation of criminal justice schools and training courses (.0400); minimum standards for accreditation of associate of applied science degree programs incorporating basic law enforcement training (.0500); and equipment and procedures (.0600).

<u>Agency Retention of Records of Certification</u> Amend*	12	NCAC	09C	.0307
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The rules in Subchapter 9E relate to the law enforcement officers' in-service training program.

<u>Minimum Training Specifications: Annual In-Service Training</u> Amend*	12	NCAC	09E	.0105
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The rules in Subchapter 9F cover concealed handgun training.

<u>Instructor Responsibilities</u> Amend*	12	NCAC	09F	.0105
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The rules in Subchapter 9G are the standards for correction including scope, applicability and definitions (.0100); minimum standards for certification of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0200); certification of correctional officers, probation/parole officers, probation/parole officers intermediate and instructors (.0300); minimum standards for training of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0400); enforcement of rules (.0500); professional certification program (.0600); and forms (.0700).

<u>Retention of Records of Certification</u> Amend*	12	NCAC	09G	.0306
<u>Certification of Instructors</u> Amend*	12	NCAC	09G	.0307
<u>Terms and Conditions of Specialized Instructor Certification</u> Amend*	12	NCAC	09G	.0311
<u>Suspension: Revocation: Denial/School Dir. Certification</u> Amend*	12	NCAC	09G	.0407
<u>Certification of Qualified Assistant</u> Adopt*	12	NCAC	09G	.0417
<u>Terms and Conditions of Qualified Assistant Certification</u> Adopt*	12	NCAC	09G	.0418

SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Subchapter 10B are from the N. C. Sheriffs' Education and Training Standards Commission. These rules govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

<u>Documentation of Educational Requirements</u> Readopt without Changes*	12	NCAC	10B	.0302
<u>Basic Law Enforcement Certificate</u> Repeal*	12	NCAC	10B	.1003
<u>Basic Detention Officer Professional Certificate</u> Repeal*	12	NCAC	10B	.1203
<u>Basic Reserve Deputy Sheriff Professional Certificate</u> Repeal*	12	NCAC	10B	.1403
<u>Basic Telecommunicator Certificate</u> Repeal*	12	NCAC	10B	.1603
<u>Minimum Training Requirements</u> Amend*	12	NCAC	10B	.2005

TRANSPORTATION, DEPARTMENT OF

The rules in Chapter 2 are from the Division of Highways.

The rules in Subchapter 2E concern miscellaneous operations including tort claims (.0100); outdoor advertising (.0200); junkyard control (.0300); general ordinances (.0400); selective vegetation removal policy (.0600); professional or specialized services (.0700); solicitation of contributions for religious purposes at rest areas (.0800); distribution of newspapers from dispensers at rest areas and welcome centers (.0900); scenic byways (.1000); tourist-oriented directional sign program (.1100); private property owners (.1200).

<u>Fees</u> Readopt without Changes*	19A	NCAC	02E	.0221
<u>Location Of TODS</u> Readopt without Changes*	19A	NCAC	02E	.1103
<u>Composition of Signs</u> Readopt without Changes*	19A	NCAC	02E	.1105
<u>Fees</u> Readopt without Changes*	19A	NCAC	02E	.1106

DIETETICS/NUTRITION, BOARD OF

The rules in Chapter 17 are from the Board of Dietetics/Nutrition. The rules cover the general provisions of licensure (.0100); weight control programs (.0200); dietetic/nutrition students or trainees (.0300); and unlicensed individuals and those who aid in the practice of dietetics/nutrition (.0400).

<u>Definitions and Acronyms</u> Readopt with Changes*	21	NCAC	17	.0101
<u>Applications</u> Readopt with Changes*	21	NCAC	17	.0104
<u>Examination for Licensure</u> Readopt with Changes*	21	NCAC	17	.0105
<u>Provisional License</u>	21	NCAC	17	.0107

Readopt with Changes*

Issuance and Renewal of License

21 NCAC 17 .0109

Readopt with Changes*

Supervision

21 NCAC 17 .0303

Readopt with Changes*

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
Tenisha Jacobs

A. B. Elkins II
Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>PUBLISHED</u>			
18	CPS	07200	5/8/2019	Dawit Kiros Gezae	v.	Victims Compensation Services	Malherbe
19	DHR	00402	5/13/2019	Sharon R Vassey	v.	NC Department of Health and Human Services, Division of Health Benefits Division of Medical Assistance (Medicaid)	Overby
18	DOJ	00627	5/29/2019	Nickolas Cody Jacobs	v.	NC Criminal Justice Education and Training Standards Commission	Ward
18	DOJ	05618	5/8/2019	Gilbert Currie	v.	NC Sheriffs Education and Training Standards Commission	Elkins
18	DOJ	07495	5/2/2019	DaQuante Cortez Jones	v.	NC Sheriffs Education and Training Standards Commission	Bawtinheimer
18	DST	07191; 07194; 07337	5/7/2019	Edgecombe County Board of Education; Lenoir County Board of Education; Harnett County Board of Education	v.	Retirement Systems Division Department of State Treasurer; Retirement Systems Divisions Department of State Treasurer; NC Department of State Treasurer, Retirement Systems Division	Lassiter
19	SOS	00923	5/14/2019	Christopher Anthony Wilson	v.	NC Department of the Secretary of State	Overby
19	SOS	01312	5/22/2019	Pablo Queriupa Tulavera	v.	Department of the Secretary of State	Bawtinheimer

CONTESTED CASE DECISIONS

				<u>UNPUBLISHED</u>			
19	ABC	00098	5/22/2019	Olivia Jackson	v.	Alcoholic Beverage Control Commission	Jacobs
19	ABC	01307	5/20/2019	NC Alcoholic Beverage Control Commission	v.	Earnest Lee Norris T/A Flavors Restaurant and Bar	Lassiter
19	CPS	01403	5/2/2019	Ernisha Ballard	v.	Office of Administrative Hearing NC Crime Victims Compensation Co	Malherbe
17	CSE	08094	5/6/2019	Richard Matthew White	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
17	CSE	08278	5/7/2019	Kelvin L Jamison	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
18	CSE	06307	5/24/2019	Samuel Hinton Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
18	CSE	06479	5/10/2019	Byron D Black	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Sutton
18	CSE	06572	5/8/2019	Julio Galindo Hoentsch	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
18	CSE	06626	5/21/2019	Thomas W Hontz Jr.	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Jacobs
18	CSE	06696	5/28/2019	Johnny R Gordon	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
18	CSE	06762	5/28/2019	William B Lewis	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe