

NORTH CAROLINA REGISTER

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August 3, 2020

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Contact List for Rulemaking Questions or Concerns

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

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

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NORTH CAROLINA REGISTER
Publication Schedule for January 2020 – December 2020

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
34:13	01/02/20	12/06/19	01/17/20	03/02/20	03/20/20	04/16/20	05/01/20	09/28/20
34:14	01/15/20	12/19/19	01/30/20	03/16/20	03/20/20	04/16/20	05/01/20	10/11/20
34:15	02/03/20	01/10/20	02/18/20	04/03/20	04/20/20	05/21/20	06/01/20	10/30/20
34:16	02/17/20	01/27/20	03/03/20	04/17/20	04/20/20	05/21/20	06/01/20	11/13/20
34:17	03/02/20	02/10/20	03/17/20	05/01/20	05/20/20	06/18/20	07/01/20	11/27/20
34:18	03/16/20	02/24/20	03/31/20	05/15/20	05/20/20	06/18/20	07/01/20	12/11/20
34:19	04/01/20	03/11/20	04/16/20	06/01/20	06/22/20	07/16/20	08/01/20	12/27/20
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34:21	05/01/20	04/09/20	05/16/20	06/30/20	07/20/20	08/20/20	09/01/20	01/26/21
34:22	05/15/20	04/24/20	05/30/20	07/14/20	07/20/20	08/20/20	09/01/20	02/09/21
34:23	06/01/20	05/08/20	06/16/20	07/31/20	08/20/20	09/17/20	10/01/20	02/26/21
34:24	06/15/20	05/22/20	06/30/20	08/14/20	08/20/20	09/17/20	10/01/20	03/12/21
35:01	07/01/20	06/10/20	07/16/20	08/31/20	09/21/20	10/15/20	11/01/20	03/28/21
35:02	07/15/20	06/23/20	07/30/20	09/14/20	09/21/20	10/15/20	11/01/20	04/11/21
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35:07	10/01/20	09/10/20	10/16/20	11/30/20	12/21/20	01/21/21	02/01/21	06/28/21
35:08	10/15/20	09/24/20	10/30/20	12/14/20	12/21/20	01/21/21	02/01/21	07/12/21
35:09	11/02/20	10/12/20	11/17/20	01/04/21	01/20/21	02/18/21	03/01/21	07/30/21
35:10	11/16/20	10/23/20	12/01/20	01/15/21	01/20/21	02/18/21	03/01/21	08/13/21
35:11	12/01/20	11/05/20	12/16/20	02/01/21	02/22/21	03/18/21	04/01/21	08/28/21
35:12	12/15/20	11/20/20	12/30/20	02/15/21	02/22/21	03/18/21	04/01/21	09/11/21

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.



State of North Carolina

ROY COOPER
GOVERNOR

June 24, 2020

EXECUTIVE ORDER NO. 147

EXTENSION OF PHASE 2 ORDER AND
NEW MEASURES TO SAVE LIVES IN THE COVID-19 PANDEMIC

Background Statement

The COVID-19 Public Health Emergency

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, and 146; and

WHEREAS, more than fifty-six thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and more than twelve hundred people in North Carolina have died from the disease; and

The Need to Extend Executive Order No. 141

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, slowing and controlling community spread of COVID-19 is critical to ensuring that the state’s healthcare facilities remain able to accommodate those who require medical assistance; and

WHEREAS, in Executive Order No. 141, issued on May 20, 2020, the undersigned urged that all people in North Carolina follow social distancing recommendations, including that everyone wear a cloth face covering, wait six (6) feet apart and avoid close contact, and wash hands often or use hand sanitizer; and

WHEREAS, to reduce COVID-19 spread, the undersigned, in Executive Order No. 141, required safety measures in certain business settings, limited mass gatherings, and closed certain types of businesses and operations; and

WHEREAS, North Carolina’s daily case counts of COVID-19 are continuing to increase, the percent of COVID-19 tests that are positive has not decreased, emergency department visits for COVID-19 illnesses are increasing, and hospitalizations for COVID-19 are increasing, which require the undersigned to continue the measures of Executive Order No. 141—and impose additional measures—to slow the spread of this virus during the pandemic; and

WHEREAS, a phased approach to reigniting the economy and reducing restrictions on businesses and activities – with some businesses and activities that pose a risk for COVID-19 spread remaining closed— is necessary to slow the spread of COVID-19, since the operation of each group of businesses and the loosening of each restriction on businesses or activities adds incremental risk and thereby increases the aggregate risk of spread of COVID-19; and

Face Coverings

WHEREAS, face coverings can decrease the spread of respiratory droplets from people, and evidence has grown, showing in numerous recent studies that the use of face coverings decreases the spread of COVID-19 within populations; and

WHEREAS, in Executive Order No. 141, the undersigned required that workers in personal care, grooming, and tattoo businesses wear cloth face coverings to reduce the spread of COVID-19; and

WHEREAS, to prevent the spread of COVID-19, and thereby to potentially save lives, the undersigned has determined that face coverings must now be required for workers in additional business segments; and

WHEREAS, the undersigned strongly recommends that all people over the age of two (2) in North Carolina should wear a face covering to reduce the spread of COVID-19; and

WHEREAS, some people have medical or behavioral health issues, disabilities, or other reasons that mean they should be excepted from wearing a face covering, and this Executive Order puts North Carolinians on the honor system to identify if they are within one of the exceptions to face covering requirements and should not wear a mask; and

WHEREAS, under this Executive Order, face coverings are required in many types of businesses, but businesses have the discretion to accommodate people who cannot wear face coverings by serving them at curbside, using home delivery, or using other means to protect against the spread of COVID-19; and

WHEREAS, all people over the age of two (2) in North Carolina should use a face covering to reduce the spread of COVID-19, but some populations may experience increased anxiety and fear of bias and being profiled if wearing face coverings in public spaces; and

WHEREAS, if someone is the target of ethnic or racial intimidation as the result of adhering to the face covering provision or as a result of the pandemic, they are encouraged to report the matter to law enforcement or another government entity; and

Expanding Capacity to Respond to COVID-19

WHEREAS, since the issuance of executive orders to slow the spread of COVID-19, North Carolina has increased its capacity to treat COVID-19, its capacity for testing and tracing, and the availability of PPE; and

WHEREAS, since the declaration of a state of emergency in Executive Order 116, North Carolina has accumulated increased PPE for health care workers and first responders, has developed health care protocols and procedures for the treatment of COVID-19, and has adopted recommendations to promote social distancing and hygiene measures that reduce transmission of COVID-19; and

WHEREAS, the state's ability to conduct testing of individuals is vital to the effort to slow the community spread of COVID-19; and

WHEREAS, historically marginalized populations, including persons of color and Latinx individuals are disproportionately affected by COVID-19, and may have more trouble accessing COVID-19 testing; and

WHEREAS, the undersigned issued Executive Order No. 143 addressing the impact of COVID-19 on persons of color; and

WHEREAS, the State Health Director has been assigned authority by the Secretary of the North Carolina Department of Health and Human Services ("NCDHHS"), pursuant to N.C. Gen. Stat. § 130A-3, to exercise authorities under N.C. Gen. Stat. § 130A-5, including to investigate the causes of communicable disease affecting the public health in order to control and prevent those diseases, to provide, under the rules of the North Carolina Commission for Public Health, for the prevention, detection, reporting, and control of communicable diseases, and to develop and carry out health programs necessary for the protection and promotion of the public health and the control of diseases; and

WHEREAS, a state-wide standing order for COVID-19 testing will remove barriers and increase access to testing for historically marginalized and underserved populations and other individuals who do not have access to a primary care physician and facilitate widespread community testing, testing of high-risk populations, and high through-put testing sites; and

Statutory Authority and Determinations

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate Gubernatorial vested authority under the Emergency Management Act and to provide for the sub-delegation of that authority; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(4) gives the undersigned the authority to "cooperate and coordinate" with the President of the United States; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.12(3)(e), the Division of Emergency Management must coordinate with the State Health Director to revise the North Carolina Emergency Operations Plan as conditions change, including making revisions to set "the appropriate conditions for quarantine and isolation in order to prevent the further transmission of disease," and following this coordination, the Emergency Management Director and the State Health Director have recommended that the Governor develop and order the plan and actions identified in this Executive Order; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.23 in conjunction with N.C. Gen. Stat. §§ 75-37 and 75-38, the undersigned may issue a declaration that shall trigger the prohibitions against excessive pricing during states of disaster, states of emergency or abnormal market disruptions; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available state resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of state agencies or units thereof for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact, thus needed control cannot be imposed locally; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1) authorizes the undersigned to prohibit and restrict the movement of people in public places; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business establishments, and other places to and from which people may travel or at which they may congregate; and

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(5) authorizes the undersigned to prohibit and restrict other activities or conditions, the control of which may be reasonably necessary to maintain order and protect lives or property during a state of emergency; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(1), when the undersigned imposes the prohibitions and restrictions enumerated in N.C. Gen. Stat. § 166A-19.31(b), the undersigned may amend or rescind the prohibitions and restrictions imposed by local authorities; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), during a Governorially declared State of Emergency, the undersigned has the power to “give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article.”

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the statutes listed above and in Executive Order No. 141, **IT IS ORDERED**:

Section I. Extension and Amendment of Phase 2 Order.

Executive Order No. 141 shall remain in effect, as amended below, until 5:00 pm on July 17, 2020. The effective date provision of Executive Order No. 141 is amended to have that order continue in effect through the above-listed time and date.

Section II. New Requirements to Wear Face Coverings.

Executive Order No. 141 is amended to add the following section.

Section 3.5. Face Coverings.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

- A. **Definitions.** “**Face Covering**” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A Face Covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. Ideally, a Face Covering has two (2) or more layers. A Face Covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels. These Face Coverings are not intended for use by healthcare providers in the care of patients. “**Surgical Mask**” means American Society for Testing and Materials (“ASTM”) Level 1, 2, or 3 approved procedural and surgical masks. An N95 respirator approved by the National Institute for Occupational Safety and Health (“NIOSH”) (or a respirator from another country allowed by the Occupational Safety & Health Administration, the Food & Drug Administration, or the CDC) is not recommended for general public use or use in public settings, as it should be reserved for healthcare providers and other medical first responders in a health care setting. However, if worn, these respirators would meet both the Face Covering and Surgical Mask requirements of this Executive Order. A face shield that covers the nose and mouth also meets the Face Covering requirements of this Executive Order.
- B. **Where Face Coverings Are Required.** People are required to wear Face Coverings in the following settings, whether they are inside or outside, unless an exception applies.
1. **In Retail Businesses.** Retail Businesses must have all workers wear Face Coverings when they are or may be within six (6) feet of another person. In addition, Retail Businesses must have all customers wear Face Coverings when they are inside the establishment and may be within (6) feet of another person, unless the customer states that an exception applies.
 2. **In Restaurants.** Restaurants must have all workers wear Face Coverings when they are or may be within six (6) feet of another person. In addition, restaurants must have all customers wear Face Coverings when not at their table, unless the customer states that an exception applies.
 3. **In Personal Care, Grooming, and Tattoo Businesses.** Personal Care, Grooming, and Tattoo Businesses must have workers wear Face Coverings when they are or may be within six (6) feet of another person. In addition, the

business must have all customers wear Face Coverings when they are inside the establishment and may be within six (6) feet of another person, unless the customer states that an exception applies. Customers may take off their Face Coverings if they are receiving a facial treatment, shave, or other services on a part of the head which the Face Covering covers or by which the Face Covering is secured.

4. **In Child Care Facilities, Day Camps, and Overnight Camps.** Child care facilities, day camps, and overnight camps must have workers, all other adults, and children eleven (11) years or older on site wear Face Coverings when they are or may be within six (6) feet of another person.
5. **In State Government.** State government agencies headed by members of the Governor’s Cabinet must have their on-site workers wear Face Coverings when they are or may be within six (6) feet of another person. Public-facing operations of state government agencies under the jurisdiction of the undersigned must also follow the requirements for Retail Businesses established in this Executive Order.

All other state and local government agencies are strongly encouraged to adopt similar policies that require Face Coverings.

6. **In Transportation.** All workers and riders on public or private transportation regulated by the State of North Carolina, as well as all people in North Carolina airports, bus and train stations or stops, must wear Face Coverings when they are or may be within six (6) feet of another person. This provision does not apply to people traveling alone with household members or friends in their personal vehicles, but does apply to ride-shares, cabs, vans, and shuttles, even if the vehicles are privately owned.

Notwithstanding the foregoing, no customer will be removed from or denied entry to public transportation for failure to wear a Face Covering.

7. **In Certain High-Density Occupational Settings Where Social Distancing is Difficult.** Social distancing is inherently difficult where multiple workers are together in manufacturing settings, at construction sites, and in migrant farm, other farm, and agricultural settings. Therefore, in businesses or operations within North American Industry Classification System (NAICS) sectors 311 to 339 (manufacturing), 236 to 238 (construction), and 111, 112, 1151, and 1152 (agriculture), all workers must wear Face Coverings when they are or may be within six (6) feet of another person.
8. **In Meat or Poultry Processing Plants.** All workers in any meat or poultry processing plant, packing plant, or slaughterhouse must wear Face Coverings when they are or may be within six (6) feet of another person, and those Face Coverings must be Surgical Masks, as long as Surgical Mask supplies are available.
9. **Long Term Care Facilities.** All workers in Long Term Care (“LTC”) Facilities, including skilled nursing facilities (“SNF”), adult care homes (“ACH”), family care homes (“FCH”), mental health group homes, and intermediate care facilities for individuals with intellectual disabilities (“ICF-IID”), must wear Face Coverings while in the facility, and those Face Coverings must be Surgical Masks, as long as Surgical Mask supplies are available.
10. **Other Health Care Settings.** Health care facilities other than LTC facilities must follow the Face Covering requirements in the CDC [Infection Control Guidance for Healthcare Professionals about Coronavirus \(COVID-19\)](#).

- C. **Exceptions.** This Executive Order does not require Face Coverings for—and a Face Covering does not need to be worn by—a worker, customer, or patron who:
1. Should not wear a Face Covering due to any medical or behavioral condition or disability (including, but not limited to, any person who has trouble breathing, or is unconscious or incapacitated, or is otherwise unable to put on or remove the face covering without assistance);
 2. Is under eleven (11) years of age;
 3. Is actively eating or drinking;
 4. Is strenuously exercising;
 5. Is seeking to communicate with someone who is hearing-impaired in a way that requires the mouth to be visible;
 6. Is giving a speech for a broadcast or to an audience;
 7. Is working at home or is in a personal vehicle;
 8. Is temporarily removing his or her Face Covering to secure government or medical services or for identification purposes;
 9. Would be at risk from wearing a Face Covering at work, as determined by local, state, or federal regulations or workplace safety guidelines;
 10. Has found that his or her Face Covering is impeding visibility to operate equipment or a vehicle; or
 11. Is a child whose parent, guardian, or responsible person has been unable to place the Face Covering safely on the child's face.

Anyone who declines to wear a Face Covering for these reasons should not be required to produce documentation or any other proof of a condition.

Children under two (2) years of age should not wear a Face Covering.

- D. **Application of Exceptions.** Under this Executive Order, all North Carolinians will be on the honor system about whether or not there is a reason why they cannot wear a Face Covering. Everyone in this state is asked to tell the truth and—if they are healthy and able to wear a mask—to wear a Face Covering so that they do not put other people at risk of serious illness and death.
- E. **How Businesses May Accommodate Exceptions.** If a customer states that an exception applies, a business may choose to offer curbside service, provide home delivery, or use some other reasonable measure to deliver its good or services.
- F. **Enforcement of Face Covering Requirements.**
1. Citations under this Section shall be written only to businesses or organizations that fail to enforce the requirement to wear Face Coverings. Operators of businesses and organizations are entitled to rely on their customers or patrons' statements about whether or not they are excepted from the Face Covering requirements, and businesses and organizations do not violate this Executive Order if they rely on such statements.
 2. Law enforcement personnel are not authorized to criminally enforce the Face Covering requirements of this Executive Order against individual workers, customers, or patrons.
 3. However, if a business or organization does not allow entry to a worker, customer, or patron because that person refuses to wear a Face Covering, and if that worker, customer, or patron enters the premises or refuses to leave the premises, law enforcement personnel may enforce the trespassing laws and any other laws (other than N.C. Gen. Stat. § 14-288.20A) that the worker, customer, or patron may violate.

Section 15(A) of Executive Order No. 141 is amended to read:

- A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers. Enforcement of Section 3.5 shall be limited as stated in that Section. Law enforcement and other public safety and emergency management personnel are strongly encouraged to educate and encourage voluntary compliance with all the provisions of this Executive Order.

Section 1(4) of Executive Order No. 141 is amended to read, “‘Face Covering’ is defined in Section 3.5(A).”

Section 6(A) of Executive Order No. 141 is amended to read as follows:

- A. **Prohibition.** To control the spread of COVID-19 and protect lives during the State of Emergency, Section 3.5 and this Section list restrictions on the operations of business establishments and other places to or from which people may travel or at which they may congregate. Businesses or operations within the scope of Section 3.5 or this Section are prohibited from operating unless they follow any applicable restrictions stated in Section 3.5 and this Section.

Sections 6(C)(2)(c), 6(D)(2)(c), and 6(D)(3) of Executive Order No. 141 are removed, since the substance of those provisions has been replaced with new Section 3.5 above.

Section III. Increase Access to COVID-19 Testing Through a Statewide Standing Order.

Executive Order No. 141 is amended to add the following additional section.

Section 9.5. Statewide Standing Order for COVID-19 Testing.

In order to further protect the public health by providing greater access to COVID-19 testing, the undersigned orders the State Health Director, in addition to and in accordance with her powers set out in N.C. Gen. Stat. Chapter 130A, to issue any statewide standing order needed in her medical judgment that would allow individuals who meet NCDHHS criteria for testing to access and undergo testing for COVID-19, subject to the terms of the standing order. This standing order may continue for the duration of the State of Emergency.

Section IV. More Precisely Tailored Mitigation Measures for Long Term Care.

Section 10(B) of Executive Order No. 141 and Section 7 of Executive Order No. 138 are removed and replaced by the following provision added to Executive Order No. 141.

Section 10.5. Limitations on Certain Long Term Care Facilities.

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

- A. **Scope of this Section.** This Section applies only to skilled nursing facilities (SNF) and combination homes (combined skilled nursing and assisted living facilities).
- B. **Limitations.** Facilities within the scope of this Section shall restrict visitation of all visitors and non-essential health care personnel, except for certain compassionate care situations, such as an end-of-life situation. Facilities within the scope of this Section shall also cancel communal dining and all group activities, including internal and external activities.

Section V. Extension of Price Gouging Period.

Section 11 of Executive Order No. 141 is amended to read as follows:

Pursuant to N.C. Gen. Stat. § 166A-19.23, the undersigned extends the prohibition against excessive pricing, as provided in N.C. Gen. Stat. §§ 75-37 and 75-38, from the issuance of Executive Order No. 116 through 5:00 pm on July 17, 2020.

The undersigned further hereby encourages the North Carolina Attorney General to use all resources available to monitor reports of abusive trade practices towards consumers and make readily available opportunities to report to the public any price gouging and unfair or deceptive trade practices under Chapter 75 of the North Carolina General Statutes.

Section VI. Effective Date.

This Executive Order is effective at 5:00 pm on June 26, 2020. This Executive Order shall remain in effect through 5:00 pm on July 17, 2020 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

Notwithstanding any provision of this Section and Section 16 of Executive Order No. 141, any statewide standing order for COVID-19 testing issued by the State Health Director under Section 9.5 of Executive Order No. 141 (as added by Section III of this Executive Order) shall remain in effect for the duration of the State of Emergency unless specifically repealed, replaced, or rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 24th day of June in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

June 26, 2020

EXECUTIVE ORDER NO. 148

**EXTENDING CERTAIN HEALTH AND HUMAN SERVICES PROVISIONS IN
PREVIOUS EXECUTIVE ORDERS**

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the state's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, and 146-147; and

WHEREAS, the North Carolina Department of Health and Human Services ("NCDHHS") has confirmed the number of cases of COVID-19 in North Carolina continues to rise and has identified widespread community transmission of the virus; and

WHEREAS, more than fifty-eight thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and over thirteen hundred people in North Carolina have died from the disease; and

WHEREAS, in Executive Order Nos. 130 and 139, the undersigned, with the concurrence of the Council of State, determined that the Secretary of Health and Human Services required authority to modify or waive enforcement of any legal constraints or regulations which restrict the immediate relief of human suffering; and

WHEREAS, the provisions in Executive Order Nos. 130 and 139 as set out below are set to expire unless the undersigned takes further action; and

WHEREAS, the need for these measures continues for a period of thirty (30) days; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, N.C. Gen. Stat. § 166A-10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency or political subdivision which restricts the immediate relief of human suffering; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(5), the undersigned, with the concurrence of the Council of State, may perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, the undersigned has sought and obtained concurrence from the Council of State consistent with the Governor's emergency powers authority in N.C. Gen. Stat. §166A-19.30; and

WHEREAS, all the authority granted by this Executive Order is intended to be temporary, and the waivers and modifications of enforcement set out in this Executive Order are intended to extend only through the period where they are needed to address the COVID-19 pandemic.

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

Section 1. Extension

For the reasons and pursuant to the authority set forth above, and to meet the goal of providing human services during the COVID-19 pandemic, the undersigned orders as follows:

A. Executive Order No. 130.

1. Section 6(A), of Executive Order No. 130 was previously extended for sixty (60) days by Executive Order No. 144. Executive Order No. 144 is not changed or amended by this Executive Order.
2. The duration of Section 2 of Executive Order No. 130 was extended to May 22, 2020 by Executive Order No. 138. Subsections C and D of Section 2 of Executive Order No. 130 regarding Child Care were replaced by Section 6 (F) of Executive Order No. 141, and the remaining provisions of Section 2 of Executive Order No. 130 were extended until June 26, 2020 at 5:00 p.m. by Executive Order No. 141. Subsections A-B and E-H of Section 2 of Executive order No. 130 are extended in effect for thirty (30) days.

3. Section 4(A)(2) of Executive Order No. 130 is rescinded, as these permits are now addressed in Session Law 2020-3, Section 4.39.
4. The remaining provisions of Executive Order No. 130 are extended in effect for thirty (30) days. Unless otherwise expressly stated in another Executive Order, Section 1(B)(1) of Executive Order No. 130 shall remain in effect for thirty (30) days following the termination of the remainder of this Executive Order, and the relief from permit expirations dates provided in Section 4(A)(1) of Executive Order No. 130 shall remain in effect following the termination of the remainder of this Executive Order.

B. Executive Order No. 139.

1. Executive Order No. 139 was effective on May 12, and is set to expire on June 26, 2020 at 5:00 p.m.
2. Section 3 of Executive Order No. 139 was originally set to expire on May 22, 2020 and was extended by Section 6(F)(3) of Executive Order No. 141 to be in effect through 5:00 p.m. on June 26, 2020.
3. Section 4 of Executive Order No. 139 is extended and will remain in effect through 5:00 p.m. on July 17, 2020.
4. With the exception of Section 4 as referenced above, Executive Order No. 139 is extended and will remain in effect for thirty (30) days. Unless otherwise expressly stated in another Executive Order, the relief from expiration dates and waivers or modifications in Section 1 of Executive Order No. 139 shall remain in effect for the periods of time listed in that Section following the termination of the remainder of this Executive Order.

C. Temporary nature of this Section.

1. Waivers and modifications under authority of this Section are temporary and shall be effective as set forth in this Executive Order.
2. The undersigned delegates to the Secretary of Health and Human Services authority to reimpose any regulations, policies, or guidance that have enforcement waived or modified under this Section.

Section 2. Distribution

I hereby order that this Executive Order be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the State of Emergency would prevent or impede such filing; and (3) distributed to others as necessary to ensure proper implementation of this Executive Order.

Section 3. Effective Date

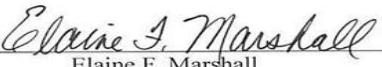
This Executive Order is effective immediately. This Executive Order shall remain in effect for thirty (30) days unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 26th day of June in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

July 02, 2020

EXECUTIVE ORDER NO. 149

REISSUING PRIOR EXECUTIVE ORDERS ON REMOTE SHAREHOLDER AND
NONPROFIT MEETINGS DURING THE COVID-19 STATE OF EMERGENCY

WHEREAS, on March 10, 2020, the undersigned issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina ("Declaration of a State of Emergency"); and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, in Executive Order No. 141, issued on May 20, 2020, the undersigned placed additional limitations on mass gatherings, venues, and long term care facilities, and directed school closures; and

WHEREAS, such limitations on person-to-person contact are reasonably necessary to address the public health risk posed by COVID-19; and

WHEREAS, the North Carolina Business Corporation Act provides that annual and special meetings of a corporation's shareholders be held at a "place" stated in or fixed in accordance with a corporation's bylaws, N.C. Gen. Stat. § 55-7-01, and "shareholders of any class or series" may, upon the board of directors' authorization, "participate in any meeting of shareholders by means of remote communication" so long as the corporation has implemented certain "reasonable measures," N.C. Gen. Stat. § 55-7-09(b); and

WHEREAS, electronic devices or processes exist that allow shareholders to be in the same place that a separately located meeting is being conducted and to participate in the separately located meeting by sight and sound; and

WHEREAS, corporations may have shareholder meetings where ten or more shareholders seek to participate; and

WHEREAS, many other states, including the State of Delaware, permit annual shareholders' meetings to be held by remote participation; and

WHEREAS, corporations have sought guidance as to interactions between the Mass Gathering restrictions and the North Carolina Business Corporation Act; and

WHEREAS, for the protection of the public health, the undersigned encourages North Carolina corporations to hold shareholders' meetings by remote participation, to the maximum extent practicable, to prevent shareholders from having to gather in a place, and thereby to promote social distancing and the mitigation of the spread of COVID-19; and

WHEREAS, the North Carolina Nonprofit Corporation Act provides that annual and special meetings of a nonprofit corporation's members be held at a "place" stated in or fixed in accordance with the corporation's by-laws, pursuant to N.C. Gen. Stat. §§ 55A-7-01 and -02; and

WHEREAS, the North Carolina Nonprofit Corporation Act provides that "any action that may be taken at any annual, regular, or special meetings of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter," and that "[a]ny requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, including electronic mail, provided that such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy," pursuant to N.C. Gen. Stat. § 55A-7-08; and

WHEREAS, the North Carolina Nonprofit Corporation Act provides that a nonprofit corporation "may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting," pursuant to N.C. Gen. Stat. § 55A-8-20; and

WHEREAS, electronic devices or processes exist that allow members and directors to be in the same place that a separately located meeting is being conducted and to participate in the separately located meeting by sight and sound; and

WHEREAS, nonprofit corporations have sought guidance as to the interaction between the mass gathering restriction and the North Carolina Nonprofit Corporation Act; and

WHEREAS, for the protection of public health, the undersigned encourages North Carolina nonprofit corporations to hold members' and board of directors' meetings by remote participation and balloting, to the maximum extent practicable, to prevent members and directors from having to gather in a place, and thereby to promote social distancing and the mitigation of the spread of COVID-19; and

WHEREAS, Executive Order No. 116 invoked the Emergency Management Act, and authorizes the undersigned to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, N.C. Gen. Stat. § 166A-19.10(b)(3) authorizes and empowers the undersigned to delegate any Gubernatorial vested authority under the Emergency Management Act and to provide for the subdelegation of any authority; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(2), the undersigned may make, amend, or rescind necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor in the Emergency Management Act; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(1), the undersigned may utilize all available State resources as reasonably necessary to cope with an emergency, including the direction of functions of State agencies for the purpose of performing or facilitating emergency services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the undersigned may take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of the Emergency Management Act and with the orders, rules, and regulations made thereunder; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(i), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because not all local authorities have enacted such appropriate ordinances or issued such appropriate declarations restricting the operation of businesses and limiting person-to-person contact, thus needed control cannot be imposed locally; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for lives and property of North Carolinians because the area in which the emergency exists spreads across local jurisdictional boundaries and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(iv), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection of lives and property of North Carolinians because the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(2), the undersigned may give to all participating state officers such directions as may be necessary to assure coordination among them; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 166A-19.30(c)(2) and 166A-19.31(b)(2), the undersigned may enact prohibitions and restrictions on the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.

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

Section 1. Prior Executive Orders

For the reasons and pursuant to the authority set forth above and set forth in the relevant Executive Orders referenced below, the undersigned orders as follows:

Executive Order No. 125 is reissued and in full effect, and shall remain in effect for sixty (60) days from the date of this Executive Order.

Executive Order No. 136 is reissued and in full effect, and shall remain in effect for sixty (60) days from the date of this Executive Order .

Future Executive Orders may extend the term of these Executive Orders. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

Section 2. Savings Clause

If any provision of this Executive Order or its application to any person or circumstances is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

Section 3. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect for sixty (60) days unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 2nd day of July in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



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

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to amend the rules cited as 13 NCAC 15 .0205, .0402, and .0702-.0705.

Link to agency website pursuant to G.S. 150B-19.1(e):
<https://www.labor.nc.gov/proposed-new-rules>

Proposed Effective Date:

*December 1, 2020 – 13 NCAC 15 .0205, .0402, .0702, .0704
January 1, 2021 – 13 NCAC 15 .0703, .0705*

Public Hearing:

Date: August 25, 2020

Time: 2:00 p.m.

Location: Teleconference Due To COVID-19, Join the meeting:
<https://call.lifesizecloud.com/4569841>; Click to call from mobile (audio only)/United States: +1 (312) 584-2401, 4569841#; Call in by phone (audio only)/United States: +1 (312) 584-2401/meeting extension 4569841#; Other ways to call <https://call.lifesize.com/otherways/4569841>

Reason for Proposed Action:

13 NCAC 15 .0205 TRAMWAY REQUIREMENTS
NCDOL is updating the information for the industry standard for tramways and funiculars. This rule was last amended in 1992 and needs updating to reference the correct name of the American National Standards Institute (ANSI) B77.1, which is Passenger Ropeways – Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors. This is the primary industry safety standard for ski lifts/chair lifts. The General Assembly also amended NCGS 95-117 of the NC Passenger Tramway Act to add funiculars and gondolas to the definition of passenger tramway. [See Section 14(b) of Session Law 2017-211; <https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2017-2018/SL2017-211.pdf>]. Therefore, NCDOL is also amending 13 NCAC 15.0205 to incorporate the ANSI industry standard for funiculars, which is ANSI B77.2, Funiculars – Safety Requirements. It is extremely important for the public to have all the amusement device owners complying with the most current industry standards to ensure that rides function safely.

The changes are primarily technical in nature to reflect the update to the title, contact information for ANSI, current cost of B77.1, and to incorporate by reference ANSI B77.2.

Neither the State of North Carolina nor any municipalities own any tramways or funiculars.

Effective Date December 1, 2020

13 NCAC 15 .0402 RESPONSIBILITY FOR COMPLIANCE

NCDOL proposes to incorporate by reference two additional American Society of Testing and Materials (ASTM) industry standards in 13 NCAC 15.0402. First, ASTM F1193, Standard

Practice for Quality, Manufacture, and Construction of Amusement Rides and Devices, provides the minimum manufacturing requirements for amusement rides and devices and provides the minimum requirements for a written quality assurance program for an amusement ride or device manufacturer, or component supplier. Second, ASTM F770, Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices, establishes procedures for the operation, maintenance, inspection, and training for amusement rides and devices. Amusement rides are quickly becoming more computerized and complex; the incorporation by reference of these industry standards will provide more current standards that the EAD inspectors may rely upon for the safety of the public. Additionally, the rule change requests a technical correction for previously incorporated standard ASTM F1159 - Standard Practice for design of Amusement Rides and Devices that are Outside the Purview of Other F24 Design Standards; those technical changes reflect the update to the title, contact information for ASTM, the current cost for ASTM F1159.

It is extremely important for the public to have all the amusement device owners and operators complying with the most current industry standards to ensure that rides function safely.

Effective Date December 1, 2020

13 NCAC 15 .0702 ELEVATOR, ESCALATOR, DUMBWAITER, AND SPECIAL EQUIPMENT ANNUAL INSPECTION FEES SCHEDULE

NCDOL proposes to increase select elevator fees listed respectively in 13 NCAC 15. 0702. The current fee structure has not been increased since 2007 and needs to be increased to reflect the cost of inspections that have risen due to increased training needs, retention of qualified inspectors, and increased travel costs. Inspection fee increases are necessary to make market-based staff salaries adequate to recruit and retain technical staff as EAD inspector salaries have fallen behind regionally and are significantly lower than private sector salaries. This is especially true in relation to the expanded roles of EAD inspectors who must inspect elevators, escalators, wind turbine elevators, construction lifts, handicap lifts, and personnel hoists. The EAD inspectors perform a vital role in ensuring that the safety and welfare of the public is well-guarded. NCDOL has determined that specific expertise is needed for individuals to perform inspections and to maintain on-going educational standards for new elevator designs and new amusement device designs, which are becoming more computer driven rather than purely mechanical. The annual inspection of elevators and other devices takes place on a rolling basis; other inspections are performed upon installation or alteration.

Effective Date December 1, 2020

**Note: domestic elevators are not inspected pursuant to the NC Elevator Safety Act.*

13 NCAC 15 .0703 AMUSEMENT DEVICE INSPECTION FEE SCHEDULE

NCDOL proposes to increase select amusement device fees listed respectively in 13 NCAC 15.0703, and to add new named devices and clarify specific types of amusement devices. All fees remain within the current statutory maximum fees. As technology and the nature of entertainment has evolved, the types of amusement devices have evolved and increased. Such new forms of entertainment also come with some inherent safety risks to the public, and thus require inspection to ensure they are operating within acceptable industry parameters to ensure the public is protected as much as possible from injury. All the named rides in the amendment have been inspected and will continue to be inspected, but the amendment is to add clarity as to the types of rides inspected. There is also an amendment to separate inspections of Go Kart Tracks and the actual Go Karts themselves.

The current fee structure has not been increased since 2007 and needs to be increased to reflect the cost of inspections that have risen due to increased training needs, retention of qualified inspectors, and increased travel costs. Inspection fee increases are necessary to make market-based staff salaries adequate to recruit and retain technical staff as EAD inspector salaries have fallen behind regionally and are significantly lower than private sector salaries. This is especially true in relation to the expanded roles of EAD inspectors who must inspect a myriad of amusement devices from water slides to children’s carousels to permanently sited double-launched roller coasters. The EAD inspectors perform a vital role in ensuring that the safety and welfare of the public is well-guarded.

Effective Date January 1, 2021

13 NCAC 15 .0704 SPECIAL AMUSEMENT DEVICE INSPECTION FEE

No Fiscal Note Required for this rule.

NCDOL proposes to change the time frame for special inspections. Currently, the rule provides for inspections from 7:00 a.m. to 7:00 p.m. Monday through Friday. The amendment would decrease the time frame for actual inspections to 8:00 a.m. until 6:00 p.m. Monday through Friday to provide for more reasonable travel time for inspectors prior to and after any special inspection, and to align hours with more traditional work hours.

This time change does not create any new costs. Special inspections will continue to be performed as needed.

Effective Date December 1, 2020

13 NCAC 15 .0705 PASSENGER TRAMWAY INSPECTION FEE SCHEDULE

NCDOL proposes to increase fees to the statutory maximum for select passenger tramway devices, so that there is one uniform inspection fee for all passenger tramway devices. Some devices are already at the statutory maximum. The initial fee was established in 2005 and there has been no increase since that time. The increase is needed to reflect the cost of inspections that have risen due to increased training needs, retention of qualified inspectors, and increased travel costs. Inspection fee increases are necessary to make market-based staff salaries adequate to recruit and retain technical staff as EAD inspector salaries have fallen behind regionally and are significantly lower than private sector salaries. EAD inspectors must be cross trained to inspect

all elevator devices, amusement devices, and passenger tramway devices. The inspectors must inspect all ski lifts, chair lifts, inclined railways, funiculars, and affiliated ski devices such as tow ropes. The EAD inspectors perform a vital role in ensuring that the safety and welfare of the public is well-guarded.

Comments may be submitted to: Jill F. Cramer, 1101 Mail Service Center, Raleigh, NC 27699-1101; phone (919)707-7710; fax (919)733-4235; email Jill.Cramer@labor.nc.gov

Comment period ends: October 2, 2020

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 (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 15 - ELEVATOR AND AMUSEMENT DEVICE DIVISION

SECTION .0200 – CODES AND STANDARDS

13 NCAC 15 .0205 TRAMWAY REQUIREMENTS

(a) The rules of this Chapter shall control when any conflict between these Rules and the American National Standards Safety Requirements exists.

~~(b)(a)~~ The construction, operation, and maintenance of all passenger tramways shall conform to the rules in this Section ANSI B77.1, Passenger Ropeways-Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors American National Standards Safety Requirements for Aerial Passenger Tramways, which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

~~(b)~~ The rules of this chapter shall control when any conflict between these rules and the B77.1 American National Standards Safety Requirements for Aerial Passenger Tramways exists.

~~(c)~~ Copies of the B77.1 American National Standards Safety Requirements for Aerial Passenger Tramways are available for inspection at the offices of the Division and may be obtained from

the American National Standards Institute (ANSI), via U.S. Mail at 11 West 42nd Street, New York, New York 10036, via telephone at (212) 642-4980, or via the internet at www.ansi.org. The cost is ninety four dollars (\$94.00) per copy.

(c) The construction, operation, and maintenance of all funiculars shall conform to the rules in this Section and the ANSI B77.2 – Funiculars – Safety Requirements, which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(d) Copies of all ANSI standards incorporated by reference in this Rule may be obtained from the American National Standards Institute via U.S. Mail at 25 West 43rd Street, 4th Floor, New York, New York 10036, via telephone at (212) 642-4900, or via the internet at www.ansi.org. The cost of each publication is as follows:

- (1) ANSI B77.1 is two hundred dollars (\$200.00).
- (2) ANSI B77.2 is seventy-five dollars (\$ 75.00).

Authority G.S. 95-120.

SECTION .0400 - AMUSEMENT DEVICES

13 NCAC 15 .0402 RESPONSIBILITY FOR COMPLIANCE

(a) Every owner, ~~or operator~~ operator, manufacturer, or designer of an amusement device shall comply with all provisions of the rules of this Section. ~~Section, and every employer and employee shall comply with all provisions which concern or affect his conduct.~~

(b) Designers and manufacturers of amusement devices shall follow the procedures of the ASTM F1159 – ~~Standard Practice for Design and Manufacture of Patron Directed, Artificial Climbing Walls, Dry Slide, Coin Operated and Purposeful Water Immersion Amusement Rides and Devices and Air Supported Structures, Standard Practice for Design of Amusement Rides and Devices that are Outside the Purview of Other F24 Design Standards,~~ which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(c) ~~Copies of the ASTM F1159— Standard Practice for Design and Manufacture of Patron Directed, Artificial Climbing Walls, Dry Slide, Coin Operated and Purposeful Water Immersion Amusement Rides and Devices and Air Supported Structures may be obtained from the American Society of Testing and Materials (ASTM), via U.S. Mail at 100 Barr Harbor Drive West, Conshohocken, Pennsylvania 19428-2959, via telephone at (610) 832-9585, or via the internet at www.astm.org. The cost is twenty-seven dollars (\$27.00) per copy.~~

(c) Designers and manufacturers of amusement devices shall follow the procedures of the ASTM F1193 – Standard Practice for Quality, Manufacture, and Construction of Amusement Rides and Devices, which is hereby incorporated by reference. This incorporation includes subsequent amendments and editions of this Code.

(d) Owners of amusement devices shall follow the procedures of ASTM F770 – Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices, which is hereby incorporated by reference. This incorporation includes all subsequent amendments and editions of this Code.

(e) Copies of all ASTM standards incorporated by reference in this Rule may be obtained from the American Society of Testing and Materials (ASTM), via U.S. Mail at P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959, via telephone at (610) 832-9500, or via the internet at www.astm.org. The cost of each publication is as follows:

- (1) ASTM F1159 is forty-four dollars (\$44.00) per copy;
- (2) ASTM F1193 is fifty-six dollars (\$56.00) per copy;
- (3) ASTM F770 is forty-four dollars (\$44.00) per copy.

(d)(f) An engineering analysis prepared by the manufacturer of each ride or device shall be submitted to the North Carolina Department of Labor, Elevator and Amusement Device ~~Division~~ Bureau, prior to the time of inspection and before ~~it~~ the ride or device is operated in North Carolina.

Authority G.S. 95-111.4.

SECTION .0700 – FEES

13 NCAC 15 .0702 ELEVATOR, ESCALATOR, DUMBWAITER, AND SPECIAL EQUIPMENT ANNUAL INSPECTION FEES SCHEDULE

Annual inspection fees for elevator, escalator, dumbwaiter, and special equipment shall be as follows:

	Equipment	Unit Fee
(a)(1)	All dumbwaiters and handicapped lifts	\$65.00 <u>\$100.00</u>
(b)(2)	All hydraulic elevators, belt man lifts, escalators plus all elevators not identified as either hydraulic or traction and special lifting devices	\$175.00 <u>\$200.00</u>
(c)(3)	Traction Elevators	
(a)	1-10 Floors	\$200.00
(b)	Over 10 Floors	\$200.00

Authority G.S. 95-107; 95-95-110.5(20).

13 NCAC 15 .0703 AMUSEMENT DEVICE INSPECTION FEE SCHEDULE

Inspection fees for amusement devices shall be as follows:

Equipment	Unit Fee	Inspection Required
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PROPOSED RULES

(1)	Inflatables	\$100.00	Annually
(2)	Rock Walls Walls, portable	\$100.00	Annually
(3)	Kiddie Rides (48 inch maximum height restriction)	\$45.00 <u>\$100.00</u>	Every setup, except in permanent parks, which shall be inspected annually
(4)	Go Karts	\$35.00 <u>\$50.00</u>	Every setup, except in permanent parks, which shall be inspected annually
(5)	<u>Go Kart Tracks</u>	<u>\$100.00</u>	<u>Every setup, except in permanent parks, which shall be inspected annually</u>
(5) (6)	Major Rides (any ride not otherwise listed herein) and Water Slides	\$90.00 <u>\$100.00</u>	Every setup, except permanent parks, which shall be inspected annually
(6) (7)	Roller Coasters <u>Coasters, other than mobile or portable roller coasters</u>	\$250.00	Annually
(8)	<u>Simulators, portable</u>	<u>\$100.00</u>	<u>Every setup</u>
(9)	<u>Simulators, stationary</u>	<u>\$100.00</u>	<u>Annually</u>
(10)	<u>Trains, small fixed track</u>	<u>\$100.00</u>	<u>Annually</u>
(11)	<u>Waterslides</u>	<u>\$150.00</u>	<u>Annually</u>

Authority G.S. 95-107; 95-111.4(19).

13 NCAC 15 .0704 SPECIAL AMUSEMENT DEVICE INSPECTION FEE

(a) In the event that an inspection is scheduled and the amusement device operator or owner fails to have all amusement devices scheduled for inspection ready for inspection, any follow up inspection visits requested by the operator or owner shall be charged at two hundred fifty dollars (\$250.00) per amusement device, notwithstanding the provisions of 13 NCAC 15 .0703.

(b) All inspections conducted outside normal business hours for the North Carolina Department of Labor (~~7:00~~ 8:00 a.m. to 6:00 ~~7:00~~ p.m. Monday through Friday, exclusive of State government holidays) shall be charged at the rate of two hundred fifty dollars (\$250.00) per inspection, plus the amusement device inspection fee, notwithstanding the provisions of 13 NCAC 15 .0703, however, in no instance may the total fee assessed exceed an aggregate of two hundred fifty dollars (\$250.00) for each device inspected.

Authority G.S. 95-107; 95-111.4(19).

13 NCAC 15 .0705 PASSENGER TRAMWAY INSPECTION FEE SCHEDULE

Inspection fees for all passenger tramway devices shall be as follows: ~~\$137.00.~~

Equipment	Unit Fee
(1) Gondolas, Chairlifts, and Inclined Railroads	\$137
(2) J or T Bars and Conveyors	\$62
(3) Rope Tows	\$31

Authority G.S. 95-120(9).

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to readopt with substantive changes the rules cited as 15A NCAC 18A .3401-.3405 and repeal through readoption the rules cited as 15A NCAC 18A .3406, and .3407.

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

Proposed Effective Date: April 1, 2021

Public Hearing:

Date: August 26, 2020

Time: 6:00 p.m.

Location: *In an abundance of caution and to address protective measures to help prevent the spread of COVID-19, this public hearing will be held by webinar. WebEx Events meeting link: <https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=ea8608d0638d06136715b7a10b3dce68a> Event number: 161 720 5186 Event password: 1234*

Reason for Proposed Action: *The agency proposes five rules for readoption and two rules for repeal through readoption in accordance with G.S. 150B-21.3A for the Periodic Review and Expiration of Existing Rules. This is the first package of rules in 15A NCAC 18A for readoption over a four-year period. As part of the readoption process the agency is proposing changes to comply with the U.S. Environmental Protection Agency (EPA) performance criteria released in 2014. The program follows guidance set forth by the EPA in accordance with the Beach*

Environmental Assessment Coastal Health Act (BEACH Act). The new guidance will increase efficiency in protecting public health and is recommending the same bacterial threshold for all swimming locations regardless of usage category. These bacteriological limits will impact how the agency issues public notifications when samples collected exceed the safe swimming standard.

Comments may be submitted to: Catherine Blum, P.O. BOX 769, Morehead City, NC 28557; Written comments may also be submitted via an online form available at <http://portal.ncdenr.org/web/mf/mfc-proposed-rules>.

Comment period ends: October 2, 2020

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 (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .3400 - COASTAL RECREATIONAL WATERS MONITORING, EVALUATION, AND NOTIFICATION

15A NCAC 18A .3401 DEFINITIONS

The following definitions shall apply throughout to Section 18A .3400 of this Subchapter:

- (1) "Division" means the Division of Marine Fisheries or its authorized agent.
- (2) "Enterococcus" means a gram positive coccoid-shaped bacteria that is found in the intestinal tracts of warm-blooded animals that include Enterococcus faecalis, Enterococcus faecium, Enterococcus avium, and Enterococcus gallinarium.

- (3) "Geometric mean" means the mean of "n" positive numbers obtained by taking the "n"th root of the product of the numbers with at least five samples collected within a 30-day period.
- (4) "Pending swimming advisory" means a notification to the public that recommends no primary contact with the water in a specific swimming area when bacteriological limits are exceeded but, does not close a swimming area to the public. A pending swimming advisory shall include a public notification via social media release to notify the public of the risks of swimming in the area. A pending swimming advisory is followed by a resample that will determine if a swimming advisory will be issued.
- (5) "Point source discharge" means the discharge of liquids through a pipe, drain, ditch, or other conveyance into a swimming area.
- (6) "Primary contact" means an activity in water in which a person's head is partially or completely submerged.
- (7) "Resample" means a water sample that is collected after the results of the initial water sample collected are processed and the results are analyzed.
- (8) "Storm water discharge" means any natural or manmade conveyance of rainwater or the resultant runoff into coastal recreational waters.
- (9) "Swimming advisory" means a notification to the public that recommends no primary contact with the water in a specific swimming area for public health reasons when bacteriological limits are exceeded, but does not close a swimming area to the public. A swimming advisory shall include a sign posted at the site of the advisory and a press release public notification via social media and news release to notify the public of the risks of swimming in the area.
- (7) "Swimming alert" means a notification to the public by media contact including a press release to warn the public of risks of swimming in an area that exceeds bacteriological swimming area levels.
- (10) "Swimming area" means a coastal recreation area that is used for primary contact located within waters classified by the Division of Water Quality Resources as SA, SB, or SC. SA, SA, or SB as set forth in 15A NCAC 02B .0220-.0222, and is hereby incorporated by reference including subsequent amendments and editions.
- (11) "Swimming season" means from April 1 through October 31 of each year.
- (12) "Tier I swimming area" means a swimming area used daily during the swimming season, including any public access swimming area and any other swimming area where people use the

~~water for primary contact, including all oceanfront beaches; beaches that are monitored by the Division.~~

- ~~(11)~~(13) "Tier II swimming area" means a swimming area ~~used an average of three days a week that is not used daily during the swimming season.~~
- (12) "Tier III swimming area" means a swimming area ~~used an average of four days a month during the swimming season.~~
- ~~(13)~~(14) "Winter season" means from November 1 through March 31 of each year.

(1) A pending swimming advisory shall be issued by the Division of Marine Fisheries if a water sample from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section, during the swimming season.

(2) A swimming advisory shall be issued by the Division if either of the following standards are exceeded during the swimming season:

(A) Both the initial water sample and resample collected from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section; or

(B) The most recent five water samples collected within a 30-day period from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(1) of this Section.

Authority G.S. ~~130A-233.1; 113-134; 113-182; 113-221.3; 143B-289.52.~~

15A NCAC 18A .3402 BACTERIOLOGICAL LIMITS FOR SWIMMING AREAS

(a) The enterococcus level in a Tier I swimming area shall not equal or exceed either:

- (1) A a geometric mean of 35 enterococci per 100 ~~milliliter~~ milliliters of water, ~~water; that includes a minimum of at least five samples collected within 30 days; or~~
- (2) A a single sample of 104 enterococci per 100 ~~milliliter~~ milliliters of water.

(b) The enterococcus level in a Tier II swimming area shall not equal or exceed a single sample of ~~276~~ 104 enterococci per 100 ~~milliliter~~ milliliters of water.

~~(c) The enterococcus level in a Tier III swimming area shall not exceed two consecutive samples of 500 enterococci per 100 milliliter of water.~~

Authority G.S. ~~130A-233.1; 113-134; 113-182; 113-221.3; 143B-289.52.~~

15A NCAC 18A .3403 PUBLIC NOTICE OF INCREASED HEALTH RISKS IN SWIMMING AREAS

(a) Tier I Swimming areas:

- ~~(1)~~ A swimming advisory shall be issued by the Division when samples of water from a swimming area exceeds a geometric mean of 35 enterococci per 100 milliliter during the swimming season.
- (2) A swimming alert shall be issued by the Division when a single sample of water from a swimming area exceeds 104 enterococci per 100 milliliter and does not exceed 500 enterococci per 100 milliliter during the swimming season.
- ~~(3)~~ A swimming advisory shall be issued by the Division when a sample of water from a swimming area exceeds a single sample of 500 enterococci per 100 milliliter during the swimming season.
- (4) A swimming advisory shall be issued by the Division when at least two of three concurrent water samples collected at a swimming area exceeds 104 enterococci per 100 milliliter during the swimming season.

(b) Tier II swimming areas:

~~(1)~~ A swimming alert shall be issued by the Division when a single sample of water from a swimming area exceeds 276 enterococci per 100 milliliter and does not exceed 500 enterococci per 100 milliliter during the swimming season.

(1) A pending swimming advisory shall be issued by the Division if a water sample from a swimming area is equal to or exceeds the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the swimming season.

(2) A swimming advisory shall be issued by the Division when a single sample if both the initial water sample and resample collected of water from a swimming area is equal to or exceeds 500 enterococci per 100 milliliter the bacteriological limit set forth in Rule .3402(a)(2) of this Section during the swimming season.

~~(c) A Tier III swimming area with a water sample result of 500 enterococci per 100 milliliter or higher on the first sample shall be resampled the following day. If the laboratory results of the second sample exceed 500 enterococci per 100 milliliter a swimming advisory shall be issued by the Division.~~

~~(d)~~(c) Signs posted pursuant to this Section shall be placed or erected in open view where the public may see the sign(s) sign prior to entering the water.

~~(e)~~(d) Signs shall ~~convey~~ state the following:

ATTENTION: SWIMMING IN THIS AREA IS NOT RECOMMENDED. BACTERIA TESTING INDICATES LEVELS OF CONTAMINATION THAT MAY BE HAZARDOUS TO YOUR HEALTH. THIS ADVISORY AFFECTS WATERS WITHIN 200' OF THIS SIGN. OFFICE OF THE STATE HEALTH DIRECTOR.

Authority G.S. ~~130A-233.1~~; 113-134; 113-182; 113-221.3; 143B-289.52.

15A NCAC 18A .3404 SWIMMING ADVISORIES FOR POINT SOURCE DISCHARGES INTO SWIMMING AREAS

(a) A wastewater treatment plant that discharges into swimming waters shall be posted by the Division of Marine Fisheries with at least one sign until the discharge is removed. The ~~sign(s)~~ sign for a wastewater treatment plant discharge shall ~~convey~~ state the following:

~~ATTENTION: THESE WATERS MAY BE CONTAMINATED BY HUMAN OR ANIMAL WASTE. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.~~

WARNING! SEWAGE TREATMENT EFFLUENT DISCHARGE SITE. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.

(b) A swimming advisory shall be issued by the Division and at least one sign shall be posted at the public access to swimming waters that have been impacted by a wastewater system failure. The sign for waters impacted by a wastewater spill shall state the following:

WARNING! WASTEWATER SPILL. SWIMMING IS NOT ADVISED IN THESE WATERS BECAUSE OF THE INCREASED RISK OF ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.

~~(b)(c)~~ (c) A swimming advisory shall be issued by the Division and at least ~~two signs~~ one sign shall be posted at a storm drain or storm water discharge that is ~~actively~~ discharging into a Tier I swimming area. ~~Signs~~ A sign shall be placed to advise the public as they enter the area impacted by the ~~drain~~ storm drain or storm water discharge. For dry weather discharges, ~~The signs~~ the sign for a storm drain or storm water discharge shall ~~convey~~ state the following:

~~SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.~~

WARNING! STORM WATER DISCHARGE AREA. SWIMMING WITHIN 200 YARDS OF THIS SIGN MAY INCREASE THE RISKS OF WATERBORNE ILLNESS. OFFICE OF THE STATE HEALTH DIRECTOR.

For wet weather discharges, the sign shall state the following:

WARNING! STORM WATER DISCHARGE AREA. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. SWIMMING IS NOT RECOMMENDED WITHIN 200 YARDS OF

THIS SIGN DURING ACTIVE DISCHARGE. FOR MORE INFORMATION, CALL 252-726-6827. OFFICE OF THE STATE HEALTH DIRECTOR.

~~(e)(d)~~ (d) A swimming advisory shall be issued by the Division and at least two signs shall be posted at a storm drain where flood waters are being pumped into a swimming area. ~~The signs shall remain posted for at least 24 hours after the pumping of flood waters has ceased.~~ The signs shall ~~convey~~ state the following:

SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.

~~(d)(e)~~ (e) A swimming advisory shall be issued by the Division and at least two signs shall be posted at an area receiving dredge material on a swimming beach ~~when~~ if the dredge material is being pumped from an area closed to shellfish harvesting. The signs shall ~~convey~~ state the following:

SWIMMING IS NOT RECOMMENDED BETWEEN SIGNS. WATERS MAY BE CONTAMINATED BY DISCHARGE FROM PIPE. OFFICE OF THE STATE HEALTH DIRECTOR.

Authority G.S. ~~130A-233.1~~; 113-134; 113-182; 113-221.3; 143B-289.52.

15A NCAC 18A .3405 RESCINDING A PENDING SWIMMING ADVISORY OR SWIMMING ALERT ADVISORY

(a) A pending swimming advisory shall be rescinded by the Division of Marine Fisheries via social media release when the resample collected meets the bacteriological limit set forth in Rule .3402(a)(2) of this Section.

~~(a)(b)~~ (b) A Tier I swimming area advisory shall be rescinded by the Division via social media and news release, including the removal of signs, when ~~two consecutive weekly water samples and the geometric mean meet the bacteriological limits in Rule 18A .3402(a) of this Section.~~ A swimming alert shall be rescinded within 24 hours of compliance with Rule 18A .3402(a)(2) of this Section. both of the following conditions are met:

(1) The geometric mean has met the bacteriological limit set forth in Rule .3402(a)(1) of this Section.

(2) Two consecutive weekly water samples meet the bacteriological limit set forth in Rule .3402(a)(2) of this Section.

~~(b)(c)~~ (c) A Tier II ~~or Tier III~~ swimming area advisory ~~or alert~~ shall be rescinded by the Division via social media and news release, including the removal of signs, after water samples meet the bacteriological ~~standard in Rule 18A .3402(b) or (c) of this Section.~~ limit set forth in Rule .3402(b) of this Section.

~~(e)(d)~~ (d) A swimming advisory resulting from a ~~point source flood water discharge or the discharge of dredge material~~ shall be rescinded by the Division via social media and news release 24 hours after the discharge has ceased. ~~ceased~~, to allow for tidal dispersion.

(e) A swimming advisory resulting from a wastewater system failure shall be rescinded by the Division via social media and news release, including the removal of signs, when failure has been corrected and water samples collected meet the bacteriological limit set forth in Rule .3402(a)(2) of this Section.

~~(d) When a swimming advisory or alert has been rescinded, the Division shall issue a press release to announce the lifting of the advisory or the alert and the sign(s) shall be removed immediately by the Division.~~

Authority G.S. ~~130A-233.1~~; 113-134; 113-182; 113-221.3; 143B-289.52.

15A NCAC 18A .3406 DESTRUCTION OF SIGNS

~~A person shall not mutilate, deface, pull down, destroy, hide, or steal any sign posted pursuant to this Section.~~

Authority G.S. 130A-233.1.

15A NCAC 18A .3407 APPLICABILITY OF RULES

~~The rules of this Section shall apply to all marine recreational waters in coastal North Carolina.~~

Authority G.S. 130A-233.1.

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 June 18, 2020 Meeting.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

ADMINISTRATION, DEPARTMENT OF

Negotiation 01 NCAC 05B .0503 34:18 NCR

PESTICIDE BOARD

Red-Winged Blackbird 02 NCAC 09L .0706* 34:11 NCR

MEDICAL CARE COMMISSION

Governing Body 10A NCAC 13B .3501* 34:12 NCR

Required Facility Bylaws, Policies, Rules, and Regulations 10A NCAC 13B .3502* 34:12 NCR

Functions 10A NCAC 13B .3503 34:12 NCR

General Provisions 10A NCAC 13B .3701* 34:12 NCR

Establishment 10A NCAC 13B .3702 34:12 NCR

Appointment 10A NCAC 13B .3703 34:12 NCR

Establishment and Categories of Medical Staff Membership 10A NCAC 13B .3704* 34:12 NCR

Medical Staff Bylaws, Rules, and Regulations 10A NCAC 13B .3705 34:12 NCR

Organization and Responsibilities of the Medical Staff 10A NCAC 13B .3706 34:12 NCR

Medical Orders 10A NCAC 13B .3707* 34:12 NCR

Medical Staff Responsibilities for Quality Improvement Re... 10A NCAC 13B .3708 34:12 NCR

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Payment Due 10A NCAC 15 .1102* 34:07 NCR

Radioactive Materials and Accelerator Fee Amounts 10A NCAC 15 .1106* 34:16 NCR

PUBLIC HEALTH, COMMISSION FOR

Reportable Diseases and Conditions 10A NCAC 41A .0101 34:17 NCR

STATE REGISTRAR

Registration of Graves Removed 10A NCAC 41H .1201* 34:16 NCR

INSURANCE, DEPARTMENT OF

Rate Filing: HMO 11 NCAC 12 .0321* 34:10 NCR

Coordination: Group A/H Contract Benefits: Group Coverages 11 NCAC 12 .0514* 34:10 NCR

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Period of Suspension: Revocation: or Denial 12 NCAC 09A .0205* 34:13 NCR

Responsibilities of the School Director 12 NCAC 09B .0202* 34:13 NCR

Admission of Trainees 12 NCAC 09B .0203* 34:13 NCR

Terms and Conditions of General Instructor Certification 12 NCAC 09B .0303* 34:13 NCR

Instructors: Annual In-Service Training 12 NCAC 09E .0104* 34:13 NCR

Minimum Training Specifications: Annual In-Service Training 12 NCAC 09E .0105* 34:17 NCR

Terms and Conditions of General Instructor Certification 12 NCAC 09G .0309* 34:13 NCR

APPROVED RULES

<u>Minimum Training Specifications</u>	12 NCAC 09H .0102*	34:13 NCR
SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION		
<u>Certification of a Former Sheriff</u>	12 NCAC 10B .0407*	34:13 NCR
PRIVATE PROTECTIVE SERVICES BOARD		
<u>Determination of Experience</u>	14B NCAC 16 .0905	33:15 NCR
<u>Pre-Delivery Report for Firearms Training Courses</u>	14B NCAC 16 .0907*	33:15 NCR
<u>Post-Delivery Report for Firearms Training Courses</u>	14B NCAC 16 .0908*	33:15 NCR
<u>Definitions</u>	14B NCAC 16 .1101*	33:15 NCR
<u>Training and Supervision Required in Level One</u>	14B NCAC 16 .1102*	33:15 NCR
<u>Training and Supervision Required in Level Two</u>	14B NCAC 16 .1103*	33:15 NCR
<u>Training and Supervision Required in Level Three</u>	14B NCAC 16 .1104*	33:15 NCR
<u>Educational Degrees and Non-Degreed Training</u>	14B NCAC 16 .1105*	33:15 NCR
<u>Consideration of Experience</u>	14B NCAC 16 .1106	33:15 NCR
<u>Enforcement</u>	14B NCAC 16 .1107*	33:15 NCR
<u>Transferability of Training Hours</u>	14B NCAC 16 .1108*	33:15 NCR
<u>Definitions</u>	14B NCAC 16 .1201*	33:15 NCR
<u>Required Continuing Education Hours</u>	14B NCAC 16 .1202*	33:15 NCR
<u>Accreditation Standards</u>	14B NCAC 16 .1203*	33:15 NCR
<u>Non-Resident Licensee Continuing Education Credits</u>	14B NCAC 16 .1204*	33:15 NCR
<u>Recording and Reporting Continuing Education Credits</u>	14B NCAC 16 .1205*	33:15 NCR
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TITLE 01 - DEPARTMENT OF ADMINISTRATION

01 NCAC 05B .0503 NEGOTIATION

(a) The Purchasing Agency may negotiate with one or more Responsive Vendors or reject all Offers under the provisions of Rule .0501 of this Subchapter and negotiate with one or more sources of supply that may be capable of satisfying the requirement. Negotiations may also be conducted under conditions that merit a waiver of Competition pursuant to Rule .1401 of this Section.

(b) Negotiations shall be conducted by the Purchasing Agency if the Solicitation is under its Bid Value Benchmark or General Delegation. A Purchasing Agency may request the participation of the Division in any Negotiation.

(c) Negotiations shall be memorialized by a written agreement executed by the parties and issued by the Division.

(d) All Negotiation results shall be documented in writing for public record.

History Note: Authority G.S. 143-52; 143-53; 143-60; Eff. February 1, 1996; Amended Eff. April 1, 1999; Readopted Eff. October 1, 2019; Amended Eff. August 1, 2020.

TITLE 02 - DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 09L .0706 RED-WINGED BLACKBIRD

(a) The North Carolina Pesticide Board hereby declares the red-winged blackbird, *agelaius phoeniceus* (linnaeus) to be a pest.

(b) Pesticides registered for use to control the red-winged blackbird may be used when it is committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers or manner as to constitute a health hazard or other nuisance.

History Note: Authority G.S. 143-444(1); 143-458; 50 CFR 21.43; Eff. July 11, 1976; Readopted Eff. August 1, 2020.

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13B .3501 GOVERNING BODY

(a) The governing body, owner, or the person or persons designated by the owner as the governing body shall be responsible for ensuring that the objectives specified in the facility's governing documents, such as the charter or resolution, are attained.

(b) The governing body shall be the final authority for decisions for which the facility administration, the medical staff, and the facility personnel are directly or indirectly responsible within the facility.

(c) A local advisory board shall be established to provide non-binding advice to the governing body regarding the health, safety, and welfare of the community, if the facility is owned by an organization or persons outside of North Carolina. A local advisory board shall include members from the county where the facility is located.

History Note: Authority G.S. 131E-75; 131E-79; Eff. January 1, 1996; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2017; Amended Eff. July 1, 2020.

10A NCAC 13B .3502 REQUIRED FACILITY BYLAWS, POLICIES, RULES, AND REGULATIONS

(a) The governing body shall adopt written bylaws, policies, rules, and regulations in accordance with all requirements contained in this Subchapter and in accordance with the community responsibility of the facility. The written bylaws, policies, rules, and regulations shall:

- (1) state the objectives;
- (2) describe the powers and duties of the governing body officers and committees and the responsibilities of the chief executive officer;
- (3) state the qualifications for governing body membership, the procedures for selecting members, and the terms of service for members, officers and committee chairmen;
- (4) describe the authority delegated to the chief executive officer and to the medical staff. No assignment, referral, or delegation of authority by the governing body shall relieve the governing body of its responsibility for the conduct of the facility. The governing body shall retain the right to rescind any such delegation;

- (5) require governing body approval of the bylaws of any auxiliary organizations established by the facility;
 - (6) require the governing body to review and approve the bylaws of the medical staff;
 - (7) establish procedures for processing and evaluating the applications for medical staff membership and for the granting of clinical privileges;
 - (8) establish a procedure for implementing, disseminating, and enforcing a Patient's Bill of Rights as set forth in Rule .3302 of this Subchapter and in compliance with G.S. 131E-117; and
 - (9) require the governing body to institute procedures to provide for:
 - (A) orientation of newly elected governing body members to board functions and procedures;
 - (B) the development of procedures for periodic reexamination of the relationship of the governing body to the total facility community; and
 - (C) the recording of minutes of all governing body and executive committee meetings and the dissemination of those minutes, or summaries thereof, after the governing body and executive committee meetings to all members of the governing body.
- (b) The governing body shall provide written policies and procedures to assure billing and collection practices in accordance with G.S. 131E-91. These policies and procedures shall include:
- (1) a financial assistance policy as defined in G.S. 131E-214.14(b)(3);
 - (2) how a patient may obtain an estimate of the charges for the statewide 100 most frequently reported Diagnostic Related Groups (DRGs), where applicable, 20 most common outpatient imaging procedures, and 20 most common outpatient surgical procedures. The policy shall require that the information be provided to the patient in writing, either electronically or by mail, within three business days;
 - (3) how a patient or patient's representative may dispute a bill;
 - (4) issuance of a refund within 45 days of the patient receiving notice of the overpayment when a patient has overpaid the amount due to the facility;
 - (5) providing written notification to the patient or patient's representative at least 30 days prior to submitting a delinquent bill to a collections agency;
 - (6) providing the patient or patient's representative with the facility's charity care and financial assistance policies, if the facility is required to file a Schedule H, federal form 990;
 - (7) the requirement that a collections agency, entity, or other assignee obtain written consent from the facility prior to initiating litigation against the patient or patient's representative;
 - (8) a policy for handling debts arising from the provision of care by the facility involving the doctrine of necessities, in accordance with G.S. 131E-91(d)(5); and
 - (9) a policy for handling debts arising from the provision of care by the facility to a minor, in accordance with G.S. 131E-91(d)(6).
- (c) The governing body shall ensure that the bylaws, rules, and regulations of the medical staff and the bylaws, rules, policies, and regulations of the facility shall not be in conflict.
- (d) The written policies, rules, and regulations shall be reviewed every three years, revised as necessary, and dated to indicate when last reviewed or revised.
- (e) To qualify for licensure or license renewal, each facility must provide to the Division, upon application, an attestation statement in a form provided by the Division verifying compliance with the requirements of this Rule.
- (f) On an annual basis, on the license renewal application provided by the Division, the facility shall provide to the Division the direct website address to the facility's financial assistance policy. This Paragraph applies only to facilities required to file a Schedule H, federal form 990.

History Note: Authority G.S. 131E-79; 131E-91; 131E-214.8; 131E-214.13(f); 131E-214.14; Eff. January 1, 1996; Temporary Amendment Eff. May 1, 2014; Amended Eff. November 1, 2014; Readopted Eff. July 1, 2020.

10A NCAC 13B .3503 FUNCTIONS

- (a) The governing body shall:
- (1) provide management, physical resources, and personnel determined by the governing body to be required to meet the needs of patients for treatment as authorized by the facility's license;
 - (2) require facility administration to establish a quality control mechanism that includes a risk management component and an infection control program;
 - (3) formulate short-range and long-range plans as defined in the facility bylaws, policies, rules, and regulations;
 - (4) conform to all applicable State and federal laws, rules, and regulations, and applicable local ordinances;
 - (5) provide for the control and use of the physical and financial resources of the facility;
 - (6) review the annual audit, budget, and periodic reports of the financial operations of the facility;
 - (7) consider the recommendation of the medical staff in granting and defining the scope of clinical privileges to individuals in accordance with medical staff bylaws requirements for

- making such recommendations and the facility bylaws established by the governing body for the review and final determination of such recommendations;
- (8) require that applicants be informed of the disposition of their application for medical staff membership or clinical privileges in accordance with the facility bylaws established by the governing body, after an application has been submitted;
- (9) review and approve the medical staff bylaws, rules, and regulations;
- (10) delegate to the medical staff the authority to:
- (A) evaluate the professional competence of medical staff members and applicants for medical staff membership and clinical privileges; and
- (B) recommend to the governing body initial medical staff appointments, reappointments, and assignments or curtailments of privileges;
- (11) require that resources be made available to address the emotional and spiritual needs of patients either directly or through referral or arrangement with community agencies;
- (12) maintain communication with the medical staff which may be established through:
- (A) meetings with the executive committee of the medical staff;
- (B) service by the president of the medical staff as a member of the governing body with or without a vote;
- (C) appointment of individual medical staff members to the medical review committee; or
- (D) a joint conference committee that will be a committee of the governing body and the medical staff composed of equal representatives of each of the governing body, the chairman of the board or designee, the medical staff, and the chief of the medical staff or designee, respectively;
- (13) require the medical staff to establish controls that are designed to provide that standards of ethical professional practices are met;
- (14) provide administrative staff support to facilitate utilization review and infection control within the facility, to support quality control and any other medical staff functions required by this Subchapter or by the facility bylaws;
- (15) meet the following disclosure requirements:
- (A) provide data required by the Division;
- (B) disclose the facility's average daily inpatient charge upon request of the Division; and
- (C) disclose the identity of persons owning five percent or more of the facility as well as the facility's officers and members of the governing body upon request;
- (16) establish a procedure for reporting the occurrence and disposition of allegations of abuse or neglect of patients and incidents involving quality of care or physical environment at the facility. These procedures shall require that:
- (A) incident reports are analyzed and summarized by a designated party; and
- (B) corrective action is taken based upon the analysis of incident reports;
- (17) in a facility with one or more units, or portions of units, however described, utilized for psychiatric or substance abuse treatment, adopt policies implementing the provisions of G.S. 122C, Article 3, and Article 5, Parts, 2, 3, 4, 5, 7, and 8;
- (18) develop arrangements for the provision of extended care and other long-term healthcare services. Such services shall be provided in the facility or by outside resources through a transfer agreement or referrals;
- (19) provide and implement a written plan for the care or for the referral, or both, of patients who require mental health or substance abuse services while in the facility;
- (20) develop a conflict of interest policy which shall apply to all governing body members and facility administration. All governing body members shall execute a conflict of interest statement; and
- (21) conduct direct consultations with the medical staff at least twice during the year.
- (b) For the purposes of this Rule, "direct consultations" means the governing body, or a subcommittee of the governing body, meets with the leader(s) of the medical staff(s), or his or her designee(s) either face-to-face or via a telecommunications system permitting immediate, synchronous communication.
- (c) The direct consultations shall consist of discussions of matters related to the quality of medical care provided to the hospital's patients, including quality matters arising out of the following:
- (1) the scope and complexity of services offered by the facility;
- (2) specific clinical populations served by the facility;
- (3) limitations on medical staff membership other than peer review or corrective action in individual cases;
- (4) circumstances relating to medical staff access to a facility resource; or
- (5) any issues of patient safety and quality of care that a hospital's quality assessment and performance improvement program might identify as needing the attention of the governing body in consultation with the medical staff.

(d) For the purposes of this Rule, "specific clinical populations" includes those individuals who may be treated at the facility by the medical staff in place at the time of the consultation.

History Note: Authority G.S. 131E-14.2; 131E-79; 42 CFR 482.12; 42 CFR 482.22; Eff. January 1, 1996; Readopted Eff. July 1, 2020.

10A NCAC 13B .3701 GENERAL PROVISIONS

(a) The facility shall have a self-governed medical staff that shall be accountable to the governing body for the quality of care provided by individuals with medical staff membership and clinical privileges to provide medical services in the facility. Facility policy shall provide that individuals with clinical privileges shall perform only services within the scope of individual privileges granted.

(b) Minutes required by the rules of this Section shall reflect all transactions, conclusions, and recommendations of meetings. Minutes shall be prepared and retained in accordance with a policy established by the facility and medical staff, and available for inspection by members of the medical staff and governing body, respectively, unless such minutes include confidential peer review information that is not accessible to others in accordance with any law protecting the confidentiality.

History Note: Authority G.S. 131E-79; Eff. January 1, 1996; Readopted Eff. July 1, 2020.

10A NCAC 13B .3702 ESTABLISHMENT

History Note: Authority G.S. 131E-79; Eff. January 1, 1996; Repealed Eff. July 1, 2020.

10A NCAC 13B .3703 APPOINTMENT

(a) The governing body may grant, deny, renew, modify, suspend, or terminate medical staff membership and clinical privileges after consideration of the recommendation made by the medical staff in accordance with the bylaws established by the medical staff and approved by the governing body for making such recommendations, and the facility bylaws established by the governing body for review and final determination of such recommendations.

(b) Review of an applicant for medical staff membership and the granting of clinical privileges shall follow procedures set forth in the bylaws, rules, and regulations of the medical staff. These procedures shall require the following:

- (1) a signed application for medical staff membership, specifying date of birth, year and school of graduation, date of licensure, statement of postgraduate or special training and experience, and a statement of the scope of the clinical privileges sought by the applicant;
- (2) verification by the facility of the applicant's qualifications as stated in the application, including any required continuing education; and

(3) written notice to the applicant from the governing body regarding appointment or reappointment, which specifies the approval or denial of clinical privileges and the scope of the privileges if granted.

(c) Members of the medical staff and others granted clinical privileges in the facility shall hold current licenses to practice in North Carolina.

(d) Medical staff appointments shall be reviewed at least once every two years by the medical staff in accordance with the bylaws established by the medical staff and approved by the governing body, and shall be followed with recommendations made to the governing body for review and a final determination.

(e) The facility shall maintain a file containing performance information for each medical staff member. Representatives of the Division shall have access to these files in accordance with, and subject to the limitations and restrictions set forth in, G.S. 131E-80; however, to the extent that the same includes confidential medical review information, such information shall be reviewable and confidential in accordance with G.S. 131E-80(d) and other applicable law.

(f) Minutes shall be taken and maintained of all meetings of the medical staff and governing body that concern the granting, denying, renewing, modifying, suspending or terminating of clinical privileges.

History Note: Authority G.S. 131E-79; 42 CFR 482.12(a)(10); 42 CFR 482.22(a)(1); Eff. January 1, 1996; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2017; Amended Eff. July 1, 2020.

10A NCAC 13B .3704 ESTABLISHMENT AND CATEGORIES OF MEDICAL STAFF MEMBERSHIP

(a) The medical staff shall be established in accordance with the bylaws of the facility and organized in accordance with the bylaws, rules, and regulations of the medical staff. After considering the recommendations of the medical staff, the governing body of the facility may, in accordance with G.S. 131E-85, grant medical staff membership and clinical privileges to qualified, licensed practitioners in accordance with their training, experience, and demonstrated competence and judgment in accordance with the medical staff bylaws, rules, and regulations.

(b) Every facility shall have an active medical staff, as defined by the medical staff bylaws, rules, and regulations, to deliver medical services within the facility and to administer medical staff functions. The members of the active medical staff shall be eligible to vote at medical staff meetings and to hold medical staff office positions as determined by the medical staff bylaws, rules, and regulations and shall be responsible for recommendations made to the governing body regarding the organization and administration of the medical staff. Medical staff office positions shall be determined in the medical staff bylaws, rules, and regulations.

(c) The active medical staff may establish other categories for membership in the medical staff. These categories for membership shall be identified and defined in the medical staff bylaws. Examples of membership categories include:

- (1) active medical staff;
- (2) associate medical staff;
- (3) courtesy medical staff;
- (4) temporary medical staff;
- (5) consulting medical staff;
- (6) honorary medical staff; or
- (7) other staff classifications.

The medical staff bylaws shall describe the authority, duties, privileges, and voting rights for each membership category consistent with applicable law, rules, and regulations and requirements of facility accrediting bodies.

History Note: Authority G.S. 131E-79; Eff. January 1, 1996; Readopted Eff. July 1, 2020.

10A NCAC 13B .3705 MEDICAL STAFF BYLAWS, RULES, AND REGULATIONS

- (a) The active medical staff shall develop and adopt, subject to the approval of the governing body, a set of bylaws, rules, and regulations to establish a framework for self-governance of medical staff activities and accountability to the governing body.
- (b) The medical staff bylaws, rules, and regulations shall provide for the following:
 - (1) organizational structure;
 - (2) qualifications for medical staff membership;
 - (3) procedures for granting or renewing, denying, modifying, suspending, and revoking clinical privileges;
 - (4) procedures for disciplinary or corrective actions;
 - (5) procedures for fair hearing and appellate review mechanisms for denying, modifying, suspending, and revoking clinical privileges;
 - (6) composition, functions and attendance of standing committees;
 - (7) policies for completion of medical records;
 - (8) formal liaison between the medical staff and the governing body;
 - (9) methods developed to formally verify that each medical staff member on appointment or reappointment agrees to abide by current medical staff bylaws, rules, and regulations, and the facility bylaws, rules, policies, and regulations;
 - (10) procedures for participation in quality assurance functions by medical staff members;
 - (11) the process for the selection and election and removal of medical staff officers; and
 - (12) procedures for the proposal, adoption, and amendment, and approval of medical staff bylaws, rules, and regulations.

(c) Neither the medical staff, the governing body, nor the facility administration may unilaterally amend the medical staff bylaws, rules, and regulations.

(d) Neither the medical staff, the governing body, nor the facility administration may waive any provision of the medical staff bylaws, rules, and regulations, except in an emergency circumstance. For purposes of this Rule, an "emergency

circumstance" means a situation of urgency that justifies immediate action and when there is not sufficient time to follow the applicable provisions and procedures of the medical staff bylaws. Examples of an emergency circumstance include an immediate threat to the life or health of an individual or the public, a natural disaster, or a judicial or regulatory order. The duration of a waiver permitted by this Rule will be only so long as the emergency circumstance exists.

History Note: Authority G.S. 131E-79; Eff. January 1, 1996; Readopted Eff. July 1, 2020.

10A NCAC 13B .3706 ORGANIZATION AND RESPONSIBILITIES OF THE MEDICAL STAFF

(a) The medical staff shall be organized to accomplish its required functions as established by the governing body and medical staff bylaws, rules, and regulations and provide for the election or appointment of its own officers.

(b) There shall be an executive committee, or its equivalent, which represents the medical staff, that has responsibility for the effectiveness of all medical activities of the staff, and that acts for the medical staff.

(c) The following functions shall be performed by the medical staff:

- (1) credentialing review;
- (2) medical records review;
- (3) drug utilization review;
- (4) radiation safety review;
- (5) blood usage review;
- (6) bylaws review;
- (7) medical review;
- (8) peer review; and
- (9) recommendations for discipline or corrective action of medical staff members.

(d) The medical staff shall ensure that minutes are prepared for each medical staff, departmental, and committee meeting.

History Note: Authority G.S. 131E-79; Eff. January 1, 1996; Readopted Eff. July 1, 2020.

10A NCAC 13B .3707 MEDICAL ORDERS

(a) No medication or treatment shall be administered or discontinued except in response to the order of a member of the medical staff in accordance with policies, rules, and regulations established by the facility and medical staff and as provided in Paragraph (f) of this Rule.

(b) Such orders shall be dated and recorded directly in the patient medical record. A method shall be established to safeguard against fraudulent recordings.

(c) All orders for medication or treatment shall be authenticated according to medical staff and facility policies, rules, or regulations. The order shall be taken by personnel qualified by medical staff bylaws, rules, and regulations, and shall include the date, time, and name of persons who gave the order, and the full signature of the person taking the order.

(d) The names of drugs shall be recorded in full and not abbreviated except where approved by the active medical staff.

(e) The active medical staff shall establish a written policy in conjunction with the pharmacy committee or its equivalent for all medications not specifically prescribed as to time or number of doses to be automatically stopped after a reasonable time limit, but no more than 14 days. The prescriber shall be notified according to established policies and procedures at least 24 hours before an order is automatically stopped.

(f) For patients who are under the continuing care of an out-of-state physician but are temporarily located in North Carolina, a facility may process the out-of-state physician's prescriptions or orders for diagnostic or therapeutic studies which maintain and support the patient's continued program of care, where the authenticity and currency of the prescriptions or orders can be verified by the physician who prescribed or ordered the treatment requested by the patient, and where the facility verifies that the out-of-state physician is licensed to prescribe or order the treatment.

History Note: Authority G.S. 131E-75; 131E-79; Eff. January 1, 1996; Amended Eff. April 1, 2005; August 1, 1998; Readopted Eff. July 1, 2020.

10A NCAC 13B .3708 MEDICAL STAFF RESPONSIBILITIES FOR QUALITY IMPROVEMENT REVIEW

- (a) The medical staff shall have in effect a system to review care provided at the facility by members of the medical staff, to assess quality, to provide a process for quality improvement, and to monitor the outcome of quality improvement activities.
- (b) The medical staff shall establish criteria for the evaluation of the quality of care.
- (c) The facility shall have a written plan that generates reports to permit identification of patient care problems and that establishes a system to use this data to document and identify interventions. The plan shall be approved by the medical staff, facility administration, and the governing body.
- (d) The medical staff shall establish a policy to maintain a review process of the care provided by members of the medical staff to all patients in every medical department of the facility. The medical staff shall have a policy to schedule meetings to examine the review process and results. The review process shall include both practitioners and allied health professionals from the medical staff.
- (e) Minutes shall be prepared for all meetings reviewing quality improvement and shall reflect all of the transactions, conclusions, and recommendations of the meeting.

10A NCAC 15 .1106 RADIOACTIVE MATERIALS AND ACCELERATOR FEE AMOUNTS

(a) Annual fees for persons licensed pursuant to the provisions of Section .0300 of this Chapter shall be:

Type of Radioactive Material License	Annual Fee
Specific license of broad scope including:	
-academic or research and development (R&D)	\$ 5,180.00
-manufacture or distribution	\$ 6,100.00
-medical	\$ 6,760.00
Specific license including:	
-educational institutions, R&D laboratories	\$ 2,960.00

History Note: Authority G.S. 131E-79; Eff. January 1, 1996; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 22, 2017; Amended Eff. July 1, 2020.

10A NCAC 15 .1102 PAYMENT DUE

- (a) All fees established in this Section shall be due on the first day of July of each year.
- (b) Notwithstanding Paragraph (a) of this Rule, when a new license or registration is issued by the agency or after the first day of July of any subsequent year, the initial fee shall be due on the date of issuance of the license or registration.
- (c) The initial fee in Paragraph (b) of this Rule shall be computed as follows:
 - (1) When any new license or registration is issued before the first day of January of any year, the initial fee shall be the full amount specified in Rule .1105 or .1106 of this Section; and
 - (2) When any new license or registration is issued on or after the first day of January of any year, the initial fee shall be one-half of the amount specified in Rule .1105 or .1106 of this Section.
- (d) All fees received by the agency pursuant to provisions of this Section shall be nonrefundable.
- (e) Each licensee or registrant shall pay all fees online at <https://www.thepayplace.com/northcarolinadhhs/dhsr/ncrpsfees/challenge.aspx>, or by check or money order made payable to "Radiation Protection Section" and mail such payment to: Radiation Protection Section, Division of Health Service Regulation, Department of Health and Human Services to the address shown on the facility invoice.

History Note: Authority G.S. 104E-9(a)(8); 104E-19(a); Eff. July 1, 1982; Amended Eff. May 1, 1993; May 1, 1992; July 1, 1989; Temporary Amendment Eff. June 30, 2002; Temporary Amendment Expired on March 28, 2003; Findings of need for Emergency Rule disapproved by Codifier on June 8, 2007; Emergency Amendment Eff. June 19, 2007 pursuant to G.S. 150B-21.1A(b); Amended Eff. August 1, 2007; Transferred and Recodified from 15A NCAC 11 .1102 Eff. February 1, 2015; Readopted Eff. July 1, 2020.

-industrial radiography	\$ 5,400.00
-irradiator >10,000Ci	\$ 19,140.00
-irradiator ≤10,000Ci	\$ 2,160.00
-manufacture or distribution	\$ 2,320.00
-medical (human use), diagnostic	\$ 2,940.00
-medical (human use), therapeutic	\$ 4,760.00
-services, consultants, gauges (all types), or not specified above	\$ 1,860.00
-well logging, subsurface tracer studies	\$ 3,200.00

General license including:

-not subject to annual registration requirements	\$ 200.00
-subject to annual registration requirements	\$ 325.00
-possession of self-luminous devices under Rule .0309 of this Chapter	no fee
-possession of source material from water remediation activities under Rule .0307 of this Chapter	no fee

(b) Annual fees for persons licensed pursuant to the provisions of Section .0900 of this Chapter shall be four thousand seven hundred sixty dollars (\$4,760.00).

(c) Fees for out-of-state persons granted permission to use sources of radiation in this State pursuant to Rule .0345 of this Chapter are the same as that provided for in the applicable category specified in Paragraphs (a) and (b) of this Rule. The fees shall be due when the application for reciprocal recognition of out-of-state license is made.

(d) Each location listed on a license issued by the Agency that is not part of a contiguous property controlled by the licensee shall require an additional fee equal to the amount specified in Paragraphs (a) and (b) of this Rule. Fees for client locations listed on mobile medical licenses shall be one-half of the amount specified in Paragraphs (a) or (b) of this Rule for each client site.

(e) Persons licensed to conduct activities subject to multiple categories of fees under Paragraph (a) of this Rule shall be required to pay only the highest fee category.

(f) Persons possessing Sealed Source and Device Registration (SS&D) certificates shall pay an annual fee of one thousand four hundred eighty dollars (\$1,480.00) per active SS&D certificate issued by the Agency, in addition to any amounts specified in Paragraph (a) of this Rule.

(g) Notwithstanding Paragraph (a) of this Rule, persons licensed to conduct activities under a specific license with annual receipts of less than two hundred fifty thousand dollars (\$250,000) may pay a reduced license fee of one-half of the amount shown in Paragraph (a) of this Rule, provided:

- (1) payment of fees is made in accordance with Rule .1102 of this Section;
- (2) an affidavit is submitted to the agency every year that reduced fees are paid, no later than the date that payment of license fees are due, stating that annual receipts for all business activities are less than the amount shown in this Paragraph during the consecutive 12 month period preceding the date license fees are due. This affidavit shall be signed by the individual authorized to sign license amendments and this signature shall be witnessed and notarized;
- (3) records of annual receipts of all business activities shall be made available to the agency for inspection in accordance with Rule .0107 of

this Chapter. These records shall include municipal, county, and State tax records; and a copy of the affidavit and records of annual receipts shall be maintained for five years after the date the affidavit is notarized.

(4)

History Note: Authority G.S. 104E-9(a)(8); 104E-19(a); Eff. August 1, 2007; Amended Eff. July 1, 2011; Transferred and Recodified from 15A NCAC 11 .1106 Eff. February 1, 2015; Amended Eff. May 1, 2019; Readopted Eff. July 1, 2020.

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 24 hours;
- (2) acute flaccid myelitis – 7 days;
- (3) anaplasmosis – 7 days;
- (4) anthrax - immediately;
- (5) arboviral infection, neuroinvasive – 7 days;
- (6) babesiosis – 7 days;
- (7) botulism - immediately;
- (8) brucellosis - 7 days;
- (9) campylobacter infection - 24 hours;
- (10) Candida auris - 24 hours;
- (11) Carbapenem-Resistant Enterobacteriaceae (CRE) – 24 hours;
- (12) chancroid - 24 hours;
- (13) chikungunya virus infection - 24 hours;
- (14) chlamydial infection (laboratory confirmed) - 7 days;
- (15) cholera - 24 hours;
- (16) Creutzfeldt-Jakob disease – 7 days;
- (17) cryptosporidiosis – 24 hours;

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| <ul style="list-style-type: none"> (18) cyclosporiasis – 24 hours; (19) dengue - 7 days; (20) diphtheria - 24 hours; (21) Escherichia coli, shiga toxin-producing infection - 24 hours; (22) ehrlichiosis – 7 days; (23) foodborne disease, including Clostridium perfringens, staphylococcal, Bacillus cereus, and other and unknown causes - 24 hours; (24) gonorrhea - 24 hours; (25) granuloma inguinale - 24 hours; (26) Haemophilus influenzae, invasive disease - 24 hours; (27) Hantavirus infection – 7 days; (28) Hemolytic-uremic syndrome – 24 hours; (29) Hemorrhagic fever virus infection – immediately; (30) hepatitis A - 24 hours; (31) hepatitis B - 24 hours; (32) hepatitis B carriage - 7 days; (33) hepatitis C, acute – 7 days; (34) human immunodeficiency virus (HIV) infection confirmed - 24 hours; (35) influenza virus infection causing death – 24 hours; (36) legionellosis - 7 days; (37) leprosy – 7 days; (38) leptospirosis - 7 days; (39) listeriosis – 24 hours; (40) Lyme disease - 7 days; (41) Lymphogranuloma venereum - 7 days; (42) malaria - 7 days; (43) measles (rubeola) - immediately; (44) meningitis, pneumococcal - 7 days; (45) meningococcal disease - 24 hours; (46) Middle East respiratory syndrome (MERS) - 24 hours; (47) monkeypox – 24 hours; (48) mumps - 7 days; (49) nongonococcal urethritis - 7 days; (50) novel coronavirus infection causing death – 24 hours; (51) novel coronavirus infection – immediately; (52) novel influenza virus infection – immediately; (53) plague - immediately; (54) paralytic poliomyelitis - 24 hours; (55) pelvic inflammatory disease – 7 days; (56) psittacosis - 7 days; (57) Q fever - 7 days; (58) rabies, human - 24 hours; (59) rubella - 24 hours; (60) rubella congenital syndrome - 7 days; (61) salmonellosis - 24 hours; (62) severe acute respiratory syndrome (SARS) – 24 hours; | <ul style="list-style-type: none"> (63) shigellosis - 24 hours; (64) smallpox - immediately; (65) spotted fever rickettsiosis – 7 days; (66) Staphylococcus aureus with reduced susceptibility to vancomycin – 24 hours; (67) streptococcal infection, Group A, invasive disease - 7 days; (68) syphilis - 24 hours; (69) tetanus - 7 days; (70) toxic shock syndrome - 7 days; (71) trichinosis - 7 days; (72) tuberculosis - 24 hours; (73) tularemia – immediately; (74) typhoid - 24 hours; (75) typhoid carriage (Salmonella typhi) - 7 days; (76) typhus, epidemic (louse-borne) - 7 days; (77) vaccinia – 24 hours; (78) varicella – 24 hours; (79) vibrio infection (other than cholera) – 24 hours; (80) whooping cough – 24 hours; (81) yellow fever – 7 days; and (82) zika virus – 24 hours. <p>(b) For purposes of reporting, "confirmed human immunodeficiency virus (HIV) infection" is defined as a positive virus culture, repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test, positive nucleic acid detection (NAT) test, or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of Public Health Laboratories.</p> <p>(c) In addition to the laboratory reports for Mycobacterium tuberculosis, Neisseria gonorrhoeae, and syphilis specified in G.S. 130A-139, laboratories shall report using electronic laboratory reporting (ELR), secure telecommunication, or paper reports.</p> <ul style="list-style-type: none"> (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens: <ul style="list-style-type: none"> (A) Anaplasma spp, the causes of anaplasmosis. (B) Any hantavirus or hemorrhagic fever virus. (C) Arthropod-borne virus (any type). (D) Babesia spp., the cause of babesiosis. (E) Bacillus anthracis, the cause of anthrax. (F) Bordetella pertussis, the cause of whooping cough (pertussis). (G) Borrelia burgdorferi, the cause of Lyme disease (confirmed tests). (H) Brucella spp., the causes of brucellosis. (I) Campylobacter spp., the causes of campylobacteriosis. |
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APPROVED RULES

- (J) *Candida auris*.
 - (K) Carbapenem-Resistant Enterobacteriaceae (CRE).
 - (L) *Chlamydia trachomatis*, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
 - (M) *Clostridium botulinum*, a cause of botulism.
 - (N) *Clostridium tetani*, the cause of tetanus.
 - (O) Coronavirus, novel human strain.
 - (P) *Corynebacterium diphtheriae*, the cause of diphtheria.
 - (Q) *Coxiella burnetii*, the cause of Q fever.
 - (R) *Cryptosporidium* spp., the cause of human cryptosporidiosis.
 - (S) *Cyclospora cayetanensis*, the cause of cyclosporiasis.
 - (T) Dengue virus.
 - (U) *Ehrlichia* spp., the causes of ehrlichiosis.
 - (V) Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
 - (W) *Francisella tularensis*, the cause of tularemia.
 - (X) Hepatitis A virus.
 - (Y) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
 - (Z) Human Immunodeficiency Virus, the cause of AIDS.
 - (AA) *Legionella* spp., the causes of legionellosis.
 - (BB) *Leptospira* spp., the causes of leptospirosis.
 - (CC) *Listeria monocytogenes*, the cause of listeriosis.
 - (DD) Measles virus.
 - (EE) Middle East respiratory syndrome virus.
 - (FF) Monkeypox.
 - (GG) Mumps virus.
 - (HH) *Mycobacterium leprae*, the cause of leprosy.
 - (II) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
 - (JJ) Poliovirus (any), the cause of poliomyelitis.
 - (KK) Rabies virus.
 - (LL) *Rickettsia* spp., the cause of spotted fever rickettsiosis.
 - (MM) Rubella virus.
 - (NN) *Salmonella* spp., the causes of salmonellosis.
 - (OO) *Shigella* spp., the causes of shigellosis.
 - (PP) Smallpox virus, the cause of smallpox.
 - (QQ) *Staphylococcus aureus* with reduced susceptibility to vanomycin.
 - (RR) *Trichinella spiralis*, the cause of trichinosis.
 - (SS) Vaccinia virus.
 - (TT) Varicella virus.
 - (UU) *Vibrio* spp., the causes of cholera and other vibrioses.
 - (VV) Yellow fever virus.
 - (WW) *Yersinia pestis*, the cause of plague.
 - (XX) Zika virus.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
- (A) Group A *Streptococcus pyogenes* (group A streptococci).
 - (B) *Haemophilus influenzae*, serotype b.
 - (C) *Neisseria meningitidis*, the cause of meningococcal disease.
- (3) Positive serologic test results, as specified, for the following infections:
- (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
 - (i) Any arthropod-borne virus associated with neuroinvasive disease.
 - (ii) *Anaplasma* spp., the cause of anaplasmosis.
 - (iii) Any hantavirus or hemorrhagic fever virus.
 - (iv) *Chlamydia psittaci*, the cause of psittacosis.
 - (v) Chikungunya virus.
 - (vi) *Coxiella burnetii*, the cause of Q fever.
 - (vii) Dengue virus.
 - (viii) *Ehrlichia* spp., the causes of ehrlichiosis.
 - (ix) Measles (rubeola) virus.
 - (x) Mumps virus.
 - (xi) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
 - (xii) Rubella virus.
 - (xiii) Varicella virus.
 - (xiv) Yellow fever virus.
 - (B) The presence of IgM serum antibodies to:
 - (i) Any arthropod-borne virus associated with neuroinvasive disease.
 - (ii) Chikungunya virus.
 - (iii) *Chlamydia psittaci*.
 - (iv) Dengue virus.
 - (v) Hepatitis A virus.

- (vi) Hepatitis B virus core antigen.
 - (vii) Mumps virus.
 - (viii) Rubella virus.
 - (ix) Rubeola (measles) virus.
 - (x) Yellow fever virus.
- (4) Laboratory results from tests to determine the absolute and relative counts for the T-helper (CD4) subset of lymphocytes and all results from tests to determine HIV viral load.
- (5) Identification of CRE from a clinical specimen associated with either infection or colonization, including all susceptibility results and all phenotypic or molecular test results.

(d) Laboratories utilizing electronic laboratory reporting (ELR) shall report in addition to those listed under Paragraph (c) of this Rule:

- (1) All positive laboratory results from tests used to diagnosis chronic Hepatitis C Infection, including the following:
 - (A) Hepatitis C virus antibody tests (including the test specific signal to cut-off (s/c) ratio);
 - (B) Hepatitis C nucleic acid tests;
 - (C) Hepatitis C antigen(s) tests; and
 - (D) Hepatitis C genotypic tests.
- (2) All HIV genotypic test results, including when available:
 - (A) The entire nucleotide sequence; or
 - (B) The pol region sequence (including all regions: protease (PR)/reverse transcriptase (RT) and integrase (INI) genes, if available).
- (3) All test results for Interferon Gamma Release Assays.

(e) For the purposes of reporting, Carbapenem-Resistant Enterobacteriaceae (CRE) are defined as:

- (1) Enterobacter spp, E.coli or Klebsiella spp positive for a known carbapenemase resistance mechanism or positive on a phenotypic test for carbapenemase production; or
- (2) Enterobacter spp, E.coli or Klebsiella spp resistant to any carbapenem in the absence of carbapenemase resistance mechanism testing or phenotypic testing for carbapenemase production.

History Note: Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141; Amended Eff. October 1, 1994; February 1, 1990; Temporary Amendment Eff. July 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. February 13, 2003; October 1, 2002; February 18, 2002; June 1, 2001; Amended Eff. April 1, 2003; Temporary Amendment Eff. November 1, 2003; May 16, 2003; Amended Eff. January 1, 2005; April 1, 2004; Temporary Amendment Eff. June 1, 2006; Amended Eff. April 1, 2008; November 1, 2007; October 1, 2006;

Temporary Amendment Eff. January 1, 2010; Temporary Amendment Expired September 11, 2011; Amended Eff. July 1, 2013; Temporary Amendment Eff. December 2, 2014; Amended Eff. October 1, 2015; Emergency Amendment Eff. March 1, 2016; Temporary Amendment Eff. July 1, 2016; Amended Eff. January 1, 2018; October 1, 2016; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. October 1, 2018; Emergency Amendment Eff. February 17, 2020; Temporary Amendment Eff. April 24, 2020; Amended Eff. July 1, 2020.

10A NCAC 41H .1201 REGISTRATION OF GRAVES REMOVED

(a) Removal of Graves Certificate and Filing. The party removing or causing the removal of a grave shall, within 30 days of completion of the reinterment of the grave, submit to the Register of Deeds in the county of disinterment and the counties of reinterment the following:

- (1) a Removal of Graves Certificate containing the elements set out in G.S. 65-106 and provided by the State Registrar. The Certificate shall be typed or completed in black ink with continuation sheets of the same format if necessary to list all decedents;
- (2) maps as set forth in Paragraph (b) of this Rule; and
- (3) a fee set out in G.S. 161-10.

(b) Maps. The party effecting removal shall prepare a map of both the disinterment and reinterment sites. The map must describe the disinterment and reinterment sites in such a manner that a layman can identify the location of each site. The maps shall include county, nearest city or town, public road or intersection of roads in the vicinity, and any other information which would be helpful in locating the sites. The graves must be noted and numbered. The names must be listed on the certificate by number, which corresponds with the numbers on the map.

(c) Filing and Indexing. The register of deeds shall:

- (1) cross index the certificates by name of cemetery of disinterment and reinterment; This requirement does not preclude additional cross indexing of the Removal of Graves Certificates by name of decedent when known; provided, that such cross indexing shall be an option of the register of deeds and imposes no extra charge to the party effecting removal; and
- (2) retain the certificates and attachments permanently. In counties using microfilm for recording various documents such as deeds and deeds of trust, these certificates may be processed as the other records.

History Note: Authority G.S. 65-106; 130A-92(7); 161-10; Eff. February 1, 1976; Readopted Eff. November 15, 1977; Amended Eff. September 1, 1990;

Readopted Eff. July 1, 2020.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 12 .0321 RATE FILING: HMO

*History Note: Authority G.S. 58-67-50; 58-67-150;
Eff. January 22, 1980;
Amended Eff. February 1, 1992;
Repealed Eff. July 1, 2020.*

**11 NCAC 12 .0514 COORDINATION: GROUP A/H
CONTRACT BENEFITS: GROUP COVERAGES**

Purpose. In order to promote consistency in liability for claims and claims determination for group accident and health coverage, when a person has more than one type of group insurance and there is a basis for a claim under two or more group insurance plans, each group accident and health policy and any accident and health certificates issued under a group accident and health policy shall contain uniform order of benefit determination provisions as outlined in this Rule.

- (1) Applicability:
 - (a) These Coordination of Benefits ("COB") provisions apply when an employee or the employee's covered dependent has health care coverage under This Plan and one or more other Health Plans as defined in Sub-item (2)(a) of these provisions and when there is a basis for a claim under This Plan and the other Health Plan(s).
 - (b) If these COB provisions apply, whether This Plan is the Primary Plan or the Secondary Plan is determined pursuant Item (3) of these provisions.
 - (c) When This Plan is a Primary Plan, its benefits shall be determined before those of the other Secondary Plan(s) and without considering the Secondary Plan's benefits. When there are more than two other Health Plans covering the person, This Plan may be a Primary Plan as to one or more other Health Plans and may be a Secondary Plan as to a different Health Plan or Health Plans.
 - (d) When This Plan is a Secondary Plan, its benefits shall be determined without considering the benefits of the Primary Plan or any other Secondary Plan and it shall credit to the deductible any amount that would otherwise be credited to it in the absence of coverage by another Health Plan. When This Plan is a Secondary Plan, any amount of those benefits paid for any Allowable Expense may be reduced to the amount of the

Allowable Expense that is unpaid by the Primary Plan to prevent the payment of benefits under more than one Health Plan that would total more than 100 percent of the total expense for that claim.

- (e) The benefits of This Plan:
 - (i) Shall not be reduced when, pursuant to Item (3) of these provisions, it is determined to be the Primary Plan; but
 - (ii) May be reduced when, pursuant to Item (3) of these provisions, it is determined to be the Secondary Plan.
- (2) Definitions:
 - (a) "Allowable Expense" means any health care expense, including coinsurance or copayments, without reduction for an applicable deductible, that is covered in full or in part by any of the Health Plans covering the person. When a Health Plan provides benefits in the form of medical services, the reasonable cash value of each service rendered shall be considered both an allowable expense and a benefit paid.
 - (b) "Claim Determination Period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under This Plan, or any part of a year before the date this COB provision or a similar provision takes effect.
 - (c) "Health Plan" means a plan which provides benefits or services for, or because of, medical or dental care or treatment:
 - (i) True group insurance. This includes prepayment, group practice or individual practice coverage. It does not include accident and health coverage for students, blanket, franchise individual, automobile and homeowner coverage.
 - (ii) Coverage under a governmental plan or required or provided by law. This does not include a state plan under Medicaid (Title XIX, Grants to States for Medical Assistance Programs, of the United States Social Security Act as amended from time to time). It also does not include any

plan when, by law, its benefits are excess to those of any private insurance program or other non-governmental program.

Each coverage under Sub-items (2)(a)(i) or (ii) of these provisions is a separate Health Plan. Also, if there is more than one schedule of benefits, and COB provisions apply only to one, each of the schedule of benefits is a separate Health Plan.

- (d) "Primary Plan" means a Health Plan whose benefits for a person's health care coverage has been determined to be the first claim payor taking the existence of any other Health Plan into consideration, pursuant to Item (3) of these provisions.
 - (e) "Secondary Plan" means a Health Plan that is not a Primary Plan.
 - (f) "This Plan" means this group accident and health policy.
- (3) Order of Benefit Determination:
- (a) When there is a basis for a claim under This Plan and another Health Plan, This Plan is a Secondary Plan which has its benefits determined after those of the other Health Plan, unless:
 - (i) the other Health Plan has provisions coordinating its benefits with those of This Plan; and
 - (ii) both the other Health Plan's provisions and This Plan's provisions in Sub-item (3)(b) of these provisions, require that This Plan's benefits be determined before those of the other Health Plan.
 - (b) This Plan determines its order of benefits using the first of the following rules which applies:
 - (i) Non-dependent/Dependent. The benefits of the Health Plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) are determined before those of the Health Plan which covers the person as a dependent.
 - (ii) Dependent Child/Parents Not Separated or Divorced. Except as stated in Sub-item (3)(b)(iii) of these provisions, when This Plan and another Health Plan cover the same child as a dependent of

different persons, called "parents":

- (A) the benefits of the Health Plan of the parent whose birthday falls earlier in a year are determined before those of the Health Plan of the parent whose birthday falls later in that year; but
- (B) if both parents have the same birthday, the benefits of the Health Plan that has covered a parent for a longer period of time are determined before those of the Health Plan that covered the other parent for a shorter period of time.

However, if the other Health Plan does not have the provision described in Sub-item (3)(b)(ii)(A) of these provisions, but instead has a provision based upon the gender of the parent, and if, as a result, the Health Plans do not agree on the order of benefits, the provision in the other Health Plan will determine the order of benefits.

- (iii) Dependent Child/Separated or Divorced Parents. If two or more Health Plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:
 - (A) first, the Health Plan of the parent with custody of the child;
 - (B) then, the Health Plan of the spouse of the parent with custody of the child; and
 - (C) finally, the Health Plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is

responsible for the healthcare expenses or healthcare coverage and the Health Plan of the parent has actual knowledge of those terms, the benefits of that Health Plan are determined first. Sub-item (3)(b)(iii)(C) of these provisions does not apply with respect to any Claim Determination Period or plan-year during which any benefits are actually paid or provided before the Health Plan has that actual knowledge.

- (iv) Active Inactive Employee. The benefits of a Health Plan which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a Health Plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other Health Plan does not have a provision like Sub-item (3)(b)(iv), and if, as a result, the Health Plans do not agree on the order of benefits, Sub-item (3)(b)(iv) is ignored.
- (v) Longer/Shorter Length of Coverage. If none of the other provisions of Item (3) determine the order of benefits, the benefits of the Health Plan which covered an employee, member or subscriber longer are determined before those of the Health Plan which covered that person for the shorter time.

History Note: Authority G.S. 58-2-40; 58-51-1; 58-51-80; 58-51-81; 58-65-1; 58-65-40; Eff. February 1, 1976; Readopted Eff. September 26, 1978; Amended Eff. February 1, 1992; April 1, 1989; July 1, 1986; Readopted Eff. July 1, 2020.

TITLE 12 - DEPARTMENT OF JUSTICE

**12 NCAC 09A .0205 PERIOD OF SUSPENSION:
REVOCATION: OR DENIAL**

(a) When the Commission revokes or denies the certification of a criminal justice officer, the period of the sanction shall be permanent where the cause of sanction is:

- (1) commission or conviction of a felony offense, except as provided by G.S. 17C-13(a);
- (2) commission or conviction of a criminal offense for which punishment is authorized by law to include imprisonment for more than two years, except as provided by G.S. 17C-13(a); or
- (3) the second suspension of an officer's certification for any of the causes requiring a five-year period of suspension pursuant to 12 NCAC 09A .0204.

(b) When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be not less than five years; however, the Commission may either reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification as determined on a case-by-case basis following a consent order or an administrative hearing, where the cause of sanction is:

- (1) commission or conviction of a criminal offense other than those listed in Paragraph (a) of this Rule;
- (2) refusal to submit to the applicant or lateral transferee drug screen required by these Rules;
- (3) production of a positive result on a drug screen reported to the Commission under 12 NCAC 09C .0310, where the positive result cannot be explained to be in compliance with the law;
- (4) material misrepresentation of any information required for certification or accreditation;
- (5) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person to attempt to obtain credit, training or certification by any means of false pretense, deception, fraud, misrepresentation or cheating;
- (6) failure to make either of the notifications as required by 12 NCAC 09B .0101(8);
- (7) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230;
- (8) performing activities or duties for which certification by the Commission is required without having first obtained the appropriate certification; or
- (9) commission or conviction of four or more crimes or unlawful acts defined as "Class B misdemeanors" in 12 NCAC 09A .0103(24)(b), regardless of the date of conviction.

(c) When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy relevant basic training requirements pursuant to 12 NCAC 09B .0205, .0225, .0235, and 0236;

- (2) failure to meet or maintain the minimum standards of employment pursuant to 09B .0101, .0111, .0114, .0116, .0117;
- (3) discharge from a criminal justice agency for impairment of physical or mental capabilities; or
- (4) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 09E.

- (9) Administer the course delivery in accordance with Commission approved lesson plans and course management guides;
- (10) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated. The comprehensive final examination shall be administered by the Criminal Justice Education and Training Standards Commission; and
- (11) Report the completion of each presentation of a Commission-certified criminal justice training course to the Commission, utilizing forms required for submission, which are located on the Agency's website: <https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/>.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. February 1, 2006; August 1, 2001; November 1, 1993; July 1, 1990; July 1, 1989; October 1, 1985; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. July 1, 2020.

12 NCAC 09B .0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR

(a) In planning, developing, coordinating, and delivering each Commission-certified criminal justice training course, the School Director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established in this Subchapter;
- (2) Select and schedule instructors who are certified by the Commission;
- (3) Provide each instructor with a current Commission course outline and all necessary additional information concerning the instructor's duties and responsibilities;
- (4) Notify each instructor that he or she shall comply with the Basic Law Enforcement Training Course Management Guide and provide him or her access to the most current version of the Course Management Guide;
- (5) Ensure each instructor utilizes Commission approved lesson plans and instructional materials;
- (6) Arrange for the availability of appropriate audiovisual aids and materials, publications, facilities, and equipment for training in all topic areas;
- (7) Develop, adopt, reproduce, and distribute any supplemental rules and requirements determined by the school to be necessary or appropriate for:
 - (A) effective course delivery;
 - (B) establishing responsibilities and obligations of agencies or departments employing or sponsoring course trainees; and
 - (C) regulating trainee participation and demeanor, ensuring trainee attendance, and maintaining performance records;
- (8) If appropriate, recommend housing and dining facilities for trainees;

(b) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating, and delivering each Commission-certified Basic Law Enforcement Training Course, the School Director shall:

- (1) Deliver training in accordance with the most current version of the Basic Law Enforcement Training Course Management Guide as published by the North Carolina Justice Academy;
- (2) Schedule course presentation to include 12 hours of instruction each week during consecutive calendar weeks, except that there may be as many as three one-week breaks until course requirements are completed;
- (3) Schedule only specialized instructors certified by the Commission to teach those high-liability areas as specified in Rule .0304(a) of this Subchapter as either the lead instructor or as assistant instructors or role players;
- (4) With the exception of the First Responder, Physical Fitness, Explosives and Hazardous Materials, and topical areas outlined in Rule .0304(a) of this Subchapter, schedule one specialized instructor certified by the Commission for every six trainees while engaged in a practical performance exercise;
- (5) Schedule one specialized instructor certified by the Commission for every eight trainees while engaged in a practical performance exercise in the topical area "Subject Control Arrest Techniques;"
- (6) Schedule no single individual to instruct more than 35 percent of the total hours of the curriculum during any one delivery of the Basic Law Enforcement Training Course presentation;
- (7) Not less than 30 days before commencing delivery of the Basic Law Enforcement Training Course, submit to the Commission a Pre-Delivery Report of Training Course Presentation pursuant to 12 NCAC 09C .0211.

The Pre-Delivery Report (Form F-10A) shall indicate a requested date and location for the administration of the state comprehensive exam, and include the following attachments:

- (A) a course schedule showing the arrangement of topical presentations and proposed instructional assignments; and
 - (B) a copy of any rules and requirements for the school. A copy of such rules shall also be given to each trainee and to the executive officer of each trainee's employing or sponsoring agency or department at the time the trainee enrolls in the course;
- (8) Monitor, or designate an instructor certified by the Commission to monitor, a presentation of each instructor once during each three year certification period in each topic taught by the instructor and prepare a written evaluation on the instructor's performance and suitability for subsequent instructional assignments. The observations shall be of sufficient duration to ensure that the instructor is using the Instructional System Design model, and that the delivery is objective-based, documented by, and consistent with a Commission-approved lesson plan. For each topic area, the School Director's evaluation shall be based upon the course delivery observations, the instructor's use of the approved lesson plan, and the results of the student evaluations of the instructor. For probationary instructors, the evaluations conducted by another instructor shall be prepared on the Criminal Justice Instructor Evaluation (Form F-16) and forwarded to the Commission. Based on this evaluation, the School Director shall recommend approval or denial of requests for General Instructor Certification. For all other instructors, these evaluations shall be prepared on the Criminal Justice Instructor Evaluation (Form F-16), be kept on file by the school for a period of three years, and shall be made available for inspection by a representative of the Commission upon request. In the event the evaluation of an instructor indicates that his or her performance was less than acceptable, the School Director shall forward a copy of the evaluation to the Commission. Any instructor who is evaluating the instructional presentation of another instructor shall hold certification in the same instructional topic area as that for which the instructor is being evaluated;
- (9) Administer or designate a staff person to administer course specific tests during course delivery:

- (A) to determine and record the level of trainee comprehension and retention of instructional subject- matter;
 - (B) to provide a basis for a final determination or recommendation regarding the minimum degree of knowledge and skill of each trainee to function as an inexperienced law enforcement officer; and
 - (C) to determine subject or topic areas of deficiency for the application of Rule .0405(a)(3) of this Subchapter; and
- (10) Not more than 10 days after the conclusion of a school's offering of Basic Law Enforcement Training, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form F-10B) that shall include:
- (A) a "Student Course Completion" form for each individual enrolled on the day of orientation; and
 - (B) a "Certification and Test Score Release" form.
- (c) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating, and delivering each Commission-certified "Criminal Justice Instructor Training Course," the School Director shall:
- (1) Schedule course presentation to include a minimum of 78 hours of instruction during the time period the class is taught until course requirements are completed.
 - (2) Schedule at least one evaluator for every six trainees, as follows:
 - (A) no evaluator shall be assigned more than six trainees during a course delivery;
 - (B) each evaluator, as well as the instructors, shall have completed a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
 - (C) each instructor and evaluator shall document successful participation in a program presented by the North Carolina Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee ; evaluation.
 - (3) Not fewer than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation [Form F-10A(ITC)]with the following attachments:
 - (A) a course schedule showing the arrangement of topical presentations

- and proposed instructional assignments;
- (B) the names and last four digits of the social security numbers of all instructors and evaluators; and
- (C) a copy of any rules , and requirements for the school; and
- (4) Not more than 10 days after course completion, submit to the Commission a Post-Delivery Report [Form F-10B(ITC)] containing the following:
 - (A) class enrollment roster;
 - (B) a course schedule with the designation of instructors and evaluators utilized in delivery;
 - (C) scores recorded for each trainee on the 70 minute skill presentation; and
 - (D) designation of trainees who completed the course in its entirety and whom the School Director finds to be competent to instruct.
- (d) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating, and delivering each Commission-certified RADAR, RADAR and Time-Distance, Time-Distance, or LIDAR speed measurement operator training course or re-certification course, the School Director shall:
 - (1) select and schedule speed measurement instrument instructors who are certified by the Commission as instructors for the specific speed measurement instruments in which the trainees are to receive instruction as follows:
 - (A) provide to the instructor the Commission form(s) for motor skill examination on each trainee;
 - (B) require the instructor to complete the motor skill examination form on each trainee indicating the level of proficiency obtained on each specific instrument; and
 - (C) require each instructor to sign each individual form and submit the original to the School Director;
 - (2) not fewer than 30 days before the scheduled starting date, submit to the Director of the Standards Division a Pre-Delivery Report of Speed Measuring Instrument Course Presentation [Form F-10A (SMI)] that shall contain a period of course delivery including the proposed starting date, course location, requested date and location for the administration of the state exam, and the number of trainees to be trained on each type of approved speed measurement instrument. The Director of the Standards Division shall review the request and notify the School Director within thirty business days if the request is approved or denied; and
 - (3) upon completing delivery of the Commission-certified course, and not more than 10 days after

the conclusion of a school's offering of a certified RADAR, RADAR and Time-Distance, Time-Distance, or LIDAR speed measurement operator training course or re-certification course, the School Director shall notify the Commission regarding the progress and achievements of each trainee by submitting a Post-Delivery Report of Training Course Presentation [Form F-10B (SMI)]. This report shall include the original motor-skill examination form(s) completed and signed by the certified instructor responsible for administering the motor-skill examination to the respective trainee.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. November 1, 1981; Readopted w/change Eff. July 1, 1982; Amended Eff. January 1, 2015; June 1, 2013; April 1, 2009; November 1, 2007; January 1, 2006; May 1, 2004; August 1, 2000; January 1, 1996; November 1, 1993; December 1, 1987; January 1, 1985; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. July 1, 2020.

12 NCAC 09B .0203 ADMISSION OF TRAINEES

- (a) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.
- (b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment if the individual will be 20 years of age prior to the date of the State Comprehensive Examination for the course.
- (c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.
- (d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302 of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.
- (e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual, within one year prior to admission to the Basic Law Enforcement Training Course, scores at or above mastery level on the NROC Edready™ Skills Inventory for English or places into course DRE 098 or above at a North Carolina Community College as a result of taking the Reading and English component of the North Carolina Diagnostic Assessment and Placement test as approved by the State Board of Community Colleges on October 17, 2014,

(<http://www.nccommunitycolleges.edu/state-board-community-colleges/meetings/october-17-2014>), or has taken the reading component of a nationally standardized test and has scored at or above the tenth grade level or the equivalent. For the purposes of this Rule:

- (1) Partial or limited enrollee does not include enrollees who hold or have held within 12 months prior to the date of enrollment, general certification pursuant to 12 NCAC 09C .0304.
- (2) A "nationally standardized test" means a test that:
 - (A) reports scores as national percentiles, stanines, or grade equivalents; and
 - (B) compares student test results to a national norm.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided to the School Director a medical examination report, completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the Standards Division shall grant an exception to this standard for a period of time not to exceed the commencement of the physical fitness topical area when failure to receive the medical examination report is not due to neglect on the part of the trainee.

(g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual is a high school, college, or university graduate or has received a high school equivalency credential recognized by the issuing state. High school diplomas earned through correspondence enrollment in an entity that charges a fee and requires the individual to complete little or no education or coursework to obtain a high diploma shall not be recognized toward the educational requirements.

(h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided the School Director one of the following types of record checks in the manner set forth in Paragraph (i) of this Rule:

- (1) a written notification, known as a "Criminal Record Conviction History for B.L.E.T. Enrollment," Form F-25, located at <https://www.ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>, from a department head stating that a criminal record check for local and state records has been conducted and no criminal convictions as listed in Paragraph (j) of this Rule were found that prohibit the individual trainee's enrollment in a presentation of the Basic Law Enforcement Training Course. The hiring agency or the individual trainee shall also provide certified court documentation for each criminal conviction;

- (2) a certified criminal record check for local and state records, and certified court documentation for each criminal conviction. For the purpose of this Rule "Certified court documentation" and "record check" mean a document with either a raised seal or other visible verification that the document is authentic as a copy of the court's official record as authorized by law;
- (3) if the individual trainee has only resided in North Carolina since obtaining the age of majority, provide a fingerprint-based criminal history background check known as a "Right to Review" performed by the North Carolina State Bureau of Investigation. For the purpose of this Rule "Resided in" means any place the trainee has lived, worked, attended school, or participated in an internship. The individual shall also provide certified court documentation for each criminal conviction;
- (4) a fingerprint-based criminal history background check known as a "Right to Review" performed by a federal agency including all locations where the trainee has lived since obtaining the age of majority. The individual shall also provide certified court documentation for each criminal conviction; or
- (5) trainees who have served in the United States Armed Forces, in addition to one of the types of criminal records checks listed in Subparagraphs (1) through (4) of this Paragraph shall provide a copy of their Certificate of Discharge, DD Form 214, that shows their "Character of Service" and "Narrative Reason for Separation." Individuals showing a "Character of Service" as "Bad Conduct" or "Dishonorable" shall provide certified copies of their court-martial proceedings to include the final disposition. Trainees shall also provide documentation to show that they have requested their official military personnel file, which shall be provided upon receipt.
- (6) A trainee who has been naturalized as a United States Citizen is exempt from providing the criminal record checks for locations where they resided outside of the United States prior to naturalization.
- (7) A trainee who has resided outside the United States, other than those described in Subparagraph (5) and (6), who cannot obtain a criminal record check from any location outside the United States shall document the following, to be forwarded to the Standards Division for review on a case by case basis:
 - (A) the name of the agencies contacted,
 - (B) the date the agencies were contacted,
 - (C) the contact information for the agencies contacted, and
 - (D) the reason the information cannot be provided.

(i) Documents obtained in accordance with Paragraph (h) of this Rule shall meet the following requirements:

- (1) any records provided shall fall within the time period beginning when the trainee obtains the age of majority and continuing through the date of application;
- (2) any records provided shall include all locations where the trainee has resided since obtaining the age of majority; and
- (3) any records provided shall include all legal names utilized by the trainee since obtaining the age of majority.

(j) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who has been convicted of the following:

- (1) a felony;
- (2) a crime for which the punishment could have been imprisonment for more than two years;
- (3) a crime or unlawful act defined as a Class B Misdemeanor within the five year period prior to the date of application for employment, unless the individual intends to seek certification through the North Carolina Sheriffs' Education and Training Standards Commission;
- (4) four or more crimes or unlawful acts defined as Class B Misdemeanors, regardless of the date of conviction;
- (5) four or more crimes or unlawful acts defined as Class A Misdemeanors, except the trainee may be enrolled if the last conviction date occurred more than two years prior to the date of enrollment; or
- (6) a combination of four or more Class A Misdemeanors or Class B Misdemeanors regardless of the date of conviction, unless the individual intends to seek certification through the North Carolina Criminal Justice Education and Training Standards Commission.

(k) Individuals charged with crimes specified in Paragraph (j) of this Rule may be admitted into the Basic Law Enforcement Training Course if such offenses were dismissed or the person was found not guilty, but completion of the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued. Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no contest to, pleads guilty to, or is found guilty of, and of all Domestic Violence Protective Orders (G.S. 50B) that are issued by a judicial official after a hearing that provides an opportunity for both parties to be present. This includes all criminal offenses except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or similar laws of

other jurisdictions that shall be reported to the School Director are G.S. 20-138.1 (driving while under the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5)(fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5)(fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph shall be in writing and specify the nature of the offense, the court where the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Protective Order (50B), and the final disposition and the date thereof. The notifications required under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

(l) The school shall not admit any individual as a trainee in the presentation of the Basic Law Enforcement Training Course unless the individual has provided to the School Director:

- (1) copies of all active Domestic Violence Orders of Protection and Civil Non-Contact Orders issued to the individual; or
- (2) a signed and dated written statement from the individual certifying that no such active Orders exist related to the individual.

(m) The school shall not admit any individual as a trainee in the presentation of the Basic Law Enforcement Training Course unless the individual has provided to the School Director a copy of their valid driver's license.

History Note: Authority G.S. 17C-6; 17C-10; 93B-9; Eff. January 1, 1981; Amended Eff. January 1, 2019; April 1, 2018; January 1, 2017; February 1, 2016; November 1, 2015; March 1, 2015; January 1, 2015; June 1, 2012; February 1, 2011; June 1, 2010; December 1, 2004; July 1, 2004; August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. July 1, 2020.

12 NCAC 09B .0303 TERMS AND CONDITIONS OF GENERAL INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for certification as a general instructor shall, be in a probationary status, for a period not to exceed 12 months, until satisfying the requirements of Paragraph (b) of this Rule.

(b) The probationary instructor shall be eligible for General Instructor status if the instructor, submits to the Commission the following forms which are found on the agency website

<https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/>:

- (1) a Form F-12A, signed by a certified School Director of In-Service Training Coordinator, indicating a favorable recommendation; and
- (2) a Form F-16, Commission Instructor Evaluation Form, indicating the Instructor taught a minimum of eight hours of Commission-accredited basic training, Commission-recognized in-service training course, or training course pursuant to 12 NCAC 10B .0601, 10B .1302, or 10B .2005, during the probationary period. The Instructor shall achieve a minimum of 64 points on all instruction evaluations submitted to the Commission.

(c) Probationary Instructors may request an extension of up to one year to teach the 8-hour minimum requirement. The Director may grant the requested extension upon showing of just cause based upon the circumstances that created the need for an extension. For purposes of this Rule, "just cause" includes an accident, illness, emergency, or course cancellation that precluded the instructor from fulfilling the teaching requirement.

(d) The term of certification as a general instructor is indefinite, provided the instructor completes during each calendar year a minimum of one hour of instructor refresher training provided by North Carolina Justice Academy. The Standards Division shall post on its website on January 1 of the current year the list of instructors who have met this requirement during the previous calendar year.

(e) If the instructor fails to meet the instructor refresher training specified in Paragraph (d) of this Rule, he or she shall deliver eight hours of evaluated instruction in a Commission-accredited basic training, Commission-recognized in-service training course, or training course pursuant to 12 NCAC 10B .0601, .1302, or .2005, and complete the instructor refresher training specified in Paragraph (d) of this Rule within 60 days from the last day of the previous calendar year.

(f) If an instructor fails to meet the requirements of Paragraph (d) or (e) of this Rule, the certification period for the instructor shall cease, and the instructor shall be required to complete the requirements of Rule 09B .0302 of this Section in order to obtain probationary instructor status.

(g) The use of guest participants in a delivery of the Basic Law Enforcement Training Course is permissible. However, such guest participants shall be supervised on-site by a Commission-certified instructor and must be authorized by the School Director. A guest participant shall only be used to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

(h) "Commission-recognized in-service training" shall mean training meeting the following requirements:

- (1) training is taught by an instructor certified by the Commission;
- (2) training utilizes a lesson plan in the Instructional Systems Design format; and
- (3) completion of training shall be demonstrated by a passing score on a written test as follows:

- (A) a written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course is exempt from this written test requirement;
- (B) a student shall pass each test by achieving at least 70 percent correct answers; and
- (C) a student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.
- (D) Topics delivered pursuant to 12 NCAC 09E .0104(1) and 12 NCAC 09E .0105(a)(1) shall not require written testing.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. January 1, 2017; December 1, 2007; November 1, 2007; August 1, 2006; January 1, 2006; August 1, 2000; July 1, 1991; October 1, 1985; January 1, 1985; January 1, 1983; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. July 1, 2020; August 1, 2019.

12 NCAC 09E .0104 INSTRUCTORS: ANNUAL IN-SERVICE TRAINING

The following requirements and responsibilities are hereby established for instructors who conduct the law enforcement officers' annual in-service training program:

- (1) The instructor shall hold Instructor Certification issued by the Commission as outlined in 12 NCAC 09B .0302, 09B .0304, and 09B .0306, except for instructors:
 - (A) delivering CPR certifications that include cognitive and skills testing;
 - (B) delivering use of equipment training conducted by a manufacturer, manufacturer's representative or a service provider and documented through a certificate of completion; or
 - (C) delivering Incident Command System training for NIMS (National Incident Management System) compliance who are certified through FEMA

(Federal Emergency Management Agency) as Incident Command Instructors.

In addition, each instructor certified by the Commission to teach in a Commission-accredited basic training, Speed Measuring Instrument Operator or Instructor training, Instructor or Specialized Instructor training, or Commission-recognized in-service training course shall remain competent in his or her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by completing all instructor updates issued by the Commission.

- (2) Instructors who teach a required in-service training topic, other than a topic taught pursuant to Paragraph (1) of this Rule, or a Firearms Training and Qualification course pursuant to Rule .0105(a)(1) of this Section, shall achieve a passing grade on a topic specific test developed by the North Carolina Justice Academy or by the agency delivering the training. Instructors who teach a required in-service training topic online shall also complete the in-service training for the topic he or she will be teaching. Instructors who teach an in-service training topic in a traditional classroom format will receive credit toward their own in-service training requirements, provided that they pass all required tests and have their instruction documented by the Department Head or In-Service Training Coordinator once completed.
- (3) Instructors who, no more than 60 days prior to the upcoming calendar year, complete mandated in-service topics in their entirety pursuant to 12 NCAC 09E .0105 as presented by the North Carolina Justice Academy as part of the Instructor Training Update program shall have satisfied the requirements of 12 NCAC 09E .0105 for the upcoming calendar year.
- (4) The instructor shall deliver the training consistent with the specifications established in Rules 09E .0105 and .0106.
- (5) The instructor shall report the successful or unsuccessful completion of training for each officer to the Department Head.
- (6) When the officer fails to qualify with a weapon, the instructor shall inform the officer that the officer did not qualify and the instructor shall deliver a Commission form F-9A (Firearms Qualification and Record) to the officer that shall be signed by the officer. This form shall instruct the officer not to use the weapon and shall require the officer to notify the Department Head or designated representative within 24 hours of the failure to qualify. The instructor shall personally deliver this form or send the form by certified mail to the Department head or designated representative within 72 hours of the failure to qualify.

All Commission forms are available for download on the Criminal Justice Standards Division website: <https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/>.

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. July 1, 2016; May 1, 2014; February 1, 2013; April 1, 2008; January 1, 2006; January 1, 2005; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. July 1, 2020.

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

(a) The following topics, specifications, and hours shall be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. All sworn law enforcement officers shall complete a minimum of 24 in-service training credits. The following topics, totaling 14 credits, shall be specifically required:

- (1) 2021 Firearms (minimum 4 credits);
- (2) 2021 Legal Update (minimum 4 credits);
- (3) 2021 Continue to Make a Difference: Positive Engagement Stories and Studies (minimum 2 credits);
- (4) 2021 School Safety and Responding to School Incidents (minimum 4 credits); and
- (5) Topics of Choice (12 credits);
 - (A) Officer Awareness: Responding to Victims of Trauma (minimum 4 credits);
 - (B) Patrol Vehicle Operations (minimum 4 credits);
 - (C) Hemp Industry: Overview and Officer Roles (minimum 2 credits); and
 - (D) Physical and Mental Wellness: Building & Implementing a Plan for Improvement (minimum 2 credits).

(b) All sworn law enforcement officers shall complete a minimum of 10 in-service credits, in topics identified by their respective agency heads. The agency head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission. Topics delivered pursuant to Rule .0104(1) of this Section and National Certification Programs administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) completed during the mandated in-service year, shall satisfy in part or in whole the topic requirements set forth by the agency head. To satisfy this requirement these topics shall not be required to be written in Instructional Systems Design format or delivered by an instructor certified by the Commission.

(c) The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

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

(d) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

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

(e) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

(f) Completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. The Firearms Training and Qualifications in-service course and topics delivered pursuant to Rule .0104(1) of this Section shall be exempt from this written test requirement;
- (2) A student shall pass each test by achieving at least 70 percent correct answers; and
- (3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; November 1, 1998; Temporary Amendment Eff. January 1, 2005; Amended Eff. January 1, 2019; January 1, 2018; January 1, 2017; July 1, 2016; January 1, 2016; January 1, 2015; February 1, 2014; June 1, 2012; February 1, 2011; January 1, 2010; April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;

Amended Eff. January 1, 2021; January 1, 2020.

12 NCAC 09G .0309 TERMS AND CONDITIONS OF GENERAL INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements pursuant to Rule .0308 of this Section for certification as a general instructor shall, be in a probationary status, for a period not to exceed 12 months, until satisfying the requirements of Paragraph (b) of this Rule.

(b) The probationary instructor shall be eligible for General Instructor status if the instructor, submits to the Commission the following forms which are found on the agency website <https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/>:

- (1) a Form F-12A, signed by a certified School Director of In-Service Training Coordinator, indicating a favorable recommendation; and
- (2) a Form F-16, Commission Instructor Evaluation Form, indicating the Instructor taught a minimum of eight hours of Commission-accredited basic training, Commission-recognized in-service training course, or training course pursuant to 12 NCAC 10B .0601, 10B. 1302, or 10B .2005, during the probationary period. The Instructor shall achieve a minimum of 64 points on all instruction evaluations submitted to the Commission.

(c) Probationary Instructors may request an extension of up to one year to teach the 8-hour minimum requirement. The Director may grant the requested extension upon showing of just cause based upon the circumstances that created the need for an extension. For purposes of this Rule, "just cause" includes an accident, illness, emergency, or course cancellation that precluded the instructor from fulfilling the teaching requirement.

(d) The term of certification as a general instructor is indefinite, provided the instructor completes during each calendar year a minimum of one hour of instructor refresher training provided by North Carolina Justice Academy. The Standards Division shall post on its website on January 1 of the current year the list of instructors who have met this requirement during the previous calendar year.

(e) If the instructor fails to complete the instructor refresher training specified in Paragraph (d) of this Rule, he or she shall deliver eight hours of evaluated instruction in a Commission-accredited basic or Commission-recognized training course and complete the instructor refresher training specified in Paragraph (d) of this Rule within 60 days.

(f) If an instructor fails to meet the requirements of Paragraph (d) or (e) of this Rule, the certification period for the instructor shall cease, and the instructor shall be required to complete the requirements of Rule .0308 of this Section in order to obtain probationary instructor status.

(g) "Commission-recognized in-service training" shall mean training meeting the following requirements:

- (1) training is taught by an instructor certified by the Commission;
- (2) training utilizes a lesson plan in the Instructional Systems Design format; and

- (3) completion of training shall be demonstrated by a passing score on a written test as follows:
 - (A) a written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course is exempt from this written test requirement;
 - (B) a student shall pass each test by achieving 70 percent correct answers; and
 - (C) a student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2017; June 1, 2012; August 1, 2006; January 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. July 1, 2020.

12 NCAC 09H .0102 MINIMUM TRAINING SPECIFICATIONS

- (a) Firearms Training and Qualification shall consist of a minimum of four hours and include the requirements of Paragraphs (c), (d) and (e) of this Rule.
- (b) Each qualified retired law enforcement officer shall qualify with each handgun he or she carries in accordance with the guidelines in the In-Service Firearms Qualification Manual as published by the North Carolina Justice Academy relating to rounds fired, distances, the ratio of shots fired from each yard line and positions of fire.
- (c) Qualification shall include a day and night qualification course with each handgun he or she carries, and a single day and night combat course with one handgun that he or she carries.
- (d) Each qualified retired law enforcement officer shall receive a minimum of two hours of instruction on the North Carolina laws of self-defense, the use of force by private citizens, detention of persons by private persons, and assistance to law enforcement officers by private citizens.
- (e) Instruction shall include a review of firearms safety and basic marksmanship fundamentals.

- (f) The qualification requirements shall be achieved at least once in a single day in no more than three attempts per day for each course of fire and for each weapon for which qualification is required. Officers not qualifying in a single day for each course of fire shall be deemed as a failure and the retired qualified law enforcement officers shall not be allowed to carry that weapon until such time as the qualification requirements have been met.
- (g) Qualified retired law enforcement officers shall be certified for a period of 12 months from the date the application is approved by the Commission. Upon application for renewal, the certification shall be renewed by the Commission for 12-month periods provided the qualified retired law enforcement officer meets the rules specified in this Subchapter.

History Note: Authority G.S. 14-415.10; 14-415.25; 14.415.26; 17C-6; Eff. May 1, 2009; Amended Eff. April 1, 2017; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019; Amended Eff. July 1, 2020.

12 NCAC 10B .0407 CERTIFICATION OF FORMER SHERIFF

- (a) The Division shall issue a General Certification to any person as either a deputy sheriff, a detention officer, or telecommunicator who has previously served as an elected or appointed sheriff for a minimum of eight years, if the person:
 - (1) applies to the Commission within one year of ceasing to serve as an elected or appointed sheriff; and
 - (2) left the office of sheriff in good standing.
- (b) The Division shall issue a General Certification to any person as either a deputy sheriff, a detention officer, or telecommunicator who has previously served as an elected or appointed sheriff for a minimum of four years, if the person:
 - (1) applies to the Commission within one year of ceasing to serve as an elected or appointed sheriff;
 - (2) held a General Certification as deputy sheriff, detention officer, or telecommunicator with the North Carolina Sheriffs' Education and Training Standards Commission or has held a General Certification as a sworn officer with the North Carolina Criminal Justice Commission, with a break in service not to exceed one year prior to serving as an elected or appointed sheriff; and
 - (3) left the office of sheriff in good standing.
- (c) In order for an officer to be certified under this Rule, the employing agency shall:
 - (1) comply with the Report of Appointment form requirement of Rule .0403 of this Section;
 - (2) submit to the Division, a copy of the Oath of Office for applicants requesting certification as a deputy sheriff; and

- (3) submit to the Division verification that the applicant meets the requirement of this Rule .0407(a)(2).

- (1) the Certified Firearms Trainer's name;
- (2) the date, time, and location of classroom training;
- (3) the date, time, and location of range qualification;
- (4) the full name of the students who completed the firearms training course;
- (5) the certification by the Firearms Trainer that the applicant has successfully completed the firearms classroom training;
- (6) the range score for each student completing the firearms training course; and
- (7) the Certified Firearms Trainer's signature.

History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 1991; Amended Eff. January 1, 1996; Temporary Amendment Eff. March 1, 1998; Amended Eff. August 1, 1998; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018; Amended Eff. July 1, 2020.

History Note: Authority G.S. 74C-5; 74C-13; Temporary Adoption Eff. October 2, 2002; Temporary Adoption Expired July 29, 2003; Eff. December 1, 2003; Amended Eff. December 1, 2008; January 1, 2008; Transferred and Recodified from 12 NCAC 07D .0908 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

14B NCAC 16 .0905 DETERMINATION OF EXPERIENCE

In determining the experience required under this Section, the provisions of Rule .0204 of this Chapter shall apply.

History Note: Authority G.S. 74C-5; 74C-13; Eff. June 1, 1984; Transferred and Recodified from 12 NCAC 07D .0905 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .0907 PRE-DELIVERY REPORT FOR FIREARMS TRAINING COURSES

Certified Firearms Trainers shall submit to the Board a pre-delivery report for all firearms training courses required by Rule .0807 of this Chapter not less than five days prior to commencing any firearms training course. This report shall be submitted on a Board form and shall contain the following information:

- (1) the Certified Firearms Trainer's name, address, and contact telephone number;
- (2) the date, time, and location of classroom training;
- (3) the date, time, and location of range qualification;
- (4) the classroom and range telephone number(s);
- (5) the number of students anticipated; and
- (6) the Certified Firearms Trainer's signature.

History Note: Authority G.S. 74C-5; 74C-13; Temporary Adoption Eff. October 2, 2002; Temporary Adoption Expired July 29, 2003; Eff. December 1, 2003; Transferred and Recodified from 12 NCAC 07D .0907 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .0908 POST-DELIVERY REPORT FOR FIREARMS TRAINING COURSES

Certified Firearms Trainers shall submit to the Board a post-delivery report for all firearms training courses required by Rule .0807 of this Rule within 20 days after completion of the firearms training. The report shall be submitted on a Board form and shall contain the following information:

14B NCAC 16 .1101 DEFINITIONS

In addition to the definitions set forth in G.S. 74C, the following definitions shall apply to this Section:

- (1) "Private Investigator Associate" refers to an individual training to become a Private Investigator. A Private Investigator Associate may also be referred to as a "trainee" in these Rules. A Private Investigator Associate must complete three training levels as set out in this Section.
- (2) "One-on-one Supervision" means person-to-person contact whereby the licensed investigator is personally and directly supervising or training the Associate. The training investigator must be the sponsoring licensed Private Investigator or any licensed Private Investigator who is a member of the sponsoring Private Investigator's firm, association, or corporation. The Private Investigator Associate may not subcontract his or her employment to another Private Investigator. However, the sponsoring Private Investigator may subcontract the Private Investigator Associate if the sponsor obtains prior written approval from the Board's Director by showing that the Private Investigator Associate will receive an educational benefit from the subcontract employment and the Associate will receive one-on-one supervision from another licensed Private Investigator. One-on-one supervision may also be satisfied if the Associate undergoes training from an individual or educational course approved by the Board's Director prior to the Associate receiving the training.

- (3) "Training Checklist" refers to the document(s) that shall state all areas of training and work that the Associate has performed. The supervising Private Investigator is responsible for maintaining the training checklist and providing a copy of the checklist to the Associate. The Training Checklist must reflect the date the Associate advances from one level to another. The training checklist must be signed by the Associate and the sponsoring Private Investigator at the end of each reporting period. In the event the Associate transfers employment to another Private Investigator, the Associate must provide the new supervising Private Investigator with the training checklist and the new sponsoring Private Investigator will then be responsible for the maintenance of the checklist. The Training Checklist must be updated on a quarterly basis for Level One Associates and on a yearly basis for Level Two and Level Three Associates. The training checklist must be maintained pursuant to Rule .0108 of this Chapter. When an Associate completes Level Three, the Training Checklist must be made a part of the Associate's application for a Private Investigator's license. The Board shall have immediate access to the training checklist.
- (4) "Associate Log" refers to the document(s) maintained by the sponsoring Private Investigator which shall list each case the Associate has worked, the number of hours spent on the case, and the type of work performed. Details of the one-on-one training must be documented within the Associate's log.

History Note: Authority G.S. 74C-2(c); 74C-5(2); Eff. July 1, 1994; Transferred and Recodified from 12 NCAC 07D .1101 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1102 TRAINING AND SUPERVISION REQUIRED IN LEVEL ONE

- (a) If upon sponsorship, the Associate has less than one year or 1,000 hours of verifiable training or experience, the Associate shall undergo 160 hours of one-on-one supervision training.
- (b) The first 40 hours of employment shall be one-on-one supervision. The remaining 120 hours of one-on-one supervision shall be gathered over the first year of employment or the first 1,000 hours of work, whichever comes first.
- (c) A Level One Associate cannot, independently of the sponsor, accept or contract employment. The Associate shall have direct face-to-face or telephone contact with the sponsor or another licensed Private Investigator within the firm, association, or corporation before accepting employment or before accepting a new case.
- (d) The sponsor or another licensed Private Investigator associated with the sponsor's firm, association, or corporation

shall meet with the Level One associate to review the Associate's work product. The Private Investigator's review may be by telephone or face-to-face and shall occur at least four times per month. The licensed Private Investigator shall review each case on which the Associate is working or has worked since the last review. Review sessions may encompass more than one case.

History Note: Authority G.S. 74C-5(2); Eff. July 1, 1994; Transferred and Recodified from 12 NCAC 07D .1102 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1103 TRAINING AND SUPERVISION REQUIRED IN LEVEL TWO

- (a) If upon initial application for an Associate permit, the applicant has at least one year or 1,000 hours of verifiable training or experience, the applicant will skip Level One and be classified as a Level Two Private Investigator Associate. An applicant that skips Level One shall undergo 80 hours of one-on-one training. The first 40 hours of one-on-one supervision shall occur within the first 40 hours of employment. The remaining 40 hours shall be gathered over the first year of employment or the first 1,000 hours of work, whichever comes first.
- (b) A Level Two Associate cannot, independently of the sponsor, accept or contract employment. The Associate shall have direct face-to-face or telephone contact with the sponsor or another licensed Private Investigator within the firm, association, or corporation before accepting employment or before accepting a new case.
- (c) The sponsor or another licensed Private Investigator associated with the sponsor's firm, association, or corporation shall meet with the Level Two Associate to review the Associate's work product. The Private Investigator's review may be by telephone or face-to-face and shall occur at least four times per month. The licensed Private Investigator shall review each case on which the Associate is working or has worked since the last review. Review sessions may encompass more than one case.

History Note: Authority G.S. 74C-5(2); Eff. July 1, 1994; Transferred and Recodified from 12 NCAC 07D .1103 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1104 TRAINING AND SUPERVISION REQUIRED IN LEVEL THREE

- (a) If upon sponsorship the Associate has at least two years or 2,000 hours of verifiable training or experience, the Associate will be classified as a Level Three Private Investigator Associate and shall undergo 40 hours of one-on-one training.
- (b) The first 40 hours of employment for the Level Three Private Investigator Associate shall be one-on-one supervision.
- (c) When the Level Three Associate completes the requirements of Level Three by fulfilling the licensing requirements set forth in Rules .0204 and .0401 of this Chapter, the Associate may apply for a private investigator's license.
- (d) The sponsor or another licensed Private Investigator associated with the sponsor's firm, association, or corporation

shall meet with the Level Three Associate to review the Associate's work product. The licensed Private Investigator shall review each case on which the Associate is working or has worked since the last review. Review sessions may encompass more than one case.

(e) The sponsoring Private Investigator shall have contact with the Level Three Associate sufficient to ensure compliance with G.S. 74C.

History Note: Authority G.S. 74C-5(2); Eff. July 1, 1994; Transferred and Recodified from 12 NCAC 07D .1104 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1105 EDUCATIONAL DEGREES AND NON-DEGREEED TRAINING

(a) An applicant shall receive a minimum of 400 hours of experience credit for an associate's degree. The Board shall grant up to 100 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the associate's degree.

(b) An applicant shall receive 800 hours of experience credit for a bachelor's degree. The Board shall grant up to 200 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the bachelor's degree.

(c) An applicant shall receive 1,200 hours of experience credit for a graduate degree. The Board shall grant an additional 300 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the graduate degree.

(d) During the first 40 hours of one-on-one supervision, a Level One Associate may receive up to 4 hours of one-on-one supervision credit for time spent in the courtroom observing a docketed trial. Of the remaining 120 hours of one-on-one supervision required in Level One, the Associate may receive up to 12 hours of credit for time spent in the courtroom observing a trial. Of the thousand hours of training required in Level One, the Associate cannot receive more than 100 hours of credit for time spent in the courtroom observing a trial. To receive credit for courtroom observation, the Level One Associate must state in the Associate's Log the docket number of the trial and the time spent observing the trial.

(e) During the first 40 hours of one-on-one supervision, a Level Two Associate may receive up to 4 hours of one-on-one supervision credit for time spent in the courtroom observing a docketed trial. Of the remaining 80 hours of one-on-one supervision required in Level Two, the Associate may receive up to 8 hours of credit for time spent in the courtroom observing a trial. Of the thousand hours of training required in Level Two, the Associate cannot receive more than 100 hours of credit for time spent in the courtroom observing a trial. To receive credit for courtroom observation, the Level Two Associate must state in the Associate's Log the docket number of the trial and the time spent observing the trial.

(f) During the first 40 hours of one-on-one supervision, a Level Three Associate may receive up to 4 hours of one-on-one

supervision credit for time spent in the courtroom observing a docketed trial. Of the one thousand hours of training required in Level Three, the Associate cannot receive more than 100 hours of credit for time spent in the courtroom observing a trial. To receive credit for courtroom observation, the Level Three Associate must state in the Associate's Log the docket number of the trial and the time spent observing the trial.

History Note: Authority G.S. 74C-5(2); Eff. July 1, 1994; Transferred and Recodified from 12 NCAC 07D .1105 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1106 CONSIDERATION OF EXPERIENCE

(a) The Board shall consider any practical experience gained prior to the application date. The Board shall not consider experience claimed by the applicant if the experience was:

- (1) gained by contracting private protective services to another person, firm, association, or corporation while not in possession of a valid private protective services license; or
- (2) gained when employed by a company contracting private protective services to another person, firm, association, or corporation while the company is not in possession of a valid private protective services license.

(b) The Board shall consider any educational experience referred to in Rule .1105 of this Section.

History Note: Authority G.S. 74C-5(2); Eff. July 1, 1994; Amended Eff. January 1, 2013; April 1, 1999; Transferred and Recodified from 12 NCAC 07D .1106 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1107 ENFORCEMENT

A violation by the Associate may be deemed by the Board to be a violation of the sponsor if the violation is found to be the result of insufficient supervision and may subject the sponsor to any enforcement actions pursuant to G.S. 74C-17.

History Note: Authority G.S. 74C-2(c); 74C-5(2); 74C-12; Eff. July 1, 1994; Transferred and Recodified from 12 NCAC 07D .1107 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1108 TRANSFERABILITY OF TRAINING HOURS

If a Level One Associate transfers employment to another Private Investigator, the one-on-one training shall not transfer and the Associate shall undergo new one-on-one supervised training hours with the new sponsoring Private Investigator. If a Level Two or Level Three Associate transfers employment to another Private Investigator, all training hours shall be transferred.

*History Note: Authority G.S. 74C-5(2);
Eff. July 1, 1994;
Transferred and Recodified from 12 NCAC 07D .1110 Eff. July 1, 2015;
Readopted Eff. July 1, 2020.*

14B NCAC 16 .1201 DEFINITIONS

In addition to the definitions set forth in Rule .0103 of this Chapter, the following definitions shall apply to this Section:

- (1) "continuing education" or "CE" refers to any educational activity approved by the Board to be a continuing education activity.
- (2) "credit hour" means 60 minutes of continuing education instruction.
- (3) "year" refers to the calendar year after the issuance of a new or renewal license.

*History Note: Authority G.S. 74C-5; 74C-22;
Eff. February 1, 2010;
Transferred and Recodified from 12 NCAC 07D .1301 Eff. July 1, 2015;
Readopted Eff. July 1, 2020.*

14B NCAC 16 .1202 REQUIRED CONTINUING EDUCATION HOURS

- (a) Each licensee shall complete 12 credit hours of continuing education training during each two year renewal period.
- (b) Credit shall be given only for classes that have been approved by the Board as set forth in Rule .1203 of this Section.
- (c) A licensee who attends a complete meeting of a regularly scheduled meeting of the Board shall receive two credit hours for each meeting that the licensee attends, with credit being given for a maximum of two meetings per year with no more than four credit hours per year and eight credit hours per renewal period.
- (d) No more that six hours of CEU credit shall be given during a renewal period for on-line courses. However, during a National or State declared state of emergency which restricts or prohibits a licensee from attending live continuing education courses or a meeting of the Board all required hours may be obtained on-line and credit shall be given upon written request to the Director.
- (e) No course offering CEU credits may be taken for credit more than one time during a renewal period.

*History Note: Authority G.S. 74C-2; 74C-5; 74C-22;
Eff. February 1, 2010;
Amended Eff. May 1, 2014;
Transferred and Recodified from 12 NCAC 07D .1302 Eff. July 1, 2015;
Emergency Amendment Eff. May 6, 2020;
Readopted Eff. July 1, 2020.*

14B NCAC 16 .1203 ACCREDITATION STANDARDS

- (a) CE courses may obtain the approval of the Board by submitting the following information to the Board for consideration:
 - (1) the nature and purpose of the course;
 - (2) the course objectives or goals;
 - (3) the outline of the course, including the number of training hours for each segment; and

- (4) the name of the instructor.
- (b) To determine if a course will receive approval from the Board, the Board shall complete the following review:

- (1) The matter shall be referred to the Training and Education Committee for the appointment of a sub-committee that shall review the course under consideration. The sub-committee shall consist of at least two industry members of the Training and Education Committee. Other members of the sub-committee may be appointed at the discretion of the Training and Education Committee Chairman.
- (2) The sub-committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives or goals.
- (3) When the sub-committee completes its review, it shall report to the Training and Education Committee. The Training and Education Committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives and goals. The Training and Education Committee shall then report the findings with a recommendation of acceptance or denial to the Private Protective Services Board.

- (c) Upon receipt of the Training and Education Committee report, the Private Protective Services Board shall determine by majority vote if the course will be approved for continuing education credits. In making its determination, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives or goals.

- (d) Each approved course shall remain an approved course for four years from the date of approval by the Board, unless the course instructor changes.

- (e) Trainers and instructors shall receive continuing education credit of five hours for every actual teaching hour with an eight hour cap of continuing education credit every two years.

- (f) Colleges, universities, trade schools, and other degree granting institutions shall be granted standing approval when the institutions are accredited, certified, or approved by the Department of Public Instruction or by a similar agency in another state and the course is related to law, criminal justice, security profession, finance, ethics, forensics, crime prevention, and investigation. Approval is one credit hour per contact hour not to exceed eight credit hours.

- (g) Online courses shall be approved by the Board based on compliance with the standards set forth in Paragraph (a) of this Rule.

*History Note: Authority G.S. 74C-5; 74C-22;
Eff. February 1, 2010;
Amended Eff. October 1, 2011;
Transferred and Recodified from 12 NCAC 07D .1303 Eff. July 1, 2015;
Emergency Amendment Eff. May 6, 2020;
Readopted Eff. July 1, 2020.*

14B NCAC 16 .1204 NON-RESIDENT LICENSEE CONTINUING EDUCATION CREDITS

A non-resident licensee shall obtain the required continuing education credits as set forth in Rule .1202 of this Section. If a non-resident licensee resides in a state that requires continuing education for a private protective services business license, then the continuing education courses to be offered in the state of residence may be considered by the Board for approval in North Carolina on an individual course basis. In determining if the course is to be approved, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objective.

History Note: Authority G.S. 74C-2; 74C-22; Eff. February 1, 2010; Transferred and Recodified from 12 NCAC 07D .1304 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1205 RECORDING AND REPORTING CONTINUING EDUCATION CREDITS

(a) Each licensee shall be responsible for recording and reporting continuing education credits to the Board at the time of license renewal. For each course taken such report shall include a certificate of course completion that is signed by at least one course instructor, states the name of the licensee who completed the course, the date of course completion, and the number of hours taken by the licensee. Credit shall not be given if a certificate of course completion is dated more than two years before the license renewal date. Each course instructor shall be required to maintain a course roster and shall verify the identity of each participant by a government issued photo identification, such as a driver's license. The roster shall be delivered to the Board's office within two weeks of the completion date of the course.

(b) All applications for renewal of a license shall have continuing education certificate(s) of course completion attached verifying completion of the required number of credit hours. If an applicant is filing an application designated as "new" and the applicant has been licensed for any period of time within the previous two years, the applicant shall attach continuing education certificate(s) of course completion verifying completion of the required number of credit hours. An applicant shall not be required to submit a continuing education certificate of course completion if the applicant is filing an application designated as a "transfer" or "duplicate" and if the applicant has a current license issued by the Board.

History Note: Authority G.S. 74C-5; 74C-22; Eff. February 1, 2010; Transferred and Recodified from 12 NCAC 07D .1305 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1206 NON-COMPLIANCE

If a licensee fails to comply with this Section, his or her license shall not be renewed.

History Note: Authority G.S. 74C-5; 74C-22; Eff. February 1, 2010;

Transferred and Recodified from 12 NCAC 07D .1306 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1303 MINIMUM STANDARDS FOR UNARMED ARMORED CAR SERVICE GUARD REGISTRATION

An applicant for registration as an unarmed armored service guard shall:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States or a resident alien;
- (3) be of good moral character and temperate habits. Any of the following within the last five years shall be prima facie evidence that the applicant does not have good moral character or temperate habits:
 - (a) conviction by any local, state, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm;
 - (b) conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage;
 - (c) conviction of a crime involving felonious assault or an act of violence;
 - (d) conviction of a crime involving unlawful breaking or entering, burglary, larceny, or any offense involving moral turpitude; or
 - (e) a history of addiction to alcohol or a narcotic drug. For purposes of this Rule, "conviction" means the entry of a plea of guilty, plea of no contest, or a verdict of guilty;
- (4) not have been judicially declared incompetent or not have been involuntarily committed to an institution for treatment of mental illness. When an individual has been treated and found to have been restored, the Board shall consider this evidence and determine whether the applicant meets the requirements of this Rule; and
- (5) not have had a revocation by the Board.

History Note: Authority G.S. 74C-3; 74C-5; Eff. January 1, 2013; Transferred and Recodified from 12 NCAC 07D .1403 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1305 UNARMED ARMORED CAR SERVICE GUARD REGISTRATION IDENTIFICATION CARDS

(a) A registration identification card shall be carried by an armored car service guard registrant when performing the duties of a private protective services employee.

(b) The registration identification card shall be exhibited upon the request of any law enforcement officer or any authorized representative of the Board.

(c) Registration identification card holders shall within five business days notify the Board following receipt of any information relating to the holder's eligibility to continue holding the card.

(d) The guard transfer form and fee shall be submitted to the Board by the employer within 10 days of the beginning of employment.

(e) Upon revocation or suspension by the Board, a holder shall return the registration identification card to the Director within 10 days of the date of the revocation or suspension.

History Note: Authority G.S. 74C-3; 74C-5;

Eff. January 1, 2013;

Transferred and Recodified from 12 NCAC 07D .1405 Eff. July 1, 2015;

Readopted Eff. July 1, 2020.

14B NCAC 16 .1307 TRAINING REQUIREMENTS FOR UNARMED ARMORED CAR SERVICE GUARDS

(a) Applicants for an unarmed armored car service guard registration shall complete a basic training course for unarmed armored car service guards within 30 days from the date of permanent hire. The course shall consist of a minimum of 16 hours of classroom instruction including:

- (1) The Security Officer in North Carolina – (minimum of one hour);
- (2) Legal Issues for Security Officers – (minimum of three hours);
- (3) Department – (minimum of one hour);
- (4) Armored Security Operations – (minimum of five hours);
- (5) Emergency Responses – (minimum of three hours); and
- (6) Safe Driver Training – (minimum of three hours);

A minimum of four hours of classroom instruction shall be completed within 20 calendar days of any armored car service guard, including probationary, being placed on a duty station. These four hours shall include The Security Officer in North Carolina and Legal Issues for Security Officers. Unarmed armored car service guard training is not transferable to qualify as unarmed security guard training.

(b) Licensees shall submit their names and resumes for proposed certified unarmed trainer registrations to the Director for Board approval.

(c) Training shall be conducted by a Board certified unarmed trainer. A Board approved lesson plan covering the training requirements in Paragraph (a) of this Rule shall be made available by the Board to each trainer. The trainer may use other media training materials that deliver the training requirements of Paragraph (a) of this Rule.

(d) The 16 hours of training may be delivered remotely under the following conditions:

- (1) The training is presented by a Board certified unarmed trainer.

(2) Each student is given a copy of the Board approved unarmed armored car service guard training manual to use for the duration of the 16 hour training course.

(3) The technology used allows the trainer to see the students and the students to see the trainer in real time during the training.

(4) All students in each classroom are able to see and read the screen or monitor, and they must be able to hear and understand the audio presentation. All monitors used in each classroom must be at least 32 inches wide.

(5) The technology used is of sufficient quality so that the training audio and video is delivered smoothly and without interruption.

(6) Each student is taught to use the audio and video equipment in the classroom prior to the start of the 16 hour unarmed armored car service guard training course.

(7) The total number of students receiving remote training at one time does not exceed 35 students.

(8) Any additional training beyond the Board mandated training in the unarmed armored car service guard training manual is taught either before or after the 16 hour unarmed armored car service guard training.

(9) The Director is notified five days prior to training of the location of each classroom, the name of the certified trainer, and the number of students who will be present.

(10) The sponsoring agency allows the Director or designee access via computer to the training during the time that it is taking place.

History Note: Authority G.S. 74C-3; 74C-5;

Eff. January 1, 2013;

Transferred and Recodified from 12 NCAC 07D .1407 Eff. July 1, 2015;

Readopted Eff. July 1, 2020.

14B NCAC 16 .1308 UNIFORMS AND EQUIPMENT

The provisions of Rule .0104 of this Chapter apply to unarmed armored car service guards.

History Note: Authority G.S. 74C-5; 74C-12; 74C-15;

Eff. January 1, 2015;

Transferred and Recodified from 12 NCAC 07D .1408 Eff. July 1, 2015;

Readopted Eff. July 1, 2020.

14B NCAC 16 .1403 MINIMUM STANDARDS FOR ARMED ARMORED CAR SERVICE GUARD FIREARM REGISTRATION PERMIT

Applicants for an armed armored car firearms registration shall meet all the requirements of Rules .1303 and .1307 of this Chapter.

History Note: Authority G.S. 74C-3; 74C-5; 74C-13;

*Eff. January 1, 2013;
Transferred and Recodified from 12 NCAC 07D .1503 Eff. July 1, 2015;
Readopted Eff. July 1, 2020.*

14B NCAC 16 .1405 ARMED ARMORED CAR SERVICE GUARD FIREARM REGISTRATION PERMIT IDENTIFICATION CARDS

- (a) The provisions of Rule .1305 of this Chapter apply to armed armored car service guards.
- (b) Upon termination of employment of an armed armored car service guard, the employer shall return the employee's registration card to the Board within 15 business days of the employee's termination.

*History Note: Authority G.S. 74C-3; 74C-5; 74C-13;
Eff. January 1, 2013;
Transferred and Recodified from 12 NCAC 07D .1505 Eff. July 1, 2015;
Readopted Eff. July 1, 2020.*

14B NCAC 16 .1407 TRAINING REQUIREMENTS FOR ARMED ARMORED CAR SERVICE GUARDS

- (a) Prior to applying, applicants for an armed armored car service guard firearm registration permit shall complete the basic training course for unarmed armored car service guards set forth in Rule .1307(a) of this Chapter. Private Investigator Licensees applying for an armed armored car service guard firearm registration permit shall complete a four hour training course consisting of blocks of instruction "The Security Officer in North Carolina" and "Legal Issues for Security Officers" as set forth in Rule .1307(a) of this Chapter. Private Investigator Licensees applying for an armed armored car service guard firearm registration permit are not required to complete the following training blocks found in the basic training course referenced in Rule .1307(a) of this Chapter: "Emergency Responses," "Deployment," "Armored Security Operations," and "Safe Driver Training." A Private Investigator Licensee applying for an armed armored car service guard firearm registration permit shall meet all additional training requirements set forth in Rule .1307(a) of this Chapter as well as the training requirements set forth in this Rule.
- (b) Applicants for an armed armored car service guard firearm registration permit shall complete a basic training course for armed security guards that consists of at least 20 hours of classroom instruction including:
 - (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including familiarity with rules relating to armed security guards -- (minimum of four hours);
 - (2) handgun safety, including range firing procedures -- (minimum of one hour);
 - (3) handgun operation and maintenance -- (minimum of three hours);
 - (4) handgun fundamentals -- (minimum of eight hours); and
 - (5) night firing -- (minimum of four hours).
- (c) Applicants for an armed armored service guard firearm registration permit shall attain a score of at least 80 percent

accuracy on a firearms range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office. Should a student fail to attain a score of 80 percent accuracy, the student shall be given an additional three attempts to qualify on the course of fire he or she did not pass, which additional attempts shall take place within 20 days of the completion of the initial 20 hour course. Failure to meet the qualification after three additional attempts shall require the student to repeat the entire basic training course for armed security guards.

(d) All armed security guard training required by this Chapter shall be administered by a certified trainer and shall be successfully completed no more than 90 days prior to the date of issuance of the armed armored car service guard firearm registration permit.

(e) All applicants for an armed armored car service guard firearm registration permit shall obtain training under the provisions of this Rule using their duty weapon and their duty ammunition or ballistic equivalent ammunition, to include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.

(f) No more than six new or renewal armed armored car service guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training.

(g) Applicants for re-certification of an armed armored car service guard firearm registration permit shall complete a basic recertification training course for armed armored car guards that consists of at least four hours of classroom instruction and is a review of the requirements set forth in Subparagraphs (b)(1) through (b)(5) of this Rule. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of an armed armored car service guard firearm registration permit shall also complete the requirements of Paragraph (c) of this Rule.

(h) To be authorized to carry a standard 12 gauge shotgun in the performance of his or her duties as an armed armored car service guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (b) and (c) of this Rule, four hours of classroom training that shall include the following:

- (1) legal limitations on the use of shotguns;
- (2) shotgun safety, including range firing procedures;
- (3) shotgun operation and maintenance; and
- (4) shotgun fundamentals.

An applicant may take the additional shotgun training at a time after the initial training in Subparagraph (b) of this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrently with the armed registration permit.

(i) In addition to the requirements set forth in Paragraph (h) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(j) Applicants for shotgun recertification shall complete an additional one hour of classroom training as set forth in Subparagraphs (h)(1) through (h)(4) of this Rule and shall also complete the requirements of Paragraph (i) of this Rule.

(k) Applicants for an armed armored car service guard firearm registration permit who possess a current firearms trainer certificate shall be given, upon their written request, a firearms registration permit that will run concurrently with the trainer certificate upon completion of an annual qualification with their duty weapons as set forth in Paragraph (c) of this Rule.

(l) An armed armored car service guard shall qualify annually for both day and night firing with his or her duty weapon and shotgun, if applicable. If the armed armored car service guard fails to qualify on either course of fire, the guard cannot carry a firearm until such time as he or she meets the qualification requirements. Upon failure to qualify, the firearm instructor shall notify the armed armored car service guard that he or she is no longer authorized to carry a firearm, and the firearm instructor shall notify the employer and the Board on the next business day.

(m) Armed armored car service guard personnel may also work as armed security guards only if they hold an unarmed or armed security guard registration.

History Note: Authority G.S. 74C-3; 74C-5; 74C-13; Eff. January 1, 2013; Transferred and Recodified from 12 NCAC 07D .1507 Eff. July 1, 2015; Amended Eff. October 1, 2015; Readopted Eff. July 1, 2020.

14B NCAC 16 .1408 UNIFORMS AND EQUIPMENT

The provisions of Rule .0104 of this Chapter apply to armed armored car service guards.

History Note: Authority G.S. 74C-5; 74C-12; 74C-15; Eff. January 1, 2015; Transferred and Recodified from 12 NCAC 07D .1508 Eff. July 1, 2015; Readopted Eff. July 1, 2020.

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 07H .0104 APPLICATION OF EROSION RATE SETBACK FACTORS

(a) Development on lots created on or after June 1, 1979 shall utilize the current erosion rate setback factor in the calculation of the development setback pursuant to 15A NCAC 07H .0304. If application of the current erosion rate setback factor in the calculation of the development setback would preclude the placement of permanent buildings, then the erosion rate in effect at the time that the lot was created may be utilized in the calculation of the development setback, provided that the development:

- (1) shall comply with the current erosion rate setback factor to the maximum extent possible;
- (2) is located at the landward most position of the lot without violating local zoning requirements;
- (3) shall extend no further oceanward than the landward-most adjacent building; and
- (4) shall be no more than 2,000 square feet in total floor area.

(b) Development on lots created prior to June 1, 1979 shall comply with the provisions of 15A NCAC 07H .0309(b) and (c).

History Note: Authority G.S. 113A-107; 113A-113; 113A-124; Eff. September 15, 1979; Amended Eff. August 1, 2010; April 1, 2004; April 1, 1997; April 1, 1995; May 1, 1990; November 1, 1988; September 1, 1988; Readopted Eff. July 1, 2020.

15A NCAC 07H .0105 EFFECTIVE DATE OF RULE AMENDMENTS

Unless explicitly stated otherwise, the Coastal Resources Commission guidelines for Areas of Environmental Concern and local land use plans in effect at the time of permit decision shall be applied to all development proposals covered by this Subchapter.

History Note: Authority G.S. 113A-107; 113A-124; Eff. December 1, 1982; Readopted Eff. July 1, 2020.

15A NCAC 07H .0106 GENERAL DEFINITIONS

The following definitions apply whenever these terms are used in this Chapter:

- (1) "Normal High Water" is the ordinary extent of high tide based on site conditions such as presence and location of vegetation which has its distribution influenced by tidal action, and the location of the apparent high tide line.
- (2) "Normal Water Level" is the level of water bodies with less than six inches of lunar tide during periods of little or no wind. It can be determined by the presence of such physical and biological indicators as erosion escarpments, trash lines, water lines, marsh grasses, and barnacles.
- (3) Unless specifically limited, the term "structures" includes, but is not limited to, buildings, bridges, roads, piers wharves and docks (supported on piles), bulkheads, breakwaters, jetties, mooring pilings and buoys, pile clusters (dolphins), navigational aids, and elevated boat ramps.
- (4) "Mining" is defined as:
 - (a) the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of mineral, ores, or other solid matter;
 - (b) any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from their original Location; or
 - (c) the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use.

This definition applies regardless of whether the mining activity is for a commercial or noncommercial purpose, and regardless of the size of the affected area. Activities such as vibracoring, box coring, surface grab sampling, and other drilling and sampling for geotechnical testing, mineral resource investigations, or geological research are not considered mining. Excavation of mineral resources associated with the construction or maintenance of an approved navigation project in accordance with 15A NCAC 7B .0200 of this Chapter is not considered mining.

- (5) "Wind Energy Facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of three megawatts or more of energy.

History Note: Authority G.S. 113A-102; 113A-107; Eff. June 1, 1995; Amended Eff. February 1, 2011; August 1, 1998; October 1, 1996; Readopted Eff. July 1, 2020.

15A NCAC 07H .0201 ESTUARINE AND OCEAN SYSTEM CATEGORIES

Included within the estuarine and ocean system are the following AEC categories:

- (a) estuarine waters;
- (b) coastal wetlands;
- (c) public trust areas; and
- (d) estuarine and public trust shorelines.

Each of the AECs is either geographically within the estuary or, because of its location and nature, may affect the estuarine and ocean system.

History Note: Authority G.S. 113A-113(b)(1); 113A-113(b)(2); 113A-113(b)(5); 113A-113(b)(6)b; 113A-124; Eff. September 9, 1977; Amended Eff. August 1, 2000; August 1, 1998; Readopted Eff. July 1, 2020.

15A NCAC 07H .0203 MANAGEMENT OBJECTIVE OF THE ESTUARINE AND OCEAN SYSTEM

It is the objective of the Coastal Resources Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values and to ensure that development occurring within these AECs is compatible with natural characteristics so as to minimize the likelihood of significant loss of private property and public resources. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

History Note: Authority G.S. 113A-102(b)(1); 113A-102(b)(4); 113A-107(a); 113A-107(b); 113A-124; Eff. September 9, 1977; Amended Eff. August 1, 2000; October 1, 1993; September 1, 1985; Readopted Eff. July 1, 2020.

15A NCAC 07H .0205 COASTAL WETLANDS

(a) Definition. "Coastal Wetlands" are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, that reach the marshland areas through natural or artificial watercourses, provided this does not include hurricane or tropical storm tides. Regular or occasional flooding shall be established through field indicators, including the observation of tidal water on the site, changes in elevation, presence of periwinkle (*Littoraria* spp.), presence of crab burrows, staining, or wrack lines. Coastal wetlands may contain one or more of the following marsh plant species:

- (1) Cord Grass (*Spartina alterniflora*);
- (2) Black Needlerush (*Juncus roemerianus*);
- (3) Glasswort (*Salicornia* spp.);
- (4) Salt Grass (*Distichlis spicata*);
- (5) Sea Lavender (*Limonium* spp.);
- (6) Bulrush (*Scirpus* spp.);
- (7) Saw Grass (*Cladium jamaicense*);
- (8) Cat-tail (*Typha* spp.);
- (9) Salt Meadow Grass (*Spartina patens*); or
- (10) Salt Reed Grass (*Spartina cynosuroides*).

The coastal wetlands AEC includes any contiguous lands designated by the Secretary of DEQ pursuant to G.S. 113-230(a).

(b) Significance. The unique productivity of the estuarine and ocean system is supported by detritus (decayed plant material) and nutrients that are exported from the coastal wetlands. Without the wetlands, the high productivity levels and complex food chains typically found in the estuaries could not be maintained. Additionally, coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

(c) Management Objective. It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource necessary to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. First priority of use shall be allocated to the conservation of existing coastal wetlands. Secondary priority of coastal wetland use shall be given to those types of development activities that require water access and cannot function elsewhere.

Unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways, and factories. Acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law, G.S. 113-229, or applicable local, state, and federal laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

(e) Alteration of Coastal Wetlands. Alteration of coastal wetlands includes mowing or cutting of coastal wetlands vegetation whether by mechanized equipment or manual means. Alteration of coastal wetlands by federal or state resource management agencies as a part of planned resource management activities is exempt from the requirements of this Paragraph. Alteration of coastal wetlands shall be governed according to the following provisions:

- (1) Alteration of coastal wetlands shall be exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
 - (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;
 - (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;
 - (C) Alteration of the substrate is not allowed;
 - (D) All cuttings or clippings shall remain in place as they fall;
 - (E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on waterfront lots without a pier access; and
 - (F) Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility easements.
- (2) Coastal wetland alteration not meeting the exemption criteria of this Rule shall require a CAMA permit. CAMA permit applications for coastal wetland alterations are subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have a significant adverse impact on the habitat or fisheries resources.

History Note: Authority G.S. 113A-107; 113A-113(b)(1); 113A-124; Eff. September 9, 1977; Amended Eff. September 1, 2016; November 1, 2009; August 1, 1998; October 1, 1993; May 1, 1990; January 24, 1978; Redopted Eff. July 1, 2020.

15A NCAC 07H .0206 ESTUARINE WATERS

(a) Definition. "Estuarine Waters" are defined in G.S. 113A-113(b)(2) to include all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters. The boundaries between inland and coastal fishing waters are set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources and in the most current revision of the North Carolina Marine Fisheries Regulations for Coastal Waters, codified at 15A NCAC 3Q .0200.

(b) Significance. Estuarine waters are the dominant component and bonding element of the entire estuarine and ocean system, integrating aquatic influences from both the land and the sea. Estuaries are among the most productive natural environments of North Carolina. They support the valuable commercial and sports fisheries of the coastal area which are comprised of estuarine dependent species such as menhaden, flounder, shrimp, crabs, and oysters. These species must spend all or some part of their life cycle within the estuarine waters to mature and reproduce. Of the 10 leading species in the commercial catch, all but one are dependent on the estuary.

This high productivity associated with the estuary results from its unique circulation patterns caused by tidal energy, fresh water flow, and shallow depth; nutrient trapping mechanisms; and protection to the many organisms. The circulation of estuarine waters transports nutrients, propels plankton, spreads seed stages of fish and shellfish, flushes wastes from animal and plant life, cleanses the system of pollutants, controls salinity, shifts sediments, and mixes the water to create a multitude of habitats. Some important features of the estuary include mud and sand flats, eel grass beds, salt marshes, submerged vegetation flats, clam and oyster beds, and important nursery areas.

Secondary benefits include the stimulation of the coastal economy from the spin off operations required to service commercial and sports fisheries, waterfowl hunting, marinas, boatyards, repairs and supplies, processing operations, and tourist related industries. In addition, there is considerable nonmonetary value associated with aesthetics, recreation, and education.

(c) Management Objective. To conserve and manage the important features of estuarine waters so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing estuarine waters so as to maximize their benefits to man and the estuarine and ocean system.

(d) Use Standards. Suitable land and water uses shall be those consistent with the management objectives in this Rule. Highest priority of use shall be allocated to the conservation of estuarine waters and their vital components. Second priority of estuarine waters use shall be given to those types of development activities that require water access and use which cannot function elsewhere such as simple access channels; structures to prevent erosion; navigation channels; boat docks, marinas, piers, wharfs, and mooring pilings.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(2); 113A-124; Eff. September 9, 1977; Amended Eff. August 1, 1998; October 1, 1993; November 1, 1991; May 1, 1990; October 1, 1988; Readopted Eff. July 1, 2020.

15A NCAC 07H .0207 PUBLIC TRUST AREAS

(a) Definition. "Public trust areas" are all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the normal high water or normal water level; all navigable natural bodies of water and lands thereunder to the normal high water or normal water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water containing public fishing resources or other public resources which are accessible to the public by navigation from bodies of water in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means. In determining whether the public has acquired rights in artificially created bodies of water, the following factors shall be considered:

- (1) the use of the body of water by the public;
- (2) the length of time the public has used the area;
- (3) the value of public resources in the body of water;
- (4) whether the public resources in the body of water are mobile to the extent that they can move into natural bodies of water;
- (5) whether the creation of the artificial body of water required permission from the state; and
- (6) the value of the body of water to the public for navigation from one public area to another public area.

(b) Significance. The public has rights in these areas, including navigation and recreation. In addition, these areas support commercial and sports fisheries, have aesthetic value, and are important resources for economic development.

(c) Management Objective. To protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. In the absence of overriding public benefit, any use which jeopardizes the capability of the waters to be used by the public for navigation or other public trust rights which the public may be found to have in these areas shall not be allowed. The development of navigational channels or drainage ditches, the use of bulkheads to prevent erosion, and the building of piers, wharfs, or marinas are examples of uses that may be acceptable within public trust areas, provided that such uses shall not be detrimental to the public trust rights and the biological and physical functions of the estuary. Projects which would directly or indirectly block or impair existing navigation channels, increase shoreline erosion, deposit spoils below normal high water, cause adverse water circulation patterns, violate water quality standards, or cause degradation of

shellfish waters are considered incompatible with the management policies of public trust areas. In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(5); 113A-124; Eff. September 9, 1977; Amended Eff. February 1, 2006; October 1, 1993; Readopted Eff. July 1, 2020.

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

- (1) Uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;
- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:
 - (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC (Rule .0203 of this subchapter) and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas;
 - (B) Development shall comply with State and federal water and air quality rules, statutes and regulations;
 - (C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Cultural resources;
 - (D) Development shall not increase siltation;
 - (E) Development shall not create stagnant water bodies;
 - (F) Development shall be timed to avoid significant adverse impacts on life

- cycles of estuarine and ocean resources; and
- (G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.
- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits outweigh the long range adverse effects of the project, that there is no reasonable alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:
- (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (B) restore the affected environment; or
- (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC);
- (5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values; and
- (6) Beds of "submerged aquatic vegetation" (SAV) are defined as those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).
- (b) Specific Use Standards
- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:
- (A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;
- (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
- (C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);
- (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;
- (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland;
- (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;

- (G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;
 - (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and
 - (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:
 - (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
 - (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
 - (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
 - (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.
- (2) Hydraulic Dredging
- (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;
 - (B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment if the material is suitable in accordance with the rules in this Subchapter, except as provided in Part (G) of this Subparagraph;
 - (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
 - (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level.
 - (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged;
 - (F) A water control structure shall be installed at the intake end of the effluent pipe.
 - (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule; and
 - (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- (3) Drainage Ditches
- (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary;
 - (B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible.

- Non-wetland areas include relic disposal sites;
- (C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies; and
 - (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates and retention structures are examples of design alternatives that may be used to minimize sediment introduction.
- (4) Nonagricultural Drainage
- (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water;
 - (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth; and
 - (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.
- (5) Marinas. "Marinas" are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall comply with the standards of this Subparagraph for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:
- (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the MFC, or wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
 - (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;
 - (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;
 - (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
 - (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
 - (B) Marinas that require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule;
 - (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible;
 - (D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet

- allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces;
- (E) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards (15A NCAC 02B .0200) adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;
 - (F) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;
 - (G) Marina basins shall be designed to promote flushing through the following design criteria:
 - (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
 - (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation;
 - (H) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters;
 - (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes mooring sites (permanent or temporary); speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted;
 - (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality;
 - (K) Marinas that require dredging shall provide areas in accordance with Part (b)(1)(B) of this Rule to accommodate disposal needs for future maintenance dredging, including the ability to remove the dredged material from the marina site;
 - (L) Marina design shall comply with all applicable EMC requirements (15A NCAC 02B .0200) for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);
 - (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;
 - (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;
 - (O) All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule;
 - (P) All applications for marinas shall be reviewed by the Division of Coastal Management to determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review shall also consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10); and

- (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.
- (6) Piers and Docking Facilities.
- (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;
- (B) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;
- (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;
- (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Size restrictions do not apply to marinas;
- (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;
- (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;
- (G) Pier and docking facility length shall be limited by:
- (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use. This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public;
 - (ii) not extending into the channel portion of the water body; and
 - (iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.
- (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward

- (I) edge of any coastal wetland vegetation that borders the water body; Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and
- (J) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.
- (7) Bulkheads
 - (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the location of normal high water or normal water level;
- (B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant adverse impacts to the resources;
- (C) Bulkhead backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead;
- (D) Bulkheads shall be permitted below normal high water or normal water level only when the following standards are met:
 - (i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;
 - (ii) the bulkhead alignment extends no further below normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;
 - (iii) the bulkhead alignment will not adversely impact public trust rights or the property of adjacent riparian owners;
 - (iv) the need for a bulkhead below normal high water or normal water level is documented by the Division of Coastal Management; and
 - (v) the property to be bulkheaded is in a non-oceanfront area.
- (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.
- (8) Beach Nourishment
 - (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public,

- commercial, and private use consistent with the following:
 - (i) Beaches may be created or maintained in areas where they have historically been found due to natural processes;
 - (ii) Material placed in the water and along the shoreline shall be clean sand and free from pollutants. Grain size shall be equal to that found naturally at the site;
 - (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds;
 - (iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by MFC;
 - (v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the Division of Marine Fisheries during the permit review; and
 - (vi) Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins.
- (B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control;
- (C) Material from dredging projects may be used for beach nourishment if:
 - (i) it is first handled in a manner consistent with dredged material disposal as set forth in this Rule;
 - (ii) it is allowed to dry prior to being placed on the beach; and
 - (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
- (D) Beach construction shall comply with State and federal water quality standards;
- (E) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any adverse impacts of the original work; and
- (F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time.
- (9) Groins
 - (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process;
 - (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin;
 - (C) Groins shall pose no threat to navigation;
 - (D) The height of groins shall not exceed one foot above normal high water or normal water level;
 - (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.
 - (F) "L" and "T" sections shall not be allowed at the end of groins; and
 - (G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant and of a size sufficient to prevent its movement from the site by wave and current action.
- (10) "Freestanding Moorings".
 - (A) A "freestanding mooring" is any means to attach a ship, boat, vessel,

- floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling as long as the piling is not associated with an existing or proposed pier, dock, or boathouse;
- (B) Freestanding moorings shall be permitted only:
- (i) to riparian property owners within their riparian corridors; or
- (ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan.
- (C) All mooring fields shall provide an area for access to any mooring(s) and other land based operations that shall include wastewater pumpout, trash disposal and vehicle parking;
- (D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;
- (E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;
- (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted;
- (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC standards;
- (H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff;
- (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal;
- (J) Freestanding moorings associated with commercial shipping, public service or temporary construction or salvage operations may be permitted without a public sponsor;
- (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access;
- (L) Freestanding moorings shall not be established in submerged cable or pipe crossing areas or in a manner that interferes with the operations of an access through any bridge;
- (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s); and
- (N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.
- (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for

estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:

- (A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;
 - (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;
 - (C) the filling will not adversely impact any designated primary nursery area, shellfish bed, submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right or public trust usage; and
 - (D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.
- (12) "Submerged Lands Mining"
- (A) Development Standards. Mining of submerged lands shall meet all the following standards:
 - (i) The biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction, shall be evaluated for significant adverse impacts and a protection strategy for these natural functions and values provided with the State approval request or permit application;
 - (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
 - (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this Subchapter; shipwrecks identified by the Department of Cultural Resources; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);

- (iv) Mining activities shall not be conducted on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. "High relief" is defined for this Part as relief greater than or equal to one-half meter per five meters of horizontal distance;
 - (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources; and
 - (vi) Mining activities shall not affect potable groundwater supplies, wildlife, freshwater, estuarine, or marine fisheries.
- (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant amending the mining proposal to include measures necessary to ensure compliance with the provisions of the Mining Act and the rules for development set out in this Subchapter. Permit conditions shall also include:
- (i) Monitoring by the applicant to ensure compliance with all applicable development standards; and
 - (ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall

- submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.
 - (C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in this Rule;
 - (D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700; and
 - (E) Public Benefits Exception. Projects that conflict with the standards in this Subparagraph, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.
- (13) "Wind Energy Facilities"
- (A) An applicant for the development and operation of a wind energy facility shall provide:
 - (i) an evaluation of the proposed noise impacts of the turbines to be associated with the proposed facility;
 - (ii) an evaluation of shadow flicker impacts for the turbines to be associated with the proposed facility;
 - (iii) an evaluation of avian and bat impacts of the proposed facility;
 - (iv) an evaluation of viewshed impacts of the proposed facility;
 - (v) an evaluation of potential user conflicts associated with development in the proposed project area; and
 - (vi) a plan regarding the action to be taken upon decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs, time frame of removal and the proposed site condition after decommissioning.
 - (B) Development Standards. Development of wind energy facilities shall meet the following standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this Rule:
 - (i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
 - (ii) Development shall not be sited on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
 - (iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Cultural Resources and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);
 - (iv) Development activities shall be timed to avoid significant adverse impacts on the life cycles of estuarine or ocean resources, or wildlife;
 - (v) Development or operation of a wind energy facility shall not jeopardize the use of the surrounding waters for navigation or for other public trust rights in public trust areas or estuarine waters; and
 - (vi) Development or operation of a wind energy facility shall not interfere with air navigation routes, air traffic control areas, military training routes or special use airspace and shall comply with standards adopted by the Federal Aviation Administration and codified under 14 CFR Part 77.13.
 - (C) Permit Conditions. Permits for wind energy facilities may be conditioned

on the applicant amending the proposal to include measures necessary to ensure compliance with the standards for development set out in this Rule. Permit conditions may include monitoring to ensure compliance with all applicable development standards; and

- (D) **Public Benefits Exception.** Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 9, 1977; Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992; RRC Objection due to ambiguity Eff. March 21, 1996; Amended Eff. August 1, 2012(see S.L. 2012-143, s.1.(f)); February 1, 2011; August 1, 2010; June 1, 2010; August 1, 1998; May 1, 1996; Readopted Eff. July 1, 2020.

15A NCAC 07H .0209 COASTAL SHORELINES

(a) **Description.** The Coastal Shorelines category includes estuarine shorelines and public trust shorelines.

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

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

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

(d) **Use Standards.** Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to avoid or minimize adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. Development shall comply with the following standards:

- (1) All development projects, proposals, and designs shall preserve natural barriers to erosion, including peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.
- (2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to service the primary purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation shall be permitted if impervious areas are not increased and the applicant designs the project to comply with the rule to the maximum extent feasible.

- (3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:
 - (A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water that is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.
 - (B) No development project proposal or design shall propose an angle for graded slopes or fill that is greater than an angle that can be retained by vegetative cover or other erosion-control devices or structures.
 - (C) All development projects, proposals, and designs that involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; unless the project involves clearing land for the purpose of forming a reservoir later to be inundated.
- (4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include development that would directly or indirectly impair water quality increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.
- (5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
- (6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use.
- (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Natural and Cultural Resources.
- (8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the use of the accessways.
- (9) Within the AECs for shorelines contiguous to waters classified as ORW by the EMC, no CAMA permit shall be approved for any project that would be inconsistent with rules adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.
- (10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:
 - (A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);
 - (C) Post- or pile-supported fences;
 - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
 - (E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
 - (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
 - (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;
 - (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased;
 - (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development shall be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
 - (i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access

- to the residence and to allow installation or connection of utilities, such as water and sewer; and
 - (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in 15A NCAC 07J .0201 and .0211; and
- (J) Where application of the buffer requirement set out in Subparagraph (d)(10) of this Rule would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development shall be permitted within the buffer if all the following criteria are met:
- (i) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary
 - (iii) Placement of the residential structure and pervious decking shall be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
 - (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces shall be allowed within the buffer; and
 - (v) The lots shall not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Marine Fisheries of the Department of Environmental Quality.
 - (e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the EMC has adopted rules that contain buffer standards.
 - (f) Specific Use Standards for ORW Coastal Shorelines.
 - (1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:

- (A) provide a buffer zone of at least 30 feet from the normal high water line or normal water line; and
 - (B) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.
- (2) Single-family residential lots that would not be buildable under the low-density standards defined in Subparagraph (f)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.
- (g) Urban Waterfronts.
- (1) Definition. Urban Waterfronts are waterfront areas, not adjacent to ORW, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met:
 - (A) the area lies wholly within the corporate limits of a municipality; and
 - (B) the area has a central business district or similar commercial zoning classification where there are mixed land uses, and urban level services, such as water, sewer, streets, solid waste management, roads, police and fire protection, or in an area with an industrial or similar zoning classification adjacent to a central business district.
 - (2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.
 - (3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.
 - (4) Use Standards:
 - (A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule shall not apply to development within Urban Waterfronts that meets the following standards:
 - (i) The development shall be consistent with the locally adopted land use plan;
 - (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation shall be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and
 - (iii) The development shall meet all state stormwater management requirements as required by the EMC;
 - (B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands shall be allowed only within Urban Waterfronts as set out below.
 - (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for commercial non-water dependent purposes. Commercial, non-water dependent uses shall be limited to restaurants and retail services. Residential uses, lodging and new parking areas shall be prohibited.

- (ii) For the purposes of this Rule, existing enclosed structures may be replaced or expanded vertically provided that vertical expansion does not exceed the original footprint of the structure, is limited to one additional story over the life of the structure, and is consistent with local requirements or limitations.
- (iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and shall meet the following criteria:
 - (I) shall provide for enhanced public access to the shoreline;
 - (II) may be roofed, but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind;
 - (III) shall require no filling of coastal wetlands, estuarine waters or public trust areas;
 - (IV) shall not extend more than 20 feet waterward of the normal high water level or normal water level;
 - (V) shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
 - (VI) shall have no more than six feet of any dimension extending over coastal wetlands;
 - (VII) shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any

part of the structure and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;

(VIII) shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;

(IX) shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there shall be no alternative that

- would avoid wetlands. Significant adverse impacts include the development that would impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;
- (X) shall not degrade waters classified as SA or High Quality Waters or ORW as defined by the EMC;
- (XI) shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and
- (XII) shall not pose a threat to navigation.

History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 1, 1977; Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990; October 1, 1989; Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142); Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494); Amended Eff. April 1, 2019; March 1, 2010; April 1, 2008; August 1, 2002; Readopted Eff. July 1, 2020.

15A NCAC 10A .1601 LICENSE FEES.

- (a) License fees established by the Commission in this Rule shall be subject to the requirements of G.S. 113-270.1B(e).
- (b) The following fees shall apply to combination hunting and inland fishing licenses issued by the Commission, as set forth in G.S. 113-270.1C:
 - (1) Resident Annual Combination Hunting and Inland Fishing License - \$35.00.

- (2) Resident Disabled Veteran Lifetime Combination Hunting and Inland Fishing License - \$11.00.
- (3) Resident Totally Disabled Lifetime Combination Hunting and Inland Fishing License - \$11.00.
- (c) The following fees shall apply to sportsman licenses issued by the Commission, as set forth in G.S. 113-270.1D:
 - (1) Annual Sportsman License - \$53.00.
 - (2) Infant Lifetime Sportsman License - \$212.00.
 - (3) Youth Lifetime Sportsman License - \$371.00.
 - (4) Adult Resident Lifetime Sportsman License - \$530.00.
 - (5) Nonresident Lifetime Sportsman License - \$1,272.00.
 - (6) Age 70 Resident Lifetime Sportsman License - \$16.00.
 - (7) Resident Disabled Veteran Lifetime Sportsman License - \$106.00.
 - (8) Resident Totally Disabled Lifetime Sportsman License - \$106.00.
- (d) The following fees shall apply to hunting licenses issued by the Commission, as set forth in G.S. 113-270.2:
 - (1) Resident State Hunting License - \$25.00.
 - (2) Lifetime Resident Comprehensive Hunting License - \$265.00.
 - (3) Controlled Hunting Preserve Hunting License - \$22.00.
 - (4) Resident Annual Comprehensive Hunting License - \$39.00.
 - (5) Nonresident State Hunting Licenses:
 - (A) Season License - \$100.00.
 - (B) Ten-Day License - \$80.00.
 - (6) Falconry Hunting License - \$25.00.
- (e) The following fees shall apply to special activity licenses issued by the Commission, as set forth in G.S. 113-270.3:
 - (1) Resident Big Game Hunting License - \$14.00.
 - (2) Nonresident Bear Hunting License - \$239.00.
 - (3) Bear Management Stamp - \$11.00.
 - (4) Nonresident Big Game Hunting License:
 - (A) Season License - \$100.00.
 - (B) Ten-Day License - \$80.00.
 - (5) Bonus Antlerless Deer License - \$11.00.
 - (6) Game Land License - \$16.00.
 - (7) Falconry License - \$11.00.
 - (8) Migratory Waterfowl Hunting License - \$14.00.
 - (9) Resident American Alligator License - \$250.00.
 - (10) Nonresident American Alligator License - \$500.00.
 - (11) Resident Elk License - \$500.00.
 - (12) Nonresident Elk License - \$1,000.00.
- (f) The following fees shall apply to hunting and fishing guide licenses issued by the Commission, as set forth in G.S. 113-270.4:
 - (1) Resident Hunting and Fishing Guide License - \$16.00.
 - (2) Nonresident Hunting and Fishing Guide License - \$159.00.

(g) The following fees shall apply to trapping licenses issued by the Commission, as set forth in G.S. 113-270.5:

- (1) Resident State Trapping License - \$32.00.
- (2) Resident Lifetime Trapping License - \$300.00.
- (3) Nonresident State Trapping License - \$133.00.

(h) The following fees shall apply to hook-and-line licenses in inland and joint fishing waters issued by the Commission, as set forth in G.S. 113-271:

- (1) Resident State Inland Fishing License - \$25.00.
- (2) Lifetime Resident Comprehensive Inland Fishing License - \$265.00.
- (3) Nonresident State Inland Fishing License - \$45.00.
- (4) Short-Term Inland Fishing License:
 - (A) Resident 10-day Inland Fishing License - \$9.00.
 - (B) Nonresident 10-day Inland Fishing License - \$23.00.
- (5) Age 70 Resident Lifetime Inland Fishing License - \$16.00.
- (6) Resident Disabled Veteran Lifetime Inland Fishing License - \$11.00.
- (7) Resident Totally Disabled Lifetime Inland Fishing License - \$11.00.
- (8) Special Landholder and Guest Fishing License - \$106.00.
- (9) Mountain Heritage Trout Waters 3-Day Fishing License - \$8.00.

(i) The following fees shall apply to special device licenses issued by the Commission, as set forth in G.S. 113-272.2:

- (1) Resident Special Device License - \$80.00.
- (2) Nonresident Special Device License - \$530.00.

(j) The fee for a collection license issued by the Commission, as set forth in G.S. 113-272.4 shall be \$10.00.

(k) The following fees shall apply to captivity licenses issued by the Commission, as set forth in G.S. 113-272.5:

- (1) Captivity License for Holding - \$50.00.
- (2) Captivity License for Rehabilitation - \$10.00.

(l) The following fees shall apply to dealer licenses issued by the Commission as set forth in G.S. 113-273:

- (1) Resident Fur-dealer License - \$64.00.
- (2) Nonresident Fur-dealer License - \$318.00.
- (3) Fur-dealer Station License - \$128.00.
- (4) Controlled Hunting Preserve Operator License - \$100.00.
- (5) Game Bird Propagation License - \$10.00.
- (6) Furbearer Propagation License - \$27.00.
- (7) Taxidermy License - \$50.00.
- (8) Taxidermy Cervid Certification - \$5.00.
- (9) Wildlife Control Agent License - \$50.00.
- (10) Alligator Control Agent Certification - \$25.00.

(m) The following fees shall apply to permits issued by the Commission, as set forth in G.S. 113-274:

- (1) Possession Permit - \$10.00.
- (2) Exportation or Importation Permit - \$10.00.
- (3) Trophy Wildlife Sale Permit - \$10.00.
- (4) Endangered Species Permit - \$10.00.
- (5) Field Trial Permit - \$10.00.

(n) Unified hunting and fishing licenses issued by the Commission, as set forth in G.S. 113-351:

- (1) Annual Resident Unified Sportsman/Coastal Recreational Fishing License - \$69.00.
- (2) Annual Resident Unified Inland/Coastal Recreational Fishing License - \$41.00.
- (3) Lifetime Unified Sportsman/Coastal Recreational Fishing Licenses:
 - (A) Infant Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$292.00.
 - (B) Youth Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$477.00.
 - (C) Resident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$716.00.
 - (D) Nonresident Adult Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$1,643.00.
 - (E) Resident Age 70 Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$32.00.
 - (F) Resident Disabled Veteran Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$117.00.
 - (G) Resident Totally Disabled Lifetime Unified Sportsman/Coastal Recreational Fishing License - \$117.00.
- (4) Resident Lifetime Unified Inland/Coastal Recreational Fishing License - \$477.00.

(o) The following fees shall apply to Coastal Recreational Fishing Licenses issued by the Commission, as set forth in G.S. 113-174.2:

- (1) Annual Resident Coastal Recreational Fishing License - \$16.00.
- (2) Annual Nonresident Coastal Recreational Fishing License - \$32.00.
- (3) Ten-Day Resident Coastal Recreational Fishing License - \$6.00.
- (4) Ten-Day Nonresident Coastal Recreational Fishing License - \$11.00.
- (5) Infant Lifetime Coastal Recreational Fishing License - \$106.00.
- (6) Youth Lifetime Coastal Recreational Fishing License - \$159.00.
- (7) Resident Adult Lifetime Coastal Recreational Fishing License - \$265.00.
- (8) Nonresident Adult Lifetime Coastal Recreational Fishing License - \$530.00.
- (9) Resident Age 70 Lifetime Coastal Recreational Fishing License - \$16.00.
- (10) Resident Disabled Veteran Coastal Recreational Fishing License - \$11.00.
- (11) Resident Totally Disabled Coastal Recreational Fishing License - \$11.00.

History Note: Authority G.S. 113-270.1B(e);
Temporary Adoption Eff. January 1, 2020;
Eff. July 1, 2020.

15A NCAC 13A .0101 GENERAL

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

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

When used in any of the federal regulations incorporated by reference throughout this Subchapter, except where the context requires references to remain without substitution including with regard to forms, publications, and regulations concerning international shipments, variances from land disposal restrictions, and other program areas over which the federal government retains sole authority: "United States" shall mean the State of North Carolina; "Environmental Protection Agency," "EPA," and "Agency" shall mean the Department of Environmental Quality; and "Administrator," "Regional Administrator," "Assistant Administrator," and "Director" shall mean the Secretary of the Department of Environmental Quality. The North Carolina Solid Waste Management Act and other applicable North Carolina General Statutes set forth in G.S. 130A shall be substituted for references to "the Solid Waste Disposal Act," "the Resource Conservation and Recovery Act," and "RCRA" where required by context.

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

(d) 40 CFR 260.1 through 260.5 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.

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

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

- (1) Persons interested in receiving rule-making notices concerning the North Carolina Hazardous Waste Management Rules shall submit a written request to the Hazardous Waste Section, 1646 Mail Service Center, Raleigh, N.C. 27699-1646 or send an email request to DENR.DWM_Rules@ncdenr.gov. Upon receipt of each request, individuals shall be placed on a list to receive notices.
- (2) Material incorporated by reference in the Federal Register may be obtained electronically free of charge from the United States Environmental Protection Agency website at <http://www.epa.gov/laws-regulations/regulations>.

- (3) All material is available for inspection at the Department of Environmental Quality, Hazardous Waste Section, 217 West Jones Street, Raleigh, NC and at <https://deq.nc.gov/about/divisions/waste-management/hw/rules>.

History Note: Authority G.S. 130A-294(c);
Eff. September 1, 1979;
Amended Eff. June 1, 1989; June 1, 1988; August 1, 1987; May 1, 1987;
Transferred and Recodified from 10 NCAC 10F .0001 Eff. April 4, 1990;
Amended Eff. October 1, 1993; April 1, 1993; October 1, 1992; December 1, 1991;
Recodified from 15A NCAC 13A .0001 Eff. December 20, 1996;
Amended Eff. July 1, 2016; August 1, 2004; August 1, 2000; August 1, 1998; August 1, 1997;
Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018);
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. June 24, 2017;
Amended Eff. July 1, 2020; March 1, 2018.

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

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

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

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

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

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

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

(g) 40 CFR 266.500 through 266.510 (Subpart P), "Hazardous Waste Pharmaceuticals" are incorporated by reference including subsequent amendments and editions.

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

History Note: Authority G.S. 130A-294(c);
 Eff. July 1, 1985;
 Amended Eff. June 1, 1990; June 1, 1988; February 1, 1988;
 December 1, 1987;
 Transferred and Recodified from 10 NCAC 10F .0039 Eff. April 4, 1990;
 Recodified from 15A NCAC 13A .0012 Eff. August 30, 1990;
 Amended Eff. January 1, 1995; April 1, 1993; August 1, 1991;
 October 1, 1990;
 Recodified from 15A NCAC 13A .0011 Eff. December 20, 1996;
 Amended Eff. April 1, 2006; April 1, 2003; April 1, 1999; August 1, 1998;
 Temporary Amendment Eff. May 30, 2017 (replaced by the rule effective March 1, 2018);
 Readopted Eff. March 1, 2018;
 Amended Eff. July 1, 2020.

15A NCAC 13B .0546 FINANCIAL ASSURANCE REQUIREMENTS FOR C&DLF FACILITIES AND UNITS

- (a) Owners and operators of construction and demolition landfill facilities permitted by the Division in accordance with this Subchapter shall comply with the financial responsibility requirements set forth in G.S. 130A-295.2.
- (b) Owners and operators of construction and demolition landfill facilities that received waste on or after June 30, 2008 and are permitted by the Division in accordance with this Subchapter shall comply with the financial assurance requirements set forth in Section .1800 of this Subchapter.

History Note: Authority G.S. 130A-294; 130A-295.2(b);
 Eff. January 1, 2007;
 Readopted Eff. July 1, 2020.

15A NCAC 13B .1105 PERMIT REQUIRED

- (a) No person, other than a person exempted by G.S. 130A-309.57(d), shall establish, operate, or maintain, or allow to be established, operated, or maintained upon land owned, leased, or otherwise controlled by that person, a scrap tire collection site or scrap tire disposal site unless a permit for the site has been obtained from the Division.
- (b) Applications for permits submitted in accordance with Rule .1106 of this Section shall be forwarded to the Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh, North Carolina 27699-1646.
- (c) A permit is issued to the permit applicant for a particular site and shall not be transferable.
- (d) Trailers and covered roll-off containers used for the collection of scrap tires are exempt from the requirements of Rule .1106(c)(1), (c)(2), (c)(4), and (c)(6) of this Section.
- (e) Scrap tire collection sites permitted by the Division in accordance with this Subchapter that are not operated by local governments shall comply with the financial responsibility requirements set forth in G.S. 130A-295.2 and the financial assurance requirements set forth in Section .1800 of this Subchapter. A demonstration of financial qualifications for operation of a site shall include documentation that the facility has liability coverage for potential property damage and bodily injury to third parties that may result from a fire occurring at the site.

History Note: Authority G.S. 130A-309.57;
 Eff. October 1, 1990;
 Readopted Eff. December 1, 2018;
 Amended Eff. July 1, 2020.

15A NCAC 13B .1111 FINANCIAL RESPONSIBILITY REQUIREMENTS

History Note: Authority G.S. 130A-294(b); 130A-309.27;
 Eff. October 1, 1990;
 Repealed Eff. July 1, 2020.

15A NCAC 13B .1628 FINANCIAL ASSURANCE REQUIREMENTS FOR MSWLF FACILITIES AND UNITS

- (a) Owners and operators of municipal solid waste landfill facilities permitted by the Division in accordance with this Subchapter shall comply with the financial responsibility requirements set forth in G.S. 130A-295.2.
- (b) Owners and operators of municipal solid waste landfill facilities that received waste on or after October 9, 1993 and are permitted by the Division in accordance with this Subchapter shall comply with the financial assurance requirements set forth in Section .1800 of this Subchapter.

History Note: Filed as a Temporary Rule Eff. November 9, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Authority G.S. 130A-294; 130A-295.2(b);
 Eff. April 9, 1994;
 Amended Eff. October 1, 1994;
 Readopted Eff. July 1, 2020.

SECTION .1800 - FINANCIAL ASSURANCE REQUIREMENTS FOR SOLID WASTE MANAGEMENT FACILITIES

15A NCAC 13B .1801 GENERAL REQUIREMENTS

- (a) Owners and operators of solid waste management facilities permitted by the Division in accordance with this Subchapter shall establish financial assurance as an environmental liability in accordance with this Section, with the exception of the following:
 - (1) municipal solid waste landfill facilities that stopped receiving waste before October 9, 1993;
 - (2) construction and demolition landfill facilities that stopped receiving waste before June 30, 2008;
 - (3) scrap tire collection sites and solid waste compost facilities that are owned and operated by local governments;
 - (4) solid waste management facilities that accept only yard waste, land clearing waste, or inert debris, unless the owners or operators have a "history of significant or repeated violations" as defined by G.S. 130A-295.3(c);
 - (5) septage management facilities permitted by the Division in accordance with Section .0800 of this Subchapter;

- (6) facility owners and operators that are State or federal government entities; and
- (7) Small Type III solid waste compost facilities as defined in Rule .1402 of this Subchapter.

(b) For the purposes of this Section, the term "sanitary landfill" shall include the following facilities unless the facility is exempt from establishing financial assurance pursuant to Paragraph (a) of this Rule:

- (1) industrial landfill facilities;
- (2) municipal solid waste landfill facilities;
- (3) construction and demolition landfill facilities; and
- (4) landfills for the exclusive disposal of scrap tires, also known as "tire monofills."

(c) Owners and operators required to place documents in the facility's operating record pursuant to this Section shall submit copies of the documents to the Division, except as provided for in Paragraph (d) of this Rule.

(d) Owners and operators of solid waste management facilities that are required to establish financial assurance in accordance with this Section shall use the mechanisms provided in Rule .1805 of this Section to provide funding for closure, post-closure care, a corrective action program, and potential assessment and corrective action. The instruments used for financial assurance mechanisms shall be submitted to the Division as original signed hard copies, and unless stated otherwise in Rule .1806 of this Section, the language of the mechanisms shall be identical to the mechanism templates provided in Rule .1806 of this Section.

(e) Owners and operators of solid waste management facilities that are required to establish financial assurance in accordance with this Section shall submit itemized cost estimates for closure activities in accordance with Rule .1802 of this Section.

(f) Owners and operators of sanitary landfills that are required to establish financial assurance in accordance with this Section shall submit itemized cost estimates for post-closure care activities in accordance with Rule .1803 of this Section.

(g) Owners and operators of solid waste management facilities that are required to undertake a corrective action program in accordance with the rules of this Subchapter shall submit itemized cost estimates for the corrective action program in accordance with Rule .1804 of this Section.

(h) Owners and operators of sanitary landfills permitted by the Division in accordance with Rule .0207 of this Subchapter shall annually submit the following information to the Division no less than 180 calendar days prior to the renewal date of the financial assurance mechanisms for the facility:

- (1) current description and size in acreage of any active portion of the facility that has closed since the previous financial assurance mechanism renewal; and
- (2) a description of the acreage proposed to remain active and proposed to be closed in the year following the upcoming financial assurance mechanism renewal.

(i) Financial assurance for potential assessment and corrective action shall be established in accordance with G.S. 130A-295.2(h) and (h1), and shall be increased for inflation annually, concurrently with cost estimates for closure, post-closure care, and corrective action programs in accordance with Rules

.1802(b)(1), .1803(b)(1), and .1804(b)(1) of this Section, respectively.

(j) When the owner and operator of a solid waste management facility is required to adjust a cost estimate or the amount of financial assurance for inflation in accordance with the rules of this Section, the adjustment for inflation shall be made by using the US Department of Commerce, Bureau of Economic Analysis Gross Domestic Product, implicit price deflator. The implicit price deflator that shall be used to adjust for inflation shall be published on the Division's website at <http://go.ncdenr.gov/fa> by January 30 of each year. Financial assurance mechanisms that renew in January shall use the previous year's implicit price deflator.

History Note: Authority G.S. 130A-294; 130A-295.2; Eff. July 1, 2020.

15A NCAC 13B .1802 FINANCIAL ASSURANCE COST ESTIMATE REQUIREMENTS FOR CLOSURE

(a) Owner and operators shall meet the following requirements for closure cost estimate calculations:

(1) Owners and operators of solid waste management facilities other than sanitary landfills that are required to establish financial assurance in accordance with this Section shall submit to the Division with the permit application an itemized cost estimate for financial assurance for closure of the facility. The closure cost estimate shall be adjusted in accordance with Subparagraphs (b)(1) and (b)(2) of this Rule. The closure cost estimate shall be calculated by multiplying the maximum tonnage of waste permitted to be stored on site by the cost per ton for a third party to remove the waste, transport it, and dispose of it at the nearest facility permitted by the Division to receive such waste. The calculations shall include estimates for all waste types that are permitted by the Division in accordance with this Subchapter to be stored on site.

(2) Owners and operators of sanitary landfills that are required to establish financial assurance in accordance with this Section shall submit to the Division with the permit application an itemized cost estimate of the cost of hiring a third party to close the sanitary landfill in accordance with the facility's closure plan required in accordance with this Subchapter. The closure cost estimate shall be adjusted in accordance with Paragraph (b) of this Rule. A copy of the closure cost estimate shall be placed in the closure plan and the facility's operating record.

(b) Owners and operators shall meet with the following requirements for adjustments to the cost estimate and the amount of financial assurance:

(1) During the active life of the facility, the owner and operator shall annually adjust the closure

cost estimate and the amount of financial assurance for inflation. Owners and operators using the local government financial test or capital reserve fund as set forth in Rule .1805(e) of this Section shall submit the adjusted financial assurance mechanism to the Division prior to December 31, after the end of the local government's fiscal year. Owners and operators using the corporate financial test or corporate guarantee as set forth in Rule .1805(e) of this Section shall submit the adjusted financial assurance mechanism to the Division no more than 90 calendar days following the close of the corporate entity's fiscal year that is stated in the mechanism. Owners and operators using a financial assurance mechanism set forth in Rule .1805(e) of this Section other than the local government financial test, capital reserve fund, corporate financial test, or corporate guarantee shall submit the adjusted financial assurance mechanism to the Division no less than 60 calendar days before the anniversary of the initial date that the financial assurance mechanism was established.

- (2) The owner and operator shall increase the closure cost estimate and the amount of financial assurance and submit the revised closure cost estimate to the Division if changes to the closure plan or facility conditions increase the maximum cost of closure at any time during the remaining active life of the facility.
- (3) The owner and operator may request to reduce the closure cost estimate and the amount of financial assurance if the cost estimate exceeds the maximum cost of closure at any time during the active life of the facility by submitting a revised closure cost estimate and a written justification for the reduction to the Division for approval no less than 180 calendar days prior to the anniversary of the date the financial assurance mechanism was established. No reduction of the closure cost estimate or the amount of financial assurance shall be allowed without written approval from the Division. The reduction justification and the Division approval shall be placed in the facility's operating record. In making the determination on approval of the request, the Division shall consider the following factors for the facility:
 - (A) changes to operations, closure activities, or other circumstances;
 - (B) changes to third party closure costs;
 - (C) compliance status of the owner and operator; and
 - (D) environmental monitoring data.

(c) Owners and operators of solid waste management facilities that are required to establish financial assurance in accordance with this Section shall establish financial assurance for closure of

the facility in compliance with G.S. 130A-295.2(f). Owners and operators of sanitary landfills shall provide continuous coverage for closure until released from financial assurance requirements for closure by demonstrating compliance with the facility's permit and closure plan, with the closure letter issued to the facility by the Division, and with Rule .0543 of this Subchapter for construction and demolition landfill facilities, Rule .1627(c) of this Subchapter for municipal solid waste landfill facilities, and Rule .0510 of this Subchapter for other sanitary landfills. Owners and operators of solid waste management facilities other than sanitary landfills shall provide continuous coverage for closure until released from financial assurance requirements for closure by demonstrating that the closure requirements for the respective facility type set forth in this Subchapter and the requirements in the facility's permit and closure plan have been met.

(d) Maintenance of financial assurance in the amounts required by this Rule does not limit the responsibility of owners or operators for the full cost of site closure and clean up, the expenses of any on-site or off-site environmental restoration necessitated by activities at the facility, and liability for all damages to third parties or private or public properties caused by the establishment and operation of the facility.

History Note: Authority G.S. 130A-294; 130A-295.2; Eff. July 1, 2020.

15A NCAC 13B .1803 FINANCIAL ASSURANCE COST ESTIMATE REQUIREMENTS FOR POST-CLOSURE CARE

(a) Owners and operators of sanitary landfills that are required to establish financial assurance in accordance with this Section shall submit to the Division with the permit application a cost estimate for financial assurance for post-closure care of the facility that contains an itemized cost estimate of the cost of hiring a third party to conduct post-closure care for the sanitary landfill in compliance with the post-closure care plan developed in accordance with this Subchapter. The post-closure care cost estimate shall be adjusted in accordance with Subparagraphs (b)(1) and (b)(2) of this Rule. The post-closure care cost estimate used to demonstrate financial assurance shall account for the total costs of conducting post-closure care for any closed and active portions of the facility, including annual and periodic costs as described in the post-closure care plan over the entire post-closure care period. The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period. The post-closure care cost estimate shall be placed in the operating record.

(b) Owners and operators shall meet the following requirements for adjustments to the post-closure care cost estimate and the amount of financial assurance:

- (1) During the active life of the facility, the owner and operator shall annually adjust the post-closure care cost estimate and the amount of financial assurance for inflation. Owners and operators using the local government financial test or the capital reserve fund as set forth in Rule .1805(e) of this Section shall submit the adjusted financial assurance mechanism to the Division prior to December 31, after the end of

the local government's fiscal year. Owners and operators using the corporate financial test or corporate guarantee as set forth in Rule .1805(e) of this Section shall submit the adjusted financial assurance mechanism to the Division no more than 90 calendar days following the close of the corporate entity's fiscal year that is stated in the mechanism. Owners and operators using a financial assurance mechanism set forth in Rule .1805(e) of this Section other than the local government financial test, capital reserve fund, corporate financial test, or corporate guarantee shall submit the adjusted financial assurance mechanism to the Division no less than 60 calendar days before the anniversary of the initial date the financial assurance mechanism was established.

(2) The owner and operator shall increase the post-closure care cost estimate and the amount of financial assurance and submit the revised post-closure care cost estimate to the Division if changes to the post-closure care plan or facility conditions increase the maximum cost of post-closure care at any time during the remaining active life of the facility.

(3) The owner and operator may request to reduce the post-closure care cost estimate and the amount of financial assurance if the cost estimate exceeds the maximum cost of post-closure care at any time during the active life of the facility by submitting a revised post-closure care cost estimate and a written justification for the reduction to the Division for approval no less than 180 calendar days prior to the anniversary of the date the financial assurance mechanism was established. No reduction of the post-closure care cost estimate or the amount of financial assurance shall be allowed without written approval from the Division. The reduction justification and the Division approval shall be placed in the facility's operating record. In making the determination on approval of the request, the Division shall consider the following factors for the facility:

- (A) changes to operations, post-closure care activities, or other circumstances;
- (B) changes to third party post-closure care costs;
- (C) compliance status of the owner and operator; and
- (D) environmental monitoring data.

(c) Owners and operators of solid waste management facilities that are required to establish financial assurance in accordance with this Section shall establish financial assurance for post-closure care of the facility in compliance with G.S. 130A-295.2(f). The owner and operator shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with the facility's permit and post-closure care plan,

with the closure letter issued to the facility by the Division, and with Rule .0543 of this Subchapter for construction and demolition landfill facilities and Rule .1627(d) of this Subchapter for municipal solid waste landfill facilities.

(d) Maintenance of financial assurance in the amounts required by this Rule does not limit the responsibility of owners or operators for the full cost of site closure and clean up, the expenses of any on-site or off-site environmental restoration necessitated by activities at the facility, and liability for all damages to third parties or private or public properties caused by the establishment and operation of the facility.

History Note: Authority G.S. 130A-294; 130A-295.2; Eff. July 1, 2020.

15A NCAC 13B .1804 FINANCIAL ASSURANCE COST ESTIMATE REQUIREMENTS FOR CORRECTIVE ACTION PROGRAMS

(a) Owners and operators shall meet the following requirements for corrective action program cost estimate calculations:

(1) The owner and operator of a sanitary landfill required by the Division to undertake a corrective action program in accordance with Rules .0545 or .1637 of this Subchapter shall have an itemized cost estimate of the cost of hiring a third party to implement the corrective action program. The corrective action program cost estimate shall be adjusted in accordance with Subparagraphs (b)(1) and (b)(2) of this Rule. The cost estimate shall include the total costs of the corrective action program for the entire corrective action period. The owner and operator shall submit the cost estimate to the Division for approval and shall place the approved cost estimate in the operating record. The cost estimate shall be approved if it is in compliance with the rules of this Section, Rule .0545 or Rules .1635 through .1637 of this Subchapter, and 15A NCAC 02L. Once every five years, the owner and operator shall update the cost estimate of the corrective action program and submit the following information to the Division in writing:

- (A) a description of the remedial actions selected pursuant to Rule.0545(e) or Rule .1636 of this Subchapter that have not been completed;
- (B) the number of years remaining for each remedial action until the remedial action is complete; and
- (C) the updated cost estimate for the remaining remedial actions.

(2) In addition to the requirements for the corrective action program set forth in Subparagraph (1) of this Paragraph, the owner and operator of a sanitary landfill required to establish financial assurance in accordance with this Section shall comply with the requirements

for potential assessment and corrective action set forth in G.S. 130A-295.2(h) and (h1).

(b) Owners and operators shall meet the following requirements for adjustments to the corrective action cost estimate and the amount of financial assurance:

- (1) During the active life of the facility, the owner and operator shall annually adjust the cost estimates for the corrective action program and potential assessment and corrective action and the amount of financial assurance for inflation. Owners and operators using the local government financial test or capital reserve fund as set forth in Rule .1805(e) of this Section shall submit the adjusted financial assurance mechanism for the corrective action program and potential assessment and corrective action to the Division prior to December 31, after the end of the local government's fiscal year. Owners and operators using the corporate financial test or corporate guarantee as set forth in Rule .1805(e) of this Section shall submit the adjusted financial assurance mechanisms for the corrective action program and potential assessment and corrective action to the Division no more than 90 calendar days following the close of the corporate entity's fiscal year that is stated in the mechanism. Owners and operators using a financial assurance mechanism provided in Rule .1805(e) of this Section, other than the local government financial test, capital reserve fund, corporate financial test, or corporate guarantee, shall submit the adjusted financial assurance mechanism to the Division no less than 60 calendar days before the anniversary of the initial date the financial assurance mechanism was established.
- (2) The owner and operator shall increase the cost estimate for the corrective action program and the amount of financial assurance and submit the revised cost estimate to the Division if changes to the corrective action program or facility conditions increase the maximum cost of corrective action program at any time during the remaining active life of the facility.
- (3) The owner and operator may request to reduce the cost estimate for the corrective action program and the amount of financial assurance if the cost estimate exceeds the maximum cost of the corrective action program at any time during the active life of the facility by submitting a revised cost estimate for the corrective action program and a written justification for the reduction to the Division for approval no less than 180 calendar days prior to the anniversary of the date the financial assurance mechanism was established. No reduction of the corrective action program cost estimate or the amount of financial assurance shall be allowed without written approval from

the Division. The reduction justification and the Division approval shall be placed in the facility's operating record. In making the determination on approval of the request, the Division shall consider the following factors for the facility:

- (A) completion of or changes to corrective action program activities or other circumstances;
- (B) changes to third party corrective action program costs;
- (C) compliance status of the owner and operator; and
- (D) environmental monitoring data.

(c) Owners and operators of sanitary landfills that are required to undertake a corrective action program under Rules .0545 or .1637 of this Subchapter shall establish financial assurance in accordance with this Section for the most recent corrective action program in compliance with G.S. 130A-295.2(f). The owner and operator shall provide continuous coverage for the corrective action program until released from financial assurance requirements for the corrective action program by demonstrating compliance with the facility's permit and corrective action plan, 15A NCAC 02L, and Rule .0545(m) and (n) of this Subchapter for construction and demolition landfill facilities, and Rule .1637(f) and (g) of this Subchapter for municipal solid waste landfill facilities.

(d) Maintenance of financial assurance in the amounts required by this Rule does not limit the responsibility of owners or operators for the full cost of site closure and clean up, the expenses of any on-site or off-site environmental restoration necessitated by activities at the facility, and liability for all damages to third parties or private or public properties caused by the establishment and operation of the facility.

History Note: Authority G.S. 130A-294; 130A-295.2; Eff. July 1, 2020.

15A NCAC 13B .1805 ALLOWABLE MECHANISMS FOR FINANCIAL ASSURANCE

(a) Pursuant to G.S. 130A-295.2, owners and operators of solid waste management facilities that are required to establish financial assurance in accordance with this Section shall choose one of the mechanisms or a combination of mechanisms in Paragraph (e) of this Rule to cover the cost of closure, post-closure care, corrective action programs, and potential assessment and corrective action.

(b) When multiple financial assurance mechanisms are established, no more than one allowable mechanism shall be provided by the same financial institution or its corporate entities. The corporate financial test provided by a corporation and the corporate guarantee provided by a corporate parent, sibling, or grandparent shall not be combined if the financial statements of the two firms are consolidated. A surety bond mechanism guaranteeing performance shall not be combined with other mechanisms. The mechanisms shall be submitted to the Division as original signed hard copies, and the language of each mechanism shall be identical to the language specified in Rule .1806 of this Section for that mechanism.

(c) A corporate seal shall be required to complete the financial assurance mechanism as part of the certification of acknowledgement required in the mechanism language in Rule .1806 of this Section for a corporate owner or operator using a trust fund, surety bond guaranteeing payment or performance, corporate financial test, and corporate guarantee as set forth in Paragraph (e) of this Rule. When a corporate seal is required to certify a financial assurance mechanism but the corporation does not have a corporate seal, a member of the corporation's senior management or a representative of the board of directors shall submit to the Division a copy of the corporation's bylaws, a corporate ownership organization chart describing the relationship of the facility owner and operator to the corporation and its parent companies, contact information for the board of directors or senior management for the corporation, and a statement on corporate letterhead stating the signee has the authority to execute correspondence and financial assurance mechanisms on behalf of the corporation, pursuant to G.S. 130A-295.2(f). The documentation shall be submitted to the Division of Waste Management, Solid Waste Section at 1646 Mail Service Center, Raleigh, NC 27699. Senior management for the corporation shall be one of the following positions: the Chief Executive Officer or President, the Chief Operating Officer or Vice President, or the Chief Financial Officer or Treasurer.

(d) The July 1, 2010 edition of 40 CFR 258.74 is incorporated by reference and can be obtained free of charge from the Division's website at <http://go.ncdenr.gov/fa>. When used in 40 CFR 258.74, except where the context requires references to remain without substitution, "United States" and "State" shall mean the State of North Carolina; "Agency" shall mean the Department of Environmental Quality; "Director" shall mean the Secretary of the Department of Environmental Quality; "municipal solid waste landfills facility(ies)", "MSWLF(s)", or "MSWLF unit(s)" shall mean solid waste management facility or facilities; and "owner or operator" shall mean the owner and operator of a solid waste management facility.

(e) The following mechanisms may be used to meet the requirements of this Section for financial assurance.

(1) A trust fund as set forth in 40 CFR 258.74(a), including the following requirements.

(A) The trust fund may be elected as a standby trust mechanism to accompany the surety bond mechanism in Subparagraph (2) of this Paragraph, or the letter of credit mechanism in Subparagraph (3) of this Paragraph; or may be elected as a standalone funded trust mechanism.

(B) 40 CFR 258.74(a)(7) is revised to state: "The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement shall be granted only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care,

corrective action programs, or potential assessment and corrective action, and if justification and documentation of the cost is submitted to the Division and placed in the operating record."

(C) The trust agreement shall be accompanied by a certification of acknowledgement as specified following the language of the trust agreement in Rule .1806(1) of this Section.

(D) Schedule A of the trust agreement shall be updated no less than 60 days after any change in the amount of the current cost estimate covered by the agreement.

(2) Surety bonds guaranteeing payment or performance as set forth in 40 CFR 258.74(b) including the following requirements.

(A) The surety company issuing the bond shall be licensed to do business in North Carolina.

(B) Bonding companies may write bonds with a penal sum over their underwriting limitation if they protect the excess amount with reinsurance, coinsurance, or other methods as specified at 31 CFR 223.10-11 and submit documentation to the Division. The owner and operator shall provide the Division with current contact information for the surety company for the life of the mechanism. 31 CFR 223.10-11 is incorporated by reference including subsequent amendments and editions and can be accessed free of charge at the U.S. Government Publishing Office website at www.ecfr.gov.

(C) The penal sum of the surety bond shall be adjusted for inflation or any increase or decrease in the amount of financial assurance in accordance with Rule .1802(b), Rule .1803(b), or .1804(b) of this Section.

(D) The bonded liability limit shall not be less than the penal sum of the surety bond and shall be adjusted annually for inflation or any increase or decrease in the amount of financial assurance in accordance with Rule .1802(b), Rule .1803(b), or .1804(b) of this Section.

(E) If the owner and operator is no longer required to demonstrate financial responsibility, the owner and operator may cancel the surety bond in accordance with the requirements of

- Rules .1802(c), .1803(c), or .1804(c) of this Section.
- (3) A letter of credit as set forth in 40 CFR 258.74(c) including the following requirements.
- (A) The owner and operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of 40 CFR 258.74(a) except the requirements for initial payment and subsequent annual payments specified in 40 CFR 258.74(a)(2), (3), (4), and (5). Payments made under the terms of the letter of credit shall be deposited by the financial institution directly into the standby trust fund.
- (B) No payments shall be made from the trust fund unless approved by the trustee and the Division.
- (C) The letter of credit shall be adjusted for inflation or any increase or decrease in the amount of financial assurance in accordance with Rule .1802(b), Rule .1803(b), or .1804(b) of this Section.
- (D) If the owner and operator is no longer required to demonstrate financial responsibility, the owner and operator may cancel the letter of credit in accordance with the requirements of Rules .1802(c), .1803(c), or .1804 (c) of this Section.
- (4) Insurance as set forth in 40 CFR 258.74(d), and if the owner and operator is no longer required to demonstrate financial responsibility, the owner and operator may cancel the insurance policy in accordance with the requirements of Rules .1802(c), .1803(c), or .1804(c) of this Section.
- (5) A corporate financial test as set forth in 40 CFR 258.74(e) including the following requirements.
- (A) The corporate financial test shall be adjusted for inflation or any increase or decrease in the amount of financial assurance in accordance with Rule .1802(b), Rule .1803(b), or .1804(b) of this Section.
- (B) If the owner and operator is no longer required to demonstrate financial responsibility, the owner and operator may cancel the test in accordance with the requirements of Rules .1802(c), .1803(c), or .1804(c) of this Section.
- (6) A local government financial test as set forth in 40 CFR 258.74(f) including the following requirements.
- (A) Owner and operators submitting a local government financial test that utilizes the bond rating indicator of financial strength shall submit a copy of the bond showing proof of the current bond rating of the most recent issuance and name of rating service, date of issuance of the bond, and date of maturity of the bond.
- (B) The local government test shall be adjusted for inflation or any increase or decrease in the amount of financial assurance in accordance with Rule .1802(b), Rule .1803(b), or .1804(b) of this Section.
- (C) If the owner and operator is no longer required to demonstrate financial responsibility, the owner and operator may cancel the test in accordance with the requirements of Rules .1802(c), .1803(c), or .1804(c) of this Section.
- (7) A corporate guarantee as set forth in 40 CFR 258.74(g) including the following requirements.
- (A) The owner and operator shall submit a corporate ownership organization chart describing the relationship of the owner and operator to the guarantor as defined in 40 CFR 258.74(g)(1) when financial assurance is initially established, and annually thereafter.
- (B) The corporate guarantee shall be adjusted for inflation or any increase or decrease in the amount of financial assurance in accordance with Rule .1802(b), Rule .1803(b), or .1804(b) of this Section.
- (C) If the owner and operator is no longer required to demonstrate financial responsibility, the owner and operator may cancel the guarantee in accordance with the requirements of Rules .1802(c), .1803(c), or .1804(c) of this Section.
- (8) A capital reserve fund that meets the following requirements.
- (A) An owner and operator of a solid waste management facility that is a unit of local government or public authority may satisfy the requirements of this Rule by establishing a capital reserve fund which conforms to the requirements of this Subparagraph. The unit of local government or public authority shall be an entity which has the authority to establish a capital reserve fund under authority of G.S. 159 Part 2 and whose financial operations are regulated and examined by a State agency. The capital reserve fund shall be established consistent

- with auditing, budgeting, and government accounting practices as prescribed in G.S. 159-30 and by the Local Government Commission. A copy of the capital reserve fund ordinance or resolution with a certified copy of the meeting minutes and a copy of documentation of initial and subsequent years' deposits shall be submitted to the Division and placed in the facility's operating record.
- (B) Payments into the capital reserve fund shall be made annually by the unit of local government or public authority over the term of the initial permit or over the remaining life of the facility for closure or post-closure care, or over one-half of the estimated length of the corrective action program when a corrective action program is required in accordance with Rules .0545 or .1637 of this Subchapter. This period is referred to as the "pay-in period".
- (C) For a capital reserve fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for closure or post-closure care, divided by the number of years in the pay-in period as defined in Part (B) of this Subparagraph. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = [CE - CV] / Y$$
 where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the capital reserve fund, and Y is the number of years remaining in the pay-in period.
- (D) For a capital reserve fund used to demonstrate financial assurance for a corrective action program, the first payment into the capital reserve fund shall be at least equal to one-half of the current cost estimate for the corrective action program. The total cost of the second half of the corrective action program period shall be divided into subsequent payments determined by the following formula:

$$\text{Next Payment} = [RB - CV] / Y$$
 where RB is the most recent cost estimate for the corrective action program, updated for inflation or other changes (i.e. the total cost that will be incurred during the second half of the corrective action period), CV is the current value of the capital reserve fund, and Y is the number of years remaining in the pay-in period.
- (E) The initial payment into the capital reserve fund shall be made before the initial receipt of waste in the case of closure and post-closure care, or no later than 120 calendar days after the corrective action remedy has been selected in accordance with the requirements of this Subchapter. Subsequent payments shall be made no later than 30 calendar days after each anniversary date of the first payment.
- (F) If the unit of local government or public authority establishes a capital reserve fund after having used one or more alternate mechanisms specified in this Rule, the initial payment into the capital reserve fund shall be at least the amount that the fund would contain if the capital reserve fund had been established on the initial date that the alternate mechanism was established, and annual payments to the fund had been made according to the specifications of this Subparagraph.
- (G) The unit of local government or public authority authorized to conduct closure, post-closure care, or corrective action programs may expend capital reserve funds to cover the remaining costs of closure, post-closure care, corrective action programs, or for the debt service payments on financing arrangements for closure, post-closure care, or corrective action programs. Monies in the capital reserve fund shall only be used for these purposes unless the fund is terminated in accordance with Part (I) of this Subparagraph. The unit of local government or public authority shall document expenditures and provide a written justification for each expenditure and shall submit a copy to the Division and place a copy in the operating record.
- (H) The unit of local government or public authority shall adjust for inflation or any increase or decrease in the amount of financial assurance in accordance with Rule .1802(b), .1803(b), or .1804(b) of this Section.
- (I) To maintain financial assurance, a unit of local government or public

authority may only terminate a capital reserve fund if it substitutes alternate financial assurance as specified in this Rule or if no longer required to demonstrate financial responsibility in accordance with the requirements of

Rules .1802(c), .1803(c), or .1804(c) of this Section.

History Note: Authority G.S. 130A-294; 130A-295.2; Eff. July 1, 2020.

15A NCAC 13B .1806 LANGUAGE OF MECHANISMS FOR FINANCIAL ASSURANCE

The financial assurance mechanisms set forth in Rule .1805 of this Section shall use the language provided in this Rule, and shall be in accordance with 40 CFR 258.74(l).

- (1) Trust Agreement. A trust agreement for a trust fund, as specified in Rule .1805(e)(1) of this Section, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of [name of state]" or "a national bank"], the "Trustee."

Whereas, the Division of Waste Management, the "Division," an agency of the State of North Carolina, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a solid waste management facility shall provide assurance that funds shall be available when needed for closure, post-closure care, corrective action programs, or potential assessment and corrective action of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein, Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on schedule A [on schedule A, for each facility list the name, address, Solid Waste Section Permit Number, and the current closure, post-closure care, corrective action program cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Division. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Division.

Section 4. Payment for Closure, Post-Closure Care, and Corrective Action Programs. The Trustee shall make payments from the Fund as the Division shall direct, in writing, to provide for the payment of the costs of closure, post-closure care, or corrective action programs of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Division from the Fund for closure, post-closure care, and corrective action program expenditures in such amounts as the Division shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Division specifies in writing, upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or State government;
(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Division a statement confirming the value of the Trust. Any securities in the fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Division shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the division, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the exhibit a or such other designees as the Grantor may designate by amendment to Exhibit A. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Division to the Trustee shall be in writing, signed by the Division, or his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or Division hereunder has occurred. The trustee shall have no duty to act in the absence of such orders, requests, and instructions from the grantor or division, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Division by certified mail within 10 days following expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Division, or by the Trustee and the Division if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Division, or by the Trustee and the Division, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Division issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of North Carolina.

Section 20. Interpretation. As used in this agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this agreement is identical to the wording specified in 15A NCAC 13B .1806(1) as were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest: [insert name of Corporation's Senior Management]

[Title]

[Seal]

State of North Carolina

County of [Name of County]

On this [date], before me personally came [name of owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]

[Or for no corporate seal, see 15A NCAC 13B .1805(c) and utilize the certification of acknowledgement below]

State of North Carolina

County of [Name of County]

I, [Name of Officer Taking Acknowledgment], a [Official Title of Officer Taking Acknowledgment], certify that [Name of Corporate Officer] personally came before me this day and acknowledged that he/she is [Title of Corporate Officer] of [insert Legal Name of Corporation], a corporation, and that he/she, as [insert Title of Officer], being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]

[Signature of Trustee]

[Title]

Attest: [insert name]

[Title]

[Seal]

State of North Carolina

County of [Name of County]

I, [Name of Officer Taking Acknowledgment], a [Official Title of Officer Taking Acknowledgment], certify that [Name of Corporate Officer] personally came before me this day and acknowledged that he/she is [Title of Corporate Officer] of [insert Legal Name of Corporation], a corporation, and that he/she, as [insert Title of Officer], being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]

Schedule A for Trust Agreement

[For Each Facility:]

Facility Name: [Facility Name]

Facility Address: [Facility Address]

Permit Number: [Permit Number]

Closure Costs: \$ [Amount]

Post-Closure Care Costs: \$ [Amount]

Corrective Action Program: \$ [Amount]

Potential Assessment and Corrective Action: \$ [Amount]

Total Aggregate Amount to be Funded by this Trust: \$ [Amount]

Schedule B for Trust Agreement

[For Standby Trust]

Trust Property: This Fund shall consist of funds drawn from [insert type of mechanism] [ex. Letter of credit No.[insert number] dated [date] issued by [name of bank] at such time said funds are directly deposited into the Trust account.

[For Funded Trust]

Trust Property: This Fund shall consist of cash in the amount of \$[insert cash amount]. [Aggregate full amount of closure, post-closure care, any corrective action program, and potential assessment and corrective action from Schedule A.]

OR, for pay-in period over the term of the initial permit or the remaining life of the solid waste management facility, include a payment schedule.

Trust Property: This Fund shall consist of annual cash payments made in accordance with the following schedule:

[For Funded Trusts: For Each Facility:]

Facility Name: [Facility Name]

Facility Address: [Facility Address]

Permit Number: [Permit Number]

Initial Payment of \$[insert dollar amount] on [date of execution] for Cell 1 [insert date Agreement is executed.]

Subsequent payment of \$[insert dollar amount], payable on [anniversary date of execution].

Subsequent payment of \$[insert dollar amount], payable on [anniversary date of execution].

Subsequent payment of \$[insert dollar amount], payable on [anniversary date of execution]

Subsequent payment of \$[insert dollar amount], payable on [anniversary date of execution]

Subsequent payment of \$[insert dollar amount], payable on [anniversary date of execution]

Account Information:

Account Number assigned to this Trust Agreement: [Account Number]

Amount of Deposit: [Amount of Deposit (zero dollars if used for a standby trust)]

Date: [Date]

Bank/Branch location for this trust account:

Bank/Branch Name: [Bank/Branch Name]

Location Address: [Location Address]

City & State: [City & State]

Contact Person at Bank:

Name: [Name]

Title: [Title]

Phone Number: [Phone Number]

Exhibit A for Trust Agreement

The following persons, acting singly or collectively, shall have the right to issue instructions to the Trustee pursuant to Section 14 of the Agreement:

Name: [insert name]

Position: [insert position]

- (2) A surety bond guaranteeing performance of closure, post-closure care, and corrective action programs as specified in Rule .1805(e)(2) of this Section shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed:

Effective date:

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation:

Surety(ies): [name(s) and business address(es)]

[For Each Facility]

Solid Waste Section Permit Number: [insert NCDEQ permit number]

Facility name: [insert facility name]

Facility address: [insert facility address]

Closure cost: [insert approved closure cost]

Post-closure care cost: [insert approved post-closure care cost]

Corrective action program cost: [insert current corrective action program cost]

Total penal sum of bond: \$[insert total sum of bond]

Liability Limit: \$ [insert bonding company's liability limit]

Surety's bond number: [insert issued bond number]

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the North Carolina Division of Waste Management (hereinafter called the Division), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required, under 15A NCAC 13B as amended, to have a permit in order to own or operate each solid waste management facility identified above, and

Whereas, said Principal is required to provide financial assurance for closure, post-closure care, or corrective action programs as a condition of the permit, and

Whereas, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance; Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure care plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform corrective action of each facility for which this bond guarantees corrective action, in accordance with the corrective action program and other requirements of the permit, as such program and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance and obtain the Division's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Division from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Division that the Principal has been found in violation of the closure requirements for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the Division.

Upon notification by the Division that the Principal has been found in violation of the post-closure care requirements for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure care plan and other permit requirements or place the post-closure care amount guaranteed for the facility into the standby trust fund as directed by the Division.

Upon notification by the Division that the Principal has been found in violation of the corrective action requirements for a facility for which this bond guarantees performance of corrective action, the Surety(ies) shall either perform corrective action in accordance with the corrective action program and other permit requirements or place the corrective action amount guaranteed for the facility into the standby trust fund as directed by the Division.

Upon notification by the Division that the Principal has failed to provide alternate financial assurance and obtain written approval of such assurance from the Division during the 90 days following receipt by both the Principal and the Division of a notice of cancellation

of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Division.

The Surety(ies) hereby waive(s) notification of amendments to closure and post-closure care plans, and corrective action programs, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Division, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Division, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Division.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure care, or corrective action program amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Division.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 15A NCAC 13B .1806(2) as was constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

[For no corporate seal, see Rule .1805(c)]

Corporate Surety(ies)

[Names and address of contact]

State of incorporation: Surety's state of incorporation]

Liability limit: \$ [Surety's liability limit]

[Signature(s)]

[Names(s) and title(s)]

[Corporate seal]

[For no corporate seal, see Rule .1805(c)]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ [bond premium]

- (3) A surety bond guaranteeing payment of closure and post-closure care as specified in Rule .1805(e)(2) of this Section shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Date bond executed: [insert date of bond execution]

Effective date: [insert effective date]

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: [insert state of incorporation]

Surety(ies): [name(s), business address(es), and contact information]

[For Each Facility]

Solid Waste Section Permit Number: [insert NCDEQ permit number]

Facility name: [insert facility name]

Facility address: [insert facility address]

Closure cost: [insert dollar amount for closure]

Post-closure care cost: [insert dollar amount for post-closure care]

Total penal sum of bond: \$[insert total cost of the bond]

Liability Limit: \$[insert underwriting limit of the surety company]

Surety's bond number: [insert bond number issued by surety]

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the North Carolina Division of Waste Management (hereinafter called the Division), in the above penal sum for the payment of which we bind ourselves, our heirs,

executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required, 15A NCAC 13B as amended, to have a permit in order to own or operate each solid waste management facility identified above, and

Whereas, said Principal is required to provide financial assurance for closure or post-closure care as a condition of the permit, and

Whereas, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance; Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure and post-closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure and post-closure care is issued by the Division or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance and obtain the Division's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Division from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Division that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Division.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Division, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Division, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Division.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure care, or corrective action program amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Division.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond has not been changed as were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

[For no corporate seal, see Rule .1805(c)]

Corporate Surety(ies)

[Name and address]

State of incorporation: [Surety's state of incorporation]

Liability limit: \$[Surety's liability limit]

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For no corporate seal, see Rule .1805(c)]

[For each co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$[bond premium]

- (4) A letter of credit, as specified in Rule .1805(e)(3) of this Section, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

North Carolina Department of Environmental Quality

Division of Waste Management

Solid Waste Section

1646 Mail Service Center

Raleigh, North Carolina 27699-1646

Dear Sir/Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. [insert mechanism number] in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars \$[insert U.S. dollar amount], available upon presentation of

- (1) your sight draft, bearing reference to this letter of credit No. [insert mechanism number], and
- (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to requirements of N.C. General Statute 130A-295.2(f) and 15A NCAC 13B because the applicant has failed to properly close and clean up the solid waste management facility, to perform post-closure maintenance and monitoring at the facility, or to remediate the facility in accordance with applicable statutes, rules and permit conditions."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on, under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 15A NCAC 13B .1806(4) as were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution], [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

- (5) A certificate of insurance, as specified in Rule .1805(e)(4) of this Section, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE

Name and Address of Insurer

(herein called the "Insurer"):

Name and Address of Insured

(herein called the "Insured"):

Facilities Covered: [List for each facility: The Solid Waste Section Permit Number, name, address, and the amount of insurance for closure or the amount for post-closure care (these amounts for all facilities covered shall total the face amount shown below).]

Face Amount: [insert dollar amount of face value]

Policy Number: [insert insurance policy number]

Effective Date: [insert effective date]

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above.

The Insurer further warrants that such policy conforms in all respects with the requirements of 40 CFR 258.74(d)(July 1, 2010 edition) and 15A NCAC 13B .1805, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the North Carolina Division of Waste Management (Division), the Insurer agrees to furnish to the Division a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 15A NCAC 13B .1806(5) as were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Date]

- (6) A corporate financial test, as specified in Rule .1805(e)(5) of this Section, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE FINANCIAL TEST

[Date]

North Carolina Department of Environmental Quality

Division of Waste Management

Solid Waste Section Chief

1646 Mail Service Center

Raleigh, NC 27699-1646

Dear Sir/Madam:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the corporate financial test to demonstrate financial assurance for closure, post-closure care, corrective action programs, and potential assessment and corrective action (if applicable), as specified in the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(e)(July 1, 2010 edition).

[For each solid waste management facility, including its permit identification number, name, address, and closure, post-closure care, corrective action programs, and potential assessment and corrective action (if applicable) cost estimates. Identify for each cost estimate whether it is for closure or post-closure care, corrective action programs, or potential assessment and corrective action.]

The firm is the owner or operator of the following solid waste management facilities for which financial assurance for closure, post-closure care, corrective action programs, and potential assessment and corrective action (if applicable), is demonstrated through the corporate financial test. The current cost estimates for closure, post-closure care, corrective action programs, and potential assessment and corrective action (if applicable), covered by the test are shown for each facility:

Name: [insert legal entity /principal name]

Office Address: [insert physical address of legal entity/principal]

Facility Address: [insert physical address of permitted facility]

Permit No.: [insert NCDEQ issued permit number]

Closure Cost Estimate: [insert dollar amount for closure]

Post-Closure Care Cost Estimate: [insert dollar amount for post-closure care]

Corrective Action Program Cost Estimate: [insert dollar amount for current corrective action program]

Potential Assessment and Corrective Action Cost Estimate: [insert dollar amount for potential assessment and corrective action]

Identify any underground injection control (UIC) facilities under 15A NCAC 02D .0400 and 15A NCAC 02C .0200, petroleum underground storage tank (UST) facilities under 15A NCAC 02N .0100 through .0800, polychlorinated biphenyl (PCB) storage facilities under 15A NCAC 02O .0100 and 15A NCAC 02N .0100, and hazardous waste treatment, storage, and disposal facilities (TSDF's) under 15A NCAC 13A .0109 and .0110 that are owned by either the owner/operator or the guarantor and/or are facilities that are covered by a financial test or corporate guarantee. Provide a separate description for each type of facility, if applicable (if not applicable write "None").

Name: [insert legal entity/principal name]

Office Address: [insert physical address of legal entity/principal]

Facility Address: [insert physical address of permitted facility]

Permit No.: [insert NCDEQ issued permit number]

Closure Cost Estimate: [insert dollar amount for closure]

Post-Closure Care Cost Estimate: [insert dollar amount for post-closure care]

Corrective Action Program Cost Estimate: [insert dollar amount for current corrective action program]

Potential Assessment and Corrective Action Cost Estimate: [insert dollar amount for potential assessment and corrective action]

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Fill in all applicable parts of the Financial Test and either Alternative I, or Alternative II, or Alternative III below.

Financial Test

1. Sum of current closure, post-closure care, corrective action program, and potential assessment and corrective action cost estimates (if applicable) and guarantees from all of the solid waste management facilities in paragraphs 1 or 2 above: \$ [insert dollar amount]

2. All other cost estimates and guarantees required for UIC facilities, petroleum UST facilities, PCB storage facilities, and TSDF's listed in paragraph 3 above. \$ [insert dollar amount]

3. Tangible net worth (defined as tangible assets – liabilities. Tangible assets do not include intangibles such as goodwill or rights to patents and royalties). \$ [insert dollar amount]

4. Net Worth \$ [insert dollar amount]

5. Total liabilities - If any portion of the current closure, post-closure care, corrective action program, and potential assessment and corrective action cost estimates (if applicable), or guarantees identified above are recognized as liabilities in the audited financial statements, you must submit a special report from the independent certified public accountant (CPA), unless you can answer "yes" to item # 9. \$ [insert dollar amount]

6. The sum of net income plus depreciation, depletion, and amortization (Use for Alternative III): \$ [insert dollar amount]

7. Total assets in the U.S.: \$ [insert dollar amount]

8. Sum of line 1 plus line 2 from above and any other environmental obligations covered by a financial test: \$ [insert dollar amount]

9. Is line 3 greater than the sum of line 8 plus \$10 million? [Yes or No]

If "No", and you have provided a report from the independent CPA that the environmental obligations have been recognized as liabilities in the audited financial statements, then go to Item 9(a).

9a. Is line 3 greater than the sum of \$10 million plus any guarantees not recognized as liabilities? [Yes or No]

10. Is line 7 greater than line 8? [Yes or No]

If the financial data provided for items 3 through 7 above differs from what was provided in the audited financial statements, a special report from the certified public accountant shall be provided as described in 40 CFR 258.74(e)(2)(i)(C).

Alternative I

1. Current bond rating of most recent senior unsubordinated bond issue of this firm and name of rating service: [current bond rating and name of rating service]
2. Date of bond issue: [insert date of bond issued]
3. Date of final maturity of bond: [insert final maturity date of bond]

Alternative II

1. Is the above line 5 divided by the above line 4 less than 1.5? [Yes or No]

Alternative III

1. Is (the above line 6 minus \$10 million) divided by the above line 5 greater than 0.1? [Yes or No]

As evidence that [Firm] meets the conditions of the Corporate Financial Test, attached hereto is a copy of the following:

Please check applicable responses.

- () 1. Independent CPA's unqualified opinion of our financial statements for our latest completed fiscal year.
- () 2. Special report from CPA, if financial data in this letter is different than in audited financial statements. [See 40 CFR 258.74(e)(2)(i)(C)].
- () 3. Report from CPA (if answer to item #9 of the financial test is No) verifying all of covered environmental obligations covered by test have been recognized as liabilities in the audited financial statements, how the obligations were measured and reported, and that tangible net worth of the firm is at least \$10 million dollars plus the amount of any guarantees not recognized as liabilities. [See 40 CFR 258.74(e)(2)(i)(D)]

I hereby certify that [name of firm] meets the requirements of [Fill in Alternative I, Alternative II, or Alternative III] in support of [name of facility(s)] use of the corporate financial test to demonstrate financial assurance as required by the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(e)(July 1, 2010 edition).

[Signature]

[Name]

[Title]

[Date]

- (7) A local government financial test, as specified in Rule .1805(e)(6) of this Section, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to the Department of Environmental Quality, Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh, North Carolina 27699-1646.]

I am the chief financial officer of [name and address of unit of local government]. This letter is in support of this unit of local government's use of the financial test to demonstrate financial assurance, as specified in 15A NCAC 13B .1805(e)(6).

[Fill out the following paragraph regarding the solid waste management facilities and associated cost estimates. For each facility, include its permit number, name, address and current closure, post-closure care, corrective action program, or potential assessment and corrective action cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, or a corrective action program.]

This unit of local government is the owner or operator of the following facilities for which financial assurance for closure, post-closure care, corrective action programs, or potential assessment and corrective action is demonstrated through the financial test specified in 15A NCAC 13B .1805(e)(6). The current closure, post-closure care, corrective action programs, or potential assessment and corrective action cost estimates covered by the test are shown for each facility:

[For Each Facility]

Solid Waste Section Permit Number: [insert NCDEQ issued permit number]

Facility name:[insert facility name]

Facility address: [insert physical address of facility]

Closure cost: [insert dollar amount of closure]

Post-closure care cost: [insert dollar amount of post-closure]

Corrective action program cost: [insert dollar amount of current corrective action]

Potential assessment and corrective action cost: [insert dollar amount of potential assessment and corrective action]

Total Costs to be Assured: [Total Costs to be Assured by this test – include costs for all facilities]:

The fiscal year of this unit of local government ends on [month, day, year]. The Indicators of Financial Strength section below is based off of the local government's financial strength of the previous year, as indicated by general accounting practices.

[Local Government completing the Local Government Test are to either complete the Ratio Indicator of Financial Strength or the Bond Rating Indicator of Financial Strength section below.]

RATIO INDICATORS OF FINANCIAL STRENGTH

1. Sum of current closure, post-closure care, and corrective action program cost estimates [total of all cost estimates shown in the paragraphs above] \$[insert dollar amount of all cost estimates/environmental liability for solid waste management facilities]
2. Sum of cash and investments: \$ [insert dollar amount]
3. Total expenditures: \$ [insert dollar amount]

4. Annual debt service: \$ [insert dollar amount]
 5. Assured environmental costs to demonstrate financial responsibility in the following amounts under Division rules:
 - Solid Waste Management Facilities under 15A NCAC 13B: \$ [insert dollar amount]
 - Hazardous waste treatment, storage, and disposal facilities under 15A NCAC 13A .0109 and .0110: \$ [insert dollar amount]
 - Petroleum underground storage tanks under 15A NCAC 02N .0100 - .0800: \$ [insert dollar amount]
 - Underground injection control system facilities under 15A NCAC 02D .0400 and 15A NCAC 02C .0200: \$ [insert dollar amount]
 - PCB commercial storage facilities under 15A NCAC 02O .0100 and 15A NCAC 02N .0100: \$ [insert dollar amount]
 - Total assured environmental costs: \$ [insert total dollar amount]
 6. Total Annual Revenue: \$ [insert dollar amount]
- Circle either "yes" or "no" to the following questions.
7. Is line 5 divided by line 6 less than or equal to 0.43? yes/no
 8. Is line 2 divided by line 3 greater than or equal to 0.05? yes/no
 9. Is line 4 divided by line 3 less than or equal to 0.20? yes/no

BOND RATING INDICATOR OF FINANCIAL STRENGTH

1. Sum of current closure, post-closure care, and corrective action program cost estimates [total of all cost estimates shown in the paragraphs above]: \$ [insert dollar amount of all cost estimates/environmental liability for solid waste management facilities]
 2. Current bond rating of most recent issuance and name of rating service: [insert bond rating and name of rating service]
 3. Date of issuance bond: [insert date of issuance]
 4. Date of maturity of bond: [insert date of maturity]
 5. Assured environmental costs to demonstrate financial responsibility in the following amounts under Division rules:
 - Solid Waste Management Facilities under 15A NCAC 13B: \$ [insert dollar amount]
 - Hazardous waste treatment, storage and disposal facilities under 15A NCAC 13A .0109 and .0110: \$ [insert dollar amount]
 - Petroleum underground storage tanks under 15A NCAC 02N .0100 - .0800: \$ [insert dollar amount]
 - Underground injection control system facilities under 15A NCAC 02D .0400 and 15A NCAC 02C .0200: \$ [insert dollar amount]
 - PCB commercial storage facilities under 15A NCAC 02O .0100 and 15A NCAC 02N .0100: \$ [insert dollar amount]
 - Total assured environmental costs: \$ [insert dollar amount]
 6. Total Annual Revenue: \$ [insert dollar amount]
- Circle either "yes" or "no" to the following question.
7. Is line 5 divided by line 6 less than or equal to 0.43? yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 15A NCAC 13B .1806(7) as such rules were constituted on the date shown immediately below. I further certify the following: (1) that the unit of local government has not operated at a total operating fund deficit equal to five percent or more of total annual revenue in either of the past two fiscal years, (2) that the unit of local government is not in default on any outstanding general obligations bonds or long-term obligations, and (3) does not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's, BBB as issued by Standard & Poor's, BBB as issued by Fitch's, or 75 as issued by the Municipal Council.

[Signature]
[Name]
[Title]
[Date]

- (8) A corporate guarantee, as specified in Rule .1805(e)(7) of this Section, shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE

[Date]
North Carolina Department of Environmental Quality
Division of Waste Management
Solid Waste Section Chief
1646 Mail Service Center
Raleigh, NC 27699-1646
Dear Sir/Madam:

I am the chief financial officer of [name and address of guarantor]. This letter is in support of this firm's use of the corporate guarantee to demonstrate financial assurance on behalf of [owner or operator name, address, permit number] for current closure, post-closure care, corrective action program, and potential assessment and corrective action cost estimates (if applicable), as specified in the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(g)(July 1, 2010 edition).

[For each solid waste management facility, including its permit identification number, name, address, and current closure, post-closure care, corrective action program, or potential assessment and corrective action cost estimates (if applicable). Identify for each cost estimate whether it is for closure, post-closure care, corrective action programs, or potential assessment and corrective action.]

This firm guarantees, through the corporate guarantee attached to this letter as Exhibit A, the current closure, post-closure care, corrective action program, and potential assessment and corrective action cost estimates (if applicable), of the following facilities owned or operated by the guaranteed party. Financial assurance for current closure, post-closure care, corrective action program, and potential assessment and corrective action cost estimates (if applicable), for the listed facilities are demonstrated through the corporate financial test. The current closure, post-closure care, corrective action program, and potential assessment and corrective action cost estimates (if applicable), so guaranteed are shown for each facility:

Name: [insert name of legal entity/principal]

Office Address: [insert physical address of legal entity/principal]

Facility Address: [insert physical address of facility]

Permit No.: [insert NCDEQ issued permit number]

Closure Cost Estimate: [insert dollar amount for closure]

Post-Closure Care Cost Estimate: [insert dollar amount for post-closure care]

Corrective Action Program Cost Estimate: [insert dollar amount for current corrective action]

Potential Assessment and Corrective Action Cost Estimate: [insert dollar amount for potential assessment and corrective action]

The guarantor firm identified above is (please check the applicable relationship):

- The direct or higher-tier parent corporation of the owner or operator.
- Owned by the same parent corporation as the parent corporation of the owner or operator.
(please attach a description of the value received in consideration of the guarantee)
- Engaged in a substantial business relationship with the owner or operator.
(please attach a written description of the business relationship and the value received in consideration of the guarantee and a copy of the contract establishing such relationship)

Identify any underground injection control (UIC) facilities under 15A NCAC 02D .0400 and 15A NCAC 02C .0200, petroleum underground storage tank (UST) facilities under 15A NCAC 02N .0100 through .0800, polychlorinated biphenyl (PCB) storage facilities under 15A NCAC 02O .0100 and 15A NCAC 02N .0100, and hazardous waste treatment, storage, and disposal facilities (TSDF's) under 15A NCAC 13A .0109 and .0110 that are owned by either the owner/operator or the guarantor and/or are facilities that are covered by a financial test or corporate guarantee. Provide a separate description for each type of facility, if applicable (if not applicable write "None").

Name: [insert name of facility]

Facility Address: [insert physical address of facility]

Permit No.: [insert associated permit number]

Closure Cost Estimate: [insert dollar amount for closure]

Post-Closure Care Cost Estimate: [insert dollar amount for post-closure care]

Corrective Action Program Cost Estimate: [insert dollar amount for current corrective action]

Potential Assessment and Corrective Action Cost Estimate: [insert dollar amount for potential assessment and corrective action]

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date]

Fill in all applicable parts of the Financial Test and either Alternative I, or Alternative II, or Alternative III below.

Financial Test

1. Sum of current closure, post-closure care, corrective action program, and potential assessment and corrective action cost estimates (if applicable) and guarantees from all of the solid waste management facilities in paragraphs 1 or 2 above: \$ [insert dollar amount]
2. All other cost estimates and guarantees required for UIC facilities, petroleum UST facilities, PCB storage facilities, and TSDF's listed in paragraph 3 above: \$ [insert dollar amount]
3. Tangible net worth (defined as tangible assets – liabilities. Tangible assets do not include intangibles such as goodwill or rights to patents and royalties): \$ [insert dollar amount]
4. Net Worth \$ [insert dollar amount]
5. Total liabilities - If any portion of the current closure, post-closure care, corrective action program, and potential assessment and corrective action cost estimates (if applicable), or guarantees identified above are recognized as liabilities in the audited financial statements, you must submit a special report from the independent certified public accountant (CPA), unless you can answer "yes" to item # 9: \$ [insert dollar amount]
6. The sum of net income plus depreciation, depletion, and amortization (Use for Alternative III.) \$[insert dollar amount]
7. Total assets in the U.S.: \$ [insert dollar amount]
8. Sum of line 1 plus line 2 from above and any other environmental obligations covered by a financial test: \$ [insert dollar amount]
9. Is line 3 greater than the sum of line 8 plus \$10 million? [Yes or No]
If "No", and you have provided a report from the independent CPA that the environmental obligations have been recognized as liabilities in the audited financial statements, then go to Item 9(a).
- 9a. Is line 3 greater than the sum of \$10 million plus any guarantees not recognized as liabilities? [Yes or No]
10. Is line 7 greater than line 8? [Yes or No]

If the financial data provided for items 3 through 7 above differs from what was provided in the audited financial statements, a special report from the certified public accountant shall be provided as described in 40 CFR 258.74(e)(2)(i)(C) and (g)(1).

Alternative I

1. Current bond rating of most recent senior unsubordinated bond issue of this firm and name of rating service: [insert current bond rating and name of rating service]
2. Date of bond issue: [insert date of bond issuance]
3. Date of final maturity of bond: [insert date of maturity]

Alternative II

1. Is the above line 5 divided by the above line 4 less than 1.5? [Yes or No]

Alternative III

1. Is (the above line 6 minus \$10 million) divided by the above line 5 greater than 0.1? [Yes or No]

As evidence that [firm] meets the conditions of the Corporate Financial Test, attached hereto is a copy of the following: Please check applicable responses

- () 1. Independent CPA's unqualified opinion of our financial statements for our latest completed fiscal year.
- () 2. Special report from CPA [If financial data in this letter is different than in audited financial statements] [See 40 CFR 258.74(e)(2)(i)(C) and (g)(1)].
- () 3. Report from CPA [if answer to item #9 of the financial test is No] verifying all of covered environmental obligations covered by test have been recognized as liabilities in the audited financial statements, how the obligations were measured and reported, and that tangible net worth of the firm is at least \$10 million dollars plus the amount of any guarantees not recognized as liabilities. [See 40 CFR 258.74(e)(2)(i)(D) and (g)(1)]

I hereby certify that [name of firm] meets the requirements of [Fill in Alternative I, Alternative II, or Alternative III] in support of [name of facility(s)] use of the corporate financial test to demonstrate financial assurance as required by the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(e)(July 1, 2010 edition).

[Signature]

[Name]

[Title]

[Date]

Exhibit A

Corporate Guarantee Terms For
Closure, Post-Closure Care, Corrective Action Program, and/or
Potential Assessment and Corrective Action
For [Owner/Operator], [Permit Number]

Guarantee made this [date] by [name of guaranteeing entity], [address and state of guaranteeing entity], herein referred to as guarantor. The guarantee is made on behalf of the [owner or operator name] of [business address], which is [one of the following: "our subsidiary"; a subsidiary of [name and address of common parent corporation] or "an entity with which the guarantor has a substantial business relationship"] to the North Carolina Division of Environmental Quality (NCDEQ).

Recitals:

1. Guarantor meets or exceeds the Corporate Financial Test criteria and agrees to comply with the reporting requirements for guarantors, as specified in the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(g)(July 1, 2010 edition).

2. [Owner or Operator] owns or operates the following solid waste management facility(ies) covered by this guarantee: List for each facility the following information

Name: [insert facility name]

Facility Address: [insert facility address]

Permit No.: [insert NCDEQ issued permit number]

Closure Cost Estimate: [insert dollar amount for closure]

Post-Closure Care Cost Estimate: [insert dollar amount for post-closure care]

Corrective Action Program Cost Estimate: [insert dollar amount for current corrective action]

Potential Assessment and Corrective Action Cost Estimate: [insert dollar amount for potential assessment and corrective action]

3. Closure, Post-Closure Care, Corrective Action Program, and Potential Assessment and Corrective Action Cost Estimates as used above refer to the plans maintained, as required by the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(g)(July 1, 2010 edition) for closure, post-closure care, corrective action program, and potential assessment and corrective action cost estimates (if applicable), of facilities identified above.

4. Pursuant to 40 C.F.R. 258.74(g)(3)(i)(July 1, 2010 edition), guarantor guarantees to NCDEQ that in the event that [insert owner or operator name] fails to perform closure, post-closure care, corrective action program, and/or potential assessment and corrective action of the above facility(ies) in accordance with the closure and post-closure care plans, the corrective action program, and/or potential assessment and corrective action and other permit requirements whenever required to do so, the guarantor shall perform the required activities or pay a third party to do so (performance guarantee) or establish a fully funded trust fund (payment guarantee), in conformance with 40 C.F.R. 258.74(a)(July 1, 2010 edition), in the name of the owner or operator in the amount of the current closure or post-closure

care or corrective action program or potential assessment and corrective action cost estimates as specified during the permitting process as well as the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(g)(July 1, 2010 edition).

5. Pursuant to 40 C.F.R. 258.74(g)(4)(July 1, 2010 edition), guarantor agrees that if the guarantor fails to meet the Corporate Financial Test criteria or is notified that it is disallowed from continuing as a guarantor, the [owner or operator name] must, within 90 days, provide alternate financial assurance. If the [owner or operator name] fails to provide alternative financial assurance within the 90-day period, the guarantor must provide such alternate financial assurance in the name of [owner or operator name] within the next 30 days thereafter.

6. The guarantor agrees to notify the NCDEQ Director by certified mail of voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modifications of the closure and post-closure care plans, corrective action programs, and/or potential assessment and corrective action or amendments or modification of the permit, the extension or reduction of the time of performance of closure or post-closure care or corrective action programs or potential assessment and corrective action, or any other modification or alteration of an obligation of the owner or operator pursuant to the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74 (July 1, 2010 edition).

8. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator name] must comply with the applicable financial assurance requirements of the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(g)(July 1, 2010 edition) for the above listed facilities, except as provided in paragraphs 9 and 10 of this agreement.

9. Pursuant to 40 C.F.R. 258.74(g)(3)(ii)(July 1, 2010 edition), guarantor may terminate this guarantee 120 days following the receipt of notification of its intended cancellation by certified mail by both the NCDEQ Director and by [owner or operator name].

10. Pursuant to 40 C.F.R. 258.74(g)(3)(iii)(July 1, 2010 edition), guarantor agrees that if [owner or operator name] fails to provide alternative financial assurance and obtain written approval of such assurance from the NCDEQ Director within 90 days after receipt of the notice of cancellation by the guarantor, guarantor shall provide such alternative financial assurance in the name of [owner or operator name] within the next 30 days before the guarantee terminates.

11. Guarantor expressly waives notice of acceptance of this guarantee by NCDEQ or by [owner or operator name]. Guarantor also expressly waives notice of amendments or modifications of the closure and post-closure care plans, corrective action programs, and/or potential assessment and corrective action and of amendments or modifications of the facility permit(s).

Effective date: [insert mechanism effective date]

[Name of Guarantor]

[Corporate Seal]

[For no corporate seal, see Rule .1805(c)]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

[Telephone Number]

[Email Address]

State of North Carolina

County of [Name of County]

On this [day] day of [month], [year], before me personally came [name signing for Guarantor] to me known, who, being by me duly sworn, did depose and say that she/he resides at [Guarantor address], that she/he is [title at Guarantor Firm] described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]

- (9) A special report from a certified public accountant (CPA) is a supplemental report mechanism to the corporate financial test mechanism as specified in Rule .1805(e)(5) and the corporate guarantee mechanism as specified in Rule .1805(e)(7) of this Section, and shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

SPECIAL REPORT
INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT'S REPORT
ON APPLYING AGREED-UPON PROCEDURES

The Board of Directors

[Name of Company]

[Mailing and location address]

[Permit No.]

We have performed the procedures enumerated below, which were agreed to by management of [Name of Company] pursuant to the Solid Waste Management Act, North Carolina General Statute 130A-295.2(f) and 40 C.F.R. 258.74(e)(July 1, 2010 edition) with respect to the letter dated [insert date] from the [insert Corporate Official name and title] to the North Carolina Department of Environmental Quality, solely to assist you in filing the Letter (prepared in accordance with the criteria specified therein) for the year ended [insert date of end of corporate fiscal year]. [Name of Company] is responsible for this Letter. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of [Name of Company] and the North Carolina Department of Environmental Quality. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures, which were limited solely to the identified item numbers, are as follows:

We compared the amounts in Item Nos. 3, 5, and 7 of the Financial Test in the CFO's Letter to corresponding amounts reported as total liabilities [amount], Tangible Net Worth [amount], and total assets [amount], respectively, in the audited financial statement as of [insert date of end of corporate fiscal year] and found them [insert either, "not to be in agreement" or "to be in agreement"].

We computed the amounts in Item Nos. 4 and 6 of the Financial Test in the CFO's Letter as of [insert date of end of corporate fiscal year] based on amounts reported as Net Worth [amount] and the net income plus depreciation, depletion, and amortization [amount] in the audited financial statements as of [insert date of end of corporate fiscal year], compared them to the amounts in the CFO's Letter and found them [insert either, "not to be in agreement" or "to be in agreement"].

We computed the amount of environmental obligations (as determined by current closure, post-closure care, corrective action program, and/or potential assessment and corrective action cost estimates or guarantees) which are recognized as liabilities in the amount of [amount] in the audited financial statement as of [insert date of end of corporate fiscal year], compared them to the amounts in the CFO's Letter and found them [insert either, "not to be in agreement" or "to be in agreement"].

We compared the amount in Item No. 7 of the Financial Test in the CFO's Letter and the Company's total assets located in the United States in the amount of [insert amount] in the audited financial statement as of [insert date of end of corporate fiscal year] and found them [insert either, "not to be in agreement" or "to be in agreement"].

[If not in agreement, describe the procedures performed in comparing the data in the CFO's letter derived from the audited financial year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.]

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the selected financial information included in the Letter. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. This report is intended solely for the use of management of the Company, and is not intended to be and should not be used by anyone other than these specified parties.

[Date]

[Name of Accounting Firm]

- (10) A capital reserve fund, as specified in Rule .1805(e)(8) of this Section shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CAPITAL RESERVE FUND RESOLUTION
ESTABLISHMENT AND MAINTENANCE
OF THE [FACILITY NAME]
CAPITAL RESERVE FUND

Whereas, there is a need in [insert location of facility as City, County] to provide funds for [closure, post-closure care, corrective action programs, or potential assessment and corrective action] for the [permit number], [facility name]; and

Whereas, the [location] shall bear the cost of [closure, post-closure care, corrective action programs, or potential assessment and corrective action] for the solid waste management facility at an estimated cost of [cost estimate].

Now, therefore, be it resolved by the governing board that:

Section 1. The Board of County Commissioners hereby creates a Capital Reserve Fund for the purpose of [closure, post-closure care, corrective action programs, or potential assessment and corrective action] for the [permit number] solid waste management facility.

Section 2. This Fund shall remain operational during the life of the facility and the post-closure care period beginning [date] and ending [date] as estimated at the time of annual update of this Resolution.

Section 3. The Board shall appropriate or transfer an amount of no less than [annual payment] each year to this Fund.

Section 4. This Resolution shall become effective and binding upon its adoption.

[Signature of County Commissioner]

[Signature of Chief Financial Officer]

[Date]

*History Note: Authority G.S. 130A-294; 130A-295.2;
Eff. July 1, 2020.*

15A NCAC 13C .0301 DEFINITIONS

Words or phrases used in the rules in this Section that are defined in G.S. 130A, Article 9 shall have the meaning provided therein. The following words and phrases shall have the following meanings:

- (1) "Applicant" means an environmental consulting or engineering firm seeking Department approval to act as a Registered Environmental Consultant.
- (2) "Applicant RSM" means an individual proposed by an applicant to fill the role of Registered Site Manager.
- (3) "Registered Environmental Consultant" or "REC" means an environmental consulting or engineering firm approved to implement and oversee voluntary remedial actions pursuant to G.S. 130A-310.9(c).
- (4) "Registered Site Manager" or "RSM" means the person or persons approved by the Department to manage all site activities and make certifications on behalf of the Registered Environmental Consultant in its role as consultant to remediating parties for implementation and oversight of a voluntary remedial action pursuant to G.S. 130A-310.9(c).
- (5) "Remediating Party" means site owner, operator, or responsible party engaging in a voluntary remedial action pursuant to G.S. 130A-310.9(c).
- (6) "Request for Approval" means the application and qualifications documentation package that must be submitted by an environmental consulting or engineering firm to the Department so that the Department may determine an applicant's eligibility to operate as a Registered Environmental Consultant. The Department shall make available a form that complies with Rule .0303 and .0304 of this Section for submission of such information.
- (7) "Sensitive Environments" means State or federal designated park, monument, wilderness area, preserve, wildlife refuge, or wetland; State or federal lands designated for game management, or the protection of natural ecosystems; or habitat for State or federally designated endangered species.
- (8) "Sensitive Populations or Property Uses" means residential property, schools, day care facilities, geriatric centers, State or federally designated historical sites, or parks owned or maintained by a unit of local government.
- (9) "Source Area" means any area of sludge, soil, sediment, or other solid medium contaminated by a release of one or more hazardous substances.
- (10) "Voluntary Remedial Action" is a remedial action as defined in G.S. 130A-310(7), conducted voluntarily by a remediating party,

and undertaken with the approval of the Department pursuant to G.S. 130A-310.9(c).

History Note: Authority G.S. 130A-310.12(b); Eff. April 1, 1997; Readopted Eff. July 1, 2020.

15A NCAC 13C .0302 GENERAL PROVISIONS

- (a) The rules in this Section shall govern the selection and use of private environmental consulting and engineering firms to implement and oversee voluntary remedial actions by remediating parties pursuant to G.S. 130A-310.9(c).
- (b) All remedial actions conducted pursuant to the rules of this Section shall comply with applicable federal, State, or local laws.
- (c) A person who violates a provision of this Section or any other requirement in connection with the voluntary remedial action program, including making a false statement, representation, or certification or knowingly rendering inaccurate a recording or monitoring device or method, shall be subject to enforcement, including disqualification as an REC or RSM.
- (d) A party wishing to conduct a Department-approved voluntary remedial action pursuant to this Section shall enter into a written agreement with the Department pursuant to G.S. 130A-310.9(c).
- (e) For the purpose of administration and enforcement of the voluntary remedial action program and for protection of human health or the environment, employees, agents, and contractors of the Department may enter any site, or other location undergoing a voluntary remedial action pursuant to this Section, during either the working hours of any business on the property or during daylight hours and upon notice, to investigate, sample, or inspect any documents, conditions, equipment, practice, or property. In the event that the Department determines as a result of an investigation, sampling, or inspection that there has been a release or that there exists a threat of release of a hazardous substance, the Department may enter a site or location and perform or arrange for the performance of response actions.
- (f) Remedial Actions conducted pursuant to this Section shall be overseen by an REC. All work performed by an REC shall be under the supervision and direction of an RSM representing the REC.
- (g) The Department shall have complete discretion to effect cleanup itself, or oversee a remediating party's cleanup if:
 - (1) the Department determines that the site poses an imminent hazard;
 - (2) in the Department's determination, the number and frequency of public concerns about actions at the site have risen to a level that direct oversight by the Department would not increase the demand on its resources beyond that already being expended;
 - (3) the Department has initiated an enforcement action;
 - (4) it appears to the Department that the voluntary remedial action is not being implemented or overseen in accordance with G.S. 130A-310.9(c);
 - (5) hazardous substances have migrated to adjoining property; or

- (6) other conditions, such as the presence of sensitive environments, sensitive populations or property uses, or radioactive wastes.
- (h) The remedial investigation shall be completed within three years of the effective date of the agreement to conduct a voluntary remedial action. Non-groundwater remedial action shall be completed within eight years of the effective date of that agreement. Groundwater remedial action shall be initiated within two years of completion of the remedial investigation. All document and work phase certifications pursuant to Rule .0306(b) of this Section shall be completed and all documents received by the Department prior to these deadlines. The Department may approve a remediating party's written request for extension of these deadlines if one or more of the following conditions exists and the remediating party or the REC provides documentation to support the request and a schedule with timelines commensurate with the activities to be performed:
- (1) documented access delays outside of the remediating party's control;
 - (2) the REC learns of previously unconsidered facts, data, or other information as described in Rule .0305(b)(5) or (6) of this Section, including changes to standards or risk targets;
 - (3) the proposed remedy includes a pilot study to be implemented prior to full-scale remedial action implementation;
 - (4) there has been a change in REC; or
 - (5) during and after implementation of a remedial action, a demonstration is made that cleanup standards cannot be achieved by the required deadline due to technical impracticability.
- (i) The REC shall preserve and maintain all documents submitted to the REC on behalf of or by the remediating party, prepared by the REC, or within the REC's possession, custody, or control, that relate to work performed pursuant to the rules in this Section, including documents to substantiate the facts, data, conclusions, and other information set forth in any REC opinion or certification. Such documents shall be kept at one or more locations accessible to the Department and in such a form as to enable the Department to ascertain whether the response actions that are the subject of the REC opinion or certification have been performed in compliance with the provisions of the rules in this Section until such time as the record is provided to the Department for the public file. The REC shall submit to the Department for the public file all work plans, reports, and work-phase completion statements within 30 days of their completion.
- (j) Any person required by Paragraph (i) of this Rule to preserve and maintain any documents shall preserve and maintain those documents until the REC confirms that the Department has received the records.
- (k) RECs shall comply with Department site-related requests for information not supplied in accordance with Paragraph (i) of this Rule.
- (l) Within 60 days of notice from the Department of revocation of an REC's approval, remediating parties shall submit the name of a successor REC. A remediating party shall provide written notice to the Department within 60 days of a change in REC for any other reason.

(m) Nothing in this Section shall be construed to imply authorization by the Department to any person other than the Department or the Department's employees, agents, or contractors to enter any property not owned by him or her to carry out a response action or otherwise to injure or interfere with any other person's rights or interests in real or personal property without that person's consent. After making efforts to obtain access to any site or other location to be investigated as a possible site not owned by the remediating party, an REC or remediating party who is unable to obtain such access may request, in writing, that the Department authorize him or her or his or her employees, agents, representatives, or contractors to enter such site or location for the purpose of performing one or more necessary response actions. Each such request for authorization shall include all of the following information:

- (1) the identity of the person making the request and his or her relationship to the site or location;
- (2) the nature and location of the actions that he or she intends to undertake, the anticipated duration of the actions and the reasons such access is necessary to perform the actions;
- (3) the identity of each person who owns or operates the site or location to which access is sought;
- (4) the results of any and all attempts to obtain such access; and
- (5) certification that a copy of the request has been sent to each person who owns or operates such sites or locations.

History Note: Authority G.S. 130A-310.1(c); 130A-310.1(e); 130A-310.3(c); 130A-310.5(a); 130A-310.6; 130A-310.12(b); Eff. April 1, 1997; Readopted Eff. July 1, 2020.

15A NCAC 13C .0303 APPROVAL OF REGISTERED ENVIRONMENTAL CONSULTANTS

- (a) To qualify for Department approval as an REC, an applicant shall complete and submit a Request for Approval form, available from the Department, demonstrating that the applicant meets the requirements contained in this Section. The Request for Approval form shall set forth the qualifications of all persons the applicant wishes to qualify as RSMs and shall contain notarized signatures of representatives of the applicant.
- (b) Applicants shall supply the names and telephone numbers of previous government and industry clients and copies of actual work products to verify experience, if requested by the Department. The Department may require applicants to supply additional information to clarify what is provided on the Request for Approval form. Those applicants not complying with such requests shall not be approved to perform work pursuant to the rules in this Section.
- (c) An REC shall notify the Department if the nature of its business changes, if it no longer meets the requirements for approval under this Section or if it discovers that any information it submitted in any Request for Approval is or was incorrect no later than 30 days subsequent to the discovery of the occurrence.
- (d) If a Department-approved RSM leaves the employment of an REC or changes employment within an REC, an REC shall, no

later than 30 days prior to the change, submit the name and qualifications of another person to perform the role of the RSM. If an REC does not receive 30 days of notice by an RSM of the RSM's intended change in employment, the REC shall notify the Department within 24 hours of the RSM providing such notice and shall within 30 days of the RSM's notice to the REC, submit to the Department the name and qualifications of another person to perform the role of the RSM. The Department shall determine whether the proposed replacement qualifies as an RSM per the requirements set forth in Rule .0304. An REC may propose amendments to its approval as an REC to add or delete RSMs. An RSM that changes employment from an approved REC shall require a new approval by the Department before working as an RSM with another REC.

(e) The Department shall notify applicants in writing whether they are approved to conduct business as an REC or RSM. No applicant may represent itself, or work, as an REC or RSM without written Department approval.

(f) An REC's approval shall be valid for five years unless revoked earlier by the Department.

(g) The Department shall make available to the general public a list of all approved RECs.

*History Note: Authority G.S. 130A-310.12(b);
Eff. April 1, 1997;
Readopted Eff. July 1, 2020.*

15A NCAC 13C .0304 MINIMUM QUALIFICATIONS FOR REGISTERED ENVIRONMENTAL CONSULTANTS

In order to be approved to perform work as an REC, an environmental consulting or engineering firm shall meet the following requirements.

(1) REC applicants shall demonstrate that one or more persons in their employ individually meet all of the following standards and requirements and therefore qualify to perform the role of RSM for the REC. To qualify as an RSM, an individual shall:

(a) Have the following relevant professional experience:

- (i) five years of experience in investigation and remediation of hazardous substance or waste disposal sites;
- (ii) three years of experience in supervising site investigation and remedial action projects; and
- (iii) eight years of total relevant professional experience, which shall be work of a professional grade and character performed for at least an average of 20 or more hours per week that indicates the applicant is competent to render waste site cleanup activity

opinions. Total relevant professional experience performed for less than an average of 20 hours per week shall be applied toward the satisfaction of these requirements on a pro rata basis. If an individual works more than 40 hours in a week, even if having multiple jobs, that individual shall get credit only for one week's worth of work. The Department shall consider the following criteria in evaluating whether an applicant RSM's waste site cleanup decision-making experience and practical experience constitute sufficient relevant experience: the nature of work activities; the field of work activities; the types of reports, studies, and documents prepared; the range of methods evaluated and selected; the number of individuals and disciplines of other professionals supervised or coordinated; the extent of review of conclusions, recommendations, and opinions by supervisors; and the duration of employment.

(b) Have sufficient training to meet the hazardous waste operations and emergency response training standard set forth in 29 CFR 1910.120.

(c) Have a four-year or graduate degree from a college or university accredited by a regional accrediting agency in one of the following fields or a field that provides the educational background necessary to oversee a remedial action:

- (i) Biochemistry;
- (ii) Biology;
- (iii) Chemical Engineering;
- (iv) Chemistry;
- (v) Civil Engineering;
- (vi) Earth Science;
- (vii) Environmental Engineering;
- (viii) Environmental Science;
- (ix) Epidemiology;
- (x) Geochemistry;
- (xi) Geological Engineering;
- (xii) Geology;

- (xiii) Geophysics;
 - (xiv) Geotechnical Engineering;
 - (xv) Hydrogeology;
 - (xvi) Hydrology;
 - (xvii) Industrial Hygiene;
 - (xviii) Mechanical Engineering;
 - (xix) Physics;
 - (xx) Soil Science; and
 - (xxi) Toxicology.
- (d) Have a record of professionalism and integrity, demonstrated by the absence of:
- (i) conviction of a felony;
 - (ii) conviction of a misdemeanor involving fraud, deceit, misrepresentation, or forgery;
 - (iii) an adverse civil judgment in an action involving fraud, deceit, misrepresentation, or forgery;
 - (iv) disbarment or disciplinary action relating to any professional license; and
 - (v) disqualification from government contracts for negligent acts or failure to perform required work.
- (2) The applicant shall demonstrate that it has an established environmental consulting practice.

- welfare and the environment in the performance of professional services as an REC.
- (2) If an REC acting pursuant to this Section identifies an imminent hazard as defined under G.S. 130A-2(3) at a site at which it is providing professional services pursuant to the rules in this Section it shall, unless the REC has documentation the remediating party has provided such notice, within 24 hours of discovery, notify the Department:
- (A) of the imminent hazard, including exposures to contaminated vapor, drinking water, and other contaminated media;
 - (B) whether the remediating party has agreed to take corrective action;
 - (C) what immediate action to reduce exposure of the imminent hazard, if any, has been taken. Such actions include providing alternate water and treatment systems for contaminated drinking water sources, removal of vessels and containers having explosive conditions, modifications to indoor ventilation systems or installation of air treatment units, stopping the on-going discharge of bulk wastes or unpermitted piped wastes entering surface water, abatement of exposed wastes on residential or school property, removal of discovered above-ground vessels storing wastes, and containment of any hazardous substance spills occurring after execution of the agreement; and
 - (D) that, if in the opinion of the REC, more extensive interim remedial action is necessary to abate an imminent hazard prior to development of a remedial action plan pursuant to Rule .0306(n) of this Section the REC shall prepare, certify, and submit an interim remedial action plan that complies with Rule .0306(o) of this Section and contains an implementation schedule.
- (3) If an REC acting pursuant to this Section determines through data evaluation, including review of laboratory analyses, performing fate and transport calculations, or conducting computer modeling that hazardous substances at or above applicable standards have migrated from the property containing a source area to other property or determines there are sensitive environments or radioactive wastes on the site, it shall, unless the REC has documentation the remediating party has provided such notice, within 24 hours of the REC's determination, notify the Department.

History Note: Authority G.S. 130A-310.12(b); Eff. April 1, 1997; Readopted Eff. July 1, 2020.

15A NCAC 13C .0305 STANDARDS OF CONDUCT FOR REGISTERED ENVIRONMENTAL CONSULTANTS

- (a) The REC and its RSMs shall comply with the following standards of professional competence.
- (1) An RSM shall render a waste site cleanup activity opinion only if he or she has reviewed the work to ascertain whether the completed work complies with this Section.
 - (2) The RSM shall perform his or her services only in areas of his or her competence and shall not render a decision on any assessment, cleanup plan, or document dealing with subject matter for which he or she lacks competence by virtue of education or experience. If a site assessment or cleanup activity opinion requires expertise outside the RSM's field of expertise, the RSM shall render such an opinion relying in part upon the advice of one or more professionals having relevant competence.
- (b) The REC and its RSMs shall comply with the following standards of professional responsibility.
- (1) An REC shall at all times recognize its primary obligation is to protect public health, safety, and

- (4) In providing professional services all RSMs shall:
 - (A) exercise independent professional judgement;
 - (B) follow the requirements and procedures set forth in applicable provisions of this Section; and
 - (C) act with reasonable care and diligence and apply the knowledge and skill ordinarily required of RSMs in good standing in the State at the time the services are performed.
- (5) If, subsequent to the date an REC renders a waste site cleanup activity opinion, anyone employed by the REC that rendered the opinion learns that previously unconsidered facts, data, or other information support or lead to a different opinion, the REC shall notify, in writing, the remediating party and the Department.
- (6) If, subsequent to the date of its engagement, a successor REC learns of material facts, data, or other information that existed as of the date of any predecessor REC's waste site cleanup activity opinion but was not disclosed in that opinion, the successor REC shall promptly notify, in writing, the remediating party and the Department.
- (7) An REC shall not allow the use of its name or the names of its RSMs by, or associate in a business venture with, any person or firm that an REC knows or should know is engaging in fraudulent or dishonest business or professional practices relating to the professional responsibilities of the REC.
- (8) The REC shall be objective and truthful in all professional reports, public statements, or testimony and shall include all information that the REC determines to be relevant and pertinent in the reports, statements, or testimony if the result of an omission would or reasonably could lead to a false conclusion.
- (9) An REC shall not falsify or permit misrepresentation of an RSM's academic or professional qualifications and shall not misrepresent or exaggerate an RSM's degree of responsibility in or for the subject matter of prior assignments.
- (10) RECs shall comply with all applicable provisions of law, rules, and regulations.
- (11) All RECs shall have knowledge of this Section.

- 15A NCAC 13C .0306 TECHNICAL STANDARDS FOR REGISTERED ENVIRONMENTAL CONSULTANTS**
- (a) The REC shall ensure that the documents, plans, and time taken to complete work comply with the remediating party's agreement with the Department, the Inactive Hazardous Sites Response Act, and the rules of this Section.
 - (b) All work phase completion statements, schedules, plans, and reports require REC certification. An REC's certification shall comply with the following:
 - (1) REC certification of any document shall include the following statement, signed by the RSM and notarized:
 "I certify that I am personally familiar with the information contained in this submittal, including any and all supporting documents accompanying this certification, and that the material and information contained herein is, to the best of my knowledge and belief, true, accurate, and complete and complies with the Inactive Hazardous Sites Response Act G.S. 130A-310, et seq. and the voluntary remedial action program Rules 15A NCAC 13C .0300. I am aware that there are significant penalties for willfully submitting false, inaccurate, or incomplete information."
 - (2) Prior to REC certification, documents shall contain the following notarized declaration signed and dated by, and including the title of, the highest ranking official of the remediating party having day-to-day responsibility for the performance of the response action which is the subject of the submittal:
 "I certify that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material and information contained herein is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for willfully submitting false, inaccurate, or incomplete information."
 - (3) Any work which would constitute the "practice of engineering" as defined by G.S. 89C shall be performed under the responsible charge of, and signed and sealed by, a professional engineer registered in the state of North Carolina. Any work which would constitute the "public practice of geology" as defined by G.S. 89E shall be performed under the responsible charge of, and signed and sealed by, a geologist licensed in the state of North Carolina.
 - (4) RSM certification and submittal to the Department of the following documents shall occur prior to implementation:
 - (A) remedial investigation work plans prepared in accordance with Paragraph (h) of this Rule;

History Note: Authority G.S. 130A-310.12(b); Eff. April 1, 1997; Readopted Eff. July 1, 2020.

- (B) plans for additional site characterization, pilot studies, or treatability studies to be conducted in relation to the site that are prepared in compliance with Paragraph (j) of this Rule;
- (C) remedial action plans prepared in accordance with Paragraph (n), (o) or (p) of this Rule; and
- (D) modifications of work schedules.
- (5) The RSM shall prepare certified completion statements for the following work phases and provide them to the Department in accordance with Rule .0302(i) of this Section:
 - (A) completion of the remedial investigation;
 - (B) REC approval of the proposed remedial action plan following notice of the proposed remedial action plan, the close of the 30-day public comment period, submission of the comments and the REC's responses to the public comments received during the public comment period, and the Department's written acknowledgement that comments have been addressed;
 - (C) initiation of all groundwater remedial actions as demonstrated by the first field event associated with implementation of the groundwater remedy;
 - (D) completion of all non-groundwater contamination remedial actions as demonstrated by a confirmatory sampling event and REC certification of a written report pursuant to Paragraph (r) of this Rule summarizing the data; and
 - (E) completion of all remedial action activities.
- (6) RSM certification pursuant to Subparagraph (b)(5) of this Rule shall include the following statement signed by the RSM and notarized:

"The [insert work phase] which is the subject of this certification has, to the best of my knowledge, been completed in compliance with the Inactive Hazardous Sites Response Act G.S. 130A-310, et seq. and the voluntary remedial action program Rules 15A NCAC 13C .0300, and [insert name of the REC] is in compliance with Rules .0305(b)(2) and .0305(b)(3) of this Section. I am aware that there are significant penalties for willfully submitting false, inaccurate, or incomplete information."

Certification of the completion of all remedial action activities shall also include the following statement:

 - "The approved and certified site remedial action plan has been implemented, and to the best of my knowledge and belief, cleanup levels determined pursuant to Rule .0308 of this Section have been achieved, and no significant or otherwise unacceptable risk or harm to human health or the environment remains at the site."
- (c) The RSM shall certify and submit to the Department a project status update report annually on the anniversary date of the executed date of the remediating party's administrative agreement with the Department. Annual project status update reports shall be submitted until the REC submits a certified completion statement pursuant to Part (b)(5)(B) of this Rule for all contaminated media. Annual project status update reports shall include an update on meeting the deadlines in Rule .0302(h) of this Section and in the remediating party's agreement with the Department.
- (d) The REC may approve and certify site activities and documents pursuant to the rules in this Section only if the following environmental sample collection and analyses criteria are met:
 - (1) The REC shall employ analytical and environmental monitoring data to support recommendations or conclusions with respect to assessment, removal, treatment, or containment actions that are scientifically valid and of a level of precision and accuracy commensurate with their stated or intended use.
 - (2) Procedures and methods employed for the collection and analysis of soil, sediment, water, vapor, air, and waste samples shall be:
 - (A) methods published by the United States Environmental Protection Agency (USEPA), the American Society for Testing and Materials (ASTM), the American Public Health Association (APHA), the National Institute for Occupational Safety and Health (NIOSH), the American Water Works Association (AWWA), or other organizations with expertise in the development of standardized analytical testing methods; or
 - (B) modifications of published methods, provided that all modifications have been previously approved by the Department or one of the entities in Part (A) of this Subparagraph.
 - (3) The REC shall only use laboratories certified to analyze applicable parameters pursuant to 15A NCAC 02H .0800, or a contract laboratory under the United States Environmental Protection Agency Contract Laboratory Program to analyze samples collected pursuant to rules in this Section.
 - (4) Laboratory and other reports of analyses of samples shall be reported in units applicable to the standards for each media analyzed.

- (5) The REC shall only allow sample collection and analyses to be performed by persons who are qualified by education, training, and experience.
 - (6) All documents prepared pursuant to the rules in this Section that contain the results of sample collection and analyses shall include the following information:
 - (A) the date, location, and time of sampling and the name of the individual who collected the sample;
 - (B) specification of all sample filtration or preservation procedures used;
 - (C) the date of receipt of the sample at the laboratory and the dates the sample was extracted and analyzed;
 - (D) the name and address of the laboratory and proof of certification received pursuant to 15A NCAC 02H .0800 or approval as a contract laboratory under the USEPA Contract Laboratory Program;
 - (E) the sample matrix description and identification numbers;
 - (F) the sample preparation and analytical method names and numbers;
 - (G) the results of the analysis and concentration units;
 - (H) the sample quantitation limit of each reported analyte based upon analytical conditions;
 - (I) details of known conditions or findings that may affect the validity of analytical data, including equipment blank, trip blank, method blank, surrogate, spiked sample, and other quality control data;
 - (J) the laboratory's written justification for all sample dilution, additional sample preparation, or deviation from specified analytical methods; and
 - (K) a complete chain of custody documentation for each sample.
- (e) The REC shall approve and certify site activities and documents pursuant to this Section only if procedures to protect health, safety, public welfare, and the environment during the performance of response actions are being implemented. The scope and detail of health and safety procedures shall be commensurate with the degree and nature of the risks posed to human and ecological populations by the disposal site and response actions. Such procedures shall include the following:
- (1) measures to protect human populations from exposure to hazardous substances;
 - (2) air monitoring activities, in areas of exceedances of standards as referenced in G.S. 130A-310.3(d); and
 - (3) measures necessary to contain hazardous substances, including:
 - (A) measures to control stormwater run-off;
 - (B) measures to control dust and other environmental media, such as wetting soils;
 - (C) measures to decontaminate vehicles and equipment to minimize the spread of contaminated soil from the disposal site;
 - (D) measures to secure on-site excavations and stockpiles of contaminated materials; and
 - (E) discontinuance of response actions if necessary to protect public health and safety.
- (f) In planning the remedial investigation, the REC shall identify each area of known or suspected hazardous substance contamination at the site, based on the following:
- (1) then-existing laboratory data;
 - (2) readily observable conditions indicative of contamination, such as staining, odors, or visible or other evidence of damage to or leakage from a storage facility or vessel;
 - (3) information ascertainable from the public record, site operation records, and information provided by the remediating party; and
 - (4) other evidence actually known to the REC.
- For each area of known or suspected contamination, the REC shall plan, implement, and complete the remedial investigation so that the location and identity of the hazardous substances are established. For purposes of this Rule, the presence of chemical storage or other similar facilities shall not alone constitute evidence of known or suspected contamination.
- (g) The REC shall plan, implement, and complete the remedial investigation so that the areal and vertical extent of hazardous substance contamination is delineated to unrestricted use remedial goals, natural background concentrations, or to concentrations demonstrated by the REC to be unrelated to the contaminant releases comprising the site for each area of concern. The REC may demonstrate, through professional judgement, that the vertical extent of contamination cannot be delineated due to technical impracticability. The technical impracticability demonstration shall include a written evaluation of the usefulness of additional data, including a conclusion that:
- (1) no receptor exposure to the media not sampled will take place by not collecting the data;
 - (2) the success of the remedial design will not be affected by not collecting the data; and
 - (3) collecting the data will result in additional expense with limited or no associated benefit.
- (h) The REC shall prepare, certify, and submit, prior to implementation of a remedial investigation, one or more remedial investigation plans prepared in compliance with Paragraphs (d), (e), (f), and (g) of this Rule and all other applicable requirements. The plan(s) shall contain the following or include an explanation as to why, in the professional judgement of the REC, the component is not relevant to the remedial investigation:

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| <p>(1) site location information including street address, longitude and latitude, and site and surrounding property land use;</p> <p>(2) a summary of all management practices employed at the site for hazardous wastes and wastes that may have contained hazardous substances including:</p> <p style="padding-left: 20px;">(A) a list of types and amounts of waste generated (with RCRA waste codes), treatment and storage methods, and ultimate disposition of wastes;</p> <p style="padding-left: 20px;">(B) a description of the facility's past and current RCRA status;</p> <p style="padding-left: 20px;">(C) the location and condition of all identified vessels currently or previously used to store chemical products, hazardous substances, or wastes; and</p> <p style="padding-left: 20px;">(D) a summary of the nature of all identified on-site hazardous substance releases, including disposal or spills;</p> <p>(3) United States Geological Survey topographic maps sufficient to display topography within a one-mile radius of the site;</p> <p>(4) a map, drawn to scale, that includes:</p> <p style="padding-left: 20px;">(A) a north arrow;</p> <p style="padding-left: 20px;">(B) a scale;</p> <p style="padding-left: 20px;">(C) the locations of property boundaries, buildings, structures, all perennial and non-perennial surface water features, drainage ditches, dense vegetation, known and suspected spill or disposal areas identified pursuant to Paragraph (f) of this Rule, underground utilities, storage vessels, existing on-site wells; and</p> <p style="padding-left: 20px;">(D) an identification of all adjacent property owners and land uses.</p> <p>(5) a description of local geologic and hydrogeologic conditions;</p> <p>(6) an inventory and map of all identifiable wells, springs, and surface-water intakes used as sources of potable water within a 1,500 foot radius of each source area or within a 1,500 foot radius of the contaminant perimeter, or, if the source area is unknown, within a 1,500 foot radius of each point where contamination has been identified at the site;</p> <p>(7) an evaluation of the site and all adjacent property for the existence of the following areas if they may have been affected by the contamination from the site:</p> <p style="padding-left: 20px;">(A) sensitive environments;</p> <p style="padding-left: 20px;">(B) sensitive populations or property uses; and</p> <p style="padding-left: 20px;">(C) above and below ground structures and utilities.</p> | <p>(8) a chronological listing of all previous owners and each period of ownership since the property was originally developed; ;</p> <p>(9) operational history, including aerial photographs and Sanborne Fire Insurance maps if used to support land-use history;</p> <p>(10) a list of all hazardous substances that have been used or stored at the site and the approximate amounts and dates of use or storage, as revealed by available written documentation and interviews with a representative number of former and current employees or occupants possessing relevant information;</p> <p>(11) the site environmental permit history, including copies of all federal, State, and local environmental permits, past and present, issued to the remediating party or within its custody or control;</p> <p>(12) a summary of all previous and ongoing environmental investigations and environmental regulatory involvement with the site and copies of all associated reports and laboratory data in public records or within the custody or control of the REC or remediating party unless the REC confirms that the documents are already present in the Department's electronic document system for REC site records;</p> <p>(13) plans to evaluate the risk of contaminant migration in any media to:</p> <p style="padding-left: 20px;">(A) wells, springs, and surface-water intakes identified in Subparagraph (6) of this Rule; and</p> <p style="padding-left: 20px;">(B) sensitive environments, sensitive populations or property uses, or above and below ground structures or utilities identified in Subparagraph (7) of this Rule;</p> <p>(14) intended procedures for characterizing site geologic and hydrogeologic conditions and identifying and delineating each contamination source as to each affected environmental medium, including any plans for special assessment such as a geophysical survey;</p> <p>(15) intended methods, locations, depths of, and justification for all sample collection points for all media sampled, including monitoring well locations and anticipated screened intervals;</p> <p>(16) proposed field and laboratory procedures for quality assurance and quality control;</p> <p>(17) proposed analytical parameters and analytical methods for all samples;</p> <p>(18) equipment and personnel decontamination procedures; and</p> <p>(19) a description of measures that shall be implemented to protect the health and safety of nearby residential and business communities in relation to activities of the remedial investigation.</p> |
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(i) The REC shall prepare, certify, and submit remedial investigation reports prepared in compliance with this Rule and all other applicable requirements. The reports shall contain the following:

- (1) an update on meeting the deadlines required by Rule .0302(h) of this Section and by the remediating party's agreement with the Department;
- (2) a narrative description of how the investigation was conducted, including a discussion of all variances from the approved work plan;
- (3) a description of groundwater monitoring well design and installation procedures, including drilling methods used, completed drilling logs, "as built" drawings of all monitoring wells, well construction techniques and materials, geologic logs, and copies of all well installation permits;
- (4) a map, drawn to scale, showing all environmental media sample locations, test pits, surficial soil samples, soil borings, soil vapor samples, surface water samples, sediment samples, and monitoring wells in relation to disposal areas or other sources of contamination identified pursuant to Paragraph (f) of this Rule. All sample locations shall be surveyed to a known benchmark or flagged with a secure marker until after the remedial action is completed. Groundwater elevations shall be surveyed to a known datum. Any survey performed pursuant to this Paragraph shall be performed by a registered land surveyor duly authorized under North Carolina law to conduct such activities;
- (5) a description of all field and laboratory quality control and quality assurance procedures followed during the remedial investigation;
- (6) a description of procedures used to manage drill cuttings, purge water, and decontamination water;
- (7) a summary of site geologic conditions, including a description of soils and vadose zone characteristics;
- (8) a description of site hydrogeologic conditions if groundwater contamination is known or suspected to be present, including current uses of groundwater, notable aquifer characteristics, a water table elevation contour map with groundwater flow patterns depicted, and tabulated groundwater elevation data;
- (9) tabulation of analytical results for all sampling including sampling dates and soil sampling depths and copies of all laboratory reports, including quality assurance and quality control documentation;
- (10) if contaminants exceed cleanup levels pursuant to Rule .0308 of this Section, soil, groundwater, surface water, and sediment contaminant delineation maps for each primary constituent

- (11) of concern, including scale and sampling points with contaminant concentrations;
- (12) if contaminants exceed cleanup levels pursuant to Rule .0308 of this Section, cross sections, including scale and sampling points with contaminant concentrations;
- (13) a description of the risk of contaminant migration in any media to:
 - (A) wells, springs, and surface water intakes identified in Subparagraph (h)(6) of this Rule; and
 - (B) sensitive environments, sensitive populations or property uses, or above and below ground structures and utilities identified in Subparagraph (h)(7) of this Rule;
- (14) a description of procedures and the results of special assessments such as geophysical surveys, immunoassay testing, soil gas surveys, or test pit excavations; and
- (15) color copies of site photographs if used to provide documentation of the investigation results.

(j) If an REC elects to conduct a pilot study, or further contaminant characterization is needed to evaluate a potential remedy, the REC shall prepare, certify, and submit, prior to implementation, a work plan prepared in compliance with Paragraphs (d) and (e) of this Rule and other applicable requirements. The work plan shall also contain a description of additional site characterization, pilot studies, and treatability studies to be conducted in relation to the site.

(k) If any of the following conditions apply to the proposed remedial action, the REC shall seek and obtain Department concurrence with the remedial action prior to implementation by submitting to the Department a summary of available remedies, their projected costs, and the reasons why each was accepted or rejected by the REC:

- (1) the remedial action will be conducted entirely on site and for which a permit waiver is desired under G.S. 130A-310.3(e);
- (2) the remedial action includes institutional controls for restricted use of contaminated areas or media; or
- (3) the remedial action exceeds the cost set forth in G.S. 130A-310.9(a).

(l) Thirty days prior to approving a remedial action plan, the REC shall provide notice of the proposed remedial action plan to those who have requested notice that such plans have been developed, as provided in G.S. 130A-310.4(c)(2). The REC shall provide proof of such notice and of resulting comments from the public to the Department prior to approval of the remedial action plan.

(m) Remedial actions that involve the emission or discharge of hazardous substances to the atmosphere shall be conducted in a manner that provides for the protection of human health and the environment, in conformance with this Section and all applicable permits, approvals, laws, or other rules or regulations.

(n) The REC shall prepare, certify, and submit, prior to implementation of a contaminant remedy, remedial action plans prepared in compliance with Paragraphs (d), (e), (k), (l), and (m)

of this Rule and all other applicable requirements. The plans shall contain the following:

- (1) a discussion of the results of the remedial investigation, including media contaminated, contaminants of concern, the areal and vertical extent of contamination, and the risk of contaminant migration in any media to any wells, springs, and surface-water intakes, sensitive environments, sensitive populations or property uses, and above and below ground structures or utilities identified in Subparagraph (i)(12) of this Rule;
- (2) a statement of objectives for the remedial action;
- (3) an evaluation of available remedial alternatives using the following feasibility study criteria:
 - (A) protection of human health and the environment, including attainment of cleanup levels;
 - (B) compliance with applicable federal, State, and local regulations;
 - (C) long-term effectiveness and permanence;
 - (D) reduction of toxicity, mobility and volume;
 - (E) short-term effectiveness, such as effectiveness at minimizing the impact of the site remedial action on the environment and the local community;
 - (F) implementability, such as technical and logistical feasibility and an estimate of time required for completion;
 - (G) cost; and
 - (H) community acceptance;
- (4) a description of the results of site characterization, pilot studies, or treatability studies that support the design and a description of the procedures and schedule for construction, operation and maintenance, system monitoring and performance evaluation, and progress reporting for the chosen remedial alternative;
- (5) a description and conceptual design of the proposed remedy, including process flow diagrams and pre-design drawings of all major components of all treatment;
- (6) a demonstration that the proposed remedy is supported by the remedial alternative feasibility study conducted pursuant to Subparagraph (n)(3) of this Rule;
- (7) a description of all activities necessary to implement the proposed methods of remedial action in compliance with applicable laws and regulations and in such a manner that cleanup standards are met. These activities shall include, well installation and abandonment, sampling, run-on or run-off control, discharge of treated waste streams, and management of

investigation and remedial action derived wastes;

- (8) a description of the criteria for remedial action completion, including procedures for confirmatory sampling;
- (9) a description of measures that shall be implemented to protect the health and safety of nearby residential and business communities in relation to activities of the remedial action; and
- (10) equipment and personnel decontamination procedures.

(o) If, in the opinion of the REC, interim remedial action is necessary to abate an imminent hazard as defined in G.S. 130A-310.5(a), or for removal of waste or chemical sources to protect public health, safety, and welfare and the environment from hazardous substances migrating toward receptors or other properties prior to development of a remedial action plan pursuant to Paragraph (n) of this Rule, the REC shall prepare, certify, and submit, prior to implementation, an interim remedial action plan prepared in compliance with Paragraphs (d), (e), (k), (l), and (m) of this Rule and other applicable requirements that contains the following:

- (1) a discussion of the remedial investigation data collected to date, including media contaminated, contaminants of concern, the known areal and vertical extent of contamination, and the risk of contaminant migration in media to any wells, springs, and surface water intakes, sensitive environments, sensitive populations or property uses, and above and below ground structures or utilities identified during the remedial investigation;
- (2) a statement of objectives for the interim remedial action;
- (3) a description and conceptual design of the proposed interim remedial action, including process flow diagrams and pre-design drawings of all major components of all treatments;
- (4) a description of all activities necessary to implement the proposed methods of interim remedial action in compliance with applicable laws and regulations.
- (5) a description of measures that shall be implemented to protect the health and safety of nearby residential and business communities in relation to activities of the interim remedial action; and
- (6) equipment and personnel decontamination procedures.

(p) The REC may change an approved remedy. In such cases, the REC shall prepare a revised remedial action plan in compliance with Paragraph (n) of this Rule.

(q) The REC shall prepare, certify, and submit remedial action progress reports in compliance with Paragraph (d) of this Rule and all other applicable requirements beginning after the REC has certified approval of the remedial action plan pursuant to Part (b)(5)(B) of this Rule. Remedial action progress reporting shall continue until remedial action is complete. Remedial action progress reports shall be submitted quarterly until one year after

the construction of the remedy is complete. After the first year of progress reporting or if a remedy that includes no construction component is being implemented, remedial action progress reports shall be submitted annually until remedial action is complete. Remedial action progress reports shall include, for the reporting period, an update on meeting the deadlines in Rule .0302(h) of this Section and the remediating party's agreement with the Department and the following:

- (1) a description of the results of all site characterization, pilot studies, or treatability studies completed since certification of the remedial action plan;
- (2) the final engineering design report, including a narrative description of process design, final plans and specifications, and an updated project schedule;
- (3) copies of any final registrations, permits, and approvals;
- (4) "as built" plans and specifications;
- (5) a summary of all problems encountered during construction;
- (6) operation and maintenance results of the treatment technology utilized, such as summaries of remedial action operating and maintenance requirements and a discussion of problems encountered;
- (7) performance evaluation results, including tabulated and graphical presentations of monitoring data and a comparison of remedial action performance to design goals;
- (8) a description of all field and laboratory quality control and quality assurance procedures followed during all sampling and analysis;
- (9) tabulation of analytical results for all sampling and copies of all laboratory reports including quality assurance and quality control documentation;
- (10) a map, drawn to scale, showing all soil sample and monitoring well locations;
- (11) if contaminants exceed cleanup levels pursuant to Rule .0308 of this Section, current soil, groundwater, surface water, and sediment contaminant delineation maps for each primary contaminant of concern, including scale and sampling points with contaminant concentrations;
- (12) if groundwater contamination exists at the site in excess of cleanup levels established pursuant to Rule .0308 of this Section, upon construction completion certification by the REC and at least every five years thereafter until remedial action is complete, an update of the information required pursuant to Subparagraphs (h)(6) and (7) of this Rule shall be included. The update shall also include an evaluation of the necessity to implement additional remedial action, and a remedial action plan if the REC determines a need exists, to address a risk of contaminant

migration in any environmental media to any of the following:

- (A) identified wells, springs, and surface-water intakes;
 - (B) identified sensitive environments, sensitive populations, or property uses; and
 - (C) above and below ground structures or utilities; and
- (13) sampling and analytical results that demonstrate progress toward achieving remedial goals.
- (r) The REC shall prepare, certify, and submit final remedial action completion reports that contain the following, unless provided in a previous progress report:
 - (1) a final progress report that includes all the information required pursuant to Paragraph (q) of this Rule;
 - (2) a summary of remedial action operating experience and effectiveness in meeting design goals, based on all performance monitoring data and progress reporting to date; and
 - (3) a discussion of criteria for completing the remedial action and a demonstration, supported by confirmatory sampling data, that such criteria have been satisfied.

(s) In the performance of its role pursuant to the rules in this Section, the REC shall manage investigation and remedial action derived wastes to provide for the protection of human health and the environment and comply with all applicable federal, State, and local laws, rules, and regulations.

History Note: Authority G.S. 130A-310.12(b); Eff. April 1, 1997; Readopted Eff. July 1, 2020.

15A NCAC 13C .0307 DEPARTMENTAL AUDITS AND INSPECTIONS

(a) The Department may conduct random or targeted audits of any REC, remediating party, response action or site that is subject to this Section.

(b) During Departmental audits of voluntary remedial actions, the Department may:

- (1) request that the person who has performed the response action provide a written explanation or other supporting evidence, to demonstrate compliance with this Section and other applicable requirements;
- (2) request that the person who has performed the response action or who is the subject of the audit appear at one of the Department's offices for an interview to provide an oral explanation or other evidence to demonstrate compliance with this Section and other applicable requirements. Any person requested to appear for an interview may be accompanied by an attorney or other representative;
- (3) visit a site or other location to determine whether an REC, remediating party, response

action, or site is in compliance with this Section and other applicable requirements;

- (4) investigate, take samples at a site, and inspect records, conditions, equipment, or practices material to the response action or property related to the site; or
- (5) take any other action to determine whether response actions have been performed in compliance with this Section and the requirements of Part 9 of Article 9 of Chapter 130A of the General Statutes.

(c) In order to participate in the voluntary remedial action program governed by this Section, remediating parties shall provide financial assurance by paying an annual administrative fee. The fee shall be set by the Department based on the expected cost of auditing voluntary remedial actions and shall be used to offset that cost. Remediating parties who pay this fee shall also annually pay any shortfall or be reimbursed any remainder not expended by the Department annually.

(d) Based on audit findings, the Department may terminate a site's eligibility for voluntary remedial action under the REC program, disqualify an RSM or REC from work on a site or from the program or take other applicable enforcement action.

History Note: Authority G.S. 130A-310.9(b); 130A-310.12(b); Eff. April 1, 1997; Readopted Eff. July 1, 2020.

15A NCAC 13C .0308 CLEANUP LEVELS

(a) RECs shall demonstrate that the Department's ascertainment of the most nearly applicable cleanup standards as would be applied pursuant to CERCLA/SARA are met.

(b) Characterization of risks to health, safety, public welfare, and the environment is not required pursuant to this Section for a disposal site, environmental medium, or chemical for which response actions have reduced concentrations of hazardous substances to on-site natural background levels.

History Note: Authority G.S. 130A-310.3(d); 130A-310.12(b); Eff. April 1, 1997; Readopted Eff. July 1, 2020.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 04 – AUCTIONEER LICENSING BOARD

21 NCAC 04B .0101 PURPOSE

(a) It is the responsibility of the Board to license auctioneers, apprentice auctioneers, and auction firms and ensure that the qualifications and activities of those engaged in auctioneering activities comply with G.S. 85B.

(b) The Board is not a board of arbitration and has no jurisdiction to settle disputes between parties concerning the rate of commissions, the division of commissions, or pay of assistants.

History Note: Authority G.S. 85B-3.1; Eff. November 1, 1984; Readopted Eff. July 1, 2020.

21 NCAC 04B .0102 BOARD OFFICE

(a) The administrative offices of the Board are located at:
108 Ber Creek Drive
Fuquay-Varina, North Carolina 27526
Telephone: (919) 567-2844

(b) The Board's website is www.ncalb.org.

(c) Office hours are 8:30 a.m. until 5:00 p.m., Monday through Friday, excluding State holidays as set forth in 25 NCAC 01E .0901, which is hereby incorporated by reference including subsequent amendments.

History Note: Authority G.S. 85B-3.1; Eff. November 1, 1984; Amended Eff. March 1, 2003; June 1, 1999; July 1, 1995; April 1, 1989; Readopted Eff. July 1, 2020.

21 NCAC 04B .0103 DEFINITIONS

Whenever used in this Chapter:

- (1) "Auction house," "auction barn," or "auction gallery" shall mean an auction business that conducts auctions at a single location and where consignments are brought to the location by either the auctioneer/auction firm or the public to be sold at auction.
- (2) "Auctioneers Law" or "licensing law" shall refer to G.S. 85B.
- (3) "Board" shall mean the North Carolina Auctioneers Commission.
- (4) "Buyer's Premium" shall mean any additional charge owed by a buyer to the auctioneer, auction firm, or to the seller above the highest accepted bid amount.
- (5) "Course" shall mean the curriculum, instruction, and activities of schools of auctioneering subject to the rules of this Subchapter.
- (6) "Minimum Bid" shall mean minimum opening bids.
- (7) "Principal(s)" as it pertains to auction firms shall mean director(s), officer(s), owner(s), and partner(s).
- (8) "Sole Proprietor Auction Business" shall mean a licensed auctioneer whose business is not defined as an "Auction Firm" as set forth in G.S. 85B-1(6).

History Note: Authority G.S. 85B-1; 85B-3.1; 85B-4; Eff. November 1, 1984; Amended Eff. May 1, 2006; April 1, 2001; April 1, 1996; January 1, 1995; Readopted Eff. July 1, 2020.

21 NCAC 04B .0104 ADMINISTRATIVE LAW PROCEDURES

(a) Contested Cases. Administrative hearings in contested cases conducted by the Board or an administrative law judge as authorized in G.S. 150B-40(e) shall be governed by:

- (1) Article 3A of G.S. 150B;
- (2) the Rules of Civil Procedure as contained in G.S. 1A-1; and
- (3) the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

The General Rules of Practice for the Superior and District Courts are hereby incorporated by reference for contested cases for which the Board has authority to adopt rules under G.S. 150B-38(h). These incorporations shall include any later amendments and editions of the incorporated matter.

(b) Declaratory Rulings. Petitions for declaratory rulings shall be submitted to the Board and shall contain:

- (1) the petitioner's name, address, and telephone number;
- (2) the statute, rule, or order to which the request relates;
- (3) all facts and information that the petitioner considers relevant to the request;
- (4) a statement of the manner in which petitioner has been aggrieved; and
- (5) a statement as to whether the petitioner desires to present oral argument, not to exceed 30 minutes, to the Board prior to its decision.

The Board shall refuse to issue a declaratory ruling when:

- (A) the petition does not comply with this Rule;
- (B) the Board has issued a declaratory ruling on the same facts;
- (C) the Board has issued a final agency decision in a contested case on the same facts;
- (D) the facts underlying the request for a declaratory ruling were considered at the time of the adoption of a rule or order in question; or
- (E) the subject matter of the request is involved in pending litigation.

(c) Petitions For Rule-Making. In addition to the procedures set out in G.S. 150B-20, petitions for rule-making shall be submitted to the Board and shall contain:

- (1) the petitioner's name, address, and telephone number;
- (2) a draft of the proposed rule adoption or amendment; and
- (3) the effect of the proposal on existing rules.

History Note: Authority G.S. 85B-3.1; 150B-4; 150B-20; 150B-38(h); Eff. November 1, 1984; Amended Eff. July 1, 1995; January 1, 1995; April 1, 1989;

Readopted Eff. July 1, 2020.

21 NCAC 04B .0201 APPLICATION FORMS

(a) Auctioneer. Each applicant for an auctioneer license shall make application on a form prescribed by the Board, which may be obtained from the Board using the information in Rule .0102 of this Subchapter.

- (1) The application form requires:
 - (A) the applicant's legal name;
 - (B) the applicant's physical, postal mail, and email addresses;
 - (C) the applicant's telephone number(s);
 - (D) the county, state, and country of the applicant's legal residence;
 - (E) the applicant's social security number;
 - (F) the applicant's date of birth;
 - (G) the applicant's qualification for licensure as set forth in G.S. 85B-4(b);
 - (H) the places of residence within the previous five years for the applicant;
 - (I) the applicant's current employment (if any);
 - (J) any places of employment within the previous five years for the applicant;
 - (K) two character endorsements for the applicant;
 - (L) any doing business names for the applicant; and
 - (M) the applicant's notarized signature.

(2) This application shall be submitted to the Board and shall be accompanied by:

- (A) one forward facing, 2" x 2" color photograph of the applicant's head and shoulders taken within the previous six months for identification;
- (B) the completed fingerprint cards provided by a law enforcement agency and the form signed by the applicant consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (C) a copy of the applicant's high school diploma or proof of equivalency;
- (D) an employee classification form provided by the Board;
- (E) the applicable fees, as set forth in 21 NCAC 04B .0202; and
- (F) documentation of required auctioneer schooling or auctioneer experience, as follows:
 - (i) Applicants who base their application upon their completion of a school of auctioneering with its curriculum and instructors approved by the Board as set forth in 21 NCAC 04B .0500 shall submit a final transcript. If the applicant has

completed this school more than the five years preceding the date of his or her application, the applicant shall submit documentation of the applicant's lawful participation in auctions within the two years preceding the date of application. The above-referenced participation in auctions is defined as "Auctioneering" as set forth in G.S. 85B-1(8); or

(ii) Applicants who base their application upon their successful completion of an apprenticeship shall submit a log maintained and completed during the apprenticeship period that lists the hours and dates when they obtained apprenticeship experience, with each entry being verified and signed by their supervising auctioneer(s). At least 100 hours of experience during the apprenticeship two-year period shall be obtained. Not less than 25 of the total hours accumulated shall be attributable to bid calling. Not less than 50 hours shall be attributable to working as a ring person, drafting and negotiating contracts, evaluating merchandise, advertising, clerking, and cashiering, with not less than five hours of accumulated experience documented for each activity. An apprentice who applies for an auctioneer license under this Part shall submit his or her application and supporting documentation and obtain a passing score on the auctioneer exam prior to the expiration of his or her apprentice auctioneer license.

(b) Non-Resident Reciprocal Auctioneer. Each non-resident applicant for an auctioneer license who applies for a North Carolina license pursuant to G.S. 85B-5 shall make application on a form prescribed by the Board, as set forth in Paragraph (a) of this Rule. This form shall be submitted to the Board and shall be accompanied by:

- (1) one forward facing, 2" x 2" color photograph of the applicant's head and shoulders taken within the previous six months for identification;
- (2) the completed fingerprint cards provided by a law enforcement agency and the form signed by the applicant consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (3) a copy of the applicant's high school diploma or proof of equivalency;
- (4) an employee classification form provided by the Board;
- (5) the applicable fees, as set forth in 21 NCAC 04B .0202;
- (6) a statement of good standing from the licensing board or Commission of each jurisdiction where the applicant holds an auctioneer, apprentice auctioneer, or auction firm license; and
- (7) irrevocable consent of the applicant that service to the Board shall be sufficient service of process for actions against the applicant by a resident of this State arising out of his or her auctioneering activities with notarized signature and notarial seal affixed.

(c) Apprentice Auctioneer. Each applicant for an apprentice auctioneer license shall make application on a form prescribed by the Board, as set forth in Paragraph (a) of this Rule. This form shall be submitted to the Board and shall be accompanied by:

- (1) one forward facing, 2" x 2" color photograph of the applicant's head and shoulders taken within the previous six months for identification;
- (2) the completed fingerprint cards provided by a law enforcement agency and the form signed by the applicant consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (3) a copy of the applicant's high school diploma or proof of equivalency;
- (4) an employee classification form provided by the Board;
- (5) the applicable fees, as set forth in 21 NCAC 04B .0202;
- (6) the signature, as designated on the apprentice applicant form, of the licensed auctioneer(s) who will be supervising the apprentice auctioneer; and
- (7) a written statement of each proposed supervisor's background and experience in the auction profession, including the number and types of auctions conducted or participated in annually, as set forth in 21 NCAC 04B .0403.

(d) Auction Firms. An applicant for an auction firm shall be a principal within the firm. Each applicant for an auction firm license shall make application on a form prescribed by the Board, which may be obtained from the Board using the information in Rule .0102 of this Subchapter.

- (1) The application form requires:

- (A) the firm's legal name, and any assumed names or trade names;
 - (B) the firm's type of business entity;
 - (C) the names, addresses, telephone numbers, and titles of each owner, officer, and partner of the firm;
 - (D) the firm's physical, postal mail, and email addresses;
 - (E) the firm's website address (if any);
 - (F) the firm's telephone number(s);
 - (G) the applicant's name, which shall be an owner of the firm;
 - (H) the applicant's physical, postal mail, and email addresses;
 - (I) the county, state, and country of the applicant's legal residence;
 - (J) the applicant's social security number;
 - (K) the applicant's qualification for licensure as set forth in G.S. 85B-4(b);
 - (L) the designated person(s) of the firm as set forth in G.S. 85B-4(g) and 21 NCAC 04B .0607;
 - (M) two character endorsements for the applicant; and
 - (N) the applicant's notarized signature.
- (2) This form shall be submitted to the Board and shall be accompanied by:
- (A) each of the principal's and proposed designated person's of the auction firm completed fingerprint cards provided by a law enforcement agency and the form signed by each consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
 - (B) a copy of each principal's and proposed designated person's high school diploma or proof of equivalency;
 - (C) the applicable fees, as set forth in 21 NCAC 04B .0202;
 - (D) a certified copy of any applicable Articles of Incorporation, Articles of Organization, Partnership Agreement, or Assumed Name Certificate; and
 - (E) a statement of good standing from the licensing board or Commission of each jurisdiction where the applicant firm and any principal and proposed designated person of such firm holds an auctioneer license of any type; and
 - (F) an employment classification form provided by the Board.

Amended Eff. May 1, 2006; April 1, 2001; Readopted Eff. July 1, 2020.

21 NCAC 04B .0202 FILING AND FEES

(a) Completed applications shall be received in the Board office at least seven days prior to a published Board meeting date, or in the case of an application for auctioneer examination, at least 10 days prior to a scheduled examination as published on the Board's website, and shall be accompanied by all required documents.

(b) License fees are as follows:

- (1) New auctioneer license for an applicant who did not serve an apprenticeship \$250.00
This includes a \$150.00 annual license fee; \$50.00 application fee; and \$50.00 examination fee.
- (2) New auctioneer license for an applicant who served an apprenticeship \$200.00
This includes a \$150.00 annual license fee; and \$50.00 examination fee.
- (3) Renewal of auctioneer license \$150.00
- (4) New apprentice auctioneer license \$150.00
This includes a \$100.00 license fee and a \$50.00 application fee.
- (5) Renewal of apprentice auctioneer license \$100.00
- (6) New auction firm license (no examination) \$200.00
This includes a \$150.00 annual license fee; and \$50.00 application fee.
- (7) New auction firm license (examination) \$250.00
This includes a \$150.00 annual license fee; \$50.00 application fee; and \$50.00 examination fee.
- (8) Renewal of an auction firm license \$150.00
- (9) Application and processing fee for conversion of non-resident reciprocal license to \$50.00 in-state license
- (10) Reinstatement of lapsed license \$50.00
- (11) Fingerprint card background check fee \$38.00

(c) The renewal fee for a non-resident reciprocal licensee under G.S. 85B-5 shall be calculated in the same manner as the initial application fee pursuant to G.S. 85B-6.

(d) Fees may be paid in the form of cash or a check, cashier's check, certified check, or money order made payable to the North Carolina Auctioneer Licensing Board. Checks drawn on escrow or trust accounts shall not be accepted. License renewal fees and reinstatement of license fees may be paid by credit card or debit card only when a license renewal fee (and when applicable, a reinstatement of license fee) is submitted by the licensee through the Board's website.

History Note: Authority G.S. 85B-3.2(g); 85B-4.1; 85B-5(i); 85B-6; Eff. November 1, 1984; Amended Eff. April 1, 2001; January 1, 2000; April 1, 1996; January 1, 1995; April 1, 1989; Temporary Amendment Eff. October 19, 2001;

History Note: Authority G.S. 85B-1; 85B-3.1; ; 85B-3.2; 85B-4; 85B-5; Eff. November 1, 1984; Amended Eff. April 1, 1996; January 1, 1995; June 1, 1991; Temporary Amendment Eff. January 1, 2000;

*Temporary Amendment Expired August 12, 2002;
Amended Eff. April 1, 2003;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0203 EXTENSIONS FOR MEMBERS OF THE ARMED FORCES

The Board shall waive the license renewal fee and shall grant an extension of time for up to one year for completing and reporting continuing education credits for those licensees currently licensed and in good standing with the Board who are serving in the Armed Services 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;
Eff. July 1, 2020.*

21 NCAC 04B .0301 SUBJECT MATTER

(a) The auctioneer license examination shall test the applicant's knowledge of the following subjects:

- (1) a working knowledge of the auction business including conduct of auctions, auctioneering ethics, contract drafting, bid calling, basic mathematical computations and percentages, advertising, settlement statements, and laws and rules that relate to the auctioneering profession;
- (2) the provisions of the licensing law; and
- (3) the rules of this Subchapter.

(b) The auction firm license examinations shall test the applicants knowledge of the following:

- (1) the provisions of the licensing law; and
- (2) the rules of this Subchapter.

*History Note: Authority G.S. 85B-4(d); 85B-4(g);
Eff. November 1, 1984;
Amended Eff. May 1, 2006; January 1, 1995;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0302 RE-EXAMINATION/REFUND OF FEES

If the applicant does not appear at the initial examination for which he or she has been scheduled or fails to pass such examination, he or she will be re-scheduled for the next scheduled examination. If the applicant again does not appear or fails to pass this examination, the Board shall refund the licensure fee, but not the application or examination fee. A new application and appropriate fees shall be required if the person wishes to reapply.

*History Note: Authority G.S. 85B-4; 85B-6;
Eff. November 1, 1984;
Amended Eff. June 1, 1991;
Temporary Amendment Eff. January 1, 2000;
Amended Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0303 EXAM: REVIEW: PAPERS AND CONTENTS

(a) Any applicant who fails to obtain a passing score of 75 percent or higher on an examination may request an appointment with the Board staff to review his or her examination.

(b) All examination papers shall remain the property of the Board. The contents thereof shall not be divulged, except by express written authorization of the Board.

*History Note: Authority G.S. 85B-4; 93B-8;
Eff. November 1, 1984;
Amended Eff. June 1, 1991;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0401 LICENSE NUMBER: DISPLAY OF LICENSE AND POCKET CARD

(a) The Board shall issue to each individual or firm a non-transferable license number. If the number is retired for any reason such as death, failure to continue in the auction business, or failure to renew his or her license, the Board shall not reissue the number.

(b) A pocket card shall be issued by the Board with the auctioneer, apprentice auctioneer, or auction firm's name, license number, and date of expiration. The pocket card shall be carried when auctioneering activities are being conducted by the licensee, and in the case of auction firms, each of the designated persons, and shall be available for inspection by the Executive Director or designated agent of the Board.

(c) An auction firm shall display its license in its premises, so as to be visible for inspection by patrons of the firm.

*History Note: Authority G.S. 85B-3.1; 85B-4;
Eff. November 1, 1984;
Amended Eff. May 1, 2006; April 1, 2001; January 1, 1995; April 1, 1989;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0402 LICENSE RENEWAL

(a) Any licensee seeking the renewal of a license that is in good standing shall submit the required fees, records, and documentation as set forth in 21 NCAC 04B .0801(a) and G.S. 143-788(a)(5) to verify the licensee's compliance with G.S. 85B and the rules in this Chapter.

(b) Applications for renewal of licenses shall only be processed by the Board upon receipt of the required fee and any records, documents, or information required by Paragraph (a) of this Rule.

(c) Any person or entity who engages in any auctioneering activities governed by the auctioneers law while the license is lapsed shall be subject to the penalties pursuant to G.S. 85B-9.

(d) Persons or firms whose license has been lapsed or suspended in excess of 24 months and who desire to be licensed shall apply for a new license and shall meet all the requirements in effect at that time. Persons or firms whose license has been lapsed or suspended in excess of 24 months and who desire to be licensed shall be exempt from the auctioneer school or the apprenticeship requirements if the continuing education requirements have been met for all lapsed or suspended years.

History Note: Authority G.S. 85B-3.1; 85B-4;

*Eff. November 1, 1984;
Amended Eff. April 1, 2001; January 1, 1995; April 1, 1989;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0403 APPRENTICE AUCTIONEER LICENSE

(a) An apprentice auctioneer's license shall be valid only while he or she is associated with and supervised by a licensed auctioneer approved by the Board. In order to be approved by the Board as a supervisor, the Board shall receive a written notice, signed by the prospective supervisor and the apprentice, requesting that the licensed auctioneer be approved as a supervisor for the apprentice. Upon receipt of such a request, the Board shall review the requested approval. The requested approval shall be denied by the Board if the prospective supervisor fails to possess a minimum of five years of active experience in the auctioneering profession or has committed any act that resulted in license suspension or revocation under the rules of this Subchapter or under G.S. 85B.

(b) The supervising auctioneer shall be on the premises of the sale location and supervise the apprentice auctioneer at all times that an apprentice auctioneer is engaged in bid calling. Additionally, the supervising auctioneer shall supervise the apprentice and ensure that the apprentice auctioneer conforms with the auctioneer law and the rules of this Subchapter.

(c) Any licensed auctioneer who undertakes the supervision of an apprentice auctioneer shall provide the apprentice with training and supervision in the following:

- (1) a working knowledge of the auction business including conduct of auctions, auctioneering ethics, contract drafting, bid calling, basic mathematical computations, advertising, and settlement statements;
- (2) the provisions of the licensing law;
- (3) the rules of this Subchapter; and
- (4) the preparation and maintenance of written agreements, record books, and other sales records as required by G.S. 85B-7.

(d) Apprentices shall not conduct or contract to conduct any auction without the prior express written consent of the supervisor(s). No supervisor shall authorize an apprentice to conduct or contract to conduct an auction, to act as principal auctioneer, or handle any funds related to an auction unless the supervisor has determined that the apprentice has received the training to do so. An apprentice auctioneer may work under more than one Board-approved licensed auctioneer at any given time.

(e) The supervisor(s) shall ensure that the apprentice complies with all of the laws and Rules as they apply to any auction-related transaction approved by the supervisor.

(f) An apprentice auctioneer shall notify the Board, in writing, within 10 days of termination of his or her association with his or her supervising auctioneer, at which time his or her license shall be placed in an invalid status. If an apprentice auctioneer's supervising auctioneer's license has been suspended or revoked, the apprentice auctioneer's license shall be placed in an invalid status. Once in an invalid status, an apprentice auctioneer shall not conduct or contract to conduct any auction. If an apprentice's license is invalid greater than 90 days due to a lack of an approved sponsor, the apprentice upon securing an approved sponsor shall

be required to submit a reinstatement fee as set forth in 21 NCAC 04B .0202(b)(10). Upon termination of the association between a supervisor and the apprentice, both licensees shall notify the Board in writing within 10 days, specifying the date and cause of termination. At this time the apprentice auctioneer's license shall be placed in an invalid status, unless at least one Board-approved supervisor remains in place for the apprentice.

*History Note: Authority G.S. 85B-3.1; 85B-4; 85B-7;
Eff. November 1, 1984;
Amended Eff. April 1, 2001; April 1, 1996; January 1, 1995; June 1, 1991;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0404 GROUNDS FOR LICENSE DENIAL OR DISCIPLINE

(a) The Board may assess a civil penalty in accordance with G.S. 85B-3.1(b) or deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, upon any of the following grounds:

- (1) violation of any provision of G.S. 85B;
- (2) violation of any rule in this Subchapter;
- (3) a check given to the Board in payment of fees is returned unpaid;
- (4) allowing an unlicensed person to call a bid at a sale, except as authorized in 21 NCAC 04B .0506;
- (5) auctioneering at an unlicensed auction firm sale;
- (6) failure to complete an application or making any false statement or giving any false information in connection with an application for a license, renewal, or reinstatement of a license including:
 - (A) failure to cooperate with any investigation; or
 - (B) making any false statement or giving any false information in connection with any investigation by the Board or the Board's staff;
- (7) being adjudicated mentally incompetent by a court;
- (8) being convicted of a crime that meets the requirements of G.S. 93B-8.1(b);
- (9) violation of any federal or state statute, rule, or regulation that relates to the auctioneering profession;
- (10) practicing the profession for which the individual is licensed while his or her ability to practice was impaired by alcohol or other drugs or physical or mental disability or disease;
- (11) being incompetent in practice. In this Subparagraph, "being incompetent in practice" means the licensee has engaged in conduct that shows a lack of ability, fitness, or knowledge to apply principles or skills of the auctioneering profession;
- (12) engaging in unprofessional conduct. In this Subparagraph, "unprofessional conduct" means

the licensee has committed any prohibited act as set forth in G.S. 85B-8(a);

- (13) obtaining or attempting to obtain compensation by fraud or deceit;
- (14) violation of any order of the Auctioneer Licensing Board requiring a licensee to comply with any provision of the Board's law or administrative rules;
- (15) failure to possess truth, honesty, and integrity sufficient to be entitled to the high regard and confidence of the public. In this Subparagraph, "a lack of truth, honesty, and integrity" shall be shown by proof that the applicant or licensee is in violation of other provisions of the Board's law and administrative rules that demonstrate that the applicant or licensee fails to meet this standard; or
- (16) failure to make the disclosures required by 21 NCAC 04B .0405.

(b) When applying the requirements of Paragraph (a) of this Rule to auction firms or their applications, the requirements shall apply to the firm, all the principals, and all of the designated persons of the firm.

History Note: Authority G.S. 85B-3.1; 85B-8; Eff. November 1, 1984; Amended Eff. January 1, 1995; Temporary Amendment Eff. January 1, 2000; Amended Eff. April 1, 2001; Readopted Eff. July 1, 2020.

21 NCAC 04B .0405 INVOLVEMENT IN COURT ACTION OR ADMINISTRATIVE HEARING

(a) All auctioneers, apprentice auctioneers, and auction firms, including their principals and designated person(s), shall report to the Board all criminal arrests for, charges of, or convictions of a misdemeanor that has as an element dishonesty, deceit, fraud, or misrepresentation, or any arrests, charges, or convictions of any felony. Convictions include findings of guilt, guilty pleas, and pleas of nolo contendere. The Board shall receive written notice of any such arrest, charge, or criminal conviction within 30 days of the occurrence of any or all of these events.

(b) All auctioneers, apprentice auctioneers, and auction firms, including their principals and designated person(s), shall report to the Board all civil suits involving them that are based upon any allegation of gross negligence, dishonesty, fraud, misrepresentation, or incompetency, or that in any way involve an auction sale or a transaction related to an auction matter or auctioneering. The Board shall receive written notice of any such civil suit within 30 days of the date the complaint in the suit is

served on the defendant in the action, or the date a pleading containing one or more of these allegations is served on a party.

(c) All auctioneers, apprentice auctioneers, and auction firms, including their principals and designated person(s), shall report to the Board all administrative proceedings commenced against them that involve any potential revocation or suspension of, or other disciplinary action against, any auction license or auctioneer license that they hold in another state. The Board shall receive written notice of any such administrative proceeding within 30 days of the date the auctioneer, apprentice auctioneer, or auction firm, including its principals and designated person(s), is notified of the administrative proceeding.

History Note: Authority G.S. 85B-3.1; 85B-4; Eff. November 1, 1984; Amended Eff. April 1, 2001; January 1, 1995; April 1, 1989; Readopted Eff. July 1, 2020.

21 NCAC 04B .0501 APPLICATION FOR COURSE APPROVAL

(a) Schools of auctioneering seeking approval of its curriculum and instructors by the Board shall make application on a form prescribed by the Board, which may be obtained from the Board using the information in Rule .0102 of this Subchapter. The application form requires:

- (1) the school name;
- (2) the name of the school director;
- (3) the school's physical, postal mail, and email addresses;
- (4) the school's website address (if any);
- (5) the school's telephone number(s);
- (6) the name, education and experience qualifications, and hours to be taught for each instructor;
- (7) the instructor(s) for, and hours to be taught in each Essential Core Curriculum topic;
- (8) the instructor(s) for, and hours to be taught in each supplemental Instruction topic; and
- (9) the school director's signature.

(b) The school shall notify the Board within 30 days of any change in the information required by the application form set forth in Paragraph (a) of this Rule. This requirement shall continue as long as the school's curriculum and instructors remain approved by the Board.

History Note: Authority G.S. 85B-3.1; 85B-4(d); Eff. November 1, 1984; Amended Eff. April 1, 2001; March 1, 1995; Readopted Eff. July 1, 2020.

21 NCAC 04B .0502 REQUIREMENTS FOR APPROVAL/MINIMUM STANDARDS

(a) The course curriculum shall contain classroom instruction in the following subjects for the minimum number of hours shown:

- (1) Essential Core Curriculum (minimum 50 hours):
 - 15 Hours - Bid Calling, Voice Control, Proper Breathing Techniques, and Use and Sequence of Numbers;
 - 4 Hours - Advertising and Marketing;
 - 8 Hours - Auctioneers Law and Rules and Regulations;
 - 2 Hours - Uniform Commercial Code and Bulk Transfers;

- 2 Hours - Drafting and Negotiating Contracts;
 - 2 Hours - Closing Statements and Settlements;
 - 8 Hours - Accounting and Mathematics;
 - 2 Hours - Auctioneering Ethics;
 - 2 Hours - Handling Sale Proceeds and Escrow Accounts;
 - 2 Hours - Auction Preparation and Setup; and
 - 3 Hours - Review and Testing (End of Course).
- (2) Supplemental Instruction Areas (minimum 30 hours):
- | | |
|---|------------------------|
| Antiques | Heavy Equipment |
| Real Estate | Automobiles |
| Technology | Cattle and Livestock |
| Environmental Issues | Public Speaking |
| Computers | Estate Sales |
| Firearms | Appraising |
| Foreclosure and Bankruptcy Sales | Sales Tax Requirements |
| Art, Rugs, Jewelry | Ring Work |
| Body Language | Consignment Auctions |
| Farm Machinery | |
| Cyber Security and Client Property Protection | |
- Each Supplemental Instruction Area shall be addressed in the school.
- (3) Schools that include students that have expressed to the school an interest to become North Carolina applicants shall provide a minimum of 2 hours of instruction on the North Carolina Auctioneers Law and Rules, G.S. 85B and 21 NCAC 04B. This instruction shall be included within the minimum required 8 hours instruction of Auctioneers Law and Rules and Regulations.

(b) Students attending an approved course shall attend and complete a minimum of 80 hours of classroom instruction according to the list of subjects and minimum hours of instruction in each subject specified in Paragraph (a) of this Rule. An hour of creditable instruction is defined as 50 minutes of classroom instruction or practical exercise accompanied by a 10 minute break.

(c) Each school's curriculum shall include instruction by a minimum of five different instructors, at least two of whom shall be professional auctioneers. Regardless of the total number of hours taught by any given instructor, no more than 20 hours of an individual's instruction may be counted to satisfy the requirements of Paragraph (a) of this Rule.

(d) The school shall establish standards for all persons who instruct in an approved school with minimum training or experience, or a combination thereof, in the particular field in which they are instructing.

(e) The instructors shall exhibit truth, honesty, and integrity as set forth in Rule 21 NCAC 04B .0404(a)(15).

(f) The school shall provide or make available facilities, equipment, materials, and supplies necessary for the course, including:

- (1) a climate-controlled classroom with a seating capacity sufficient to accommodate all students; and
- (2) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of training.

History Note: Authority G.S. 85B-3.1; 85B-4(d); Eff. November 1, 1984; Amended Eff. May 1, 2006; April 1, 2001; March 1, 1995; Readopted Eff. July 1, 2020.

21 NCAC 04B .0503 CERTIFICATION OF COURSE COMPLETION

Schools shall furnish each student who completes his or her course a transcript containing the student's name, the date the course was completed, and the total number of hours completed by that student.

History Note: Authority G.S. 85B-4(d); Eff. November 1, 1984; Readopted Eff. July 1, 2020.

21 NCAC 04B .0504 RECORDS MUST BE MAINTAINED

Each school shall maintain for five years, and make available upon request of the Board or its staff, records containing the following information:

- (1) the dates, times of instruction, and location of every course offered;
- (2) for each student, the names, address(es), and numbers of hours completed;
- (3) a list of all instructors used by the school, the qualifications of each, and their addresses; and
- (4) for each course offered, the names of all instructors used, the subject(s) taught, the number of hours that each instructor devoted to each subject, and the dates and times of the instruction.

History Note: Authority G.S. 85B-4(d); Eff. November 1, 1984; Readopted Eff. July 1, 2020.

21 NCAC 04B .0505 GROUNDS FOR APPROVAL, DENIAL, SUSPENSION, OR REVOCATION

- (a) The approval of a school's curriculum and instructors by the Board shall be valid for a period of two years. Each approval shall be evaluated for reapproval by the Board prior to the expiration of the two-year period.
- (b) The Board may deny, suspend, or revoke the approval of any school's curriculum and instructors when it finds that the school has failed to meet or to maintain any requirement of this Section. The Board may deny, suspend, or revoke the approval of any school's curriculum and instructors upon a finding that any information required under this Section was falsified or misrepresented.

History Note: Authority G.S. 85B-3(f); 85B-4(d); Eff. November 1, 1984; Amended Eff. April 1, 1996; Readopted Eff. July 1, 2020.

21 NCAC 04B .0506 ALLOWING UNLICENSED BID CALLERS: EXCEPTION

A person enrolled in a class at a school of auctioneering with Board-approved curriculum and instructors may call bids without a license if it is done for the purpose of training and receiving instruction. The bid calling by an unlicensed individual shall be done under the direct supervision of a licensed auctioneer who is also an instructor in the school and who further assumes responsibility for the activities of the student in the matter involving bid calling.

History Note: Authority G.S. 85B-4(d); Eff. November 1, 1984; Readopted Eff. July 1, 2020.

21 NCAC 04B .0601 CHANGE OF ADDRESS OR BUSINESS NAME OR OWNERSHIP

- (a) All licensees shall notify the Board in writing of each change or addition of residence or business address, including mailing address, and change of trade name, assumed name, or combination of names under which the licensee conducts business related to auctions.
- (b) In the case of a corporate license, the licensee shall notify the Board of any change in the directors or officers of the corporation. The new director(s) or officer(s) shall comply with the provisions of 21 NCAC 04B .0201(d)(2)(A), (B), (D), (E), and (F). If the new directors or officers have a 51% or greater controlling interest in the corporation, the firm license shall be retired and the firm shall apply for a new license.
- (c) In the case of a partnership license, the licensee shall notify the Board of any change in partners and such new partners shall comply with the provisions of 21 NCAC 04B .0201(d)(2)(A), (B), (D), (E), and (F).
- (d) In the case of an auction firm license, the licensee shall notify the Board of any change in a designated person(s). If the designated person is a currently licensed auctioneer under G.S. 85B, the designated person shall be required to comply with the provisions of 21 NCAC 04B .0201(d)(2)(A), (B), (D), (E), and (F). If the designated person is not a currently licensed auctioneer under G.S. 85B, the designated person shall be required to comply

- with the provisions of 21 NCAC 04B .0201(d)(2)(A), (B), (D), (E), and (F).
- (e) Any changes of reported information required by this Rule shall be reported within 10 days of the occurrence of such change.

History Note: Authority G.S. 85B-3.1; Eff. November 1, 1984; Amended Eff. April 1, 1996; January 1, 1995; Temporary Amendment Eff. January 1, 2000; Amended Eff. April 1, 2001; Readopted Eff. July 1, 2020.

21 NCAC 04B .0602 ADVERTISING

- (a) In all advertisements relating to an auction, the auctioneer's, apprentice auctioneer's, or auction firm's name and license number shall be given. If an auctioneer is working for or in conjunction with an auction firm, the relationship shall be disclosed and both license numbers shall be given. A general advertisement that does not concern a specific sale or specific sales and that does not list sale dates, times, or locations, referred to as "trolling" or "holding" advertisements, shall not be subject to any identification requirement. A licensee may advertise under a name, assumed name, trade name, or combination of names, only if written notice has been filed with the Board.
- (b) Any licensee who advertises an "Estate Sale" shall disclose, in all advertisement materials, whether it is the estate of a living or deceased person. Before conducting an auction as an "estate sale," the majority of items in the sale shall come from the estate of the living or deceased person(s). Other items not related to or in an estate may be sold with an estate if disclosed at or before the time of the auction.
- (c) It shall be a violation of this Rule to advertise a "Bankruptcy Sale" unless the item(s) offered for sale, whether real or personal, are from an active bankruptcy action. Before conducting an auction as a "bankruptcy sale," the majority of the items in the sale shall come from the bankruptcy of one or more parties. Other items not related to or from a bankruptcy action may be sold with items from a bankruptcy action if disclosed at or before the time of the auction.
- (d) It shall be a violation of this Rule to advertise an item, either real or personal, as "Absolute" or "Without Reserve" if the item is subject to confirmation, minimum bid, or any other condition of sale. Before advertising an auction as absolute or without reserve, the majority of items in the sale shall be offered for sale absolute or without reserve. Items that are not absolute may be included in the auction provided they are designated as such in all announcements and advertisements.
- (e) It shall be a violation of this Rule to advertise any auction using such descriptive words as "Urgent," "Emergency," "Distress" or any other word that connotes liquidation of assets or that the buyers will be in a position to reap some unusual bargain without disclosing, in the written advertisement in a print size equal to the descriptive word, the reason that the sale is "urgent," the nature of the "emergency," or the cause of the "distress."
- (f) It shall be a violation of this Rule to advertise any auction using such descriptive words as "Seized," "Confiscated," "Forfeited," or any other word that connotes a governmental action whereby items are seized or taken by a government department, agency, or commission and released or sold or that

the buyers will, for some governmental reason, be in a position to reap some unusual bargain without disclosing, in the written advertisement in a print size equal to the descriptive word, the exact nature of the government action.

(g) It shall be a violation of this Rule to advertise any items as being from an "estate" or a "bankruptcy," or from an "urgent," "emergency," "distress," "seized," "confiscated," "forfeited," or similar sale, unless the consignor of the item(s) to be sold is the original owner of the item(s), the designated representative of the owner, or a federal, state, or local department, agency, or commission charged with disposing of the item(s), and consigned the item(s) directly to the advertised sale.

(h) It shall be a violation of this Rule to:

- (1) Reference the U.C.C. or any other uniform act or federal or state law in any advertisement unless the act or law is required, by law, to be referenced;
- (2) Reference or mention any federal, state, or local department, agency, or commission in any advertisement unless required by law to do so or unless prior written approval is received from such department, agency, or commission; or
- (3) Otherwise connote in any advertisement that the auction is under the auspices of, at the direction of, or required by federal or state law or act or a federal, state, or local department, agency, or commission and that the buyers will, for some legal or governmental reason, be in a position to reap some unusual bargain.

(i) It shall be a violation of this Rule to advertise for sale items that the auctioneer/firm does not intend to offer for sale at the advertised auction.

(j) It shall be a violation of this Rule for an auctioneer or auction firm to permit its name or license number to appear on any advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with G.S. 85B and this Subchapter.

(k) It shall be a violation of this Rule to advertise any auction using such descriptive words as "Contents," "Stock," "Inventory," "Liquidation," or any other word that connotes that the items to be auctioned are present on the premises of a residence, business, building, or establishment unless the items were physically present without interruption for 30 days prior to the signing of the contract or written agreement. Before conducting an auction using any of the descriptive words, the majority of the items in the sale shall be from the premises. Other items not related to or from the contents of the residence or business may be included in the auction provided they are designated as such in all advertisements previous to the sale. The 30-day requirement shall not apply to items used in direct conjunction with the residence or business and brought to the site solely for the purpose of sale at auction.

(l) At all auctions that include a buyer's premium, the amount of the buyer's premium shall be announced at the beginning of the auction and a written notice of this information shall be displayed or distributed to the public at the auction site.

History Note: Authority G.S. 85B-1; 85B-3.1; 85B-8(a)(4); Eff. November 1, 1984;

Amended Eff. May 1, 2006; April 1, 2001; April 1, 1996; January 1, 1995; June 1, 1991;
Readopted Eff. July 1, 2020.

21 NCAC 04B .0603 SALE PROCEEDS, ACCOUNTING AND ESCROW ACCOUNTS

(a) Each payment made payable to the auctioneer/firm of which any portion belongs to others, and not disbursed to the seller on auction day, shall be deposited in an escrow account for the benefit of the owner or seller of such property within three business days after receipt of same.

(b) Any licensee who disburses any funds on auction day shall prepare a receipt or settlement statement in compliance with G.S. 85B-7.1(a) and maintain records in compliance with G.S. 85B-7.1(b).

(c) Every auctioneer/firm that does not disburse all funds to the seller on auction day shall establish and maintain a separate bank account designated as "Custodial Account for Sellers Proceeds" or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(d) Custodial accounts created pursuant to Paragraph (c) of this Rule shall be established and maintained in banks, credit unions, or savings and loan associations located in North Carolina whose deposits are insured by the Federal Deposit Insurance Corporation, or comparable state or federal recognized insurance agency or program.

(e) The custodial account created pursuant to Paragraph (c) of this Rule shall be drawn on only for payment of:

- (1) the net proceeds to the seller, or to any person that the auctioneer/firm knows is entitled to payment;
- (2) to pay charges against the property that the auctioneer/firm in its agency capacity is required to pay; and
- (3) to obtain any sums due the auctioneer/firm as compensation for its services.

(f) In the event of a dispute between the seller and buyer of goods or property or between the licensee and any person in whose name trust or escrow funds are held, the licensee shall retain the monies in his or her trust or escrow account until he or she has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction.

(g) Each auctioneer/firm shall keep accounts and records that document the handling of funds in a custodial account created pursuant to Paragraph (c) of this Rule. Accounts and records shall disclose the names of buyers and the amount of purchase and payment from each, the names of the sellers, and the amount due and payable to each from funds in the custodial account created pursuant to Paragraph (c) of this Rule. The names of the buyers and amount of purchase and payment from each buyer related to an individual seller shall be delivered to the seller within 14 days of a written request made within 90 days of settlement of a specific auction.

(h) All trust or escrow account records and records of disbursement shall be available for inspection by the Board staff without advance notice, and copies shall be provided to the Board upon request.

History Note: Authority G.S. 85B-7.1; 85B-8(a);
Eff. June 1, 1991;
Amended Eff. April 1, 2003; January 1, 1995;
Readopted Eff. July 1, 2020.

21 NCAC 04B .0604 CONTRACTS, CONSIGNMENT RECORDS, SALES RECORDS, AND BIDDER REGISTRATION RECORDS

- (a) All written agreements for auctions and registration, sales, and accounting records shall be maintained at the site during the conduct of the auction and, upon request, shall be made available to the Board or its staff.
- (b) An auction house, auction barn, or auction gallery business may enter into a written agreement with repeat dealers or sellers for an extended period of time, not to exceed one year.
- (c) The consignment records and sales records shall be kept by the licensee for a period of two years from the date of the auction.
- (d) At an auction house, auction barn, or auction gallery, when consignments are brought to the location by the public during that specific auction sale, the sales records and the consignment records may be the same.
- (e) The bidder registration records shall contain the bidders' names, addresses, telephone numbers, and email addresses. The bidder registration records shall be kept by the licensee for a period of two years from the date of the auction.
- (f) All required records shall be open for inspection by the Board or its designated agent at reasonable times, or copies of the same shall be provided to the Board or its designated agent upon written request.
- (g) In auctions of consigned property, any buyer's premium shall be calculated, collected, and distributed according to terms authorized by the consignor in a written auction contract.

History Note: Authority G.S. 85B-7; 85B-7.1; 85B-8;
Eff. January 1, 1995;
Amended Eff. May 1, 2006;
Readopted Eff. July 1, 2020.

21 NCAC 04B .0605 BIDDING

- (a) No auctioneer/auction firm shall bid on items in a sale he or she is conducting or procure the bid without the intent to purchase the item. However, in a sale with reserve, the auctioneer/auction firm may bid on the reserve item up to, and including, the amount of the reserve price without the intent to purchase the item. In any auction where the auctioneer/auction firm bids or such auctioneer/auction firm procures such a bid, the auctioneer shall announce such bidding in advance of the auction.
- (b) A minimum opening bid shall not be required in an absolute auction. Following an opening bid, the auctioneer may set reasonable minimum bid increments. Such a policy shall be disclosed in the auctioneer's/auction firm's spoken, posted, and written terms and conditions of the sale. In this Paragraph "reasonable minimum bid increments" shall be determined by the auctioneer or auction firm, based on the type and value of the property being offered at an auction.

History Note: Authority G.S. 25-2-328(4); 85B-1; 85B-3.1;
Eff. January 1, 1995;
Amended Eff. May 1, 2006; April 1, 2001;

Readopted Eff. July 1, 2020.

21 NCAC 04B .0606 AUCTION FIRMS

- (a) All licensed auction firms shall have at least one Board-approved designated person as defined by G.S. 85B-1(10). If a licensed auction firm does not have at least one Board-approved designated person, it shall not engage in auctioneering activity.
- (b) Only Board-approved designated person(s) for an auction firm shall have the authority to transact business under the firm license. This includes arranging, managing, soliciting, and contracting auctions; the supervision of the auction staff; the supervision of the acceptance of consignments of items for sale at auction; the supervision of the advertising of an auction; and the supervision of the acceptance of payment and disbursement of monies for items sold at auction.
- (c) At least one designated person shall be on the premises of an auction firm's auction sale location while the auction sale is conducted.
- (d) Any auctioneer licensed under G.S. 85B may call bids for a licensed auction firm without being a designated person.
- (e) Any apprentice auctioneer licensed under G.S. 85B and supervised by his or her supervising auctioneer may call bids for a licensed auction firm without being a designated person.
- (f) Individuals that hold a currently valid real estate broker license shall be exempt from the auction firm examination. Their authority to transact business as a designated person under the auction firm license is limited to real estate sales at auction.

History Note: Authority G.S. 85B-1; 85B-3.1; 85B-4;
Eff. May 1, 2006;
Readopted Eff. July 1, 2020.

21 NCAC 04B .0607 SOLE PROPRIETOR AUCTION BUSINESSES

- (a) A licensed auctioneer who owns and operates a sole proprietor auction business has the responsibility for arranging, managing, soliciting, and contracting auctions; the supervision of the auction staff; the supervision of the acceptance of consignments of items for sale at auction; the supervision of the advertising of an auction; and the supervision of the acceptance of payment and disbursement of monies for items sold at auction.
- (b) A licensed auctioneer or an apprentice auctioneer who is employed or contracted by another licensed auctioneer who owns and operates a sole proprietor auction business shall only be responsible for calling bids and performing duties that a non-auctioneer is allowed to perform.
- (c) A licensed auctioneer who owns and operates a sole proprietor auction business shall be on the premises of his or her businesses' auction sale location while the auction sale is conducted.

History Note: Authority G.S. 85B-1; 85B-3.1;
Eff. May 1, 2006;
Readopted Eff. July 1, 2020.

21 NCAC 04B .0701 APPLICATIONS

All verified applications will be served upon the Commission in accordance with the procedures set forth in G.S. 1A-1, Rule 4(j)(4).

*History Note: Authority G.S. 85B-4.2;
Eff. January 1, 1995;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0801 CONTINUING EDUCATION COURSE

(a) To renew a license in active status, an auctioneer, apprentice auctioneer, or designated person(s) in an auction firm shall complete Board-approved course(s) consisting of the hours of instruction as established as in Paragraph (d) of this Rule and shall provide documentation of completion of Board-approved course(s) to the Board.

- (1) An auctioneer, apprentice auctioneer, or designated person(s) in an auction firm shall provide documentation on required continuing education courses to the Board by May 15th of the current renewal period.
- (2) The Board shall not process a license renewal until the licensee has complied with this Rule.

(b) The Board shall approve courses that shall be conducted by sponsors approved by the Board under the rules of this Section. The subject matter of this course shall be determined by the course sponsor. The course sponsor shall provide instructor and student materials. The course shall be conducted as prescribed by the rules in this Section.

(c) The sponsor may conduct the course at any location as often as desired during the approval period. Approval of a sponsor to conduct a course authorizes the sponsor to conduct the course using an instructor who has been approved by the Board as a course instructor under Rule .0804 of this Section.

(d) The minimum classroom hours of instruction for each year shall be four.

(e) An auctioneer, an apprentice auctioneer, or a designated person(s) in an auction firm shall complete the continuing education requirements for each renewal period that his or her license was lapsed or suspended.

(f) Credit hours applied to the current renewal of a license shall not be used for future renewals.

(g) Excess continuing education hours may be carried forward as credits for a maximum of one renewal year.

(h) No part of any preclicensing course curriculum shall count as continuing education credit hours.

(i) Continuing education shall not be required until the second renewal after initial licensing pursuant to G.S. 85B-4(e).

*History Note: Authority G.S. 85B-4(e1);
Eff. July 1, 1999;
Amended Eff. April 1, 2001; January 1, 2000;
Temporary Amendment Eff. October 12, 2001;
Temporary Amendment Expired July 29, 2002;
Amended Eff. April 1, 2003;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0802 APPLICATION FOR ORIGINAL APPROVAL

(a) An entity seeking original approval to sponsor a course shall make application on a form prescribed by the Board, which may be obtained from the Board using the information in Rule .0102 of this Subchapter. The application form requires:

- (1) the sponsor's legal name, and any assumed names or trade names;
- (2) the sponsor's physical, postal mail, and email addresses;
- (3) the sponsor's website address (if any);
- (4) the sponsor's telephone number(s);
- (5) the applicant's name, which must be an owner of the sponsor;
- (6) the applicant's physical, postal mail, and email addresses;
- (7) the applicant's telephone number(s);
- (8) the course name;
- (9) the credit hours of the course;
- (10) a description of the content and subject matter of the course;
- (11) the name of the course instructor(s);
- (12) the name of the sponsor's continuing education coordinator; and
- (13) the applicant's signature.

An applying entity that is not based in North Carolina shall also file with the application a consent to service of process and pleadings.

(b) Approval to sponsor a course shall be granted to an applicant upon showing to the Board that:

- (1) The applicant has submitted all information required by the Board in the application;
- (2) The applicant satisfies all of the requirements of Rule .0805 of this Section relating to qualifications or eligibility of course sponsors;
- (3) The continuing education coordinator required by Rule .0805(e) shall exhibit truth, honesty, and integrity as set forth in 21 NCAC 04B .0404(a)(15). The Board shall consider the reputation and character of any owner, officer, or director of any corporation, association, or organization applying for sponsor approval; and
- (4) The applicant has at least one proposed instructor who meets the requirements for Board approval as a course instructor under Rule .0804 of this Section.

*History Note: Authority G.S. 85B-4(e1);
Eff. July 1, 1999;
Amended Eff. April 1, 2001; January 1, 2000;
Temporary Amendment Eff. October 12, 2001;
Temporary Amendment Expired July 29, 2002;
Amended Eff. April 1, 2003;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0803 STUDENT FEE FOR COURSES

Sponsors of a course may establish the amount of the fee to be charged to students taking the course. However, the established fee shall be an all-inclusive fee and no separate or additional fee may be charged to students for providing course materials, providing course completion certificates, reporting course completion to the Board, or for recouping other administrative expenses.

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0804 APPROVAL OF CONTINUING EDUCATION INSTRUCTORS

(a) Approval of course instructors shall occur at the time of the approval of the course sponsor. Approval of a course instructor authorizes the instructor to teach the course only for the approved course sponsor. An approved course instructor may not conduct a course unless the instructor is conducting the course under the supervision of an approved course sponsor.

(b) An entity seeking original approval as a course sponsor shall submit an application for each instructor for the course on a form prescribed by the Board, which may be obtained from the Board using the information in Rule .0102 of this Chapter. The application requires:

- (1) the instructor's name;
- (2) the instructor's postal mail and email addresses;
- (3) the instructor's telephone number;
- (4) the instructor's education and experience; and
- (5) the instructor's signature.

No additional application fee is required.

(c) The instructor(s) shall exhibit truth, honesty, and integrity as set forth in 21 NCAC 04B .0404(a)(15).

(d) The instructor(s) shall be qualified under one or more of the following standards:

- (1) Possession of a baccalaureate or higher degree with a major in the field of marketing, finance, or business administration;
- (2) Possession of a current North Carolina auctioneer or auction firm license, three years experience in auctioneering within the previous 10 years, and 30 classroom hours of auction education, excluding prelicensing education, within the past three years, such education covering topics that are in compliance with these Rules;
- (3) Possession of a current North Carolina real estate broker license, three years experience in the real estate business within the previous 10 years, and experience teaching real estate prelicensing and continuing education courses;
- (4) Possession of a license to practice law in North Carolina and three years experience in law practice within the previous 10 years; or
- (5) Possession of qualifications found by the Board to be equivalent to one or more of the standards set forth in this Rule.

(e) The Board shall deny or withdraw approval of any course instructor upon finding that:

- (1) The course sponsor or the instructor made any false statements or presented false information in connection with an application for approval;
- (2) The instructor failed to meet the criteria for approval described in Paragraph (d) of this Rule or refused or failed to comply with any other provisions of this Subchapter;

(3) The instructor failed to demonstrate, during the teaching of courses, teaching skills described in Rule .0815 of this Section; or

(4) The instructor provided false or incorrect information in connection with any reports a course sponsor submitted to the Board.

(f) If a licensee who is an approved course instructor engages in any dishonest, fraudulent, or improper conduct in connection with the licensee's activities as an instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 85B-8 and G.S. 85B-9.

(g) Upon the written request of the Board, an approved course instructor shall submit to the Board a video recording depicting the instructor teaching the course. The video recording shall have been made within 12 months of the date of submission, shall be in electronic format, and shall identify the instructor and the date of the presentation.

(h) An approved instructor who is a licensee of the Board shall receive continuing education credit hours for instruction at a rate of one hour for every one-half hour of approved course taught.

*History Note: Authority G.S. 85B-4(e1);
Eff. July 1, 1999;
Temporary Amendment Eff. October 12, 2001;
Temporary Amendment Expired July 29, 2002;
Amended Eff. April 1, 2003;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0805 SPONSOR REQUIREMENTS

(a) An entity is eligible to seek approval as a sponsor of continuing education courses, provided that the entity seeking approval is either the owner of the proprietary rights to the course or has acquired from the course owner the right to seek course approval from the Board and to conduct the course.

(b) The official name used by any course sponsor in connection with the offering of an approved continuing education course shall distinguish the sponsor from any other approved continuing education course sponsor. Unless the sponsor is an auction school with approved curriculum and instructors pursuant to G.S. 85B-4(d) that is proposing to operate continuing education courses in its own name, the official name also shall distinguish the sponsor from any auction school with approved curriculum and instructors. Sponsor applicants proposing to use a sponsor name that does not comply with this Paragraph shall be required to adopt a different name as a condition of approval.

(c) Any advertisement or promotional material utilized by an approved course sponsor shall include the course sponsor's official name and shall not include any other name for the sponsor.

(d) All sponsors shall obtain written approval from the Board prior to advertising a course or conducting a course and shall not advertise that a course is or may be approved for continuing education credit in North Carolina prior to Board approval. No retroactive approval to conduct a course shall be granted for any reason.

(e) A sponsor of a course shall designate one person to serve as the continuing education coordinator for all Board-approved continuing education courses offered by the sponsor. The designated coordinator shall serve as the contact person for the sponsor and shall be responsible for the following:

- (1) Supervising the sponsor's Board-approved continuing education courses;
- (2) Signing the course completion certificates provided by the sponsor to licensees completing courses; and
- (3) Submitting to the Board all required rosters, reports and other information.

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0806 COURSE COMPLETION REPORTING

(a) Course sponsors shall prepare and submit to the Board reports verifying the student's completion of each continuing education course conducted. Sponsors shall submit these reports to the Board within 30 calendar days following the course, but in no case later than May 15 for courses conducted prior to that date. Reports shall include the following:

- (1) the course name;
- (2) the sponsor and coordinator name, mailing address, and telephone number;
- (3) the coordinator signature certifying that the information is correct;
- (4) the name, address, and North Carolina license number of each licensee who completed the course and who desires continuing education credit for the course;
- (5) the physical location where the course was conducted;
- (6) the date(s) and starting and ending times of each course; and
- (7) the number of credit hours.

(b) Course sponsors shall provide each licensee who completes an approved continuing education course a course completion certificate. Sponsors shall provide the certificates to licensees within 30 calendar days following the course, but in no case later than May 15 for any course completed prior to that date. Course completion certificates shall include the following:

- (1) the course name;
- (2) the name of the licensee who completed the course;
- (3) the date(s) of attendance;
- (4) the number of credit hours; and
- (5) the coordinator signature certifying that the information is correct.

(d) When a licensee in attendance at a continuing education course does not comply with the student participation standards of Rule .0817 of this Section, the course sponsor shall inform the Board in writing at the time reports verifying completion of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Board's attendance standards of Rule .0816(a) of this Section or the student participation standards of Rule .0817 of this Section shall not provide the licensee with a course completion certificate, nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Amended Eff. May 1, 2006;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0807 CHANGE IN SPONSOR OWNERSHIP AND OTHER INFORMATION

(a) The approval granted to a course sponsor may be transferred to a new or different entity only with the advance approval of the Board.

(b) Course sponsors shall notify the Board in writing prior to any change in business name, continuing education coordinator, address, or business telephone number.

(c) Course sponsors shall obtain advance approval from the Board for any changes to be made in the content or number of hours for courses. However, changes in course content made for the purpose of assuring that information provided in a course is current and accurate do not require approval during the approval period, but shall be reported at the time the sponsor requests renewal of course approval. Requests for approval of changes shall be in writing.

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0808 COURSE RECORDS

All course sponsors shall retain on file for two years records of student registration and attendance for each session of a continuing education course that is conducted and shall make such records available to the Board, or its staff, upon request.

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0809 RENEWAL OF COURSE AND SPONSOR APPROVAL

Board approval of all continuing education course sponsors shall expire on the next June 30 following the date of issuance. A completed renewal application prescribed by the Board shall be submitted to the Board annually on or before April 30. Applicants for renewal as a continuing education course sponsor shall make application on a form prescribed by the Board, which may be obtained from the Board using the information in Rule .0102 of this Subchapter. The application form requires:

- (1) the sponsor's legal name, and any assumed names or trade names;
- (2) the sponsor's physical, postal mail, and email addresses;
- (3) the sponsor's website address (if any);
- (4) the sponsor's telephone number(s);
- (5) the applicant's name, which must be an owner of the sponsor;
- (6) the applicant's physical, postal mail, and email addresses;

- (7) the applicant's telephone number(s);
- (8) the name(s) of any new course(s);
- (9) the credit hours of any new course(s);
- (10) a description of the content and subject matter of any new course(s);
- (11) the name of the course instructor(s) for any new course(s);
- (12) the name of the sponsor's continuing education coordinator; and
- (13) the applicant's signature.

Any continuing education course sponsor's renewal applications that are not received or that are not complete on or before April 30 shall not have met the requirements for renewal and in order to conduct continuing education shall seek approval pursuant to Rule .0802 of this Section.

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0810 DENIAL OR WITHDRAWAL OF APPROVAL

(a) The Board may deny or withdraw approval of any course or course sponsor upon finding that:

- (1) The course sponsor has made any false statements or presented any false information in connection with an application for course or sponsor approval or renewal of approval;
- (2) The course sponsor or any instructor in the employ of the course sponsor has refused or failed to comply with any of the provisions of the rules of this Section;
- (3) The course sponsor or any instructor in the employ of the course sponsor has provided false or incorrect information in connection with any reports the course sponsor is required to submit to the Board;
- (4) An instructor in the employ of the course sponsor fails to conduct approved courses in accordance with the teaching skills described in Rule .0815 of this Section; or
- (5) Any court of competent jurisdiction has found the course sponsor, any instructor, or any person in the employ of the course sponsor to have violated, in connection with the offering of continuing education courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

(b) If a licensee who is an approved course sponsor or an instructor in the employ of an approved course sponsor engages in any dishonest, fraudulent, or unlawful conduct in connection with the licensee's activities as a course sponsor or instructor, the

licensee shall be subject to disciplinary action pursuant to G.S. 85B-8 and G.S. 85B-9.

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0811 MINIMUM CLASS SIZE

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Repealed Eff. July 1, 2020.*

21 NCAC 04B .0812 SCHEDULING AND NOTICE OF SCHEDULED COURSES

(a) An hour of creditable instruction is defined as 50 minutes of instruction or practical exercise accompanied by a break of up to 10 minutes.

(b) Sponsors shall provide the Board written notice of all scheduled course offerings not later than 10 days prior to a scheduled course date. The notice shall include the name of the sponsor and, for each scheduled course, the name of the course, the scheduled date and time, specific location, and name of the instructor(s).

(c) Sponsors shall notify the Board of any schedule changes or course cancellations at least five days prior to the original scheduled course date. If a change or cancellation is necessary five or less days before the course date due to weather, staffing, or other unforeseen circumstance, then notice shall be provided to the Board as soon as possible, and in no event more than 10 days later.

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0813 ADVERTISING; PROVIDING COURSE INFORMATION

(a) Course sponsors shall not utilize advertising of any type that is false or misleading. In any advertisement for a course, the sponsor shall state the total number of hours of the course and the number of those hours that are Board-approved for continuing education credit.

(b) Any flyers, brochures, or similar materials utilized to promote a continuing education course shall state the fee to be charged and the sponsor's cancellation and fee refund policies.

(c) Upon course approval, course sponsors shall include in course descriptions and promotional materials the information contained in the following illustration: This course [seminar or program] has been approved by the Board for continuing education credit in the amount of __ hours. This course is not sponsored by the Board.

(d) Course sponsors of any course shall provide to any prospective student, upon request, a description of the course content.

History Note: Authority G.S. 85B-4(e1);

*Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0814 CONDUCT OF CLASSES

- (a) All class sessions of approved continuing education courses shall be open to all licensees on a first-come/first-served basis. The sponsor of a course that has an education or experience prerequisite, such as an advanced course leading to a special auctioneer designation, may refuse admission to a licensee not satisfying such prerequisite.
- (b) Courses not conducted by electronic means shall be conducted in a facility that provides a learning environment as set forth in 21 NCAC 04B .0502(f).

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0815 INSTRUCTOR CONDUCT AND PERFORMANCE

- (a) All instructors shall ensure that class sessions are conducted at the scheduled time and for the full amount of time that is scheduled.
- (b) Instructors shall conduct courses in accordance with the Board's rules, and shall demonstrate the ability to:
 - (1) present accurate and relevant information;
 - (2) communicate using correct grammar and vocabulary;
 - (3) present instruction in an organized manner, utilize illustrative examples, and respond to questions from students;
 - (4) utilize a variety of instructional techniques that require students to analyze and apply course content, including teacher-centered approaches, such as lecture discussion, reading, group problem solving, case studies, and scenarios;
 - (5) utilize instructional aids;
 - (6) identify key concepts and correct student misconceptions;
 - (7) maintain control of a class; and
 - (8) avoid criticism of any other person, agency, or organization.

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0816 MONITORING ATTENDANCE

- (a) Sponsors and instructors shall monitor attendance for the duration of each class session to ensure that all students reported as completing a course according to these Rules have attended at least 90 percent of the scheduled classroom hours. Sponsors shall not admit students to a class session after 10 percent of the scheduled classroom hours have been conducted. Unless a student satisfies the attendance requirement in this Paragraph, the sponsor shall not allow the student to sign a course completion card, issue

a course completion certificate to a student, or report to the Board that the student completed the course. Sponsors and instructors shall not make any exceptions to the attendance requirement for any reason.

- (b) Sponsors shall provide adequate personnel, in addition to the instructor, during all class sessions to assist the instructor in monitoring attendance and performing the administrative tasks associated with conducting a course.

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0817 STUDENT PARTICIPATION STANDARDS

- (a) Students shall comply with the following student participation standards:

- (1) A student shall direct his or her attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction.
- (2) A student shall refrain from engaging in any activities that are disruptive to other students or the instructor, or that otherwise disrupt the conduct of a class.
- (3) A student shall comply with all instructions provided by the sponsor or instructor related to providing information needed to report completion of a course by the student.

(b) Instructors and sponsors may dismiss from a class any student who fails to comply with the student participation standards in Paragraph (a) of this Rule.

(c) Sponsors shall not issue a course completion certificate to any student who fails to comply with the student participation standards set forth in Paragraph (a) of this Rule, nor shall sponsors include the name of such student on their reports verifying completion of a continuing education course. Sponsors shall submit to the Board with their reports for the class session a written statement that includes the name and license number of the student for whom the sponsor does not report course credit, details concerning the student's failure to comply with the student participation standards, and names of other persons in attendance at the class who witnessed the student's conduct.

*History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2020.*

21 NCAC 04B .0818 ADDITIONAL SPONSOR REQUIREMENTS

- (a) Sponsors and instructors may make available for purchase by continuing education students materials that belong to the sponsor or instructor. Class time may not be used to promote or sell any materials or to solicit affiliation or membership in any business, organization, or association.

(b) Course sponsors shall administer course cancellation and fee refund policies in a consistent and non-discriminatory manner. In

the event a scheduled course is canceled, the course sponsor shall attempt 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.

(c) Course sponsors shall admit the Board's authorized representative to monitor any continuing education class without prior notice. The representative shall not be required to register or pay any fee and shall not be reported as having completed the course.

(d) Course sponsors may deviate from the rules of this Section concerning the conduct of continuing education courses, such as rules addressing classroom facilities and instructional methods, as may be necessary in order for the sponsor to comply with the Americans with Disabilities Act or other laws requiring such sponsors to accommodate persons with disabilities. A sponsor providing a special accommodation for a licensee with a disability that requires the sponsor to deviate from these Rules shall notify the Board in writing of the accommodation at the time reports are submitted for the class session attended by the licensee.

History Note: Authority G.S. 85-4(e1); Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001; Readopted Eff. July 1, 2020.

21 NCAC 04B .0819 ALTERNATIVE COMPLIANCE

(a) An auctioneer, apprentice auctioneer, or designated person of an auction firm who is unable to attend a Board-approved course and obtain the requisite hours of instruction established by the Board may submit evidence of alternative compliance.

(b) A written submission of alternative compliance shall be received by the Board by May 15 of the year when the requisite hours of instruction are to be completed.

(c) The course of instruction submitted as alternative compliance shall be completed prior to license renewal.

- (d) Alternative compliance shall include: (1) Academic courses at a community college, junior college, college, or university accredited by an agency recognized by the United States Department of Education in any of the following topics: (A) Accounting; (B) Finance; (C) Business Management; (D) Business Law; (E) Economics; (F) Marketing; (G) Computer Science; or (H) Sales. (2) Completion of any real estate course accredited by a state real estate licensing body.

History Note: Authority G.S. 85B-4(e1); Temporary Adoption Eff. January 1, 2000; Eff. April 1, 2001; Amended Eff. May 1, 2006; Readopted Eff. July 1, 2020.

CHAPTER 06 – BOARD OF BARBER EXAMINERS

21 NCAC 06C .0913 PREDETERMINATIONS FOR INDIVIDUALS WITH CRIMINAL RECORDS

(a) An individual who wishes to request a predetermination under G.S. 93B-8.1(b6) shall submit a petition with the following:

- (1) The person's full name;
(2) The person's social security number;
(3) The person's date of birth;
(4) The person's current address;
(5) A complete and accurate criminal history record from the Federal Bureau of Investigation;
(6) Three character references from individuals chosen by the petitioner;
(7) A notarized affirmation under oath that the information in the petition is accurate and true to the best of the petitioner's knowledge; and
(8) For each offense in the criminal history record, the following information:
(A) Whether the crime was a felony or misdemeanor;
(B) The date that the person was convicted of the offense;
(C) The sentence imposed for the crime;
(D) If the petitioner has completed the sentence, documentation from the appropriate court showing that the petitioner has met all court-imposed sentencing conditions or that records pertaining to the applicant either do not exist or have been purged;
(E) If the petitioner has not completed the sentence, either a statement written by the petitioner describing, or documentation from the sentencing court showing, the status of the petitioner's efforts toward meeting the sentencing requirements, including the expected date of completion;
(F) If applicable, evidence of a Certificate of Relief granted under G.S. 15A-173.2;
(G) If applicable, evidence of completion of or active participation in rehabilitative measures, such as drug or alcohol treatment, domestic-violence or anger-management counseling, or Drug Court programs; and
(H) A statement by petitioner that describes the circumstances surrounding the commission of the crime.

(b) The petition shall be accompanied by a non-refundable petition fee of forty-five dollars (\$45.00).

(c) The Board delegates authority to make predeterminations to the Executive Director, who shall issue a response as required by G.S. 93B-8.1(b6).

History: Authority G.S. 93B-8.1; Eff. July 1, 2020.

21 NCAC 060 .0122 FAILURE TO NOTIFY BOARD OF CHANGE OF BARBER SHOP OR SCHOOL MANAGER

(a) The presumptive civil penalty for the failure of a barber shop or barber school to notify the Board of a change of barber shop manager:

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

(b) The presumptive civil penalty for an individual manager for the failure to notify the Board of a change of manager of a barber shop or barber school:

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

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-22; 86A-27; Eff. July 1, 2016; Amended Eff. July 1, 2020.

21 NCAC 06S .0101 GENERAL EXAMINATION INSTRUCTIONS

(a) For the purposes of this Rule, "test center" means those rooms where the Board administers written and practical examinations while the examinations are being conducted.

(b) All candidates scheduled for an examination conducted by the Board shall:

- (1) provide two forms of identification, one of which shall have a photo of the candidate;
- (2) submit a signed copy of the exam instructions that the Board sent to the candidate;
- (3) wear closed-toed shoes and barber smocks or jackets, if they are taking a practical exam;
- (4) bring tools and supplies as required by the Board in its exam instructions; and
- (5) bring a hygienically clean model with natural hair and beard of sufficient length to demonstrate practical barbering proficiency as determined by the Board in its qualifying model policy.

(c) The following shall be prohibited in the test center during examinations:

- (1) briefcases, bags, books, papers, or study materials;
- (2) cell phones, calculators, or other electronic devices;
- (3) eating, drinking, smoking, or chewing gum;
- (4) visitors, children, or pets;
- (5) talking by candidates; or
- (6) wearing or carrying any school identification on uniforms or equipment.

(d) The Board shall not be responsible for lost or misplaced items.

(e) No extra time for the examination shall be permitted unless mandated by State or federal law, such as the Americans with Disabilities Act.

(f) No candidate shall leave the test center during the examination. Candidates may visit the restroom with the Board staff's permission but shall not receive any additional time for the examination.

(g) No candidate may give or receive assistance during the examination. If a candidate gives or receives assistance during the examination, the Board staff shall stop the candidate's examination and the candidate shall be dismissed from the test center. The Board staff shall not score the examination and shall report the candidate to the Board, which shall make any decisions regarding discipline.

History Note: Authority G.S. 86A-5(a)(4); 86A-8; 86A-9; 86A-24; Eff. September 1, 2009; Amended Eff. September 1, 2013; Readopted Eff. July 1, 2016; Amended Eff. July 1, 2020.

CHAPTER 30 – BOARD OF MASSAGE AND BODYWORK THERAPY

21 NCAC 30 .1014 FEES

Fees for massage and bodywork therapy establishments shall be as follows:

- (1) Application for license \$20.00
- (2) Initial license fee 150.00
- (3) License Renewal 100.00
- (4) Late renewal penalty 75.00
- (5) Duplicate license 25.00
- (6) Inspection of establishment 150.00

History Note: Authority G.S. 90-632.14; Eff. July 1, 2020.

CHAPTER 56 – BOARD OF EXAMINERS FOR ENGINEERS AND SURVEYORS

21 NCAC 56 .0303 DISBURSEMENT OF FUNDS

The Board shall dispense funds for educational programs in the following manner:

- (1) The Board shall dispense funds after Board Committees, as organized, study each specific committee-related request and recommend funding.
- (2) The Board shall consider requests for funds only from the following entities: community colleges, public or private institutions of higher learning, State and county boards of education, or governing authorities for any industrial education center.

- (3) The Board shall consider educational programs to establish instructional programs for individuals currently licensed and those seeking to become licensed.
- (4) Approved entities shall request funds in writing and provide the following information:
 - (a) The amount needed;
 - (b) The intended use of the funds;
 - (c) Subject material to be presented and qualifications of instructors to be employed;
 - (d) Itemized breakdown of the amount needed and the total expected costs;
 - (e) Source and amount of assistance being given by any other person or organization.

- (2) Surveyors. Copies may be obtained at the Board office at a cost of five dollars (\$5.00) per copy. "Engineering or related science curriculum of four or more years other than ones approved by the Board" is defined as a curriculum, although not accredited by ABET, of technical courses that contains engineering or scientific principles.
- (3) "Equivalent education satisfactory to the board" is defined as:

- (A) A graduate degree in Engineering from an institution where the same discipline undergraduate engineering program has been accredited by ABET (EAC) shall be considered equivalent to an engineering curriculum of four or more years approved by the Board.
- (B) A bachelor's degree in Engineering Technology, whether or not accredited by the Technology Accreditation Commission (TAC) of ABET, shall be considered equivalent to an engineering or related science curriculum of four or more years other than one approved by the Board.
- (C) Foreign degrees shall be considered equivalent only after receipt of an evaluation report that the degree is substantially equivalent to an EAC/ABET accredited engineering curriculum from the Center for Professional Engineering Education Services, an affiliate of the National Council of Examiners for Engineering and Surveying (NCEES), or from the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The Board shall equate the degree to an EAC/ABET accredited engineering curriculum of four or more years approved by the Board in Subparagraph (a)(1) of this Rule if it receives a substantially equivalent evaluation.

History Note: Authority G.S. 89C-10(g); Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. April 1, 1989; January 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; Amended Eff. July 1, 2020.

21 NCAC 56 .0304 SUSPENSION OF AUTHORITY TO EXPEND FUNDS

In the event that 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 collect all fees set forth in G.S. 89C-14, 89C-17, and 89C-24. The Board shall maintain an escrow account into which any fees tendered during the Board's period of suspension shall be deposited. 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. 89C-10; 89C-11; 93B-2; Eff. July 1, 2020.

21 NCAC 56 .0501 REQUIREMENTS FOR LICENSING

(a) Education. The Board shall consider the education of an applicant in determining eligibility for licensing as a Professional Engineer. The terms used by the Board for the educational requirements in G.S. 89C-13(a1) to be eligible to be licensed as a Professional Engineer are defined as follows:

- (1) "Engineering curriculum of four or more years approved by the Board" is defined as a program that has been accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET). This program is incorporated by reference including subsequent amendments and editions. This material is available at www.abet.org/accreditation-criteria-policies-documents/ at no cost, or for inspection at the office of the North Carolina Board of Examiners for Engineers and

(b) Experience. The experience of an applicant shall be considered in determining whether an applicant is eligible to be licensed as a Professional Engineer.

- (1) Required Experience. In evaluating the work experience required, the Board shall consider the total experience record and the progressive nature of the record. Experience shall be of a progressive engineering nature obtained after graduation from a program that meets the criteria set forth in Paragraph (a) of this Rule. Not less than half of required engineering experience shall be of a professional grade and character, and shall be performed under the responsible charge of a licensed Professional Engineer, or if not, the applicant shall submit a

written explanation to the Board explaining why the experience should be considered acceptable. The Board shall approve the experience on a case-by-case basis if it is satisfied of the grade and character of the progressive experience. Experience gained under the technical supervision of an unlicensed individual shall be considered based upon the engineering education and experience credentials of the unlicensed supervisor. Experience gained in the armed services, typically while serving in an engineering or engineering related group, shall be accepted only if substantially equivalent to civilian work.

(2) Definition. The word "progressive" in the terms "progressive nature of the record," "progressive engineering experience," "progressive land surveying," "progressive engineering nature," or "progressive experience on engineering projects" means that during the period of time that an applicant made a practical utilization of acquired knowledge and continuous improvement, growth, and development have been shown in the utilization of that knowledge as revealed in the complexity and technical detail of the work product or work record. The applicant shall show continuous assumption of greater individual responsibility for the work product over that period of time. The progressive experience on engineering projects shall be of a grade and a character that shows the Board that the applicant is competent to practice engineering.

(3) Credit for Experience. In evaluating progressive engineering experience, the Board shall give credit for experience in the following areas of work:

- (A) Graduate schooling or research in an engineering program resulting in award of a master's degree from an institution that offers EAC/ABET-accredited programs – one year;
- (B) Graduate schooling or research in an engineering program resulting in award of an earned doctoral degree in engineering from an institution that offers EAC/ABET-accredited programs – two years, with or without a master's degree, but this includes the one year for the master's degree, if obtained;
- (C) Progressive land surveying - maximum two years; and
- (D) Teaching of engineering subjects at the university level in an engineering program offering a four-year or more degree approved by the Board.

The Board shall not accept combinations of the categories in this Subparagraph as fulfilling all the necessary statutory experience

requirements. Every applicant for licensure as a Professional Engineer, as part of the total experience requirement, shall show a minimum of one year experience of a progressive engineering nature in industry, government, or under a licensed Professional Engineer offering service to the public.

Full-time engineering faculty members who teach in an engineering program offering a four-year or more degree approved by the Board may request and shall be granted waiver of the minimum one year experience in industry, government, or private practice if they demonstrate consulting or research work of at least one year's duration, which was pursued to completion of the project, and that is of a progressive engineering nature. The faculty applicant shall document the work to evidence that the work meets the Board's requirement.

(4) An exception to the requirement in Subparagraph (b)(1) of this Rule that experience be obtained after graduation is for long-established practice of 20 years or more, as provided for in G.S. 89C-13(a3).

(5) Other experience is considered if it is:

- (A) Experience obtained prior to graduation as part of an ABET accredited engineering program shown on the transcript, with a maximum credit of one year; or
- (B) Experience obtained in a foreign country that is performed under direct supervision of a Professional Engineer licensed with a member Board of the National Council of Examiners for Engineering and Surveying (NCEES).

History Note: Authority G.S. 89C-10; 89C-13;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2014; August 1, 2011; May 1, 2009; August 1, 2002; August 1, 2000; August 1, 1998; November 2, 1992; April 1, 1989; January 1, 1982;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;

Amended Eff. July 1, 2020.

21 NCAC 56 .0503 EXAMINATIONS

(a) The Board offers the following examinations that are the national examinations of the National Council of Examiners for Engineering and Surveying (NCEES) with application made directly to NCEES to take the exam:

- (1) Fundamentals of Engineering (FE): This examination is designed to test the applicant's proficiency and knowledge of the fundamentals of engineering; and
- (2) Principles and Practice of Engineering (PE): This examination is designed to test the applicant's proficiency and knowledge of engineering principles and practices.

(b) Examination Aids. Examinees may utilize examination aids as specified and published by NCEES.

(c) Examination Sequence. Before the applicant shall be permitted to be examined on the principles and practice of

engineering, the applicant shall pass the examination on the fundamentals of engineering, unless the applicant can provide evidence of 20 years of progressive engineering experience, or is a full-time engineering faculty member, or possesses an earned doctoral degree in engineering. NCEES administers the fundamentals of engineering examination as a computer-based exam.

(d) Only those applicants who have met the education requirements as set forth in Rule .0501(a) of this Section, and have passed the FE exam may sit for the PE exam prior to gaining the required experience. Upon gaining the required experience, as set forth in Rule .0501(b) of this Section, an applicant may apply for the PE license.

(e) Reasonable Accommodation. An applicant may make a written request to NCEES, before the application deadline, for reasonable accommodation for the exam. Reasonable accommodation shall be granted based upon meeting the Guidelines for Requesting Religious and ADA Accommodations published by the National Council of Examiners for Engineering and Surveying (NCEES).

(f) Exam Results. Exam results shall be supplied in writing as pass or fail. No results will be given in any other manner.

(g) Review of Failed Exams. An applicant who fails to make a passing score on an exam shall receive an exam analysis by NCEES.

History Note: Authority G.S. 89C-10; 89C-13; 89C-14; 89C-15;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2014; September 1, 2009; May 1, 2009;

April 1, 2001; August 1, 1998; November 2, 1992; April 1, 1989;

January 1, 1982;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;

Amended Eff. July 1, 2020.

21 NCAC 56 .0601 REQUIREMENTS FOR LICENSING

(a) Education. The terms used by the Board for the specific education requirements to be eligible to be licensed as a Professional Land Surveyor are defined as follows:

- (1) "B.S. in surveying or other equivalent curriculum." These degrees shall contain a minimum of 45 semester hours, or their quarter-hour equivalents. Of the 45 semester hours, a minimum of 12 semester hours of surveying fundamentals, 12 semester hours of applied surveying practice, and 12 semester hours of advanced or theoretical surveying courses are required. The remainder of the required surveying courses may be elective-type courses in any of the categories; and
- (2) "Associate degree in surveying technology." This degree shall contain a minimum of 20 semester hours, or quarter-hour equivalents. Courses shall be in surveying fundamentals, applied surveying practice and advanced or

theoretical surveying courses, including courses in surveying practices, subdivision design and planning, surface drainage, and photogrammetry which must be completed with a passing grade.

(b) Experience:

(1) Definition. As used in the North Carolina Engineering and Land Surveying Act, the term "progressive practical experience" means that during the period of time in which an applicant made a practical utilization of the knowledge of the principles of geometry and trigonometry in determining the shape, boundaries, position, and extent of the earth's surface, such that continuous improvement, growth, and development in the utilization of that knowledge have been shown. In addition, the applicant shall show the continuous assumption of greater individual responsibility for the work product over that period of time.

(2) Required Experience. In evaluating the work experience required, the Board shall consider the total experience record and the progressive nature of the record. Not less than half of the required land surveying experience shall be of a professional grade and character, and shall be performed under the responsible charge of a Professional Land Surveyor. If the work was not under the responsible charge of a Professional Land Surveyor, the applicant shall submit a written explanation to the Board explaining why the experience should be considered. The Board shall approve the experience on a case-by-case basis if it is satisfied of the grade and character of the progressive experience. Experience gained under the technical supervision of an unlicensed individual shall be considered based upon the engineering education and experience credential of the unlicensed supervisor. Experience gained in the armed services, typically while serving in an engineering or surveying related group, shall be accepted only if substantially equivalent to that which would have been gained in civilian work.

(3) Other Experience. The applicant shall document the nature and details of the work done in the following areas to evidence to the Board its equivalency to land surveying:

- (A) construction layout;
- (B) engineering surveying; or
- (C) part-time surveying work.

(c) Exhibits, Drawings, Maps:

(1) Required Exhibit Before Principles and Practice of Surveying Examination:

(A) General. The applicant shall submit, along with the application, an actual map of a boundary survey of an actual project prepared under the direct

supervision and responsible charge of a Professional Land Surveyor who states that the applicant did the preparatory work of the survey; that shows, by its conformance, that the applicant is knowledgeable of the contents of the Standards of Practice for Land Surveying in North Carolina as set forth in Section .1600 of this Chapter; and that shows that the applicant is able to apply this knowledge by preparing a map in accordance with the various legal and professional requirements of land surveying.

- (B) Physical Requirement. The map submitted shall be a clean, clear, legible print of an original map in the file of a Professional Land Surveyor.
- (2) Specific Requirements. The details that shall be evaluated are those applicable to the particular project as described in the Standards of Practice for Land Surveying in North Carolina as set forth in Section .1600 of this Chapter, and as described in G.S. 47-30. In addition, the exhibit shall contain a statement that the field work, calculation, and mapping were performed by the applicant under the supervision of a Professional Land Surveyor, attested to by that Professional Land Surveyor.
- (3) Requirements for Comity Applicant. The map submitted by an applicant under comity may be a representative map of an actual survey of a project or work performed in the state of licensure that is modified to meet the requirements in Subparagraph (c)(2) of this Rule and shall be evaluated in accordance with the requirements applicable to the particular project as described in the Standards of Practice for Land Surveying in North Carolina as set forth in Section .1600 of this Chapter, and as described in G.S. 47-30.

(1) Fundamentals of Surveying (FS): This examination is designed to test the applicant's proficiency and knowledge of the fundamentals of surveying. (Reference to Fundamentals of Surveying is the revised name of the national exam that is the Fundamentals of Land Surveying in G.S. 89C); and

(2) Principles and Practice of Surveying. This examination is designed to test the applicant's proficiency and knowledge of land surveying practices and procedures generally and specifically within North Carolina. (Reference to Principles and Practice of Surveying is the revised name of the national exam that is the Principles and Practice of Land Surveying in G.S. 89C).

(b) State-Specific Exam. The State-specific portion of the principles and practice of surveying examination shall be provided by the Board.

(1) Examination Filing Deadline. The applicant who wishes to take the State-specific portion of the principles and practice of surveying examination shall deliver the completed application, including all necessary references, transcripts, and verifications, to the Board office at least 60 days prior to the date for taking the exam.

(2) Unexcused Absences. For the State-specific portion of the principles and practices of surveying examination, after a seating notice for a scheduled examination has been issued, if applicant fails to appear, the applicant's record shall reflect "unexcused absence," unless the absence was for jury duty or the applicant was not physically able to be present, as indicated by a doctor's certificate. The examination fee shall be forfeited if the applicant's record reflects an unexcused absence.

(3) Re-Examination. A person who failed the State-specific portion of the principles and practices of surveying examination may apply to take the examination again at the after a six-month waiting period by making written request and submitting the required exam fee. A person having a combined record of three failures shall be eligible only after submitting a new application with appropriate application fee, and shall be considered by the Board for re-examination at the end of 12 months after the last failure.

(c) Examination Aids. Examinees may utilize examination aids as specified and published by NCEES or the Board.

(d) Preparation of Examination. NCEES administers the fundamentals of surveying examination and the examination in the principles and practice of surveying as computer-based exams.

(e) Reasonable Accommodation. An applicant may make a written request to NCEES, before the application deadline, for reasonable accommodation for the exam. Reasonable accommodation shall be granted based upon meeting the

History Note: Authority G.S. 47-30; 89C-10; 89C-13; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. August 1, 2014; July 1, 2009; August 1, 2000; August 1, 1998; November 2, 1992; April 1, 1989; December 1, 1984; January 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; Amended Eff. July 1, 2020.

21 NCAC 56 .0603 EXAMINATIONS

(a) The Board offers the following examinations that are the national examinations of the National Council of Examiners for Engineering and Surveying (NCEES) with application made directly to NCEES to take the exam:

Guidelines for Requesting Religious and ADA Accommodations published by the National Council of Examiners for Engineering and Surveying (NCEES).

(f) Exam Results. Exam results shall be supplied in writing as pass or fail. No results shall be given in any other manner.

(g) Review of Failed Exams. An applicant who fails to make a passing score on an NCEES exam shall receive an exam analysis by NCEES. An applicant who fails to make a passing score on the two-hour state-specific portion of the exam may request in writing within 30 days of receiving the result to have an opportunity to review that portion of the exam. The review shall be done in the Board office under supervision of staff and is limited to one hour.

History Note: Authority G.S. 89C-10; 89C-15; Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2014; May 1, 2009; April 1, 2001; August 1, 1998; November 2, 1992; April 1, 1989; January 1, 1982;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;

Amended Eff. July 1, 2020.

21 NCAC 56 .0804 ANNUAL RENEWAL AND 30-DAY REPORTING OF VIOLATIONS AND CHANGE OF ADDRESS

(a) Renewal. The certificate of licensure for a business shall be renewed annually.

(b) Expiration. The certificate of licensure expires on the last day of June following its issuance by the Board and becomes invalid on that date unless renewed.

(c) Written Application. The applicant shall submit a written application on a renewal form provided by the Board that requires the physical place of business address and report of disciplinary actions, accompanied by a fee of seventy-five dollars (\$75.00). The Board shall renew the certificate of licensure, providing that the business has complied with all rules of the Board and applicable General Statutes of North Carolina. The form shall be provided to all licensees in good standing no later than June 1st.

(d) Reporting. The business shall give notice to the Board on a change form within 30 days of any change of:

- (1) business address and branch locations;
- (2) resident professional or licensee in responsible charge;
- (3) business name;
- (4) officers, directors, or owners; or
- (5) the services being offered.

The business shall give notice to the Board of any disciplinary actions or conviction of any crime, in any jurisdiction on any license within 30 days of the disciplinary action or conviction.

(e) If a business fails to renew its certificate of licensure within one year of the expiration date, the business shall submit a new application for a new certificate of licensure in accordance with all requirements of 21 NCAC 56 .0802.

(f) If any business that holds a current certificate of licensure ceases business because the professional licensee receives a waiver from paying the individual renewal fee under 21 NCAC 56 .0506 or 21 NCAC 56 .0607, the annual renewal fee for the business shall be waived for the same time period.

History Note: Authority G.S. 55B-11; 57D-2-01; 89C-10; 89C-14; 89C-17; 89C-24;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2011; July 1, 2010; July 1, 2009; December 4, 2002; April 1, 2001; February 1, 1996; May 1, 1994;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;

Amended Eff. July 1, 2020.

21 NCAC 56 .0902 BUSINESS TITLES

(a) Companies, partnerships, corporations, limited liability companies, or any other business providing professional engineering or land surveying services in North Carolina shall not practice under a name that is misleading. Except as provided in Paragraph (b), for purposes of this Rule, "misleading" means that the titles of engineering or land surveying companies, partnerships, corporations, limited liability companies, or any other business organized for the primary purpose of providing such professional services shall not contain the name of an individual:

- (1) who is not licensed to provide the professional services offered in North Carolina;
- (2) who is not eligible for licensure by comity to provide the professional services offered in North Carolina under the provisions of G.S. 89C-13; or
- (3) who is licensed to provide the professional services, offered in North Carolina, in a state where the business (or of a successor to that business or business created to comply with G.S. 55B), is incorporated, organized, or is authorized to transact business.

(b) A business may include in its title the name or names of one or more deceased or retired former members of the business, or of a successor to that business or a business created to comply with G.S. 55B, provided that the business submits a letter of request and explanation with its application to the Board, and that the Board finds that the use of the name is not misleading.

(c) A business shall not change its title, or operate under an assumed name, without first applying to the Board for a determination that the proposed title meets the requirements of Paragraph (a) or (b) of this Rule. Requests for name changes shall be made in writing on the change forms referenced in 21 NCAC 56 .0804(d). Requests to operate under an assumed name shall be made in writing.

History Note: Authority G.S. 55B-5; 57D-2.01; 89C-10; 89C-24;

Eff. February 1, 1976;

Readopted Eff. September 29, 1977;

Amended Eff. August 1, 2000; August 1, 1998; May 1, 1994; April 1, 1989; April 1, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;

Amended Eff. July 1, 2020.

21 NCAC 56 .1301 IMPROPER PRACTICE BY A LICENSEE

(a) General. Licensee practice that may violate the rules of this Chapter or G.S. 89C is subject to Board investigation and disciplinary action by the Board.

(b) Preferring Charges. Any person who believes that any licensed Professional Engineer, Professional Land Surveyor, or business holding a certificate of licensure is in violation of the provisions of G.S. 89C or the rules in this Chapter may prefer charges against that person or business, in the form of a complaint, completed to the best of that individual's knowledge and belief, along with providing corroborative evidence that helps support the charges. An optional complaint form is provided by the Board to aid in filing the complaint.

(c) Preliminary Review:

- (1) Upon receipt of a filed charge that meets requirements of G.S. 89C and the rules of the Board a case shall be opened. Other information indicating that a licensee is in violation of the provisions of G.S. 89C or the rules of the Board may be a basis for opening a case by the Board.
- (2) A field investigation may be performed if determined necessary by the Executive Director in order to obtain additional information and evidence.
- (3) If the Executive Director determines that the charges are corroborated by evidence, a written notice and explanation of the charge shall be forwarded to the person or business against whom the charge is made and a response requested, within 15 days, to show compliance with G.S. 89C and the rules of the Board for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt request.
- (4) After preliminary evidence has been obtained, the matter shall be referred to the Board's review committee, made up of the following individuals:
 - (A) one member of the Board who is licensed in the respective profession;
 - (B) the legal counsel of the Board; and
 - (C) the Executive Director of the Board or Assistant Executive Director if designated by the Executive Director.
- (5) Upon review of the evidence, the review committee shall:
 - (A) recommend that the Board dismiss the charge as unfounded or trivial;
 - (B) when the charge is admitted as true, recommend that the Board accept the admission of guilt by the person charged and order that person not to commit in the future the specific act or acts admitted and also not to violate any of the provisions of the Board rules or the statutes at any time in the future;

(C) present the charge, whether admitted or denied, to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or

(D) whether the charge is admitted or denied, give written notice to the licensee that:

- (i) sufficient evidence exists which, if not rebutted or explained, would justify the Board in taking an action set out in Rule .1402(4) through (12) of this Chapter;
- (ii) stating the nature of the evidence; and
- (iii) that unless the licensee, within 20 days after service of said notice, deposits in the mail a certified letter addressed to the Board and containing a request for a hearing or settlement conference, that it will recommend that the Board take the action(s) specified in the notice, set out in Rule .1402(4) through (12) of this Chapter.

(d) Consultant. A consultant to the review committee shall be designated by the Board Chair if a board member is a complainant, witness, or respondent in a case. The consultant shall be a licensed professional engineer or professional land surveyor, depending on the nature of the case. The consultant shall review all case materials and make a recommendation for consideration by the review committee as to the merits of the case. The consultant shall review any new information presented in the event of a settlement conference and make a recommendation to the settlement conference committee.

(e) Board Decision. When the review committee proceeds pursuant to Parts (c)(5)(A) or (B) of this Rule, upon approval of the Board, notice shall be given to the party against whom the charges have been brought and the party submitting the charge. The Board is not required to notify the parties of the reasons of the Board in making its decision.

(f) Settlement Conference. When the review committee proceeds pursuant to Parts (c)(5)(C) or (D) of this Rule, the licensee may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If, after the completion of a settlement conference, the licensee and Board's settlement committee do not agree to a resolution of the dispute for the full Board's consideration, the original administrative proceeding shall commence. During the course of the settlement conference, no sworn testimony shall be taken, nor shall any witnesses be cross-examined.

- (1) The Board's settlement committee shall be made up of the following individuals:
 - (A) the member of the Board who served on the review committee or a replacement member if the member is not available;
 - (B) one public member from the Board;
 - (C) the legal counsel of the Board; and
 - (D) the Executive Director of the Board or Assistant Executive Director if designated by the Executive Director.
- (2) Upon review of the evidence, the settlement committee shall:
 - (A) recommend that the Board dismiss the charge as unfounded or trivial;
 - (B) when the charge is admitted as true, recommend the Board accept the admission of guilt by the person charged and order the person not to commit in the future the specific act or acts admitted and, also, not to violate any provisions of the Board Rules or the statutes at any time in the future;
 - (C) direct that the charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .1400 of this Chapter and the provisions of G.S. 150B; or
 - (D) recommend that the Board approve a settlement agreed to by the licensee and proposed by the settlement conference committee.

complaint form is provided by the Board to aid in filing the complaint.

- (c) Preliminary Determination:
 - (1) Upon receipt of a filed charge that meets requirements of G.S. 89C and the rules of the Board a case shall be opened. Other information indicating that a party is in violation of the provisions of G.S. 89C or the rules of the Board may be a basis for opening a case by the Board.
 - (2) A field investigation may be performed if determined necessary by the Executive Director in order to obtain additional information and evidence.
 - (3) If the Executive Director determines that charges are corroborated by evidence, a written notice and explanation of the charge shall be forwarded to the person or business against whom the charge is made and a response is requested, within 15 days, to show compliance with G.S. 89C. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt requested.
 - (4) After preliminary evidence has been obtained, the matter shall be referred to the Board's review committee, which is made up of the following individuals:
 - (A) one member of the Board;
 - (B) the legal counsel of the Board; and
 - (C) the Executive Director of the Board or Assistant Executive Director if designated by the Executive Director.
 - (5) Upon review of the available evidence, the review committee shall recommend to the Board that:
 - (A) the investigation be continued and the party be notified with an explanation of the charge(s) and given an opportunity to provide a response to show compliance with G.S. 89C;
 - (B) the charge be dismissed as unfounded or trivial;
 - (C) a letter be issued informing of the possible violation of G.S. 89C and that further action may be pursued under G.S. 89C-23; or
 - (D) the matter be referred to an appropriate agency for necessary legal action.

(d) Board Decision. Notice of decision by the Board on recommendations of the review committee shall be given to the party submitting the charge.

History Note: Authority G.S. 89C-10; 89C-23; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. August 1, 2011; August 1, 2000; August 1, 1998; May 1, 1994; April 1, 1989; January 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;

History Note: Authority G.S. 89C-10; 89C-21; 89C-22; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. August 1, 2011; July 1, 2009; May 1, 2009; August 1, 2000; August 1, 1998; March 1, 1996; April 1, 1989; December 1, 1984; January 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; Amended Eff. July 1, 2020.

21 NCAC 56 .1302 UNLAWFUL PRACTICE BY AN UNLICENSED PERSON

- (a) General. Alleged unlawful practice by an unlicensed person shall be subject to Board investigation and enforcement, to include applying for relief by injunction or referral to an agency of the State for appropriate legal action.
- (b) Preferring Charges. Any person who believes that any person or business (party) is in violation of the acts specified in G.S. 89C may prefer charges against that person or business, in the form of a complaint, completed to the best of that individual's knowledge and belief, in the form of a complaint, along with providing corroborative evidence that helps support the charges. An optional

Amended Eff. July 1, 2020.

21 NCAC 56 .1403 NOTICE OF CONTEMPLATED BOARD ACTION TO APPLICANT: REQUEST FOR HEARING

When the Board takes an action specified in Subparagraphs (1), (2) or (3) of Rule .1402 of this Section, it shall give the applicant a written statement:

- (1) that the applicant failed to meet the qualifications to be examined or to be issued a license;
- (2) stating the specific deficiencies as to why the applicant failed; and
- (3) that unless the applicant, within 20 days after service of the notice, deposits in the mail a certified letter addressed to the Board and containing a request for a hearing, the Board's action will become final.

In any Board proceeding involving the denial of an application to take an examination, or refusal to issue a license after an applicant has taken and passed an examination, the burden of satisfying the Board of the applicant's qualifications shall be upon the applicant.

History Note: Authority G.S. 89C-10; 89C-21; 89C-22; 150B-38; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. August 1, 1998; December 1, 1984; January 1, 1982; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; Amended Eff. July 1, 2020.

21 NCAC 56 .1603 CLASSIFICATION OF BOUNDARY SURVEYS

General. "Boundary surveys" are defined as surveys made to establish or to retrace a boundary line on the ground, or to obtain data for constructing a map, plat, or report showing a boundary line. For the purpose of this Rule, the term refers to all surveys, including "loan" or "physical" surveys, that involve the determination or depiction of property lines. For the purpose of specifying minimum allowable surveying standards for boundary surveys, the following four general classifications of lands in North Carolina are established from the standpoint of their real value, tax value, or location. Each map shall contain a statement of the calculated ratio of precision before adjustments or a statement of positional accuracy.

- (1) Local Control Network Surveys (Class AA). Local control network surveys are traverse networks utilizing permanent points for the purpose of establishing local horizontal control networks for future use by local surveyors. For Class AA boundary surveys in North Carolina, the angular error of closure shall not exceed ten seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 20,000 feet of perimeter of the parcel of land (1:20,000). When using positional accuracy

standards for Class AA control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.05 feet or 0.015 meters plus 30 ppm measured relative to the position(s) of the horizontal control points used and referenced on the survey.

- (2) Urban Land Surveys (Class A). Urban surveys include lands that normally lie within a town or city. For Class A boundary surveys in North Carolina, the angular error of closure shall not exceed 20 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 10,000 feet of perimeter of the parcel of land (1:10,000). When using positional accuracy standards for Class A control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.10 feet or 0.030 meters plus 50 ppm measured relative to the position(s) of the horizontal control points or property corners used and referenced on the survey.

- (3) Suburban Land Surveys (Class B). Suburban surveys include lands in or surrounding the urban properties of a town or city. For Class B boundary surveys in North Carolina, the angular error of closure shall not exceed 25 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 7,500 feet of perimeter of the parcel of land (1:7,500). When using positional accuracy standards for Class B control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.12 feet or 0.037 meters plus 90 ppm measured relative to the position(s) of the horizontal control points or property corners used and referenced on the survey.

- (4) Rural and Farmland Surveys (Class C). Rural and farmland surveys include lands located in rural areas of North Carolina and generally outside the suburban properties. For Class C boundary surveys in North Carolina, the angular error of closure shall not exceed 30 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 5,000 feet of perimeter of the parcel of land (1:5,000). When using positional accuracy standards for Class C control and boundary surveys, neither axis of the 95 percent confidence level error ellipse for any control point or property corner shall exceed 0.15 feet or 0.046 meters plus 150 ppm measured relative to the position(s) of the horizontal control points or property corners used and referenced on the survey.

History Note: Authority G.S. 89C-10; 89C-20; Eff. July 1, 1989; Amended Eff. August 1, 2014; May 1, 2009; August 1, 2000; August 1, 1998; November 2, 1992; January 1, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019; Amended Eff. July 1, 2020.

21 NCAC 56 .1604 MAPPING REQUIREMENTS FOR BOUNDARY SURVEYS

- (a) The size of a map shall be such that all details are legible on a copy.
- (b) Any lines that are not actually surveyed shall be indicated on the map and a statement included revealing the source of information from which the line is derived.
- (c) All surveys based on the North Carolina grid system shall contain a statement identifying the coordinate system referenced datum used.
- (d) All plats (maps), unless marked as "Preliminary Plat - Not for recordation, conveyances, or sales" shall be sealed, signed, and dated by the Professional Land Surveyor and shall contain the following:
 - (1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina grid ('NAD 83' and realization (date of adjustment of coordinate system) or 'NAD27'), or is referenced to old recorded deed or recorded plat bearings. If the north index is magnetic or referenced to old recorded deed or recorded plat bearings, the date and the source (note if not determined) shall be indicated.
 - (2) The azimuth or courses and distances of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required in Rule .1603 of this Section.
 - (3) All plat lines shall be horizontal or grid measurements. All lines shown on the plat shall be correctly plotted to the scale shown. Enlargements of portions of a plat are not required to be to scale. Where the North Carolina grid system is used, the combined grid factor shall be shown on the face of the plat. If grid distances are used, they shall be shown on the plat.
 - (4) Where a boundary is formed by a curved line, the following data shall be given: actual survey data or a series of subchords with bearings and distances around the curve. If standard curve

- (5) data is used, the bearing and distance of the long chord (from point of curvature to point of tangency) shall be shown on the face of the plat. Where a subdivision of land is set out on the plat, all streets and lots shall be accurately plotted with dimension lines indicating widths and all other information pertinent to retracing all lines in the field. This shall include bearings and distances to form a continuous closure of the entire perimeter.
- (6) Control corners, and all other corners that are marked by monument or natural object shall be identified on all plats, and all corners of adjacent owners along the boundary lines of the subject tract that are marked by monument or natural object shall be shown.
- (7) The surveyor shall show one of the following (or note if could not be determined):
 - (A) The names of adjacent land owners;
 - (B) The lot, block, parcel, and subdivision designations; or
 - (C) Other legal reference.
- (8) All visible and apparent rights-of-way, easements, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.
- (9) Tie lines as required and defined in Rule .1602(g) of this Section shall be accurately shown on the face of the plat, whether or not the plat is to be recorded.
- (10) A vicinity map (location map) shall appear on the face of the plat.
- (11) Each map shall contain:
 - (A) the property designation;
 - (B) the name of owner or prospective owner;
 - (C) the location (including township, county, and State);
 - (D) the date or dates the survey was conducted;
 - (E) a scale of the drawing listed in words or figures;
 - (F) a bargraph;
 - (G) the title source; and
 - (H) a legend depicting nomenclature or symbols not otherwise labeled.
- (12) Any map not certified for recording under G.S. 47-30, and all reports of survey, shall contain this certificate signed by the Professional Land Surveyor in substantially the following form:

"I certify that this map was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, page _____ or other reference source _____); that the boundaries not surveyed are indicated as drawn from information in Book _____, page _____ or other reference source _____; that the ratio of precision or positional accuracy is _____; and that this map meets the requirements of The Standards of Practice for Land Surveying in North Carolina (21 NCAC 56. 1600)."
 This _____ day of _____, 2_____.

Seal
Professional Land Surveyor

History Note: Authority G.S. 89C-10; 89C-16; 89C-20;
Eff. July 1, 1989;
Amended Eff. August 1, 2014; May 1, 2009; August 1, 2000; August 1, 1998; February 1, 1996; November 2, 1992; January 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;
Amended Eff. July 1, 2020.

21 NCAC 56 .1607 GLOBAL POSITIONING SYSTEMS SURVEYS

(a) General. Global Navigation Satellite Systems (GNSS) is the generic name of navigation and positioning systems with global coverage that is comprised of GPS (Global Positioning System, United States, originally Navstar), GLONASS (Global Navigation Satellite System, Russia), Galileo (Europe), BDS (BeiDou Navigation Satellite System, China, also known as COMPASS), and any other satellite-based navigation and positioning systems that provide global coverage.
(b) The Professional Land Surveyor in responsible charge of the GPS survey shall certify all prepared documents. When a map or document consists of more than one sheet, only one sheet must contain the certificate and all others must be certified. The certificate or metadata notes shall contain the following information:

- (1) Class of GPS survey as defined in the Standards of Practice (or list the sections);
- (2) Type of GPS field procedure, such as Static, Kinematic, Pseudo-Kinematic, Real-time Kinematic, Real-time Kinematic networks, and Online Position User Service;
- (3) Positional accuracy;
- (4) Dates of survey;
- (5) What datum and epoch coordinates or geographic positions are based on;
- (6) Designation of fixed-control stations and their positional data;
- (7) Geoid model used;
- (8) Combined grid factor(s); and
- (9) Units.

The certificate shall be substantially in the following form:

"I, _____, certify that this map was drawn under my supervision from an actual GPS survey made under my supervision and the following information was used to perform the survey:

- (1) Class of survey: _____
- (2) Positional accuracy: _____
- (3) Type of GPS field procedure: _____
- (4) Dates of survey: _____
- (5) Datum/Epoch: _____
- (6) Published/Fixed-control use: _____
- (7) Geoid model: _____
- (8) Combined grid factor(s): _____
- (9) Units: _____"

(c) GPS surveys to provide control networks shall be performed in such a manner that it meets a 95 percent confidence level of the positional accuracy of each point relative to the published positions of the control points used and shall meet the accuracy standards of a Class AA survey as set out in Rule .1603.

(d) GPS surveys performed to provide local horizontal or vertical Grid control on a parcel of land where the boundary or topography of that parcel will be shown relative to NC Grid horizontal or vertical datum shall be performed using techniques that will provide the standards of accuracy for the class of survey being performed while determining the horizontal or vertical positions of objects as set out in Rule .1603 or Rule .1606 as applicable.

(e) Fixed station(s) used for the project shall appear on the map, plat, or report. The minimum data shown for each fixed station shall be station name, horizontal position (northing and easting) or latitude, longitude, elevation (ellipsoid or orthometric), and datum and epoch.

History Note: Authority G.S. 89C-10; 89C-20;
Eff. November 2, 1992;

Amended Eff. August 1, 2011; May 1, 2009; August 1, 2002;
August 1, 2000;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27, 2019;
Amended Eff. July 1, 2020.

CHAPTER 58 - REAL ESTATE COMMISSION

21 NCAC 58H .0401 APPROVAL OF A REAL ESTATE EDUCATION COURSE

(a) Prior to obtaining the Commission's written approval of a real estate education course, education providers shall not offer, advertise, or otherwise represent that any real estate education course is, or may be, approved for credit in North Carolina.

(b) An education provider seeking original approval of a proposed course shall complete an application on a form available on the Commission's website that requires the applicant to set forth the:

- (1) title of the proposed course;

- (2) education provider's legal name, address, and telephone number;
- (3) education director's legal name;
- (4) education provider's number;
- (5) credit hours awarded for completing the course;
- (6) subject matter of the course;
- (7) identity of the course owner;
- (8) written permission of the course owner, if other than the applicant;
- (9) identity of prospective instructors;
- (10) a description of the method by which the education provider will proctor the end-of-course examination for Prelicensing and Postlicensing courses; and
- (11) education director's signature.

(c) The application for original approval shall be accompanied by a copy of the course guide, which shall include:

- (1) course objectives;
- (2) learning objectives for each topic;
- (3) a timed outline;
- (4) instructional methods and aids to be employed; and
- (5) all materials that will be provided to students.

(d) An applicant seeking approval to offer a distance education, synchronous distance-learning, or blended learning course shall submit an application for original approval as well as:

- (1) a full copy of the course on the medium to be utilized for instruction, except for synchronous distance-learning;
- (2) a description of the method by which the education provider will verify and record student attendance;
- (3) a list of hardware and software or other equipment necessary to both offer and complete the course;
- (4) the contact information for the technical support service for the course;
- (5) a copy of the student orientation and course tutorial information; and
- (6) all hardware and software necessary to review the submitted course at the expense of the applicant, except for synchronous distance-learning;

(e) An education provider seeking approval to offer an already approved course shall complete an application on a form available on the Commission's website that requires the applicant to set forth the:

- (1) title of the course;
- (2) applicant's legal name, address, and telephone number;
- (3) applicant's education director's legal name;
- (4) applicant's education provider number;
- (5) identity of the course owner;
- (6) written permission of the course owner, if other than the applicant;
- (7) identity of prospective instructors, if applicable;
- (8) certification that the originally approved course will not be altered; and

- (9) education director's signature.

(f) An education provider shall submit a one hundred dollar (\$100.00) fee for each application submitted pursuant to Paragraph (e) of this Rule for any continuing education course. The application shall be deemed approved ten business days after the Commission has received the application and fee, unless the Commission notifies the applicant otherwise.

(g) An education provider shall submit a forty dollar (\$40.00) fee per Prelicensing or Postlicensing course offered at any of its branch locations. No fee shall be required for public education providers or an agency of federal, state, or local government.

(h) An education provider shall submit a one hundred dollar (\$100.00) fee per elective course. No fee shall be required for public education providers or an agency of federal, state, or local government.

History Note: Authority G.S. 93A-3(c); 93A-4; 93A-33; 93A-34; 93A-38.5; Eff. July 1, 2017; Amended Eff. July 1, 2020.

TITLE 25 - STATE HUMAN RESOURCES COMMISSION

25 NCAC 01E .0311 SEPARATION

Unused sick leave is not paid when an employee separates from State service except as provided in Rule .0210 of this Subchapter.

History Note: Authority G.S. 126-4; Eff. February 1, 1976; Amended Eff. December 1, 2007; July 1, 1995; January 1, 1983; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016; Amended Eff. July 1, 2020.

25 NCAC 01J .1306 BACK PAY

In grievances:

- (1) Back pay may be awarded as allowed by G.S. Chapter 126.
- (2) Full or partial back pay shall not be dependent upon whether reinstatement is ordered.
- (3) Gross back pay shall always be reduced by any gross interim earnings, except that interim earnings from employment that was approved secondary employment prior to dismissal shall not be set off against gross back pay. Any unemployment insurance benefits paid to the employee shall also be deducted from the gross back pay amount due.
- (4) All applicable State and federal withholding taxes, including social security taxes, shall be paid from the reduced gross back pay due. "Reduced gross back pay" is gross back pay due minus interim earnings and unemployment insurance benefits received.
- (5) The employee's regular retirement contribution shall be paid on the total, unreduced amount of gross back pay due.

- (6) Back pay shall include payment for all holidays that the grievant would have been paid for except for the interruption in employment status. Holiday premium pay shall not be a part of any back pay award.
- (7) Shift pay shall be a part of a back pay award if the grievant would have been entitled to the pay in the absence of the interruption in employment. This benefit shall not be applicable in cases involving a failure to hire or a failure to promote.
- (8) Employees shall not be entitled to any discretionary pay that may or may not have been awarded to them in the absence of the interruption in employment, including merit increments.
- (9) Back pay shall include any across-the-board compensation that would have been included in the grievant's regular salary except for the interruption in employment. This includes one time "bonuses," and across-the-board legislative pay increases.
- (10) If the grievant's longevity eligibility date occurred during the period of interrupted employment, back pay shall include the difference between the prorated longevity payment made at dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the grievant is reinstated prior to his or her longevity date, no adjustment for longevity pay shall be made in the back pay award. The prorated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.
- (11) Back pay shall be applied for on the Office of State Human Resources form, available on the Office of State Human Resources website, www.oshr.nc.gov. The back pay application form requires the following information:
 - (a) agency or university name;
 - (b) division, department or school;
 - (c) employee name;
 - (d) employee social security number;
 - (e) position classification;
 - (f) position number; and
 - (g) a notarized sworn statement verifying the following information for a total earnings calculation:
 - (i) gross interim income, not including secondary employment approved prior to adverse action; and
 - (ii) unemployment compensation.
- (12) The decision to award back pay shall include evidence, if any, of the grievant's efforts to obtain available employment following separation from State government. The burden of proof that an employee mitigated his or her lost wages by seeking employment following separation shall be on the employee.

*History Note: Authority G.S. 126-4(9); 126-34.01; 126 - 34.02;
Temporary Adoption Eff. May 23, 2014;
Eff. April 1, 2015;
Readopted Eff. April 1, 2018;
Amended Eff. July 1, 2020.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission August 20, 2020 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 984-236-1850. 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 (Chair)
Jeanette Doran (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
W. Tommy Tucker, Sr.

Appointed by House

Anna Baird Choi (2nd Vice Chair)
Andrew P. Atkins
Paul Powell
Garth Dunklin

COMMISSION COUNSEL

Amber Cronk May	984-236-1936
Amanda Reeder	984-236-1939
Ashley Snyder	984-236-1941
Karlene Turrentine	984-236-1948

RULES REVIEW COMMISSION MEETING DATES

August 20, 2020	September 17, 2020
October 15, 2020	November 19, 2020

AGENDA

**RULES REVIEW COMMISSION
THURSDAY, AUGUST 20, 2020 9:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Pesticide Board - 02 NCAC 09L .0101, .0515, .0529 (Snyder)
 - B. Crime Victims Compensation Commission – 14B NCAC 09 .0301, .0302, 0303, .0304, .0305 (Snyder)
 - C. Private Protective Services Board - 14B NCAC 16 .1001, .1002, .1003, .1207, .1304, .1404 (Reeder)
 - D. State Board of Education - 16 NCAC 06B .0111, .0112, .0113, .0114 (Snyder)
 - E. State Board of Education - 16 NCAC 06C .0334, .0335, .0336, .0337, .0338, .0339, .0340, .0341, .0342, .0343, .0344, .0345, .0346, .0347, .0348, .0349, .0350, .0351, .0352, .0353, .0354, .0355, .0356, .0357, .0358, .0359, .0360, .0361, .0362, .0363, .0364, .0365, .0366, .0367, .0368, .0369, .0370, .0371, .0372, .0373, .0374, .0375, .0376, .0377, .0378, .0379, .0380, .0381, .0382, .0383, .0384, .0385, .0386, .0387, .0388, .0389, .0390, .0391, .0392, .0393, .0394, .0395, .0396, .0397, .0701 (May)
 - F. State Board of Education 16 NCAC 06D .0211, .0212, .0307, .0308, .0309, .0310, .0311, .0313; 06E .0106, .0107, .0204, .0205, .0206; 06G .0314, .0315, .0316, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515, .0516, .0517, .0518, .0519, .0520, .0521, .0522, .0523, .0524 (Snyder)
 - G. State Board of Education 16 NCAC 06H .0113, .0114, .0115, .0116, .0117; 06K .0101, .0103, .0104, .0105 (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between June 23, 2020 through July 20, 2020
 - Department of Natural and Cultural Resources (May)
 - Environmental Management Commission 15A NCAC 02B (May)
 - Environmental Management Commission 15A NCAC 02D .0400, .0500, .0600 (May)
 - Environmental Management Commission 15A NCAC 02D .0900, .1400, .1700, .2600 (Reeder)

- Environmental Management Commission 15A NCAC 13B (Snyder)
 - Licensing Board for General Contractors (May)
 - Board of Cosmetic Art Examiners (May)
 - Board of Dental Examiners (Snyder)
 - Medical Board (May)
 - State Human Resources Commission (Snyder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
- Readoptions
 - Not Scheduled for Review this month
1. 10A NCAC 70,71 – Social Services Commission (May)
 2. 11 NCAC 04 – Department of Insurance (May)
- VII. Commission Business
- Next meeting: Thursday, September 17, 2020

Commission Review
Log of Permanent Rule Filings
 June 23, 2020 through July 20, 2020

NATURAL AND CULTURAL RESOURCES, DEPARTMENT OF

The rules in Subchapter 13B concern parks and recreation areas including general provisions (.0100); preservation of the park (.0200); bathing (.0300); refuse and rubbish (.0400); traffic and parking (.0500); boating and camping (.0600); sports and games (.0700); hunting and fishing (.0800); firearms, explosives, fires, etc. (.0900); disorderly conduct, public nuisance, etc. (.1000); commercial enterprises, advertising, meetings, exhibitions, etc. (.1100); and miscellaneous (.1200).

Alcoholic Beverages and Controlled Substances 07 NCAC 13B .1003
 Readopt with Changes*

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

French Broad River Basin 15A NCAC 02B .0304
 Amend*

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); monitoring; recordkeeping; reporting (.0600); volatile organic compounds (.0900); motor vehicle emission control standard (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators and combustion units (.1200); nitrogen oxides (.1400); municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); banking emission reduction credits (.2300); and source testing (.2600).

Total Suspended Particulates 15A NCAC 02D .0403
 Readopt without Changes*

Compliance with Emission Control Standards 15A NCAC 02D .0501
 Readopt without Changes*

Purpose 15A NCAC 02D .0502

<u>Readopt without Changes*</u>				
<u>Particulates from Fuel Burning Indirect Heat Exchangers</u>	15A	NCAC	02D	.0503
<u>Readopt without Changes*</u>				
<u>Particulates from Wood Burning Indirect Heat Exchangers</u>	15A	NCAC	02D	.0504
<u>Readopt with Changes*</u>				
<u>Particulates from Hot Mix Asphalt Plants</u>	15A	NCAC	02D	.0506
<u>Readopt without Changes*</u>				
<u>Particulates from Chemical Fertilizer Manufacturing Plants</u>	15A	NCAC	02D	.0507
<u>Readopt without Changes*</u>				
<u>Particulates from Pulp and Paper Mills</u>	15A	NCAC	02D	.0508
<u>Readopt without Changes*</u>				
<u>Particulates from MICA or Feldspar Processing Plants</u>	15A	NCAC	02D	.0509
<u>Readopt without Changes*</u>				
<u>Particulates from Sand, Gravel, or Crushed Stone Operations</u>	15A	NCAC	02D	.0510
<u>Readopt without Changes*</u>				
<u>Particulates from Lightweight Aggregate Processes</u>	15A	NCAC	02D	.0511
<u>Readopt without Changes*</u>				
<u>Particulates from Wood Products Finishing Plants</u>	15A	NCAC	02D	.0512
<u>Readopt without Changes*</u>				
<u>Particulates from Portland Cement Plants</u>	15A	NCAC	02D	.0513
<u>Readopt without Changes*</u>				
<u>Particulates from Ferrous Jobbing Foundries</u>	15A	NCAC	02D	.0514
<u>Readopt without Changes*</u>				
<u>Particulates from Miscellaneous Industrial Processes</u>	15A	NCAC	02D	.0515
<u>Readopt without Changes*</u>				
<u>Sulfur Dioxide Emissions from Combustion Sources</u>	15A	NCAC	02D	.0516
<u>Readopt without Changes*</u>				
<u>Emissions from Plants Producing Sulfuric Acid</u>	15A	NCAC	02D	.0517
<u>Readopt without Changes*</u>				
<u>Control of Nitrogen Dioxide and Nitrogen Oxides</u>	15A	NCAC	02D	.0519
<u>Readopt without Changes*</u>				
<u>Control of Visible Emissions</u>	15A	NCAC	02D	.0521
<u>Readopt without Changes*</u>				
<u>New Source Performance Standards</u>	15A	NCAC	02D	.0524
<u>Readopt without Changes*</u>				
<u>Emissions from Spodumene Ore Roasting</u>	15A	NCAC	02D	.0527
<u>Readopt without Changes*</u>				
<u>Total Reduced Sulfur from Kraft Pulp Mills</u>	15A	NCAC	02D	.0528
<u>Readopt without Changes*</u>				
<u>Fluoride Emissions from Primary Aluminum Reduction Plants</u>	15A	NCAC	02D	.0529
<u>Readopt without Changes*</u>				
<u>Prevention of Significant Deterioration</u>	15A	NCAC	02D	.0530
<u>Readopt with Changes*</u>				
<u>Sources in Nonattainment Areas</u>	15A	NCAC	02D	.0531
<u>Readopt without Changes*</u>				
<u>Sources Contributing to an Ambient Violation</u>	15A	NCAC	02D	.0532
<u>Readopt with Changes*</u>				
<u>Stack Height</u>	15A	NCAC	02D	.0533
<u>Readopt without Changes*</u>				
<u>Fluoride Emissions from Phosphate Fertilizer Industry</u>	15A	NCAC	02D	.0534
<u>Readopt without Changes*</u>				
<u>Excess Emissions Reporting and Malfunctions</u>	15A	NCAC	02D	.0535

<u>Readopt without Changes*</u>				
<u>Particulate Emissions from Electric Utility Boilers</u> Readopt/Repeal*	15A	NCAC	02D	.0536
<u>Control of Mercury Emissions</u> Readopt without Changes*	15A	NCAC	02D	.0537
<u>Control of Ethylene Oxide Emissions</u> Readopt without Changes*	15A	NCAC	02D	.0538
<u>Odor Control of Feed Ingredient Manufacturing Plants</u> Readopt without Changes*	15A	NCAC	02D	.0539
<u>Control of Emissions from Abrasive Blasting</u> Readopt without Changes*	15A	NCAC	02D	.0541
<u>Control of Particulate Emissions from Cotton Ginning Oper...</u> Readopt without Changes*	15A	NCAC	02D	.0542
<u>Best Available Retrofit Technology</u> Readopt without Changes*	15A	NCAC	02D	.0543
<u>Prevention of Significant Deterioration Requirements for ...</u> Readopt without Changes*	15A	NCAC	02D	.0544
<u>Delegation</u> Readopt/Repeal*	15A	NCAC	02D	.0615
<u>Definitions</u> Readopt without Changes*	15A	NCAC	02D	.0901
<u>Applicability</u> Readopt without Changes*	15A	NCAC	02D	.0902
<u>Recordkeeping: Reporting: Monitoring</u> Readopt without Changes*	15A	NCAC	02D	.0903
<u>Circumvention</u> Readopt without Changes*	15A	NCAC	02D	.0906
<u>Compliance Schedules for Sources In Ozone Nonattainment a...</u> Readopt without Changes*	15A	NCAC	02D	.0909
<u>General Provisions on Test Methods and Procedures</u> Readopt without Changes*	15A	NCAC	02D	.0912
<u>Can Coating</u> Readopt without Changes*	15A	NCAC	02D	.0918
<u>Coil Coating</u> Readopt without Changes*	15A	NCAC	02D	.0919
<u>Metal Furniture Coatings</u> Readopt without Changes*	15A	NCAC	02D	.0922
<u>Surface Coating of Large Appliance Parts</u> Readopt without Changes*	15A	NCAC	02D	.0923
<u>Magnet Wire Coating</u> Readopt without Changes*	15A	NCAC	02D	.0924
<u>Petroleum Liquid Storage in Fixed Roof Tanks</u> Readopt without Changes*	15A	NCAC	02D	.0925
<u>Bulk Gasoline Plants</u> Readopt with Changes*	15A	NCAC	02D	.0926
<u>Bulk Gasoline Terminals</u> Readopt with Changes*	15A	NCAC	02D	.0927
<u>Gasoline Service Stations Stage 1</u> Readopt without Changes*	15A	NCAC	02D	.0928
<u>Solvent Metal Cleaning</u> Readopt without Changes*	15A	NCAC	02D	.0930
<u>Cutback Asphalt</u>	15A	NCAC	02D	.0931

<u>Readopt without Changes*</u>				
<u>Gasoline Truck Tanks and Vapor Collection Systems</u>	15A	NCAC	02D	.0932
<u>Readopt with Changes*</u>				
<u>Petroleum Liquid Storage in External Floating Roof Tanks</u>	15A	NCAC	02D	.0933
<u>Readopt without Changes*</u>				
<u>Factory Surface Coating of Flat Wood Paneling</u>	15A	NCAC	02D	.0935
<u>Readopt without Changes*</u>				
<u>Manufacture of Pneumatic Rubber Tires</u>	15A	NCAC	02D	.0937
<u>Readopt without Changes*</u>				
<u>Synthetic Organic Chemical and Polymer Manufacturing</u>	15A	NCAC	02D	.0943
<u>Readopt without Changes*</u>				
<u>Manufacture of Polyethylene: Polypropylene and Polystyrene</u>	15A	NCAC	02D	.0944
<u>Readopt without Changes*</u>				
<u>Petroleum Dry Cleaning</u>	15A	NCAC	02D	.0945
<u>Readopt without Changes*</u>				
<u>Manufacture of Synthesized Pharmaceutical Products</u>	15A	NCAC	02D	.0947
<u>Readopt without Changes*</u>				
<u>VOC Emissions from Transfer Operations</u>	15A	NCAC	02D	.0948
<u>Readopt without Changes*</u>				
<u>Storage of Miscellaneous Volatile Organic Compounds</u>	15A	NCAC	02D	.0949
<u>Readopt without Changes*</u>				
<u>RACT for Sources of Volatile Organic Compounds</u>	15A	NCAC	02D	.0951
<u>Readopt without Changes*</u>				
<u>Petition for Alternative Controls for RACT</u>	15A	NCAC	02D	.0952
<u>Readopt without Changes*</u>				
<u>Thread Bonding Manufacturing</u>	15A	NCAC	02D	.0955
<u>Readopt without Changes*</u>				
<u>Glass Christmas Ornament Manufacturing</u>	15A	NCAC	02D	.0956
<u>Readopt without Changes*</u>				
<u>Commercial Bakeries</u>	15A	NCAC	02D	.0957
<u>Readopt without Changes*</u>				
<u>Work Practices for Sources of Volatile Organic Compounds</u>	15A	NCAC	02D	.0958
<u>Readopt without Changes*</u>				
<u>Petition for Superior Alternative Controls</u>	15A	NCAC	02D	.0959
<u>Readopt without Changes*</u>				
<u>Cargo Tank Leak Tester Report</u>	15A	NCAC	02D	.0960
<u>Readopt with Changes*</u>				
<u>Offset Lithographic Printing and Letterpress Printing</u>	15A	NCAC	02D	.0961
<u>Readopt without Changes*</u>				
<u>Industrial Cleaning Solvents</u>	15A	NCAC	02D	.0962
<u>Readopt without Changes*</u>				
<u>Fiberglass Boat Manufacturing Materials</u>	15A	NCAC	02D	.0963
<u>Readopt without Changes*</u>				
<u>Miscellaneous Industrial Adhesives</u>	15A	NCAC	02D	.0964
<u>Readopt without Changes*</u>				
<u>Flexible Package Printing</u>	15A	NCAC	02D	.0965
<u>Readopt without Changes*</u>				
<u>Paper, Film and Foil Coatings</u>	15A	NCAC	02D	.0966
<u>Readopt without Changes*</u>				
<u>Miscellaneous Metal and Plastic Parts Coatings</u>	15A	NCAC	02D	.0967
<u>Readopt without Changes*</u>				
<u>Automobile and Light Duty Truck Assembly Coatings</u>	15A	NCAC	02D	.0968

Readopt without Changes*				
<u>Definitions</u>	15A	NCAC	02D	.1401
Readopt without Changes*				
<u>Applicability</u>	15A	NCAC	02D	.1402
Readopt without Changes*				
<u>Compliance Schedules</u>	15A	NCAC	02D	.1403
Readopt without Changes*				
<u>Recordkeeping: Reporting: Monitoring</u>	15A	NCAC	02D	.1404
Readopt without Changes*				
<u>Circumvention</u>	15A	NCAC	02D	.1405
Readopt without Changes*				
<u>Boilers and Indirect-Fired Process Heaters</u>	15A	NCAC	02D	.1407
Readopt without Changes*				
<u>Stationary Combustion Turbines</u>	15A	NCAC	02D	.1408
Readopt without Changes*				
<u>Stationary Internal Combustion Engines</u>	15A	NCAC	02D	.1409
Readopt without Changes*				
<u>Emissions Averaging</u>	15A	NCAC	02D	.1410
Readopt without Changes*				
<u>Seasonal Fuel Switching</u>	15A	NCAC	02D	.1411
Readopt without Changes*				
<u>Petition for Alternative Limitations</u>	15A	NCAC	02D	.1412
Readopt without Changes*				
<u>Sources not Otherwise Listed in this Section</u>	15A	NCAC	02D	.1413
Readopt without Changes*				
<u>Tune-Up Requirement</u>	15A	NCAC	02D	.1414
Readopt without Changes*				
<u>Test Methods and Procedures</u>	15A	NCAC	02D	.1415
Readopt without Changes*				
<u>New Electric Generating Units, Boilers, Combustion Turbin...</u>	15A	NCAC	02D	.1418
Readopt without Changes*				
<u>Large Internal Combustion Engines</u>	15A	NCAC	02D	.1423
Readopt without Changes*				
<u>Definitions</u>	15A	NCAC	02D	.1701
Readopt without Changes*				
<u>Applicability</u>	15A	NCAC	02D	.1702
Readopt with Changes*				
<u>Emission Standards</u>	15A	NCAC	02D	.1703
Readopt without Changes*				
<u>Test Methods and Procedures</u>	15A	NCAC	02D	.1704
Readopt without Changes*				
<u>Operational Standards</u>	15A	NCAC	02D	.1705
Readopt without Changes*				
<u>Compliance Provisions</u>	15A	NCAC	02D	.1706
Readopt without Changes*				
<u>Monitoring Provisions</u>	15A	NCAC	02D	.1707
Readopt without Changes*				
<u>Reporting Requirements</u>	15A	NCAC	02D	.1708
Readopt without Changes*				
<u>Recordkeeping Requirements</u>	15A	NCAC	02D	.1709
Readopt without Changes*				
<u>Compliance Schedule</u>	15A	NCAC	02D	.1710

Readopt without Changes*

Determination of Leak Tightness and Vapor Leaks 15A NCAC 02D .2615

Readopt with Changes*

The rules in Chapter 13 concern Solid Waste Management. The rules in Subchapter 13B concern Solid Waste Management including general provisions (.0100); permits for solid waste management facilities (.0200); treatment and processing facilities (.0300); transfer facilities (.0400); disposal sites (.0500); monitoring requirements (.0600); administrative penalty procedures (.0700); septage management (.0800); yard waste facilities (.0900); solid waste management loan program (.1000); scrap tire management (.1100); medical waste management (.1200); disposition of remains of terminated pregnancies (.1300); municipal solid waste compost facilities (.1400); standards for special tax treatment of recycling and resource recovery equipment and facilities (.1500); requirements for municipal solid waste landfill facilities (.1600); requirements for beneficial use of coal combustion by-products (.1700); and financial assurance requirements for solid waste management facilities (.1800).

Purpose and Applicability for Construction and Demolition... 15A NCAC 13B .0531

Readopt with Changes*

Definitions for C&DLF Facilities 15A NCAC 13B .0532

Readopt with Changes*

General Application Requirements and Processing for C&DLF... 15A NCAC 13B .0533

Readopt with Changes*

General Requirements for C&DLF Facilities and Units 15A NCAC 13B .0534

Readopt with Changes*

Application Requirements for C&DLF Facilities 15A NCAC 13B .0535

Readopt with Changes*

Site Study for C&DLF Facilities 15A NCAC 13B .0536

Readopt with Changes*

Facility Plan for C&DLFs 15A NCAC 13B .0537

Readopt with Changes*

Geologic and Hydrogeologic Investigations for C&DLF Facil... 15A NCAC 13B .0538

Readopt with Changes*

Engineering Plan for C&DLF Facilities 15A NCAC 13B .0539

Readopt with Changes*

Construction Requirements for C&DLF Facilities 15A NCAC 13B .0540

Readopt with Changes*

Construction Quality Assurance for C&DLF Facilities 15A NCAC 13B .0541

Readopt with Changes*

Operation Plan and Requirements for C&DLF Facilities 15A NCAC 13B .0542

Readopt with Changes*

Closure and Post-Closure Requirements for C&DLF Facilities 15A NCAC 13B .0543

Readopt with Changes*

Monitoring Plans and Requirments for C&DLF Facilities 15A NCAC 13B .0544

Readopt with Changes*

Assessment and Corrective Action Program for C&DLF Facili... 15A NCAC 13B .0545

Readopt with Changes*

Existing C&DLF Units as of January 1, 2007 15A NCAC 13B .0547

Readopt/Repeal*

Purpose and Applicability 15A NCAC 13B .1601

Readopt with Changes*

Definitions 15A NCAC 13B .1602

Readopt with Changes*

General Application and Requirements and Processing 15A NCAC 13B .1603

Readopt with Changes*

General Requirements for MSWLF Facilities 15A NCAC 13B .1604

Readopt with Changes*

<u>Application Requirements for MSWLF Facilities</u> Readopt with Changes*	15A	NCAC	13B	.1617
<u>Site Study for MSWLF Facilities</u> Readopt with Changes*	15A	NCAC	13B	.1618
<u>Facility Plan</u> Readopt with Changes*	15A	NCAC	13B	.1619
<u>Engineering Plan</u> Readopt with Changes*	15A	NCAC	13B	.1620
<u>Construction Quality Assurance Plan</u> Readopt with Changes*	15A	NCAC	13B	.1621
<u>Location Restrictions for MSWLF Facility Siting</u> Readopt with Changes*	15A	NCAC	13B	.1622
<u>Geologic and Hydrogeologic Investigations for MSWLF Facil...</u> Readopt with Changes*	15A	NCAC	13B	.1623
<u>Construction Requirements for SMWLF Facilities</u> Readopt with Changes*	15A	NCAC	13B	.1624
<u>Operation Plan for MSWLF Facilities</u> Readopt with Changes*	15A	NCAC	13B	.1625
<u>Operational Requirements for MSWLF Facilities</u> Readopt with Changes*	15A	NCAC	13B	.1626
<u>Closure and Post-Closure Requirements for MSWLF Facilities</u> Readopt with Changes*	15A	NCAC	13B	.1627
<u>Closure and Post-Closure Plan</u> Readopt with Changes*	15A	NCAC	13B	.1629
<u>Applicability of Groundwater Monitoring Requirements</u> Readopt with Changes*	15A	NCAC	13B	.1630
<u>Groundwater Monitoring Systems</u> Readopt with Changes*	15A	NCAC	13B	.1631
<u>GroundWater Sampling and Analysis Requirements</u> Readopt with Changes*	15A	NCAC	13B	.1632
<u>Detection Monitoring Program</u> Readopt with Changes*	15A	NCAC	13B	.1633
<u>Assessment Monitoring Program</u> Readopt with Changes*	15A	NCAC	13B	.1634
<u>Assessment of Corrective Measures</u> Readopt with Changes*	15A	NCAC	13B	.1635
<u>Selection of Remedy</u> Readopt with Changes*	15A	NCAC	13B	.1636
<u>Implementation of the Corrective Action Program</u> Readopt with Changes*	15A	NCAC	13B	.1637
<u>Leachate Storage Requirements</u> Readopt with Changes*	15A	NCAC	13B	.1680

GENERAL CONTRACTORS, LICENSING BOARD FOR

The rules in Subchapter 12A concern general provisions including organization and responsibilities of the board (.0100); licensing requirements (.0200); application procedure (.0300); examination (.0400); license (.0500); board disciplinary procedures (.0700); contested cases (.0800); and homeowners recovery fund (.0900).

<u>Fees</u> Amend*	21	NCAC	12A	.0304
<u>Renewal of License</u> Amend*	21	NCAC	12A	.0503

The rules in Subchapter 12B concern the general provisions (.0100); providers (.0200); courses (.0300); and instructors (.0400) for continuing education.

<u>General</u> Adopt*	21	NCAC	12B	.0101
<u>Continuing Education Credit</u> Adopt*	21	NCAC	12B	.0102
<u>Continuing Education Records; Audit</u> Adopt*	21	NCAC	12B	.0103
<u>Extension of Time</u> Adopt*	21	NCAC	12B	.0104
<u>Inactive Status</u> Adopt*	21	NCAC	12B	.0105
<u>Application for Initial Approval of Continuing Education ...</u> Adopt*	21	NCAC	12B	.0201
<u>Expiration and Renewal of Provider Approval</u> Adopt*	21	NCAC	12B	.0202
<u>Denial or Withdrawal of Provider Approval</u> Adopt*	21	NCAC	12B	.0203
<u>Attendance; Roster Reports and Certificates</u> Adopt*	21	NCAC	12B	.0204
<u>Course Scheduling</u> Adopt*	21	NCAC	12B	.0205
<u>Records and Board Review</u> Adopt*	21	NCAC	12B	.0206
<u>Course Requirements</u> Adopt*	21	NCAC	12B	.0301
<u>Approval and Renewal of Elective Course</u> Adopt*	21	NCAC	12B	.0302
<u>Mandatory Course</u> Adopt*	21	NCAC	12B	.0303
<u>Application Criteria for Initial Instructor Approval</u> Adopt*	21	NCAC	12B	.0401
<u>Renewal and Expiration of Instructor Approval</u> Adopt*	21	NCAC	12B	.0402
<u>Denial or Withdrawal of Instructor Approval</u> Adopt*	21	NCAC	12B	.0403

COSMETIC ART EXAMINERS, BOARD OF

The rules in Subchapter 14H are sanitation rules for both operators and facilities including sanitation (.0100); shop licensing and physical dimensions (.0200); cosmetic art shop and equipment (.0300); sanitation procedures and practices (.0400); and enforcement, maintenance of licensure (.0500).

<u>Licensees and Students</u> Amend*	21	NCAC	14H	.0401
<u>Disinfection Procedures</u> Amend*	21	NCAC	14H	.0403
<u>First Aid</u> Amend*	21	NCAC	14H	.0404

The rules in Subchapter 14T concern cosmetic art schools including the scope of the rules and school applications (.0100); physical requirements for cosmetic art schools (.0200); school equipment and supplies (.0300); student

equipment (.0400); record keeping (.0500); curricula for all cosmetic art disciplines (.0600); school licensure, operations, closing and relocating schools (.0700); school inspections (.0800); and disciplinary actions (.0900).

<u>Cosmetology and Apprentice Student Equipment</u> Amend*	21	NCAC	14T	.0401
<u>Permanent Records, Forms and Documentation</u> Amend*	21	NCAC	14T	.0502
<u>Cosmetology Curriculum</u> Amend*	21	NCAC	14T	.0602
<u>Apprentice Cosmetology Curriculum</u> Amend*	21	NCAC	14T	.0603
<u>Esthetics Curriculum</u> Amend*	21	NCAC	14T	.0604
<u>Manicuring Curriculum</u> Amend*	21	NCAC	14T	.0605
<u>Natural Hair Care Curriculum</u> Amend*	21	NCAC	14T	.0606
<u>Field Trips</u> Amend*	21	NCAC	14T	.0615

DENTAL EXAMINERS, BOARD OF

The rules in Chapter 16 cover the licensing of dentists and dental hygienists.

The rules in Subchapter 16B concern licensure examination for dentists including examination required (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); licensure by credentials (.0500); limited volunteer dental license (.0600); instructor's license (.0700); temporary volunteer dental license (.0800); and exemptions for active military (.0900).

<u>Application for Reinstatement and Proof of Competency</u> Amend*	21	NCAC	16B	.1101
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The rules in Subchapter 16C are dental hygienist licensure rules including general provisions (.0100); qualifications (.0200); application (.0300); Board conducted examinations (.0400); and licensure by credentials (.0500).

<u>Board Approved Examinations</u> Amend*	21	NCAC	16C	.0303
<u>Application for Reinstatement and Proof of Competency</u> Amend*	21	NCAC	16C	.0601

The rules in Subchapter 16F concern professional corporations.

<u>Certificate of Registration</u> Amend*	21	NCAC	16F	.0104
<u>Application for Renewal</u> Amend*	21	NCAC	16F	.0105

The rules in Subchapter 16G concern dental hygienists.

<u>Procedures Prohibited</u> Amend*	21	NCAC	16G	.0103
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The rules in Subchapter 16H concern dental assistants including classification and training (.0100); and permitted functions of dental assistant (.0200).

<u>Approved Education and Training Programs</u> Amend*	21	NCAC	16H	.0104
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The rules in Subchapter 16I concern the annual renewal of the dental hygienist license.

Applications 21 NCAC 16I .0101
Amend*

The rules in Subchapter 16N concern rule-making and administrative hearing procedures including petitions for rulemaking (.0100); notice of rule-making hearings (.0200); rule-making hearings (.0300); declaratory rulings (.0400); administrative hearing procedures (.0500); and administrative hearings, decisions, related rights and procedures (.0600).

Disposition of Requests 21 NCAC 16N .0403
Amend*

The rules in Subchapter 16R concern continuing education requirements of dentists (.0100 and .0200).

Applications 21 NCAC 16R .0101
Amend*

Fee for Late Filing and Duplicate License 21 NCAC 16R .0102
Amend*

License Void Upon Failure to Timely Renew 21 NCAC 16R .0108
Amend*

MEDICAL BOARD

The rules in Subchapter 32R concern Continuing Medical Education (CME) Requirements.

Approved Categories of CME 21 NCAC 32R .0102
Amend*

STATE HUMAN RESOURCES COMMISSION

The rules in Chapter 1 are from the State Personnel Commission. The rules in Subchapter 1C concern personnel administration including employment (.0100); general employment policies (.0200); personnel records and reports (.0300); appointment (.0400); work schedule (.0500); competitive service (.0600); secondary employment (.0700); requirements for teleworking programs (.0800); employee recognition programs (.0900); and separation (.1000).

Covered Employees 25 NCAC 01C .0802
Amend*

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 984-236-1850.

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

Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer
Tenisha Jacobs

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>Published</u>			
20	DHR	00549	6/12/2020	Wake Radiology Diagnostic Imaging LLC	v.	NC Department of Health and Human Services, Division of Health Service Regulation, Health Care Planning and Certificate of Need	Bawtinheimer
19	DOJ	01619	6/3/2020	Maurice A Devalle	v.	NC Sheriffs Education and Training Standards Commission	Lassiter
19	DOJ	02493	6/11/2020	Craig Dana Malton	v.	North Carolina Criminal Justice Education and Training Standards Commission	Culpepper
19	DOJ	06336	6/2/2020	Jason Thomas Potter	v.	NC Sheriffs Education and Training Standards Commission	Ward
19	EHR	06050	6/30/2020	Glade/Winding Woods Homeowners Group	v.	NC Department of Environmental Quality	May
19	OSP	06277	6/12/2020	Juanita Cantrell	v.	Avery County Dept of Social Services	Sutton
				<u>Unpublished</u>			
20	ABC	01067	6/18/2020	NC Alcoholic Beverage Control Commission	v.	Young Seung Lee T/A Golden Kings Market	Malherbe
20	ABC	01458	6/22/2020	NC Alcoholic Beverage Control Commission	v.	Fidel Torres T/A Texas Discotheque	May
20	BOE	01232	6/18/2020	Penny Wynne McGhee	v.	North Carolina Board of Elections	Bawtinheimer

CONTESTED CASE DECISIONS

20	BOE	01394	6/19/2020	Citizens to Elect Rena Turner Committee Rena W Turner	v.	NC State Board of Elections	Sutton
20	CPS	01106	6/22/2020	Shirlene N Best	v.	NC Crime Victims Compensation Commission	Ward
19	CRA	06778	6/17/2020	Devonte Morris	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
19	CSE	05840	6/24/2020	Paul Ronald Brown Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
19	CSE	05933	6/22/2020	Prince Haynes	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Culpepper
19	CSE	05965	6/19/2020	Jeron R Howie	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Culpepper
19	CSE	05975	6/30/2020	Raishad F Dobie	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
19	CSE	05977	6/30/2020	Raishad F Dobie	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
19	CSE	05979	6/30/2020	Raishad F Dobie	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
19	CSE	06008	6/17/2020	Mark Anthony M Buright	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Culpepper
19	CSE	06060	6/17/2020	Richard Bevan	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Culpepper
19	CSE	06331	6/30/2020	Christine L Barnes	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
19	CSE	06348	6/1/2020	Todd J Rutledge	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	06360	6/12/2020	Robert L Holmes Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
19	CSE	06473	6/22/2020	Benjamin C Pratt	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
19	CSE	06586	6/2/2020	Jacob E Lofton Sr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Bawtinhimer
19	CSE	06587	6/22/2020	Vincent A Izediuno	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
19	CSE	06589	6/11/2020	Christopher A Ketchum	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Overby

CONTESTED CASE DECISIONS

19	CSE	06610	6/2/2020	Jacob E Lofton Sr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Bawtinhimer
19	CSE	06636	6/2/2020	Arthur Burke	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinhimer
20	CSE	00530	6/23/2020	Paul Adae-Mensah	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	CSE	01606	6/10/2020	William C Whitaker	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
19	DCS	06117	6/3/2020	Joseph H McIntosh	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	DHR	04918	6/29/2020	Steven Wayne Lentz	v.	Central Regional Hospital	Mann
19	DHR	06791	6/10/2020	Hugs R Precious Child Enrichment Center	v.	DHHS	Ward
20	DHR	00359	6/15/2020	Kaleik Henderson	v.	NC DOHSR NC Healthcare Registry	Ward
20	DHR	00659	6/23/2020	Self Determination LLC Anne Jeffries	v.	Mental Health Licensure and Certification Section NC Division of Health Service Regulation	Sutton
20	DHR	00811	6/26/2020	International Healthcare Services	v.	State of North Carolina Department of Health and Human Services NC Tracks Operations Center	Jacobs
20	DHR	00935	6/9/2020	Bert Elaine Crisco	v.	Division of Child Development and Early Education	Sutton
20	DHR	00953	6/26/2020	Toryana Baldwin	v.	DHSR Adult Care Licensure	Ward
20	DHR	01095	6/10/2020	Brueggers Bagels David Cohen	v.	NC Department of Health and Human Services Division of Public Health	Malherbe
20	DHR	01336	6/4/2020	Coastal Community Action Inc (Godette CDC-2555067) Catissa Sullivan-Head	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Lassiter
20	DHR	01852	6/30/2020	Jareh Healthcare Inc Deloris Young	v.	NC Department of Health and Human Services, Division of Medical Assistance	Mann
20	DHR	02024	6/22/2020	Stella Peartree	v.	NC Department of Health and Human Services	Lassiter
20	INS	01551	6/18/2020	Alcione Laskowski	v.	North Carolina State Health Plan for Teachers and State Employees	Malherbe
20	OSP	01408	6/11/2020	Tiffany M Rochester	v.	NC Department of Public Safety Division of Adult Correction and Juvenile Justice	Sutton
20	OSP	01587	6/17/2020	Richard McKenzie	v.	Jane Ammons Gilchrist, General Counsel NC Dept of Public Safety	Bawtinhimer
19	SAP	06718	6/11/2020	North Carolina Substance Abuse	v.	Rafael Berry	Sutton

CONTESTED CASE DECISIONS

				Professional Practice Board			
20	SAP	00634	6/10/2020	North Carolina Addictions Specialist Professional Practice Board	v.	Shawn Gross CADC No. 20332	Malherbe
20	SAP	00671	6/23/2020	North Carolina Addictions Specialist Professional Practice Board	v.	Percy Rivers CADC No 2838	Malherbe
20	UNC	02073	6/30/2020	Cynthia Mayes Taylor	v.	University of North Carolina Hospitals	Mann