

NORTH CAROLINA REGISTER

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August 17, 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
34:20	04/15/20	03/24/20	04/30/20	06/15/20	06/22/20	07/16/20	08/01/20	01/10/21
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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35:05	09/01/20	08/11/20	09/16/20	11/02/20	11/20/20	12/17/20	01/01/21	05/29/21
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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

July 14, 2020

EXECUTIVE ORDER NO. 150

EXTENDING CERTAIN TRANSPORTATION-RELATED 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 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 responding to the COVID-19 pandemic, and for the purposes 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 146-149; and

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

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 the community spread of COVID-19 is critical to ensuring that our healthcare facilities remain able to accommodate those who require intensive medical intervention; and

WHEREAS, Executive Order No. 116, issued on March 10, 2020, included certain suspensions of Federal Motor Carrier Safety Regulations; and

WHEREAS, 49 C.F.R. § 390.23(a)(1)(ii)(B) allows for the undersigned to extend the suspension of the regulations in 49 C.F.R. Parts 300-399, the Federal Motor Carrier Safety Regulations, for an additional thirty (30) day period if the undersigned determines that an emergency condition continues to exist; and

WHEREAS, on July 13, 2020, the Federal Motor Carrier Safety Administration issued the Extension of Expanded Emergency Declaration No. 2020-002 to provide regulatory relief for commercial motor vehicle operations that provide direct assistance in support of emergency relief efforts related to COVID-19; and

WHEREAS, the undersigned has determined that the Executive Order needs to remain in place to allow for the continued expedited movement of vehicles in the state; and

WHEREAS, Executive Order No. 119, issued on March 20, 2020, the undersigned facilitated critical motor vehicle operations; and

WHEREAS, Executive Order No. 146, issued on June 19, 2020, extended the transportation related provisions in Executive Order Nos. 116, 119, 133, and 140; and

WHEREAS, the provisions concerning the Division of Motor Vehicles (“DMV”) in Executive Order No. 119 are set to expire unless the undersigned takes further action; and

WHEREAS, the undersigned has determined that these DMV-related provisions should be extended; 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-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.

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. Extensions and technical amendments

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:

A. Executive Order Nos. 116 and 119.

1. Sections 3 to 5 of Executive Order No. 119 (which were extended by Executive Order Nos. 133, 140 and 146) are hereby extended through the end of the calendar day on August 14, 2020.
2. Section 5 of Executive Order No. 116 (which was amended by Section 6 of Executive Order No. 119 and Section 1 of Executive Order No. 146 and extended by Executive Order Nos. 133, 140, and 146) is amended as follows:

Executive Order No. 116 Section 5 is amended as follows:

Section 5. Maximum Hours of Service

In order to ensure adequacy and location of supplies and resources to respond to COVID-19, DPS, in conjunction with the North Carolina Department of Transportation (“DOT”), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381, if the driver is transporting medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; and supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19, such as masks, gloves, hand sanitizer, soaps and disinfectants, essential fuels, food, water, livestock, poultry, feed for livestock and poultry and other supplies and equipment in support of the Plan or other efforts to address the public health threat posed by COVID-19, through the duration of the State of Emergency or until further notice.

- 3. This Executive Order does not amend the sixty (60) day postponement of DMV-related hearings established in Section 3.f of Executive Order No. 119.
- 4. The first sentence of Section 8 of Executive Order No. 119 is amended to read:

“This Executive Order is effective immediately and shall remain in effect until the end of the calendar day on August 14, 2020, or until rescinded or superseded by another applicable Executive Order

B. Miscellaneous provisions. For avoidance of doubt:

- 1. Future Executive Orders may extend the term of the restrictions, delegations, and requirements listed above.
- 2. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

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

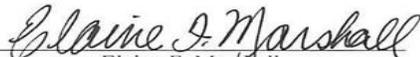
This Executive Order is effective immediately. This Executive Order shall remain in effect until August 14, 2020 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive 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 14th day of July 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 16, 2020

EXECUTIVE ORDER NO. 151

EXTENSION OF PHASE 2 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 146-150; and

WHEREAS, more than ninety-three thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and over fifteen 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, the undersigned issued Executive Order No. 147 to address troubling trends in COVID-19 metrics following the issuance of Executive Order No. 141, including increasing daily case counts of COVID-19, increasing emergency department visits for COVID-19-like illnesses, increasing hospitalizations for COVID-19, and a continued high percentage of positive COVID-19 tests; and

WHEREAS, Executive Order No. 147 continued the measures of Executive Order No. 141 and imposed additional measures tailored to mitigate the spread of COVID-19, including requiring face coverings in certain settings; and

WHEREAS, North Carolina's daily case counts of COVID-19 continue to increase, the percent of COVID-19 tests that are positive remains elevated, emergency department visits for COVID-19-like illnesses are increasing, and hospitalizations for COVID-19 are increasing; and

WHEREAS, these trends require the undersigned to continue the measures of Executive Order No. 141, as amended by Executive Order No. 147, to slow the spread of this virus during the pandemic and enable the reopening of the state's schools for in-person instruction in the fall, subject to applicable requirements and guidance; and

WHEREAS, a phased approach to reigniting the state's economy and reducing restrictions on businesses and activities, with some businesses and activities that pose an increased 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 adds incremental risk and thereby increases the aggregate risk of spread of COVID-19; and

Medical Exception for Use of Indoor Areas of Exercise Facilities, Gyms, and Fitness Facilities

WHEREAS, since the issuance of Executive Order No. 141, the North Carolina Department of Health & Human Services ("NCDHHS") and the North Carolina Department of Justice ("NCDOJ") have issued guidance documents and letters addressing the restrictions established by the Executive Order for exercise facilities, gyms, and fitness facilities; and

WHEREAS, the undersigned, in close consultation with NCDHHS and NCDOJ, has determined to make clear that these guidance documents represent an enforceable interpretation of Executive Order No. 141; and

Restrictions on Receptions and Parties

WHEREAS, certain types of businesses, settings, and events by their very nature present greater risks of the spread of COVID-19 because of the nature of the activity, the way that people have traditionally acted and interacted with each other in that space, and the duration of time that patrons stay in the establishment; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings where people are less likely to maintain social distancing by staying six (6) feet apart; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings where people are in close physical proximity for an extended period of time (more than 15 minutes); and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in gatherings of larger groups of people because these gatherings offer more opportunity for person-to-person contact with someone infected with COVID-19; and

WHEREAS, at private parties and receptions, people tend to gather together, interact socially, dance, and talk with their friends in close proximity, much as people do in bars and nightclubs; and

WHEREAS, therefore, the undersigned has determined that parties and receptions at restaurants must be subject to strict limits, and that these limits must be applicable whether the party or reception takes place in a restaurant, in a hotel, in a conference center, in a venue used exclusively to host parties or receptions, or in any other location currently open under this Executive Order; 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, 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 Nos. 141 and 147, **IT IS ORDERED**:

Section I. Extension and Amendment of Phase 2 Order.

Executive Order No. 141 shall remain in effect, as amended by Executive Order No. 147 and this Executive Order as detailed further below, until 5:00 pm on August 7, 2020. The effective date provisions of Executive Order Nos. 141 and 147 are amended to have those orders continue in effect through the above-listed time and date.

Section II. Clarification on Use of Indoor Areas of Exercise Facilities, Gyms and Other Fitness Facilities.

On June 29, 2020, NCDHHS posted two guidance documents that make clear the limits of any medical exception that allows use of the indoor areas of exercise facilities, gyms, and fitness facilities that otherwise are closed under Section 8(A) of Executive Order No. 141. These documents are the Interim Guidance for Fitness Center and Gym Settings with Limited

Operations, available at files.nc.gov/covid/documents/guidance/NCDHHS-Interim-Guidance-for-Fitness-Center-and-Gym-Settings.pdf, and the Statement Regarding June 5, 2020 Letter from the North Carolina Department of Justice, available at files.nc.gov/covid/documents/guidance/DHHS-Statement-on-DOJ-Letter-Medical-Exception-FINAL.pdf.

These June 29 guidance documents represent the undersigned's interpretation of Executive Order No. 141, as amended. Any medical exception to Executive Order No. 141 allowing use of the indoor areas of exercise facilities, gyms, and fitness facilities is limited as stated in the June 29 guidance documents. These limitations include the requirement that each patron using the medical exception must present to an exercise facility, gym, or fitness facility a medical or health care provider's note or other written communication to confirm that each patron's use is prescribed or directed by a medical or health care provider.

To the extent that exercise facilities, gyms, and fitness facilities are currently operating to serve patrons under the limited medical exception above, they must do so in compliance with the NCDHHS Interim Guidance for Fitness Centers and Gym Settings with Limited Operations, available at files.nc.gov/covid/documents/guidance/NCDHHS-Interim-Guidance-for-Fitness-Center-and-Gym-Settings.pdf.

Section III. Clarification to Restrictions on Parties and Receptions.

Section 7 of Executive Order No. 141 is amended to add the following subsection.

- E. **Limit on Receptions or Parties.** Parties and receptions, like all other private events or convenings which are not excepted from the prohibition on Mass Gatherings, are limited to the Mass Gathering limit of ten (10) people indoors or twenty-five (25) people outdoors. This limit applies regardless whether the event takes place in a restaurant, in a conference center, in a hotel ballroom, in a venue that is used exclusively for receptions or parties, or in some other space open under this Executive Order.

Section 8(A) of Executive Order No. 141 is amended to remove the text "Venues for Receptions or Parties." These venues may open, but they are limited to the Mass Gathering limit stated above.

Section IV. 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 August 7, 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 V. Effective Date.

This Executive Order is effective at 5:00 pm on July 17, 2020. This Executive Order shall remain in effect through 5:00 pm on August 7, 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 Executive Order No.

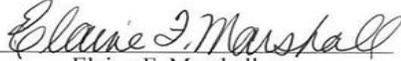
147) shall remain in effect for the duration of the State of Emergency unless specifically repealed, replaced, or rescinded.

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 16th day of July 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 24, 2020

EXECUTIVE ORDER NO. 152

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

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 146-151; 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 108,000 people in North Carolina have had laboratory-confirmed cases of COVID-19, and over 1,700 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 the Department of Health and Human Services required authority to modify or waive enforcement of certain legal constraints or regulations which restrict the immediate relief of human suffering; and

WHEREAS, certain provisions of Executive Order Nos. 130 and 139 were extended by Executive Order Nos. 144 and 148, but these provisions are set to expire unless the undersigned takes further action; and

WHEREAS, it is anticipated that the need for these measures will continue for at least a period of sixty (60) days; and

WHEREAS, since the declaration of a state of emergency in Executive Order No. 116, North Carolina has accumulated increased personal protective equipment (“PPE”) for health care workers and first responders, developed health care protocols and procedures for the treatment of COVID-19, and adopted personal recommendations to promote social distancing and reduce transmission of COVID-19; and

WHEREAS, in response to outbreaks of COVID-19 in long term care facilities, the undersigned ordered effective March 25, 2020 that long term care facilities restrict all visitors and non-essential health care personnel to compassionate care situations, and this restriction remains in effect for skilled nursing facilities and combination homes; and

WHEREAS, the Secretary of the Department of Health and Human Services has been working closely with long term care facility industry leaders, advocates, and families to continue efforts to mitigate the spread of COVID-19, and has the expertise to determine necessary restrictions and requirements for long term care facilities to provide safe environments of care for staff and residents; 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-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, 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 the orders and authorizations below cooperate and coordinate with Centers for Medicare and Medicaid Services (“CMS”) and utilize the flexibility provided in CMS waiver letters; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7), the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of departments, offices, and agencies of the state in response to the emergency; 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(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, 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, 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 in Executive Order Nos. 130, 139, 144, and 148, and to meet the goal of providing human services during the COVID-19 pandemic, the undersigned orders as follows:

A. Executive Order No. 144.

Executive Order No. 144 is modified to be in effect until September 22, 2020. Section 6(A) of Executive Order No. 130, which was extended by Executive Order No. 144, shall be in effect until that date.

B. Executive Order No. 148.

1. The last sentence of Section 1(A)(2) of Executive Order No. 148 is modified to read, "Subsections A-B and E-H of Section 2 of Executive Order No. 130 are extended in effect until September 22, 2020."
2. Section 1(A)(4) of Executive Order No. 148 is modified to read as follows:

"The remaining provisions of Executive Order No. 130 are extended in effect until September 22, 2020. 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 State of Emergency, and the relief from permit expiration 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."
3. Section 1(B)(3) of Executive Order No. 148 is modified to read, "Section 4 of Executive Order No. 139 is extended and will remain in effect until September 22, 2020 unless modified or rescinded by another applicable Executive Order." The modification to Section 1(B)(3) of Executive Order No. 148 is retroactive to July 17, 2020.
4. The first sentence of Section 1(B)(4) of Executive Order No. 148 is modified to read, "Executive Order No. 139 is extended and will remain in effect until September 22, 2020."
5. Section 2 of Executive Order No. 139 is modified to be effective throughout the duration of the State of Emergency. Unless otherwise ordered, waivers granted under Section 2 of Executive Order No. 139 shall remain in effect thirty (30) days following the termination of this State of Emergency to allow facilities time to return to their prior status.
6. Executive Order No. 148 is extended in effect, as modified, until September 22, 2020.

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 the Department of Health and Human Services authority to reimpose any regulations, policies, or guidance that have enforcement waived or modified under this Section.

Section 2. Delegation of Authority on Long Term Care Facilities.

Pursuant to N.C. Gen. Stat. § 166A-19.10(b)(3), the undersigned delegates to the Secretary of the Department of Health and Human Services the authority under N.C. Gen. Stat. § 166A-19.30(c), in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(1),(2), and (5), to prohibit and restrict activities and operations of long term care facilities, including skilled nursing facilities, combination homes, adult care homes, mental health group homes, and intermediate care facilities for individuals with intellectual disabilities, which may be reasonably necessary to maintain order and protect lives and property during this state of emergency.

At the time the Secretary of the Department of Health and Human Services issues orders pursuant to the authority of this Section on visitation in long term care facilities, Section 10.5 of Executive Order No. 141, as added by Executive Order No. 147, is rescinded.

Section 3. 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 4. Effective Date.

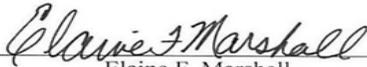
This Executive Order is effective immediately. Except as set forth expressly above, this Executive Order shall remain in effect for sixty (60) days unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically 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 24th day of July in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



1 NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

2
3 NORTH CAROLINA BUILDING CODE COUNCIL

4
5 **Notice of Rule-making Proceedings** is hereby given by NC Building Code Council in accordance with
6 G.S. 150B-21.5(d).

7
8 **Citation to Existing Rule Affected by this Rule-Making:** *North Carolina Administrative Code and*
9 *Polices, Plumbing, Fuel Gas, Mechanical, Existing Building, Fire, Residential, and Building Code*
10 *amendments.*

11
12 **Authority for Rule-making:** *G.S. 143-136; 143-138.*

13
14 **Reason for Proposed Action:** *To incorporate changes in the NC State Building Codes as a result of*
15 *rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the*
16 *Council.*

17
18 **Public Hearing:** *Tuesday, September 1, 2020, 9:00AM, Albemarle Building, 325 North Salisbury Street,*
19 *Raleigh, NC 27603, 2nd Floor Training Room 240. Comments on both the proposed rule and any fiscal*
20 *impact will be accepted. Comments on both the proposed rule and any fiscal impact will be accepted.*

21
22 **Comment Procedures:** *Written comments may be sent to Cliff Isaac, Secretary, NC Building Code*
23 *Council, NC Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202. Comments on*
24 *both the proposed rule and any fiscal impact will be accepted. Comment period expires on October 16,*
25 *2020.*

26
27 **Link to Agency Notice:**
28 [http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=BCC_-](http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=BCC_-_Hearing_Notice&user=Building_Code_Council&sub=BCC_Meeting)
29 [_Hearing_Notice&user=Building_Code_Council&sub=BCC_Meeting](http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=BCC_-_Hearing_Notice&user=Building_Code_Council&sub=BCC_Meeting)

30
31 **Statement of Subject Matter:**

32
33 **1. Request from Bob Haynes representing the NCBLA Code Revisions Committee to add the 2018**
34 **N.C. Administrative code, Section 106.4.**

35

1 **106.4 Site address signage.** It is the responsibility of the permit applicant or designee to post the 911 site
2 address on an active jobsite at the commencement of work regulated by the NC Building Codes. The
3 signage shall be temporary or permanent per 106.4.1 or 106.4.3.

4
5 **106.4.1 Temporary signage.** Signage to identify a construction site location can be temporary. Acceptable
6 temporary signage may include such items as a permit placard, an address written on job box, yard signage
7 or other approved temporary method. Temporary street name markers shall be required if permanent street
8 signs are not in place for new developments or subdivisions.

9
10 **106.4.2 Temporary Signage Location.** Address signage shall be placed such that it is clearly legible from
11 the street or road that fronts the property at all times during construction.

12
13 **106.4.3 Permanent signage.** Address signage meeting the requirements of the *International Residential*
14 Code Section R319 for One- and Two-family Dwellings, *International Building Code* Section 501.2 or
15 *International Fire Code* Section 505.1 for commercial buildings shall be deemed as meeting the
16 requirements of this section.

17
18 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
19 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

20 **Reason Given** – The purpose of this amendment is to reduce construction delays by reducing failed
21 inspections due to inability to locate a job site and to assist emergency responders for unfinished job sites.

22 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
23 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
24 funds. A fiscal note has not been prepared.

25
26

27 **2. Request from Keith Rogers representing the Mechanical/Plumbing Standing committee to amend**
28 **the 2018 N.C. Plumbing Code, Section 405.3.1.**

29

30 **405.3.1 Water closets, urinals, lavatories and bidets.** A water closet, urinal, lavatory or bidet shall not be
31 set closer than 15 inches (381 mm) from its center to any side wall, partition, vanity or other obstruction, or
32 closer than 30 inches (762 mm) center to center between adjacent fixtures. There shall be not less than a
33 21-inch (533 mm) clearance in front of the water closet, urinal, lavatory or bidet to any wall, fixture or
34 door. Water closet compartments shall be not less than 30 inches (762 mm) in width and not less than 60
35 inches (1524 mm) in depth for floor-mounted water closets and not less than 30 inches (762 mm) in width
36 and 56 inches (1422 mm) in depth for wall-hung water closets.

37

1 **Exceptions:**

2 **Exception:**

3 1. For detached one- and two-family dwellings and townhouses, see the *North Carolina Residential Code*,
4 ~~Figure~~ Section R307.1 for minimum fixture clearances.

5 2. Private side by side lavatories may be less than 30 inches (762 mm) center to center.

6

7 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
8 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

9 **Reason Given** – The purpose of this amendment is to allow lavatory bowls closer than 30 inches center to
10 center. The 30 inches is for health purposes that should not be an issue for private bathrooms.

11 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
12 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
13 funds. A fiscal note has not been prepared.

14

15

16 **3. Request from Clint Latham representing the City of Raleigh to amend the 2018 N.C. Fuel Gas**
17 **Code, Section 311.4.2 and add Section 311.4.2.4.**

18

19 **311.4.2 Locations.** Where required by Section 311.4.1.1, carbon monoxide detection shall be installed in
20 the locations specified in Sections 311.4.2.1 through ~~311.4.2.3~~ 311.4.2.4.

21

22 **311.4.2.4 Group A-2 occupancies.** Carbon monoxide detection shall be installed in A-2 occupancies in all
23 the following locations:

24 1. On the ceiling of the room containing the fuel-burning *appliance* or fuel-burning *fireplace*.

25 2. In an *approved* location where the room or area is served by a forced air furnace.

26

27 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
28 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

29 **Reason Given** – The purpose of this amendment is to provide information about where to mount carbon
30 monoxide detectors that are currently required by Sections 311.4.1.1, 311.4.1.2, and 311.4.1.3.

31 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with a net increase in cost.
32 This rule is not expected to either have a substantial economic impact or increase local and state funds. A
33 fiscal note has not been prepared.

34

35 **4. Request from Colin Triming representing the NC Fire Code Revision Committee to amend the**
36 **2018 N.C. Fuel Gas Code, Chapter 2.**

37

1 CARBON MONOXIDE ALARM. A single- or multiple-station alarm intended to detect carbon
2 monoxide gas and alert occupants by a distinct audible signal. It incorporates a sensor, control components
3 and an alarm notification appliance in a single unit.

4

5 CARBON MONOXIDE DETECTOR. A device with an integral sensor to detect carbon monoxide gas
6 and transmit an alarm signal to a connected alarm control unit.

7

8 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
9 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

10 **Reason Given** – The purpose of this amendment is to define the two devices that are currently used in the
11 code. The definitions are taken from the 2018 International Fire Code.

12 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
13 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
14 funds. A fiscal note has not been prepared.

15

16

17 **5. Request from Colin Trining representing the NC Fire Code Revision Committee to amend the**
18 **2018 N.C. Mechanical Code, Chapter 2.**

19

20 CARBON MONOXIDE ALARM. A single- or multiple-station alarm intended to detect carbon
21 monoxide gas and alert occupants by a distinct audible signal. It incorporates a sensor, control components
22 and an alarm notification appliance in a single unit.

23

24 CARBON MONOXIDE DETECTOR. A device with an integral sensor to detect carbon monoxide gas
25 and transmit an alarm signal to a connected alarm control unit.

26

27 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
28 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

29 **Reason Given** – The purpose of this amendment is to define the two devices that are currently used in the
30 code. The definitions are taken from the 2018 International Fire Code.

31 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
32 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
33 funds. A fiscal note has not been prepared.

34

35

36 **6. Request from Clint Latham representing the City of Raleigh to amend the 2018 N.C. Mechanical**
37 **Code, Section 313.4.2 and add Section 313.4.4.**

1
2 **313.4.2 Locations.** Where required by Section 313.4.1.1, carbon monoxide detection shall be installed in
3 the locations specified in Sections 313.4.2.1 through ~~313.4.2.3~~ 313.4.2.4.
4 **313.4.2.4 Group A-2 occupancies.** Carbon monoxide detection shall be installed in A-2 occupancies in all
5 the following locations:
6 1. On the ceiling of the room containing the fuel-burning appliance or fuel-burning fireplace.
7 2. In an approved location where the room or area is served by a forced air furnace.
8

9 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
10 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

11 **Reason Given** – The purpose of this amendment is to provide information about where to mount carbon
12 monoxide detectors that are currently required by Sections 313.4.1.1, 313.4.1.2, and 313.4.1.3.

13 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with a net increase in cost.
14 This rule is not expected to either have a substantial economic impact or increase local and state funds. A
15 fiscal note has not been prepared.

16
17
18 **7. Request from Colin Trining representing the NC Fire Code Revision Committee to amend the**
19 **2018 N.C. Existing Building Code, Chapter 2.**

20
21 **CARBON MONOXIDE ALARM.** A single- or multiple-station alarm intended to detect carbon
22 monoxide gas and alert occupants by a distinct audible signal. It incorporates a sensor, control components
23 and an alarm notification appliance in a single unit.
24

25 **CARBON MONOXIDE DETECTOR.** A device with an integral sensor to detect carbon monoxide gas
26 and transmit an alarm signal to a connected alarm control unit.
27

28 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
29 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

30 **Reason Given** – The purpose of this amendment is to define the two devices that are currently used in the
31 code. The definitions are taken from the 2018 International Fire Code.

32 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
33 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
34 funds. A fiscal note has not been prepared.

35
36

1 **8. Request from Clint Latham representing the City of Raleigh to amend the 2018 N.C. Existing**
2 **Building Code, Section 402.6.**

3
4 **402.6 Carbon monoxide alarms in existing portions of a building.** Where an addition is made to a
5 building or structure of a Group A-2, I-1, I-2, I-4 or R occupancies, or classrooms are added in Group E
6 occupancies, the *existing building* shall be provided with carbon monoxide alarms in accordance with
7 Section 915 of the *North Carolina Building Code*, except that the carbon monoxide alarms shall be allowed
8 to be solely battery operated.

9
10 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
11 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

12 **Reason Given** – The purpose of this amendment is to correlate the requirement for carbon monoxide
13 detectors in Group A-2 assembly occupancies with Sections 403.1, 804.4.3, and 1104.2 and with other code
14 volumes.

15 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with a net increase in cost.
16 This rule is not expected to either have a substantial economic impact or increase local and state funds. A
17 fiscal note has not been prepared.

18
19
20 **9. Request from Clint Latham representing the City of Raleigh to amend the 2018 N.C. Fire Code,**
21 **Section 915.2 and add Section 915.2.4.**

22
23 **915.2 Locations.** Where required by Section 915.1.1, carbon monoxide detection shall be installed in the
24 locations specified in Sections 915.2.1 through ~~915.2.3~~ 915.2.4.

25
26 **915.2.4 Group A-2 occupancies.** Carbon monoxide detection shall be installed in A-2 occupancies in all
27 the following locations:

28 1. On the ceiling of the room containing the fuel-burning appliance or fuel-burning fireplace.

29 2. In an approved location where the room or area is served by a forced air furnace.

30
31 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
32 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

33 **Reason Given** – The purpose of this amendment is to provide information about where to mount carbon
34 monoxide detectors that are currently required by Sections 915.1.1, 915.1.2, and 915.1.3.

35 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with a net increase in cost.
36 This rule is not expected to either have a substantial economic impact or increase local and state funds. A
37 fiscal note has not been prepared.

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10. Request from Colin Triming representing the NC Fire Code Revision Committee to amend the 2018 N.C. Fire Code, Section 315.3.1.

315.3.1 Ceiling clearance. Storage shall be maintained 2 feet (610 mm) or more below the ceiling in nonsprinklered areas of buildings or not less than 18 inches (457 mm) below sprinkler head deflectors in sprinklered areas of buildings.

Exceptions:

- 1. The 2-foot (610 mm) ceiling clearance is not required for storage along walls in nonsprinklered areas of buildings.
- 2. The 18-inch (457 mm) ceiling clearance is not required for storage along walls in areas of buildings equipped with an automatic sprinkler system in accordance with Section 903.3.1.1, 903.3.1.2 or 903.3.1.3.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

Reason Given – The purpose of this amendment is to bring forward language from the 2018 International Fire Code that has already been vetted by the International Code Council and correlate with the referenced NFPA 13 document.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

11. Request from Colin Triming representing the NC Fire code Revision Committee to amend the 2018 N.C. Fire Code, Section 907.2.1.

907.2.1 Group A. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group A occupancies where the occupant load due to the assembly occupancy is 300 or more, or where the Group A occupant load is more than 100 persons above or below the lowest level of exit discharge. Group A occupancies not separated from one another in accordance with Section 707.3.10 and 711.2.4 of the *International Building Code* shall be considered as a single occupancy for the purposes of applying this section. Portions of Group E occupancies occupied for assembly purposes shall be provided with a fire alarm system as required for the Group E occupancy.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

1 **Reason Given** – The purpose of this amendment is to clarify the requirement for manual fire alarm devices.
2 The language is brought forward from the 2018 International Fire Code that has already been vetted by the
3 International Code Council.

4 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with a net increase in cost.
5 This rule is not expected to either have a substantial economic impact or increase local and state funds. A
6 fiscal note has not been prepared.

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9 **12. Request from Colin Triming representing the NC Fire code Revision Committee to amend the**
10 **2018 N.C. Building Code, Section 907.2.1.**

11

12 **907.2.1 Group A.** A manual fire alarm system that activates the occupant notification system in accordance
13 with Section 907.5 shall be installed in Group A occupancies where the occupant load due to the assembly
14 occupancy is 300 or more., or where the Group A occupant load is more than 100 persons above or below
15 the lowest level of exit discharge. Group A occupancies not separated from one another in accordance with
16 Section 707.3.10 and 711.2.4 of the *International Building Code* shall be considered as a single occupancy
17 for the purposes of applying this section. Portions of Group E occupancies occupied for assembly purposes
18 shall be provided with a fire alarm system as required for the Group E occupancy.

19

20 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
21 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

22 **Reason Given** – The purpose of this amendment is to clarify the requirement for manual fire alarm devices.
23 The language is brought forward from the 2018 International Fire Code that has already been vetted by the
24 International Code Council.

25 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with a net increase in cost.
26 This rule is not expected to either have a substantial economic impact or increase local and state funds. A
27 fiscal note has not been prepared.

28

29

30 **13. Request from Colin Triming representing the NC Fire Code Revision Committee to add the 2018**
31 **N.C. Fire Code, Section 2303.2.1.**

32

33 **2303.2.1 Height.** The height of the emergency disconnect switch shall be not less than 42 inches (1067
34 mm) and not more than 48 inches (1372 mm) measured vertically, from the floor level to the activating
35 button.

36

1 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
2 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

3 **Reason Given** – The purpose of this amendment is to provide height limits for emergency disconnect
4 switched for motor fuel-dispensing devices to ensure usability of the switch. The limits are consistent with
5 fire alarm manual pull stations and ADA requirements.

6 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
7 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
8 funds. A fiscal note has not been prepared.

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11 **14. Request from Colin Triming representing the NC Fire Code Revision Committee to amend the**
12 **2018 N.C. Fire Code, Chapter 2.**

13

14 **CARBON MONOXIDE ALARM.** A single- or multiple-station alarm intended to detect
15 carbon monoxide gas and alert occupants by a distinct audible signal. It incorporates a
16 sensor, control components and an alarm notification appliance in a single unit.

17

18 **CARBON MONOXIDE DETECTOR.** A device with an integral sensor to detect carbon
19 monoxide gas and transmit an alarm signal to a connected alarm control unit.

20

21 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
22 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

23 **Reason Given** – The purpose of this amendment is to define the two devices that are currently used in the
24 code. The definitions are taken from the 2018 International Fire Code.

25 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
26 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
27 funds. A fiscal note has not been prepared.

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29

30 **15. Request from Colin Triming representing the NC Fire Code Revision Committee to amend the**
31 **2018 N.C. Residential Code, Chapter 2.**

32

33 **CARBON MONOXIDE ALARM.** A single- or multiple-station alarm intended to detect
34 carbon monoxide gas and alert occupants by a distinct audible signal. It incorporates a
35 sensor, control components and an alarm notification appliance in a single unit.

36

37 **CARBON MONOXIDE DETECTOR.** A device with an integral sensor to detect carbon

1 monoxide gas and transmit an alarm signal to a connected alarm control unit.

2

3 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
4 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

5 **Reason Given** – The purpose of this amendment is to define the two devices that are currently used in the
6 code. The definitions are taken from the 2018 International Fire Code.

7 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
8 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
9 funds. A fiscal note has not been prepared.

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11

12 **16. Request from David Smith representing the Residential Ad Hoc Committee to amend the 2018**
13 **N.C Residential Building, Section R404.4.**

14

15 **R404.4 Retaining walls.** Retaining walls ~~that are not laterally supported at the top and that retain in excess~~
16 ~~of 48 inches (1219 mm) of unbalanced fill, shall be designed to ensure stability against overturning, sliding,~~
17 ~~excessive foundation pressure and water uplift. In addition, any retaining wall that meets meet the~~
18 ~~following shall be designed by a registered design professional.~~

19 1. Any retaining wall systems on a residential site that cross over adjacent property lines regardless of
20 vertical height, ~~and~~

21 2. Retaining walls that support buildings and their accessory structures,

22 3. Retaining walls exceeding 4 feet (1524 mm) of unbalanced backfill height, or

23 4. Retaining wall systems providing a cumulative vertical relief greater than 5 feet (1524 mm) in height
24 within a horizontal distance of 50 feet (15 m) or less

25

26 Retaining walls shall be designed for a safety factor of 1.5 against lateral sliding and overturning.

27

28 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
29 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

30 **Reason Given** – The purpose of this amendment is to reduce retaining wall failure where cumulative relief
31 loads are applied. The amendment brings the code into alignment with the 2018 NC Building Code.

32 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with a net increase in cost.
33 This rule is not expected to either have a substantial economic impact or increase local and state funds. A
34 fiscal note has not been prepared.

35

36

1 **17. Request from Leon Skinner representing the Residential Ad Hoc Committee to amend the 2018**
2 **N.C. Residential Code, Sections R101.2.2 Accessory structures, Section R202 Definitions, and Section**
3 **R327 Docks, Piers, Bulkheads, and Waterway Structures.**

4

5 **R101.2.2 Accessory structures.**

6 Only the following *accessory structures* shall meet the provisions of this code.

7 1. Decks, see Appendix M,

8 2. Gazebos,

9 3. Retaining walls, see Section R404.4,

10 4. Detached masonry chimneys located less than 10 feet (3048 mm) from other buildings or lot lines,

11 5. Swimming pools and spas, see Appendix V,

12 6. Detached carports,

13 **Exception:** Portable lightweight carports not exceeding 400 square feet (37 m²) or 12 foot (3658 mm)
14 mean roof height.

15 7. *Docks, piers, bulkheads,* and waterway structures, see Section R327.

16

17 **Section R202 Definitions.**

18

19 **ACCESSORY BUILDING.** ~~In one and two family dwellings not more than three stories above grade~~
20 ~~plane in height with a separate means of egress, a. A building that does not contain a sleeping room, the~~
21 ~~use of which is incidental accessory to that of the main building dwelling and that is detached and located~~
22 ~~on the same lot as the dwelling. An accessory building and is roofed over and with more than 50 percent of~~
23 ~~its exterior walls are enclosed. Examples of accessory buildings are garages, storage buildings, workshops,~~
24 ~~boat houses, treehouses, and similar structures.~~

25

26 **ACCESSORY STRUCTURE.** A structure that is accessory to the dwelling and not defined as an
27 *accessory building*. Examples of accessory structures are fencing, decks, gazebos, arbors, retaining walls,
28 barbecue pits, detached chimneys, playground equipment, yard art, *docks, piers,* etc.

29

30 **PRIVATE POND.** A body of water owned entirely by a single property owner and located on the same
31 parcel of land as a detached single-family dwelling.

32

33 **SECTION R327 DOCKS, PIERS, BULKHEADS AND WATERWAY STRUCTURES**

34

35 **R327.1 General.** *Docks, piers, bulkheads* and waterway structures shall be constructed in accordance with
36 Chapter 36 of the *North Carolina Building Code*.

- 1 **Exceptions:** Structures complying with the following are not required to meet the provisions of Chapter 36
2 of the North Carolina Building Code or this code.
- 3 1. Docks and Piers built over private ponds.
- 4 2. Fixed in place walkways, docks, and piers not covered in “Exception 1” and not exceeding 144 square
5 feet for single family dwelling.
- 6 3. Minor repairs to existing docks, piers and waterway structures.
- 7 1. Fixed piers associated with a one or two family dwelling meeting all of the following:
- 8 1.1 A maximum of four boat slips for a single owner of a one or two family dwelling or two adjacent,
9 riparian owners.
- 10 1.2. A maximum height of 15 feet (4572 mm) measured from deck to mud line at any location along the
11 pier.
- 12 1.3. A maximum normal pool depth of 13 feet (3962 mm) on lakes and ponds and a maximum mean low
13 water depth of 7 feet (2134 mm) in other locations.
- 14 1.4. A maximum walkway width of 6 feet (1829 mm).
- 15 1.5 A maximum pile spacing of 8 feet (2438 mm), in both directions.
- 16 1.6. A maximum of 576 sq. ft. (53.5 m²) for non-walkways areas.
- 17 1.7. A maximum boat slip length of 40 feet (12.2 m).
- 18 1.8. A maximum roofed area of 576 sq. ft. (53.5 m²) with an additional maximum 2 foot (610 mm)
19 overhang.
- 20 1.9. Constructed with no enclosed or multilevel structures.
- 21 1.10. Supports a boatlift with a maximum design capacity no greater than 16,000 pounds (71.2 kN).
- 22 2. Floating docks associated with a one or two family dwelling meeting all of the following:
- 23 2.1. A maximum of four boat slips for a single owner of a one or two family dwelling or two adjacent,
24 riparian owners.
- 25 2.2. A maximum normal pool depth of 20 feet (6096 mm) for docks with guide piles on lakes and ponds
26 and a maximum mean low water of 10 feet (3048 mm) for docks with guide piles in other locations.
- 27 2.3. A maximum boat slip length of 40 feet (12.2 m).
- 28 2.4. Finger piers, crosswalks or other floating surfaces having a minimum width of 3 feet (914 mm) wide to
29 a maximum of 6 feet (1829 mm) wide, except for a single 8 foot x 16 foot (2438 mm x 4877 mm) section.
- 30 2.5. When constructed with a roof and the following conditions exist:
- 31 i. Ultimate design wind speed is 115 mph (51 m/s) or less;
- 32 ii. Roof load is 20 psf (0.96 kPa) or less;
- 33 iii. A maximum eave height of 10 feet (3048 mm);
- 34 iv. A maximum roof slope of 4:12;
- 35 v. A maximum roofed area of 576 sq. ft. (53.5 m²) with an additional maximum 2 foot (610 mm) overhang;
- 36 vi. A minimum boat slip width of 12 feet (3658 mm);
- 37 vii. A minimum floating dock width of 4 feet (1219 mm) along both sides of the boat slip;

- 1 ~~viii. A maximum dead load of 12 psf (0.57 kPa);~~
2 ~~ix. Floating structures supporting roof structures are balanced or anchored to reduce the possibility of~~
3 ~~tipping.~~
4 ~~2.6. Constructed with no enclosed or multilevel structures.~~
5 ~~2.7. Supports a boat lift with a maximum design capacity no greater than 16,000 pounds (71.2 kN).~~

6
7 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
8 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

9 **Reason Given** – The purpose of this amendment is to simplify the section to improve construction and
10 inspections and still allow private property owners to construct piers and docks where the general public is
11 not expected to be affected by possible structural failure

12 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
13 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
14 funds. A fiscal note has not been prepared.

15
16
17 **18. Request from David Smith representing the Residential Ad Hoc Committee to add 2018 N.C.**
18 **Residential Building Code, Sections R328 Demolition.**

19
20 **SECTION R328 DEMOLITION**

21
22 **R328.1 Demolition.** Where a building or structure regulated by this code has been demolished or removed,
23 the lot shall not create a new hazard to the site or to adjoining properties. All utilities shall be properly
24 terminated.

25
26 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
27 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

28 **Reason Given** – The purpose of this amendment is to provide requirements for demolition of structures
29 because demolition is stated within the scope of the code in Section R101.2.

30 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
31 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
32 funds. A fiscal note has not been prepared.

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34
35 **19. Request from Jackie Flemming and Doug Allen P.E. representing Simpson Strong-Tie to amend**
36 **the 2018 Residential Building Code, Section R4603.6.1.**

37

1 **R4603.6.1 Tying at corners.** At corners, girders shall be connected to the pile with a minimum 3/16 × 4 ×
 2 18-inch (5 × 102 × 467 mm) hot dip galvanized strap bolted with two 5/8 inch (15.9 mm) galvanized
 3 through bolts on the exterior and a minimum L4 x 3/16 x 1'-6" (102 × 5 × 467 mm) galvanized steel angle
 4 bolted with two 5/8 inch (15.9 mm) galvanized through bolts on the interior in accordance with Figure
 5 R4603.6(d1), or with a minimum of (2) 3/16" x 4" x 18" (5x102x467 mm) hot dip galvanized straps
 6 installed on the outside of the girders with fasteners per table R4603.6.1 and in accordance with Figure
 7 R4603.6 (e).

8
 9 **Table R4603.6.1 Minimum Fastening of Corner Beams and Girder to Pilings**

<u>Amount Piling is Notched</u>	<u>Associated Figure</u>	<u>Hardware</u>	<u>Fasteners</u>
<u>> 50%¹</u>	<u>R4603.6(d)</u>	<u>one 3/16"x4"x18"</u>	<u>six 5/8" bolts²</u>
		<u>one L4x3/16x18"</u>	
	<u>R4603.6 (e)</u>	<u>one 3/16"x4"x18"</u>	<u>eight 0.27"x4" each³</u>

10 1. Where piling is notched over 50%, use strap as required in Section 4603.6. Install the specified number
 11 of bolts or screws in each end of the strap.

12 2. Bolts shall be 5/8" diameter hot dipped galvanized through bolts with nuts and washers.

13 3. Screws shall be 0.270" (6.9 mm) minimum in diameter, hot dipped galvanized to a minimum of A153,
 14 Class C, and having a minimum length of 4", and also shall be long enough to penetrate at least one inch
 15 through the remaining pile and into the girder.

16
 17 **R4603.6.2 Bracing of Pilings.** Bracing of pile foundations is required where the clear height from ground
 18 to sill, beam or girder exceeds 10 feet (3048 mm) or the dwelling is more than one story above piles. A line
 19 of X-bracing is defined as a row of piles with X-bracing provided in at least two bays. A line of X-bracing
 20 shall be provided at all exterior pile lines. Where the perimeter lines of X-bracing exceed 40 feet (12 192
 21 mm), an additional line of X-bracing shall be provided near the center of the building. See Figure
 22 R4603.6(e)(f). X-bracing shall be with 2 × 10s through bolted with two 3/4-inch (19.1 mm) bolts at each
 23 end. The code official is permitted to accept alternate bracing designs if they bear the seal of a registered
 24 design professional.

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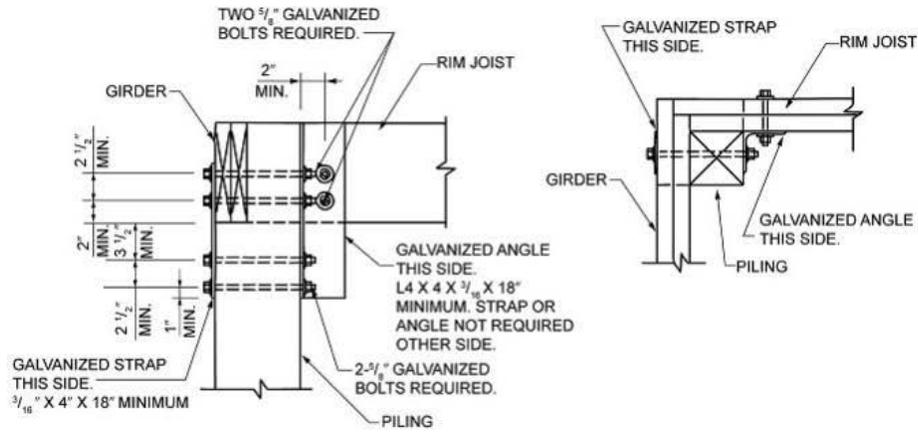


FIGURE R4603.6(d)
CORNER PILE CONNECTION

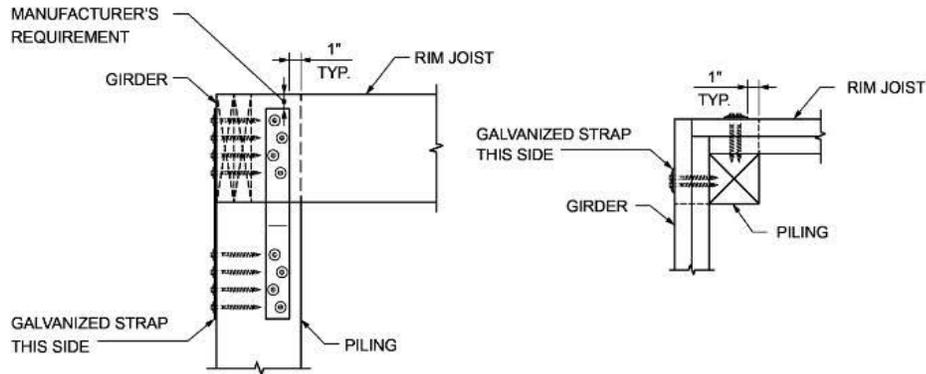


FIGURE R4603.6(e)
CORNER PILE CONNECTION

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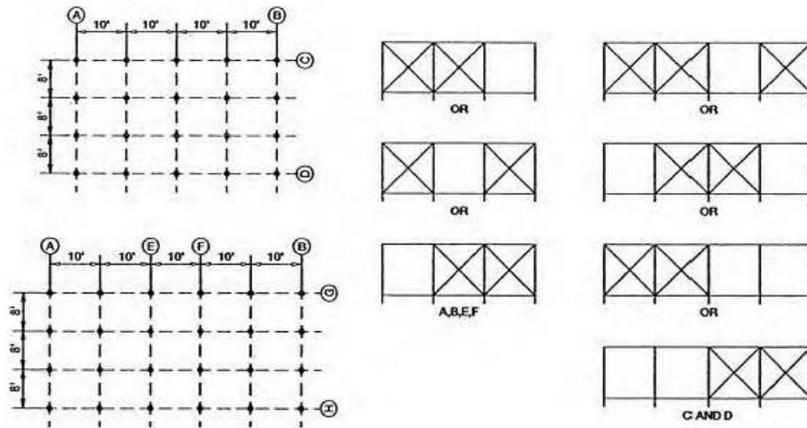


FIGURE R4603.6(a)(f)
 ELEVATIONS (SHOWING POSSIBLE ARRANGEMENT OF X-BRACING IN LINE) (G AND H SIMILAR)

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 2 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
 3 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).
 4 **Reason Given** – The purpose of this amendment is to provide requirements that allow a complicated
 5 connection to be made without damaging the structural integrity of the wood members being connected.
 6 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
 7 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
 8 funds. A fiscal note has not been prepared.

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 10
 11 **20. Request from Robert Privott representing the N.C. Home Builders Association to amend the 2018**
 12 **N.C. Residential Code, Section N1101.13.**

- 13
 14 **N1101.13 (R401.2) Compliance.** Projects shall comply with one of the following:
 15 1. Sections N1101.14 through N1104.
 16 2. Section N1105 and the provisions of Sections N1101.14 through N1104 labeled “Mandatory.”
 17 3. An energy rating index (ERI) approach in Section N1106.
 18 4. North Carolina specific REScheck™ shall be permitted to demonstrate compliance with this code.
 19 Envelope requirements may not be traded off against the use of high efficiency heating or cooling
 20 equipment. No trade-off calculations are needed for required termite inspection and treatment gaps.
 21 5. Rated in accordance with ANSI/RESNET/ICC 301-2019 Standard for the Calculation and Labeling of
 22 Energy Performance of Low-Rise Residential Buildings using an Energy Rating Index with a maximum

1 energy rating index (ERI) less than or equal to the appropriate value indicated in one of the following
 2 tables as applicable, when compared to the ERI reference design:

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**MAXIMUM ENERGY RATING INDEX
 (without calculation of on-site renewable energy)**

<u>CLIMATE ZONE</u>	<u>JAN. 1, 2019 – DEC. 31, 2022</u>	<u>JAN. 1, 2023 AND FORWARD</u>
<u>3</u>	<u>65</u>	<u>61</u>
<u>4</u>	<u>67</u>	<u>63</u>
<u>5</u>	<u>67</u>	<u>63</u>

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**MAXIMUM ENERGY RATING INDEX
 (including calculation of on-site renewable energy)**

<u>CLIMATE ZONE</u>	<u>JAN. 1, 2019 – DEC. 31, 2022</u>	<u>JAN. 1, 2023 AND FORWARD</u>
<u>3</u>	<u>51</u>	<u>42</u>
<u>4</u>	<u>54</u>	<u>50</u>
<u>5</u>	<u>55</u>	<u>51</u>

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Motion/Second/Approved – The request was granted. The proposed effective date of this rule is March 1, 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

Reason Given – The purpose of this amendment is to expand options for Energy Rating Index compliance.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

20 **21. Request from Leon Skinner representing the N.C. Residential Ad-Hoc Committee to amend the**
 21 **2018 N.C. Residential Code, Sections R905.2.8.5 and R908.3.**

22
 23 **R905.2.8.5 Drip Edge.** ~~Deleted.~~ Not required unless required by the roof covering manufacturer
 24 installation instructions. The drip edge placed around the edge of a roof prior to installing the roofing
 25 material is designed so that water runs off over the drip edge and falls from a slight projection at the bottom
 26 edge of the roof rather than running back under, or along the eaves. Metal, wood or exterior composite
 27 materials can be used for the drip edge.

1
2 **R908.3 Roof replacement.** Roof replacement shall include the removal of existing layers of roof
3 coverings down to the roof deck and replacement of up to 15% of the total existing roof deck.
4 Replacement of up to 15% of the total roof deck shall not be considered structural work.
5 **Exception:** Where the existing roof assembly includes an ice barrier membrane that is adhered to the roof
6 deck, the existing ice barrier membrane shall be permitted to remain in place and covered with an
7 additional layer of ice barrier membrane in accordance with Section R905.

8
9 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
10 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

11 **Reason Given** – The purpose of this amendment is to allow minor roof sheathing replacement with roofing
12 replacement that is currently exempt from building permits.

13 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
14 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
15 funds. A fiscal note has not been prepared.

16
17
18 **22. Request from Colin Triming representing the NC Fire Code Revision Committee to amend the**
19 **2018 N.C. Building Code, Section 1010.1.9.7.**

20
21 **1010.1.9.7 Delayed egress.** Delayed egress locking systems, shall be permitted to be installed on doors
22 serving any occupancy except Group A, E and H in buildings that are equipped throughout with an
23 *automatic sprinkler system* in accordance with Section 903.3.1.1 or an *approved* automatic smoke or heat
24 detection system installed in accordance with Section 907. The locking system shall be installed and
25 operated in accordance with all of the following:

26 **Exception:** Group E classrooms with an occupant load of less than 50.

- 27
28 1. The delay electronics of the delayed egress locking system shall deactivate upon actuation of the
29 *automatic sprinkler system* or *automatic fire detection system*, allowing immediate, free egress.
30 2. The delay electronics of the delayed egress locking system shall deactivate upon loss of power
31 controlling the lock or lock mechanism, allowing immediate free egress.
32 3. The delayed egress locking system shall have the capability of being deactivated at the *fire command*
33 *center* and other *approved* locations. If a fire command center is not required by this code, the door locks
34 shall have the capability of being unlocked by a signal from a location approved by the fire code official.
35 4. An attempt to egress shall initiate an irreversible process that shall allow such egress in not more than 15
36 seconds when a physical effort to exit is applied to the egress side door hardware for not more than 3
37 seconds. Initiation of the irreversible process shall activate an audible signal in the vicinity of the door.

1 Once the delay electronics have been deactivated, rearming the delay electronics shall be by manual means
2 only.

3 **Exception:** Where approved, a delay of not more than 30 seconds is permitted on a delayed egress door.

4 5. The egress path from any point shall not pass through more than one delayed egress locking system.

5 **Exception:** In Group I-2 or I-3 occupancies, the egress path from any point in the building shall pass
6 through not more than two delayed egress locking systems provided the combined delay does not exceed
7 30 seconds.

8 6. A sign shall be provided on the door and shall be located above and within 12 inches (305 mm) of the
9 door exit hardware:

10 6.1. For doors that swing in the direction of egress, the sign shall read: PUSH UNTIL ALARM SOUNDS.
11 DOOR CAN BE OPENED IN 15 [30] SECONDS.

12 6.2. For doors that swing in the opposite direction of egress, the sign shall read: PULL UNTIL ALARM
13 SOUNDS. DOOR CAN BE OPENED IN 15 [30] SECONDS.

14 6.3. The sign shall comply with the visual character requirements in ICC A117.1.

15 **Exception:** Where approved, in Group I occupancies, the installation of a sign is not required where care
16 recipients who because of clinical needs require restraint or containment as part of the function of the
17 treatment area.

18 7. Emergency lighting shall be provided on the egress side of the door.

19 8. The delayed egress locking system units shall be listed in accordance with UL 294.

20

21 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
22 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

23 **Reason Given** – The purpose of this amendment is to provide schools more flexibility for emergency
24 lockdown situations. The language is brought forward from the 2018 International Fire Code that has been
25 vetted by the International Code Council.

26 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
27 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
28 funds. A fiscal note has not been prepared.

29

30

31 **23. Request from Colin Triming representing the NC Fire Code Revision Committee to amend the**
32 **2018 N.C. Fire Code, Section 1010.1.9.7.**

33

34 **1010.1.9.7 Delayed egress.** Delayed egress locking systems, shall be permitted to be installed on doors
35 serving any occupancy except Group A, E and H in buildings that are equipped throughout with an
36 *automatic sprinkler system* in accordance with Section 903.3.1.1 or an *approved* automatic smoke or heat

1 detection system installed in accordance with Section 907. The locking system shall be installed and
2 operated in accordance with all of the following:

3 **Exception:** Group E classrooms with an occupant load of less than 50.
4

5 1. The delay electronics of the delayed egress locking system shall deactivate upon actuation of the
6 *automatic sprinkler system* or *automatic fire detection system*, allowing immediate, free egress.

7 2. The delay electronics of the delayed egress locking system shall deactivate upon loss of power
8 controlling the lock or lock mechanism, allowing immediate free egress.

9 3. The delayed egress locking system shall have the capability of being deactivated at the *fire command*
10 *center* and other *approved* locations. If a fire command center is not required by this code, the door locks
11 shall have the capability of being unlocked by a signal from a location approved by the fire code official.

12 4. An attempt to egress shall initiate an irreversible process that shall allow such egress in not more than 15
13 seconds when a physical effort to exit is applied to the egress side door hardware for not more than 3
14 seconds. Initiation of the irreversible process shall activate an audible signal in the vicinity of the door.
15 Once the delay electronics have been deactivated, rearming the delay electronics shall be by manual means
16 only.

17 **Exception:** Where approved, a delay of not more than 30 seconds is permitted on a delayed egress door.

18 5. The egress path from any point shall not pass through more than one delayed egress locking system.

19 **Exception:** In Group I-2 or I-3 occupancies, the egress path from any point in the building shall pass
20 through not more than two delayed egress locking systems provided the combined delay does not exceed
21 30 seconds.

22 6. A sign shall be provided on the door and shall be located above and within 12 inches (305 mm) of the
23 door exit hardware:

24 6.1. For doors that swing in the direction of egress, the sign shall read: PUSH UNTIL ALARM SOUNDS.
25 DOOR CAN BE OPENED IN 15 [30] SECONDS.

26 6.2. For doors that swing in the opposite direction of egress, the sign shall read: PULL UNTIL ALARM
27 SOUNDS. DOOR CAN BE OPENED IN 15 [30] SECONDS.

28 6.3. The sign shall comply with the visual character requirements in ICC A117.1.

29 **Exception:** Where approved, in Group I occupancies, the installation of a sign is not required where care
30 recipients who because of clinical needs require restraint or containment as part of the function of the
31 treatment area.

32 7. Emergency lighting shall be provided on the egress side of the door.

33 8. The delayed egress locking system units shall be listed in accordance with UL 294.
34

35 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
36 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

1 **Reason Given** – The purpose of this amendment is to provide schools more flexibility for emergency
2 lockdown situations. The language is brought forward from the 2018 International Fire Code that has been
3 vetted by the International Code Council.

4 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
5 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
6 funds. A fiscal note has not been prepared.

7

8

9 **24. Request from Colin Triming representing the NC Fire Code Revision Committee to amend the**
10 **2018 N.C. Building Code, Chapter 2.**

11

12 **CARBON MONOXIDE ALARM.** A single- or multiple-station alarm intended to detect carbon
13 monoxide gas and alert occupants by a distinct audible signal. It incorporates a sensor, control components
14 and an alarm notification appliance in a single unit.

15

16 **CARBON MONOXIDE DETECTOR.** A device with an integral sensor to detect carbon monoxide gas
17 and transmit an alarm signal to a connected alarm control unit.

18

19 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
20 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

21 **Reason Given** – The purpose of this amendment is to define the two devices that are currently used in the
22 code. The definitions are taken from the 2018 International Fire Code.

23 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
24 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
25 funds. A fiscal note has not been prepared.

26

27

28 **25. Request from Clint Latham representing the City of Raleigh to amend the 2018 N.C. Building**
29 **Code, Section 915.2 and add Section 915.2.4.**

30

31 **[F] 915.2 Locations.** Where required by Section 915.1.1, carbon monoxide detection shall be installed in
32 the locations specified in Sections 915.2.1 through ~~915.2.3~~ 915.2.4.

33

34 **[F] 915.2.4 Group A-2 occupancies.** Carbon monoxide detection shall be installed in A-2 occupancies in
35 all the following locations:

36 1. On the ceiling of the room containing the fuel-burning appliance or fuel-burning *fireplace*.

37 2. In an *approved* location where the room or area is served by a forced air furnace.

1
2 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
3 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).
4 **Reason Given** – The purpose of this amendment is to provide information about where to mount carbon
5 monoxide detectors that are currently required by Sections 915.1.1, 915.1.2, and 915.1.3.
6 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with a net increase in cost.
7 This rule is not expected to either have a substantial economic impact or increase local and state funds. A
8 fiscal note has not been prepared.

9
10
11 **26. Request from Bryan Dale Robinson representing the City of Raleigh to amend the 2018 N.C.**
12 **Building Code, Section 428.2.**

13
14 **428.2 Residential care homes.** Homes keeping no more than six adults or six unrestrained children who
15 are able to respond and evacuate the facility without assistance, determined by the state agency having
16 jurisdiction to be licensable, shall be classified as single-family residential ~~(North Carolina Residential~~
17 ~~Code)~~ and comply with the requirements of this section and the North Carolina Residential Code for
18 detached one- and two-family dwellings and townhouses.

19
20 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
21 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).
22 **Reason Given** – The purpose of this amendment is to clarify the application of the NC Residential Code for
23 such facilities.
24 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
25 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
26 funds. A fiscal note has not been prepared.

27
28
29 **27. Request from Bryan Dale Robinson representing the City of Raleigh to amend the 2018 N.C.**
30 **Building Code, Section 428.3.**

31
32 **428.3 Licensed Small Residential Care Facilities.** The following facilities when determined by the State
33 Agency having jurisdiction to be licensable, shall be classified as Single-Family Residential and comply
34 with the requirements of this section and the North Carolina Residential Code for detached one- and two-
35 family dwellings and townhouses.

36

- 1 1. Residential Care Facilities keeping no more than six adults or six unrestrained children with no more
2 than three who are unable to respond and evacuate without assistance.
- 3 2. Residential Care Facilities keeping no more than five adults or five children who are unable to respond
4 and evacuate without assistance, when certifiable for Medicaid reimbursement, and when staffed 24-hours
5 per day with at least two staff awake at all times.
- 6 3. Residential Care Facilities keeping no more than nine adults or nine children who are able to respond and
7 evacuate without assistance.

8

9 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is March 1,
10 2021 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2022).

11 **Reason Given** – The purpose of this amendment is to clarify the application of the NC Residential Code for
12 such facilities.

13 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase
14 in cost. This rule is not expected to either have a substantial economic impact or increase local and state
15 funds. A fiscal note has not been prepared.

16
17
18
19 **NOTICE:**

20 **Appeals and Interpretations** of the North Carolina State Building Codes are published online at the
21 following link.

22 [http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Code_Interpretations&user=C
23 ode_Enforcement_Resources](http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Code_Interpretations&user=Code_Enforcement_Resources)

24
25
26 **NOTICE:**

27 **Objections and Legislative Review** requests may be made to the NC Office of Administrative Hearings in
28 accordance with G.S. 150B-21.3(b2) after Rules are adopted by the Building Code Council.

29 <http://www.ncoah.com/rules/>

30
31

**The 2021 Low-Income Housing Tax Credit Qualified Allocation Plan
For the State of North Carolina**

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I. INTRODUCTION

The 2021 Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term “Agency” shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

- A. Selection criteria to be used in determining the allocation of tax credits:
- Project location and site suitability.
 - Market demand and local housing needs.
 - Serving the lowest income tenants.
 - Serving qualified tenants for the longest periods.
 - Design and quality of construction.
 - Financial structure and long-term viability.
 - Use of federal project-based rental assistance.
 - Use of mortgage subsidies.
 - Experience of development team and management agent(s).
 - Serving persons with disabilities and persons who are homeless.
 - Willingness to solicit referrals from public housing waiting lists.
 - Tenant populations of individuals with children.
 - Projects intended for eventual tenant ownership.
 - Projects that are part of a community redevelopment effort.
 - Energy efficiency.
 - Historic nature of the buildings.
- B. Threshold, underwriting and process requirements.
- C. Description of the Agency’s compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

In the process of administering the tax credit, Rental Production Program (RPP) and Workforce Housing Loan Program (WHLP), the Agency will make decisions and interpretations regarding project applications and the Plan. RPP and WHLP are state investments dedicated to making rental developments financially feasible and more affordable for working families and seniors. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major:

- natural disaster
- pandemic / epidemic,
- disruption in the financial markets, or
- reduction in subsidy resources available, including tax credits, RPP₂ and WHLP funding,

the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

II. SET-ASIDES, AWARD LIMITATIONS, AND COUNTY DESIGNATIONS

The Agency will determine whether applications are eligible under Section II(A) or II(B). This Section II only applies to 9% Tax Credit applications.

A. REHABILITATION SET-ASIDE

The Agency will award up to ten percent (10%) of tax credits available after forward commitments to projects proposing rehabilitation of existing housing. The Agency may exceed this limitation to completely fund a project request. In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3). The maximum award under this set-aside to any one Principal will be one project.

The following will be considered new construction under Section II(B) below:

- adaptive re-use projects,
- entirely vacant residential buildings,
- proposals to increase and/or substantially re-configure residential units.

B. NEW CONSTRUCTION SET-ASIDES

1. GEOGRAPHIC REGIONS

The Agency will award tax credits remaining after awards described above to new construction projects, starting with those earning the highest scoring totals within each of the following four geographic set-asides and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside to award the next highest scoring application statewide under Section II(G)(1).

West 16%		Central 23%		Metro 38%	East 23%	
Alexander	Lincoln	Alamance	Moore	Buncombe	Beaufort	Jones
Alleghany	Macon	Anson	Orange	Cumberland	Bertie	Lenoir
Ashe	Madison	Cabarrus	Person	Durham	Bladen	Martin
Avery	McDowell	Caswell	Randolph	Forsyth	Brunswick	Nash
Burke	Mitchell	Chatham	Richmond	Guilford	Camden	New Hanover
Caldwell	Polk	Davidson	Rockingham	Mecklenburg	Carteret	Northampton
Catawba	Rutherford	Davie	Rowan	Wake	Chowan	Onslow
Cherokee	Surry	Franklin	Scotland		Columbus	Pamlico
Clay	Swain	Granville	Stanly		Craven	Pasquotank
Cleveland	Transylvania	Harnett	Stokes		Currituck	Pender
Gaston	Watauga	Hoke	Union		Dare	Perquimans
Graham	Wilkes	Iredell	Vance		Duplin	Pitt
Haywood	Yadkin	Lee	Warren		Edgecombe	Robeson
Henderson	Yancey	Montgomery			Gates	Sampson
Jackson					Greene	Tyrrell
					Halifax	Washington
					Hertford	Wayne
					Hyde	Wilson
					Johnston	

2. REDEVELOPMENT PROJECTS

- (a) If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in awards for two (2) Redevelopment Projects. Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not meet the criteria below will be

awarded to the next highest ranking Redevelopment Project(s). The Agency may make such adjustment(s) in any geographic set-aside.

- (b) The following are required to qualify as a Redevelopment Project:
- (i) The site currently contains or contained at least one structure used for commercial, residential, educational, or governmental purposes.
 - (ii) The application proposes adaptive re-use with historic rehabilitation credits and/or new construction.
 - (iii) Any required demolition has been completed or is scheduled for completion in 2021 (not including the project buildings). For a Rental Assistance Demonstration (RAD) project under the U.S. Department of Housing and Urban Development (HUD), any required demolition must be scheduled to be completed by June 30, 2022~~1~~.
 - (iv) A unit of local government initiated the project, evidenced by a Request for Proposal, Council minutes, or other documentation stipulating the project was originally envisioned by the local government, and has invested community development resources in the Half Mile area within the last ten years. A resolution will not suffice as evidence of local government initiation.
 - (v) As of the preliminary application deadline, a unit of local government formally adopted a plan to address the deterioration (if any) in the Half Mile area and approved one or more of the following for the project:
 - donation of at least one parcel of land,
 - waiver of impact, tap, or related fees normally charged,
 - commitment to lend/grant at least \$750,000 in the Metro region and \$250,000 in the East, Central or West of its housing development funds (net of any amount paid to the unit of government) as a source of permanent funding, or
 - is part of the RAD program under HUD.

The Agency will require official documentation of each element of local government participation.

3. DISASTER RECOVERY

(a) Additional Tax Credits

Twelve point five percent (12.5%) of tax credits available will be added to the East region before the Rehabilitation Set-Aside and before any allocations under the New Construction Set-Aside.

(b) County Award Limits

Should each county with an eligible application in the East or Central region receive one new construction award and credits remain in the respective region, counties declared a federal disaster area (Individual Assistance designation) under Hurricane Florence are eligible to receive a second new construction award.

If necessary, the Agency will adjust the awards under the Plan to ensure the overall allocation results in no less than one award for Cumberland County in the Metro region. The initial maximum under II(F)(1)(b) will not apply to Cumberland County should that county be eligible for a second new construction award.

C. USDA RURAL DEVELOPMENT

Up to \$750,000 will be awarded to eligible rehabilitation and/or new construction project(s) identified by the U.S. Department of Agriculture, Rural Development (RD) state office as a priority. These projects will count towards the applicable set-asides and limits. The maximum award under this set-aside to any one Principal will be one project. Other RD applications will be considered under the applicable set-asides.

D. NONPROFIT AND CHDO SET-ASIDES AND NATIONAL HOUSING TRUST FUND

1. SET-ASIDES AND NATIONAL HOUSING TRUST FUND

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in:

- ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax-exempt organizations (nonprofits),
- fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs) and
- all funds available from the National Housing Trust Fund have been awarded.

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s). The Agency may make such adjustment(s) in any set-aside.

(a) Nonprofit Set-Aside

To qualify as a nonprofit application, the project must either:

- not involve any for-profit Principals or
- comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2).

(b) CHDO Set-Aside

To qualify as a CHDO application,

- the project must meet the requirements of subsection (D)(1)(a) above and 24 CFR 92.300(a)(1),
- the Applicant, any Principal, or any affiliate must not undertake any choice-limiting activity prior to successful completion of the U.S. Department of Housing and Urban Development (HUD) environmental clearance review, and
- the project and owner must comply with regulations regarding the federal CHDO set-aside.

The Agency may determine the requirements of the federal CHDO set-aside have been or will be met without implementing subsection (D)(1)(b).

(c) National Housing Trust Fund

To qualify for the National Housing Trust Fund, the project must:

- be located in a High Income county as designated in Section II(F)(2) and
- commit at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income. See Appendix J for additional information.

E. PRINCIPAL AND PROJECT AWARD LIMITS

1. PRINCIPAL LIMITS

- (a) The maximum awards to any one Principal will be a total of ~~\$24,800,000~~ in tax credits, including all set-asides. New construction awards will be counted towards this limitation first (in score order), then rehabilitation awards. No Principal can receive more than 2 new construction awards.
- (b) The Agency may further limit awards based on unforeseen circumstances.
- (c) For purposes of the maximum allowed in this subsection (E)(1), the Agency may determine that a person or entity not included in an application is a Principal for the project. Such determination would include consideration of relationships between the parties in previously awarded projects and other common interests. Standard fee for service contract relationships (such as accountants or attorneys) will not be considered.

2. PROJECT LIMIT

The maximum award to any one project will be \$1,200,000.

3. AGENCY-DESIGNATED BASIS BOOST

The Agency can boost the eligible basis of new construction projects committing to the targeting in Section IV(B)(2) or that are located in an Opportunity Zone by up to ten percent (10%). Projects using the DDA or QCT basis increase are not eligible under this section.

F. COUNTY AWARD LIMITS AND INCOME DESIGNATIONS

1. AWARD LIMITS

(a) Rehabilitation and East, Central, and West Regions

No county will be awarded more than one project under the rehabilitation set-aside. No county will be awarded more than one project under the new construction set-aside except as specified under Section II(B)(3)(b).

(b) Metro Region

The initial maximum award(s) for a county will be its percent share of the Metro region based on population (see Appendix K), unless exceeding this amount is necessary to complete a project request. If any tax credits remain, the Agency will make awards to the next highest scoring application(s). A county may receive one additional award, even if in excess of its share. See Section II(B)(3)(b) for Cumberland County exception.

2. INCOME DESIGNATIONS

The Agency is responsible for designating each county as High, Moderate or Low Income. The criteria used as a guide in making this determination was HUD's FY 2020~~19~~ Median Family Income.

High		Moderate		Low	
Buncombe	Henderson	Alamance	Mitchell	Alleghany	Lenoir
Brunswick	Iredell	Alexander	Nash	Anson	Macon
Cabarrus	Johnston	Beaufort	Onslow	Ashe	Martin
Camden	Madison	Burke	Pamlico	Avery	McDowell
Carteret	Mecklenburg	Caldwell	Pasquotank	Bertie	Montgomery
Chatham	Moore	Catawba	Pender	Bladen	Northampton
Currituck	New Hanover	Craven	Perquimans	Caswell	<u>Perquimans</u>
Dare	Orange	Cumberland	Person	Cherokee	Richmond
Durham	Pitt	Davie	<u>Pitt</u>	Chowan	Robeson
Forsyth	Union	Davidson	Polk	Clay	Sampson
Franklin	Wake	Edgecombe	Randolph	Cleveland	Scotland
Gaston	Watauga	Gates	Rockingham	Columbus	Surry
Guilford		Granville	Rowan	Duplin	Swain
		Greene	Rutherford	Graham	Tyrrell
		Harnett	Stanly	Halifax	Vance
		Haywood	Stokes	Hertford	Warren
		Hoke	<u>Surry</u>	Hyde	Washington
		<u>Hyde</u>	Transylvania	Jones	<u>Wilkes</u>
		Jackson	Wayne		Yancey
		Lee	Wilkes		
		Lincoln	Wilson		
		<u>Macon</u>	Yadkin		

G. OTHER AWARDS AND RETURNED ALLOCATIONS

- The Agency may award tax credits remaining from the geographic set-asides to the next highest scoring eligible new construction application(s) in the East, Central, and West regions and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.
- An owner returning a valid allocation of 2018~~7~~ tax credits between ~~December 1, 2020~~ and December 31, 2020~~19~~ will receive an allocation of the same amount of 2021 tax credits if:
 - the project has obtained a building permit and closed its construction loan,
 - the owner pays a fee equal to the original allocation fee amount upon the return, and
 - the project's design is the same as approved at full application (other than changes approved by the Agency).

None of the Principals for the returned project may be part of a 2021 application. The project must place in service in 2021. Repeated use of this provision by a Principal may result in the Principal being considered not in good standing with the Agency.
- The Agency may make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.

III. DEADLINES, APPLICATION AND FEES

A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the 2021 application process for 9% Tax Credits and the first round of tax-exempt bond volume and 4% Tax Credits.

January 22 ⁴	Deadline for submission of preliminary applications (12:00 noon)
March 15 ⁶	Market analysts will submit studies to the Agency and Applicants
March 26 ⁷	Notification of final site scores
April 5 ⁶	Deadline for market-related project revisions (5:00 p.m.)
April 12 ³	Deadline for the Agency and Applicant to receive the revised market study, if applicable
May 14 ⁵	Deadline for full applications (12:00 noon)
August	Notification of tax credit awards

The Agency will also accept tax-exempt bond volume and 4% Tax Credit applications any time between May 1 and October 1 (5:00 p.m.). When a preliminary application has been submitted in this timeframe, a schedule of milestones will be provided to the Applicant. The preliminary application submission date will determine when those milestones occur which will follow a time frame similar to the 9% Tax Credit round. The Agency will work with the Applicant to determine if the project will receive 2021 or ~~2022~~⁺ volume cap. Full applications can be submitted no later than January ~~14~~⁵, ~~2022~~⁺.

The Agency reserves the right to change the schedule to accommodate unforeseen circumstances.

B. APPLICATION, ALLOCATION, MONITORING, AND PENALTY FEES

1. All Applicants are required to pay a nonrefundable fee of ~~\$5,800~~⁷⁸⁰ at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a ~~\$1,400~~³⁸⁰ preliminary application processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).
2. All Applicants are required to pay a nonrefundable processing fee of ~~\$1,400~~³⁸⁰ upon submission of the full application.
3. Entities receiving tax credit awards, including those involving tax-exempt bond volume, are required to pay a nonrefundable allocation fee equal to ~~0.86~~⁴% of the project's total qualified basis.
4. The allocation fee will be due at the time of either the carryover allocation or bond volume award. Failure to return the required documentation and fee by the date specified may result in cancellation of the allocation. The Agency may assess other fees for additional monitoring responsibilities.
5. Owners must pay a monitoring fee of ~~\$1,220~~⁰ per unit (includes all units, qualified, unrestricted, and employee) prior to issuance of the project's IRS Form 8609. Any project utilizing income averaging or for which the Agency is the bond issuer must pay an additional monitoring fee of \$300 per unit.
6. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the owner which jeopardize use of the tax credits, such legal costs will be paid by the owner in the amount charged to the Committee or Agency.
7. The Agency may assess Applicants or owners a fee of up to \$2,000 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed; such a delay in processing may result in disqualification of application(s).

8. The Agency will assess \$1,500 for a Workforce Housing Loan Program closing and \$2,000 for an RPP closing.

C. APPLICATION PROCESS AND REQUIREMENTS

1. The Agency may require Applicants to submit any information, letter, or representation relating to Plan requirements or point scoring as part of the application process.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.
3. Only one application can be submitted per site (new construction or rehabilitation).
4. For any rehabilitation application proposing to combine multiple existing properties into one property, the properties must be adjacent or not separated by more than one like parcel, or by more than a road, street, stream, or other similar property.
4. ~~The Agency may elect to treat applications involving more than one site, population type (family/senior) or activity (new/rehabilitation) as separate for purposes of the Agency's application process. Each application would require a separate initial application fee. The Agency may allow such applications to be considered as one for the full application underwriting if all sites are secured by one permanent mortgage and are not intended for separation and sale after the tax credit allocation.~~
5. No Principal or Applicant can be involved in more than 5 preliminary applications in any capacity.
65. The Agency will notify the appropriate unit of government about the project after submission of the full application.
76. For each application one individual or validly existing entity must be identified as the Applicant and execute the preliminary and full applications. An entity may be one of the following:
 - (a) corporation, including nonprofits,
 - (b) limited partnership, or
 - (c) limited liability company.

Only the identified Applicant will have the ability to make decisions with regard to that application and be considered under Section IV(D)(1). The Applicant may enter into joint venture or other agreements but the Agency will not be responsible for evaluating those documents to determine the relative rights of the parties. If the application receives an award the Applicant must become a managing member or general partner of the ownership entity.

IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

Applications must meet all applicable threshold requirements to be considered for award and funding. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2021 cycle.

A. SITE AND MARKET EVALUATION

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

1. SITE EVALUATION (MAXIMUM 60 POINTS)
 - (a) General Site Requirements:

- (i) Sites must be sized to accommodate the number and type of units proposed. The Applicant or a Principal must have site control by the preliminary application deadline as evidenced by an option, contract or deed. The documentation of site control must include a plot plan.
 - (ii) Required zoning must be in place by the full application deadline, including special/conditional use permits, and any other discretionary land use approval required (includes all legislative or quasi-judicial decisions).
 - (iii) Water and sewer must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the owner's responsibility to extend utilities and roads to the site. In such cases, the Applicant must explain and budget for such plans and document the right to perform such work.
 - (iv) To be eligible for RPP funds, the preliminary application must contain the Agency's "Notice of Real Property Acquisition" form. The form must be executed by all parties before or at the same time as the option or contract.
- (b) Criteria for Site Score Evaluation:

Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories. An application must have a minimum total score of 45 points.

(i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 10 POINTS)

Good: 10 points if structures within a Half Mile are well maintained or the site qualifies as a Redevelopment Project (see Section II(B)(2)(b))

Fair: 5 points if structures within a Half Mile are not well maintained and there are visible signs of deterioration

Poor: 0 points if structures within a Half Mile are Blighted or have physical security modifications (e.g. barbed wire fencing or bars on windows)

Half Mile: The half mile radius from the approximate center of the site (does not apply to Amenities below).

Blighted: A structure that is abandoned, deteriorated substantially beyond normal wear and tear, a public nuisance, or appears to violate minimum health and safety standards.

(ii) AMENITIES (MAXIMUM 38 POINTS)

Other than applications with tribally-appropriated funds or near bus/transit stops (described at the end of this subsection), points will be determined according to the matrix below. For an amenity to be eligible for points, the application must include documentation required by the Agency of meeting the applicable criteria. In all cases the establishment must be open to the general public and operating as of the preliminary application deadline with no announced closing prior to the notification of final site scores.

	<u>Driving Distance in Miles</u>			
<i>Primary Amenities</i> <i>(maximum 26 points)</i>	<u>≤ 1.25</u>	<u>≤ 1.75</u>	<u>≤ 2.25</u>	<u>≤ 3.25</u>
Grocery	12pts.	10 pts.	8 pts.	6 pts.
Shopping	7 pts.	6 pts.	5 pts.	4 pts.
Pharmacy	7 pts.	6 pts.	5 pts.	4 pts.
<i>Secondary Amenities</i> <i>(maximum 12 points)</i>				
<i>Other Primary Amenity</i>	<u>≤ 1.25</u>	<u>≤ 1.75</u>	<u>≤ 2.25</u>	<u>≤ 3.25</u>
Service	3 pts.	2 pts.	1 pt.	0 pts.

IN ADDITION

Healthcare	3 pts.	2 pts.	1 pt.	0 pts.
Public Facility	3 pts.	2 pts.	1 pt.	0 pts.
Public School (Family)	3 pts.	2 pts.	1 pt.	0 pts.
Senior Center (Senior)	3 pts.	2 pts.	1 pt.	0 pts.
Retail	3 pts.	2 pts.	1 pt.	0 pts.

Driving Distance in Miles, Small Town*

<i>Primary Amenities</i> <i>(maximum 26 points)</i>	≤ 2	≤ 2.5	≤ 3	≤ 4
Grocery	12 pts.	10 pts.	8 pts.	6 pts.
Shopping	7 pts.	6 pts.	5 pts.	4 pts.
Pharmacy	7 pts.	6 pts.	5 pts.	4 pts.
<i>Secondary Amenities</i> <i>(maximum 12 points)</i>	≤ 2	≤ 2.5	≤ 3	≤ 4
Other Primary Amenity	5 pts.	4 pts.	3 pts.	2 pts.
Service	3 pts.	2 pts.	1 pt.	0 pts.
Healthcare	3 pts.	2 pts.	1 pt.	0 pts.
Public Facility	3 pts.	2 pts.	1 pt.	0 pts.
Public School (Family)	3 pts.	2 pts.	1 pt.	0 pts.
Senior Center (Senior)	3 pts.	2 pts.	1 pt.	0 pts.
Retail	3 pts.	2 pts.	1 pt.	0 pts.

* A Small Town is a municipality with a population of less than 10,000 people. The list of town sizes can be found on the Office of State Budget and Management web site at <https://www.osbm.nc.gov/demog/municipal-population-estimates>. The Certified 2018 Population Estimates, Municipal Estimates – Alphabetically by municipality will be used to determine a town’s population. A site is not required to be within the town limits to qualify but must have an address of a Small Town. Any application in an unincorporated town not appearing on the Small Town list but recognized as a community must have Agency approval to be considered a Small Town prior to the preliminary application deadline.

Only one establishment will count for each row under Primary and Secondary Amenities. For example, an application for a site with a public park, library, and community center all between one quarter mile and one and three quarters-half miles will receive only 2 points under Public Facility.

The driving distance will be the mileage as calculated by Google Maps and must be a drivable route as of the preliminary application deadline. The drivable route must be shown in satellite view map format (written directions optional). A photo of each amenity must also be provided. The measurement will be:

- the point closest to the site entrance to or from
- the point closest to the amenity entrance.

Driveways, access easements, and other distances in excess of 500 feet between the nearest residential building of the proposed project and road shown on Google Maps will be included in the driving distance. For scattered site projects, the measurement will be from the location with the longest driving distance(s). Scattered site is defined as buildings on separate parcels, not connected by internal drive, and with separate entrances. A scattered site cannot have parcels separated by more than one like parcel, or by more than a road, street, stream, or other similar property.

The following establishments qualify as a Grocery:

Aldi	Food Matters Market	Just Save	Save-A-Lot
Bi-Lo	Fresh Air Galaxy Food Centers	Kroger	Sprouts
Bo's Food Stores	The Fresh Market	Lidl	Super Target
Compare Foods	Harris Teeter	Lowes Foods	Trader Joe's
Earth Fare	Harveys	Piggly Wiggly	Walmart Neighborhood Market
Fairvalue	Hopey & Company	Publix	Walmart Supercenter
Family Foods	IGA	Red & White	Weaver Street Market
Food Lion	Ingle's Market	Sav-Mor	Whole Foods

The following establishments qualify as Shopping:

Big Lots	Kmart	Target
Dollar General	Maxway	Super Target
Dollar Tree	Ollie's Bargain Outlet	Walmart
Family Dollar	Roses	Walmart Supercenter
Fred's Super Dollar	Roses Express	

To qualify as a Pharmacy, the establishment must have non-medical general merchandise items for sale (not including pharmacies within hospitals).

To qualify as a Secondary Amenity, the establishment must meet the applicable requirement(s) below.

Other Primary Amenity: second Grocery, Shopping or Pharmacy (not used as Primary Amenity)

Service: restaurant, bank/credit union, or gas station with convenience store

Healthcare: hospital, urgent care business, general/family practice, or general dentist (not to include orthodontist); does not include medical specialists or clinics within pharmacies

Public Facility (any of the following):

- community center with scheduled activities operated by a local government
- public park owned and maintained by a local government containing, at a minimum, playground equipment and/or walking/bike trails and listed on a map, website, or other official means; a greenway or trailhead does not qualify
- library operated by a local government open at least five days a week

Public School: non-alternative elementary, middle or high school (family properties only)

Senior Center: with scheduled activities operated by a local government (senior properties only)

Retail: any Grocery or Shopping not listed as a Primary or Other Primary Amenity; any strip shopping center with a minimum of 4 operating establishments; any grocery or general merchandise establishment

A commitment of at least \$250,000 in tribally-appropriated funds (including through the Native American Housing Assistance and Self Determination Act) qualifies for 6 points, not to exceed the total for subsection (ii). The commitment must meet the requirements of Section VI(B)(6)(b) and be submitted as part of the preliminary application.

A bus/transit stop qualifies for 6 points, not to exceed the total for subsection (ii), if it is:

- in service as of the preliminary application date,
- at a fixed location and has a covered waiting area,
- served by a public transportation system six days a week, including for 12 consecutive hours on weekdays, and
- within 0.25 miles walking distance of the proposed project site entrance using existing continuous sidewalks (excluding the proposed project site) and crosswalks.

A bus/transit stop qualifies for 2 points, not to exceed the total for subsection (ii), if all of the above criteria are met except for a covered waiting area.

(iii) SITE SUITABILITY (MAXIMUM 12 POINTS)

3 points if there is no Incompatible Use, which includes the following activities, conditions, or uses within the distance ranges specified:

Half Mile

- airports
- chemical or hazardous materials storage/disposal
- industrial or agricultural activities with environmental concerns (such as odors or pollution)
- commercial junk or salvage yards
- landfills currently in operation
- sources of excessive noise
- wastewater treatment facilities

A parcel or right of way within 500 feet containing any of the following:

- adult entertainment establishment
- distribution facility
- factory or similar operation
- jail or prison
- large swamp

Any of the following within 250 feet of a proposed project building:

- electrical utility substation, whether active or not
- frequently used railroad tracks (not to include passenger light rail)
- high traffic corridor (500 feet for an interstate)
- power transmission lines and tower

3 points if there are no negative features, design challenges, physical barriers, or other unusual and problematic circumstances that would impede project construction or adversely affect future tenants, including but not limited to: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive re-use projects: suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition)

3 points if the project would be visible to potential tenants using normal travel patterns and is within 500 feet of a building that is currently in use for residential, commercial, educational, or governmental purposes (excluding Blighted structures or Incompatible Uses)

3 points if traffic controls allow for safe access to the site; for example limited sight distance (blind curve) or having to cross three or more lanes of traffic going the same direction when exiting the site would not receive points.

(iv) SITE NEGATIVE POINTS (NEGATIVE 3 POINTS)

Up to 3 points will be deducted from a site deemed to be unsuitable for housing. This determination recognizes a site may meet all site evaluation scoring criteria but not be suitable for housing regardless of having required zoning or local government support.

2. MARKET ANALYSIS

The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

- (a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix, targeting). Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the Applicant for the full application.
- (b) The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.
- (c) The following four criteria are threshold requirements for new construction applications:
 - (i) the project's capture rate,
 - (ii) the project's absorption rate,
 - (iii) the vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances), and
 - (iv) the project's effect on existing or awarded properties with 9% Tax Credits or Agency loans.
- (d) Applicants may not increase the total number of units after submission of the preliminary application. Unless 2021 rent and income limits are released by the 9% preliminary application deadline, ~~2020~~2019 rent and income limits must be used for the preliminary application, market study, and any market study revision. After the deadline for completing market-related project revisions Applicants may not increase:
 - (i) rents, irrespective of a decrease in utility allowances,
 - (ii) the number of income targeted units in any bedroom type, or
 - (iii) the number of units in any bedroom type.Applicants are prohibited from decreasing unit square footage after the deadline for completing market-related revisions.
- (e) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this subsection (A)(2).
- (f) Projects may not give preferences to potential tenants based on:
 - (i) residing in the jurisdiction of a particular local government,
 - (ii) having a particular disability, or
 - (iii) being part of a specific occupational group (e.g. artists).
- (g) Age-restricted (senior) projects may not contain three or more bedroom units.
- (h) No project can have more than four (4) income bands consisting of: 20%, 30%, 40%, 50%, 60%, 70%, 80% of area median income, and market rate.

B. RENT AFFORDABILITY

1. FEDERAL RENTAL ASSISTANCE

Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated similar to a funding source under Section VI(B)(6)(e); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements may involve the public housing authority's (PHA's) Annual Plan, selection policy, and approval for advertising.

2. TENANT RENT LEVELS AND RPP (MAXIMUM 2 POINTS)

An application may earn points under one of the following scenarios:

(a) If the project is in a High Income county:

- 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.
- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of area median income.

(b) If the project is in a Moderate Income county:

- 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.
- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of area median income.

(c) If the project is in a Low Income county:

- 2 points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.
- 1 point will be awarded if at least fifteen percent (15%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income.

To qualify for an RPP loan, at least forty percent (40%) of qualified low-income units in a project will be affordable to and occupied by households with incomes at or below fifty percent (50%) of area median income. Targeting in subsection (a), (b) or (c) above counts towards this requirement.

3. INCOME AVERAGING

Only new construction projects and rehabilitation projects not subject to an existing Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits are eligible to utilize income averaging. Applicants electing to use income averaging must comply with the following:

- (a) The income average for the property cannot exceed 60% of area median income,
- (b) The income average for any bedroom type cannot exceed 60% of area median income,
- (c) Market rate units are prohibited,
- (d) The election of Income Averaging at full application submission is irrevocable, and

- (e) For projects with more than one building, Owners must select that each building is part of a multiple building set-aside on line 8b in Part II of IRS Form 8609.

C. PROJECT DEVELOPMENT COSTS, RPP LIMITATIONS, AND WHLP

1. MAXIMUM PROJECT DEVELOPMENT COSTS (NEGATIVE 10 POINTS)

- (a) The Agency will assess negative points to applications listing more than the following in lines 5 and 6 of the Project Development Costs (PDC) description, as outlined in Chart A below. The point structure in Chart B will apply to the following:

- all units are detached single family houses or duplexes,
- serving persons with severe mobility impairments,
- development challenges resulting from being within or adjacent to a central business district,
- public housing redevelopment projects, or
- building(s) with both steel and concrete construction and at least four stories of housing.

The per-unit amount calculation includes all items covered by the construction contract, ENERGY STAR[®], certifications for green programs, and any other costs not unique to the specific proposal.

Chart A	Chart B
\$820,000 -10	\$934,000 -10

- (b) Lines 5 and 6 of the PDC description must total at least \$697,000 per unit and cannot exceed \$927,000 per unit.
- (c) The Agency will review proposed costs for historic adaptive re-use projects and approve the amount during the full application review process but in no case can lines 5 and 6 of the PDC exceed \$110,000 per unit.

See Section VI(B) for other cost restrictions.

2. RESTRICTIONS ON RPP AWARDS

- (a) Projects requesting RPP funds must submit the Agency’s “Notice of Real Property Acquisition” form with the preliminary application and may not:
 - (i) request RPP funds in excess of the following amounts per unit: \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties,
 - (ii) include market-rate units,
 - (iii) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 2012,
 - (iv) request less than \$150,000 or more than \$800,000 per project,
 - (v) have a commitment of funds from a local government under terms that will result in more repayment than determined under subsection (C)(2)(b) below,
 - (vi) have a federally insured loan or one which would require the RPP loan to have a term of more than 20 years or limits repayment, or
 - (vii) have a Principal listed on SAM.gov as being ineligible to receive federal funds.

The maximum award of RPP funds to any one Principal will be a total of \$1,600,000. Requesting an RPP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds.

- (b) Projects may only request an RPP loan if the principal and interest payments for RPP and any local government financing will be equal to the anticipated net operating income divided by 1.15, less conventional debt service:

Repayment of RPP and local government loans = (NOI / 1.15) – conventional debt service.

The amount of repayment will be split between the RPP loan and local government lenders based on their relative percentage of loan amounts. For example:

RPP Loan = \$400,000
 local government loan = \$200,000

	Year 1	Year 2	Year 3	Year 4
Anticipated amount available for repayment	\$10,000	\$8,000	\$6,000	\$4,000
RPP principal and interest payments	\$6,667	\$5,333	\$4,000	\$2,667
local government P&I payments	\$3,333	\$2,667	\$2,000	\$1,333

Lien position will be determined by loan amount: the larger loan will have the higher lien position. For equal loan amounts, the local government will have the higher lien position.

- (c) Loan payments made to the Applicant, any Principal, member or partner of the ownership entity, or any affiliate thereof, will be taken out of cash flow remaining after RPP payments.
- (d) An application may be ineligible for RPP funds due to one or more of the listed parties (including but not limited to members/partners, general contractor, and management agent) having failed to comply with the Agency’s requirements on a prior loan.
3. WORKFORCE HOUSING LOAN PROGRAM (Subject to appropriation)

- (a) Projects with 9% Tax Credits which meet the Agency’s loan criteria are eligible for WHLP. As required under the legislation, these criteria support the financing of projects similar to those created under G.S. 105-129.42.
- (b) A loan will not be closed until the outstanding balance on the first-tier construction financing exceeds the principal amount and the entire loan must be used to pay down a portion of the then existing construction debt.
- (c) The terms will be zero percent (0%) interest, thirty year balloon (no payments). The Agency will take all eligible sources into consideration in setting the amount. The following percent of eligible basis will be the calculated loan amount. In no event will the loan amount exceed the statutory maximum.

County Income Designation	Percent of Eligible Basis	Statutory Maximum
High	4%	\$250,000
Moderate	10%	\$1,500,000
Low	16%	\$2,000,000

Requesting a WHLP loan may result in an application being ineligible under Section VI(B)(6)(e) if the Agency has inadequate funds. Projects in the Metro geographic set-aside are ineligible to request WHLP. The maximum award of WHLP funds to any one Principal will be a total of \$2,000,000.

D. CAPABILITY OF THE PROJECT TEAM

1. DEVELOPMENT EXPERIENCE

- (a) To be eligible for an award of 9% Tax Credits, at least one Principal must have successfully developed, operated and maintained in compliance either one (1) 9% Tax Credit project in North Carolina or six (6) separate 9% Tax Credit projects totaling in excess of 200 units. The project(s) must have been placed in service between January 1, 2015~~3~~ and January 1, 2020~~4~~9. Such Principal must:
 - (i) be identified in the preliminary application as the Applicant under Section III(C)(6),
 - (ii) become a general partner or managing member of the ownership entity, and
 - (iii) remain responsible for overseeing the project and operation of the project for a period of at least two (2) years after placed in service. The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.
- (b) All owners and Principals must disclose all previous participation in the low-income housing tax credit program. Additionally, owners and Principals that have participated in an out of state tax credit allocation may be required to complete an Authorization for Release of Information form.
- (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).

2. MANAGEMENT EXPERIENCE

The management agent must:

- (a) have at least one similar tax credit project in their current portfolio,
- (b) have a valid North Carolina real estate license and be registered with the North Carolina Secretary of State as of the full application deadline (excluding public housing authorities),
- (c) be requesting Key assistance timely and accurately (if applicable),
- (d) be reporting in the Agency's Rental Compliance Reporting System (RCRS) timely and accurately (if applicable)
- (e) have at least one staff person in a supervisory capacity with regard to the project who has attended at least one Agency sponsored training within the past 12 months as of the full application deadline, and
- (f) have at least one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist.

Such certification must be from an organization approved by the Agency (see **Appendix C**). None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected noncompliance beyond the cure period unless there is a plan of action to address the issue(s). Any management agent found to have implemented a rent increase on an existing tax credit property without the required Agency approval may be prohibited from serving as management agent for an application. The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the Agency approves a change.

3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

- (a) has been debarred or received a limited denial of participation in the past ten years by any federal or state agency from participating in any development program;
- (b) within the past ten years has been in a bankruptcy; an adverse fair housing settlement, judgment or administrative determination; an adverse civil rights settlement, judgment or administrative determination; or an adverse federal, state or local government proceeding and settlement, judgment or administrative determination;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on any publicly subsidized project;
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits;
- (e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;
- (f) interferes with a tax credit application for which it is not an owner or Principal at a public hearing or other official meeting;
- (g) has outstanding flags in HUD's national 2530 National Participation system;
- (h) has been involved in any project awarded 9% Tax Credits in ~~2020~~2019 for which either the equity investment has not closed as of the full application deadline or the "10% test" has not been met;
- (i) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;
- (j) would be removed from the ownership of a project that is the subject of an application under the rehabilitation set-aside in the current cycle;
- (k) requested a qualified contract for a North Carolina tax credit property; or
- (l) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the 2021 cycle and removing from consideration any application where they are identified.

E. UNIT MIX AND PROJECT SIZE

1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where either
 - the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 680% AMI and the market study indicates that such rents are feasible, or
 - there is a commitment for a grant or no-payment financing equal to at least the amount of foregone federal tax credit equity.
2. New construction 9% Tax Credit projects may not exceed the following:
 - Metro Region - one hundred and twenty (120) units
 - Central, East, and West Regions - eighty-four (84) units.
3. New construction tax-exempt bond projects may not exceed two hundred (200) units unless approved by the Agency prior to the preliminary application submission.
4. All new construction projects must have at least twenty-four (24) qualified low-income units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, including public housing projects, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines or adaptive re-use projects where made necessary by the building(s) physical structure.

F. SPECIAL CRITERIA AND TIEBREAKERS

1. ENERGY STAREFFICIENCY CERTIFICATION

New construction residential buildings must achieve ENERGY STAR Multifamily New Construction Program certification and comply with all energy efficiency standards as defined in Appendix B (incorporated herein by reference). Adaptive re-use and rehabilitation projects must comply to the extent doing so is economically feasible and as allowed by historic preservation rules.

2. CREDITS PER UNIT AVERAGE (MAXIMUM 2 POINTS)

The Agency will calculate the average federal tax credits per low-income unit requested on a geographic set-aside basis among new construction full applications and award points based on the following:

Within 4% of the average	2 points
Within 8% of the average	1 point

Any Applicant or Principal attempting to manipulate the average, as determined by the Agency, will have any application(s) they are involved with removed from the competition.

3. APPLICANT BONUS POINTS (MAXIMUM 2 POINTS)

An Applicant is entitled to ~~two~~ bonus points which can be awarded to one application (2 points) or ~~two~~ applications (1 point each) as part of the full application submission. No application can receive more than ~~two~~ bonus points. No Principal or Applicant is entitled to more than ~~two~~ bonus points for all applications in which they may be involved. If a Principal is part of an application in which he/she is not the Applicant but that application receives ~~at two~~ ~~B~~bonus ~~P~~points, the Principal will not be entitled to use a ~~B~~bonus ~~P~~point as an Applicant or Principal on another application. Should an Applicant or Principal use ~~more than 2~~ bonus points ~~on two or more applications~~, the Agency will determine which application receives the bonus point(s), if at all.

4. UNITS FOR THE MOBILITY IMPAIRED

Five percent (5%) of all units in new construction projects must meet the accessibility standards as defined in Appendix B (incorporated herein by reference). THESE UNITS ARE IN ADDITION TO MOBILITY IMPAIRED UNITS REQUIRED BY FEDERAL AND STATE LAW (INCLUDING BUILDING CODES). If laws or codes do not require mobility impaired units for a project, a total of ten percent (10%) of the units must be fully accessible. Units for the mobility impaired should be available to all tenants who would benefit from their design and are not necessarily reserved under the Targeting Program requirements of subsection (F)(5).

5. TARGETING PROGRAM

All projects will be required to target ten percent (10%) of the total units to persons with disabilities and persons who are homeless. Projects with federal project-based rental assistance must target at least five (5) units regardless of size. Projects that have targeted units under this subsection are not required to provide onsite supportive services or a service coordinator.

Owners must submit the following documents, all of which are fully described in **Appendix D** (incorporated herein by reference).

- (a) Targeting Unit Agreement
- (b) Owner Agreement to Participate (if applicable)
- (c) Property Profile
- (d) Tenant Selection Plan
- (e) Rental Assistance Plan (if applicable)
- (f) Affirmative Fair Housing Marketing Plan

These documents must be submitted to the Agency no later than the times specified in **Appendix D** but in no case later than six months prior to the project's placed in service date. The Agency may set additional requirements, as needed. The requirements of this subsection (F)(5) may be fully or partially waived to the extent the Agency determines they are not feasible.

6. OLMSTEAD SETTLEMENT INITIATIVE (MAXIMUM 4 POINTS)

- (a) Projects proposing 1 bedroom units as a percentage of the total project units will be awarded points based on the following:

7.5% of total units	1 point
10% of total units	2 points
15% of total units	3 points

Tax-exempt bond projects must contain 1 bedroom units totaling a minimum of 10% of total project units.

- (b) Projects proposed in the following DHHS priority counties will be awarded 1 point.

Buncombe	Craven	Gaston	Mecklenburg	Robeson
Burke	Cumberland	Guilford	New Hanover	Rowan
Cabarrus	Durham	Iredell	Onslow	Wake
Caldwell	Forsyth	Johnston	Pitt	Wayne

7. SECTION 1602 EXCHANGE PROJECTS (NEGATIVE 40 POINTS)

The Agency may deduct up to forty (-40) points from any application if the Applicant, any owner, Principal or affiliate thereof is also involved in a Section 1602 Exchange project with uncorrected material noncompliance.

8. TIEBREAKER CRITERIA

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

~~(a) First Tiebreaker: The project in the census tract with the lowest percentage of families below the poverty rate (see Appendix II for listing of poverty rates by census tract).~~

(a) ~~First~~ Third Tiebreaker: The project requesting the least amount of federal tax credits per low-income unit based on the Agency's equity needs analysis. No new construction project can request less than 85% of the amount calculated on line 64 of the Development Costs page of the application. No application qualifying for \$1,200,000 or more in tax credits can have a credit request of less than \$1,020,000.

- (b) Second Tiebreaker: The county with the least number of 9% tax credit units produced over the last 5 years (see **Appendix L** for listing of units produced by county).
- (c) Third~~Fourth~~ Tiebreaker: The project with the lowest average income targeting.
- (d) Fourth~~Fifth~~ Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Projects will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand for this population (as determined by the Agency).
- (e) Fifth~~Sixth~~ Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such projects must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

G. DESIGN STANDARDS

All proposed measures must be shown in the application to receive points.

1. THRESHOLD REQUIREMENTS

The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding.

2. CRITERIA FOR SCORE EVALUATION (MAXIMUM 30 POINTS)

The Agency will determine points based on the following criteria as applied to the site drawings submitted with the full application.

(a) Site Layout

The Agency will award up to 5 points based on its evaluation of the site layout. The following characteristics will be considered.

- (i) The location of residential buildings in relation to parking, site amenities, community building, postal facilities and trash collection areas.
- (ii) The degree to which site layout ensures a low, controlled traffic speed through the project.

(b) Quality of Design and Construction

(The points in this subsection are mutually exclusive with Section IV(G)(2)(c) below.)

The Agency will award up to 25 points for new construction projects based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

- (i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.
- (ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.
- (iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.
- (iv) Use of brick veneer or masonry products on building exteriors.

(c) Adaptive Re-Use

(The points in this subsection are mutually exclusive with Section IV(G)(2)(b) above.)

The Agency will award up to 25 points based on the following characteristics:

- (i) The extent to which the building(s) fit with surrounding streetscape after adaptation or have problems with orientation, sightlines, bulk and scale.
- (ii) Aesthetics after adaptation.
- (iii) Presence of special design elements or architectural features that may not be physically or financially available if new construction was introduced on the same site.

H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS

1. GENERAL THRESHOLD REQUIREMENTS

To be eligible for an allocation under Section II(A), a project must:

- (a) have either (i) received a tax credit allocation and be in the extended use period or (ii) federal project-based rental assistance for at least thirty percent (30%) of the total units,
- (b) have been placed in service on or before December 31, 2005~~4~~,⁵
- (c) require rehabilitation expenses in excess of \$25,000 per unit (as supported by a physical needs assessment conducted or approved by the Agency),
- (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
- (e) not be feasible using tax-exempt bonds (as determined by the Agency),
- (f) not have received an Agency loan in the last five years,
- (g) not be deteriorated to the point of requiring demolition,
- (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
- (i) have total replacement costs of less than \$14~~30~~,000 per unit, including all Agency-required rehabilitation work.

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the PDC description.

2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of **Appendix B** (incorporated herein by reference), the Agency will require owners to complete the following as appropriate for their project.

- (a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.
- (b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, and adding new architectural features to improve appearance.
- (c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- (d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- (e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.

- (f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

3. EVALUATION CRITERIA

The Agency will evaluate applications under Section II(A) based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not consider subsections (d) through (f) below if the outcome is determined by the criteria in subsections (a) through (c).

- (a) The Agency will give the highest priority to applications proposing to rehabilitate the most distressed housing with a tax credit allocation, particularly buildings with accessibility or life, health and safety problems.
- (b) Applications will have a reduced likelihood of receiving an award of tax credits if the Agency determines the property has not been properly maintained and any current owner will remain part of the new ownership.
- (c) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.
- (d) Shortcomings in the above criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).
- (e) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
- (f) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.
- (g) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).
- (h) While the rehabilitation set-aside is not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

V. ALLOCATION OF BOND CAP

A. ORDER OF PRIORITY

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

1. Projects that serve as a component of an overall public housing revitalization effort.
2. Rehabilitation of existing rent restricted housing.
3. Rehabilitation of projects consisting of entirely market-rate units.
4. Adaptive re-use projects.
5. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, applications seeking the least amount of authority per low-income unit will have priority.

B. ELIGIBILITY FOR AWARD

Except as otherwise indicated, owners of projects with tax-exempt bonds and 4% Tax Credits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

1. All projects must meet the requirements under Section IV(F)(5).
2. Rehabilitation applications must:
 - (a) have been placed in service on or before December 31, 200~~5~~⁴,
 - (b) require rehabilitation expenses in excess of \$15,000 per unit,
 - (c) not have an acquisition cost in excess of seventy percent (70%) of the total replacement costs,
 - (d) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
 - (e) not be deteriorated to the point of requiring demolition.
3. The inducement resolution must be submitted with the full application.
4. To be eligible for an award of tax-exempt bond volume, at least one Principal must have successfully developed, operated and maintained in compliance either one 9% Tax Credit project in North Carolina or one tax-exempt bond project in any state. The project must have been placed in service between January 1, 201~~5~~³ and January 1, 202~~0~~⁴~~9~~. Such Principal must:
 - be identified in the preliminary application as the Applicant under Section III(C)(6),
 - become a general partner or managing member of the ownership entity, and
 - remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.

The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

VI. GENERAL REQUIREMENTS

A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS

1. PROJECTS WITH HISTORIC TAX CREDITS

Buildings either must be on the National Register of Historic Places or approved for the State Historic Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.

2. NONPROFIT SET-ASIDE

For purposes of being considered as a nonprofit sponsored application under Section II(D)(1)(a), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must:

- (a) be qualified under Section 501(c)(3) or (4) of the Code,
- (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,
- (c) have as one of its exempt purposes the fostering of low-income housing.

(d) be a managing member or general partner of the ownership entity.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

3. REQUIRED REPORTS

All projects involving use of existing structures must submit the following:

- (a) For projects built prior to 1978, a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
- (b) A report assessing the structural integrity of the building(s) being renovated from an architect or engineer. Report must be dated no more than six (6) months from the full application deadline.
- (c) A current termite inspection report. Report must be dated no more than six (6) months from the full application deadline.

4. APPRAISALS

The Agency will not allow the project budget to include more for land or lease costs than the lesser of its appraised market value or the purchase or lease price. Applicants must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The appraisal must encompass all parcels that comprise the project. Comparable properties used in the appraisal must be in reasonable proximity to the project. The Agency may order an additional appraisal with costs to be paid by the Applicant. Appraisals for rehabilitation and adaptive re-use projects must break out the land and building values from the total value.

5. CONCENTRATION

Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.

6. DISPLACEMENT

For rehabilitation projects and in every other instance of tenant displacement, including temporary, the Applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The owner is responsible for all relocation expenses, which must be included in the project's development budget. Owners must also comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.

7. FEASIBILITY

The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an equity investment or a Principal that has inadequate capacity to successfully carry out the development process.

8. SMOKE-FREE HOUSING

Owners must prohibit smoking in all indoor common areas, individual living areas (including patios and balconies), and within 25 feet of building entries or ventilation intakes. A non-smoking clause must be included in the lease for each household.

B. UNDERWRITING THRESHOLD REQUIREMENTS

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding. Any documentation required as part of the application must be dated and be within 6 months of the application deadline, unless otherwise stated.

1. LOAN UNDERWRITING STANDARDS

- (a) Projects applying for tax credits only will be underwritten with rents escalating at two percent (2%) and operating expenses escalating at three percent (3%).
- (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for twenty (20) years.
- (c) Applications requesting RPP funds must use current Low HOME rents for fifteen percent (15%) of the total units (spread proportionally through all bedroom types) and may be required to comply with HOME program requirements, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92 and all relevant administrative guidance. Projects awarded RPP funds must also comply with the RPP Guidelines in **Appendix G** (incorporated herein by reference).
- (d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.

2. OPERATING EXPENSES

- (a) New construction (excluding adaptive re-use): minimum of \$3,600 per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes rehabilitation and adaptive re-use): minimum of \$3,800 per unit per year not including taxes, reserves and resident support services. For projects with RD loans, the operating expenses will be based upon the current RD approved operating budget.
- (c) ~~The proposed management agent (or management staff if there is an identity of interest) must sign a statement (to be submitted with the full application) agreeing that the operating expense projections are reasonable.~~

3. EQUITY PRICING

- (a) Projects will be underwritten using Applicants proposed equity pricing. Pricing above \$0.94 will require a commitment letter from a syndicator or investor with as much detail as is possible. At a minimum, the letter should include the equity pricing, total capital contribution amount, estimated pay-in schedule and any reserve requirements. Should an Applicant receive an allocation of tax credits and fail to receive equity pricing at least equal to the pricing used in the awarded application, any equity shortfall will be the responsibility of the Applicant. The Agency will not approve an increase of the rents stated in the awarded application to support additional debt to cover the equity shortfall.
- (b) Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

4. RESERVES

- (a) Rent-up Reserve: Required for all except tax-exempt bond projects. A reasonable amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$300 per unit. These funds must be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the PDC description. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency ninety (90) days prior to the expected placed in service date. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.

For those projects receiving loan funds from RD, the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

- (b) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and operating expenses (four months for tax-exempt bond projects), and must be maintained for the duration of the extended use period.

The operating reserve can be funded by deferring the developer fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency. This reserve must stay with the project at the time of investor exit.

- (c) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Rehabilitation and adaptive re-use projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually. This reserve must stay with the project at the time of investor exit.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD.

5. DEFERRED DEVELOPER FEES (NEGATIVE 2 POINTS)

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within fifteen years and meets the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

Deferment of more than twenty-five (25%) of the total developer fee will result in a deduction of 2 points.

6. FINANCING COMMITMENT

- (a) For all projects proposing private permanent financing, a letter of intent is required (see **Appendix E**). This letter must be on lender's letterhead, must clearly state the term of the permanent loan is at least fifteen (15) years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property, and lien position. The interest rate must be fixed and no balloon payments may be due for fifteen years.
- (b) For all projects proposing public permanent financing, binding commitments on lender's letterhead are required to be submitted by the full application deadline (see **Appendix E**). Local governments also must identify the source of funding (e.g. HOME, trust fund). All loans must have a fixed interest rate and no balloon payments for at least fifteen (15) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.
- (c) The Agency may request a letter from a construction lender documenting the loan amount, interest rate, and any origination fees.
- (d) Any Owner Investment listed as a source cannot exceed \$10,000.
- (e) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility. Project cash flow may not be used as a source of funds.

7. DEVELOPER FEES

- (a) Developer fees shall be up to \$13,500 per unit for new construction projects and twenty-eight point five percent (28.5%) of PDC line item 4 for rehabilitation projects, both being set at award.
- (b) Notwithstanding the amount calculated in subsection (7)(a), the developer fee for any project shall be a maximum of \$1,350,000 (the maximum for projects with tax-exempt bonds is \$2,700,000).
- (c) Contractor general requirements shall be limited to six percent (6%) of hard costs.
- (d) Contractor profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.
- (e) Where an identity of interest exists between the owner and contractor, the contractor profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).

8. CONSULTING FEES

The total amount of any consulting fees and developer fees shall be no more than the maximum developer fee allowed to that project.

9. ARCHITECTS' FEES

The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the PDC description). This amount does not include engineering costs.

10. INVESTOR SERVICES FEES

Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.

11. PROJECT CONTINGENCY FUNDING

All new construction projects shall have a hard cost contingency line item of five percent (5%) of total hard costs, including general requirements, contractor profit and overhead. Rehabilitation and adaptive re-use projects shall include a hard cost contingency line item of ten percent (10%) of total hard costs.

12. PROJECT OWNERSHIP

There must be common ownership between all units and buildings within a single project for the duration of the compliance period.

13. SECTION 8 PROJECT-BASED RENTAL ASSISTANCE

For all new construction projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.

Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.

14. WATER, SEWER, AND TAP FEES

Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the PDC description. Applications must provide letters from local provider(s) documenting either the amounts or if no fees will be charged.

VII. POST-AWARD PROCESSES AND REQUIREMENTS

A. ALLOCATION TERMS AND REVOCATION

1. At any time between award and issuance of IRS Form 8609, owners must have approval from the Agency prior to:
 - (a) changing the anticipated or final sources (amount, terms, or provider), including equity;
 - (b) increasing the anticipated or final uses by more than two percent (2%);
 - (c) altering the designs approved by
 - the Agency at full application, or
 - local building code office,including amenities, site layout, floor plans and elevations (Approved Design);
 - (d) starting construction, including sitework;
 - (e) increasing rents for new construction ~~low-income~~ units;
 - (f) increasing rents for rehabilitation ~~low-income~~ units above existing rents at time of award (rents shown in the approved application can be instituted once rehabilitation is complete);
 - (g) occupying units;
 - (h) any other change to the awarded application.

At its discretion, the Agency can request any documentation related to project costs. If an increase in uses or design alteration is due to a local government requirement, owners do not need prior approval but rather must provide the Agency with prompt written notice. Failure to comply with a requirement of this subsection may result in a fine of up to \$25,000, revocation of the reservation or allocation,

- future disqualification under Section IV(D)(3) of any Principal involved, or other recourse available to the Agency.
2. Ownership entities must submit a completed carryover agreement and expend at least ten percent (10%) of the project's reasonably expected basis, both by dates to be determined by the Agency.
 3. IRS Form 8609 will not be issued until:
 - (a) submission of a Final Cost Certification by an independent auditor that complies with the Agency's requirements;
 - (b) the owner documents attendance at an Agency sponsored or approved tax credit compliance seminar sponsored within the previous 12 months (see **Appendix C** for list of approved seminars); the management agent documents attendance at an Agency sponsored tax credit compliance seminar within the previous 12 months;
 - (c) monitoring fees have been paid;
 - (d) the project has been built according to the Approved Design;
 - (e) the Agency determines the project has adhered to all representations made in the approved application and will meet all relevant Plan requirements;
 - (f) documentation of the ownership entity having paid all applicable state and local taxes for the most recent year due; and
 - (g) submission of a listing of the name and address for all contractors and subcontractors indicating if there exists an identity of interest with the Owner and a statement from each representing the entity will comply with all applicable employment rules and regulations.
 4. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code. Projects will be required to elect a project-based allocation. An allocation does not constitute a representation or warranty by the Agency or Committee that the ownership entity or its owners will qualify for the tax credits. The Agency's interpretation of the Code, regulations, notices, or other guidance is not binding on the federal government.
 5. Owners must record, prior to all other liens against the property in the registry of deeds in the county where the project is located, a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating the owner will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code and will comply with other requirements under the Code, Plan, other relevant statutes and regulations, and all representations made in the approved application. The Extended Use Agreement also may contain other provisions as determined by the Agency. The owner must have good and marketable title and obtain the consent of any prior recorded lienholder (other than for construction financing) to be bound by the Extended Use Agreement terms. Owners may not claim tax credits in any taxable year unless the Extended Use Agreement is in effect and appropriately recorded.
 6. The Agency may revoke an allocation if the owner fails to implement all representations in the approved application. In addition to the terms of Section VII(A)(1), owners will acknowledge that the following constitute conditions to their allocation:
 - (a) accuracy of all representations made to the Agency, including application uploads,
 - (b) adherence to the Plan and all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act,
 - (c) provision and maintenance of amenities for the benefit of the tenants, and

- (d) not incurring a penalty under N.C.G.S. § 105-236 for failure to file a return, failure to pay taxes, or having a large tax deficiency (as defined under N.C.G.S. § 105-236). The Agency may request documentation demonstrating all project related taxes have been paid.

An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual consent. After any such cancellation, the owner will acknowledge that neither it nor the project will have any right to claim tax credits pursuant to the allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

B. COMPLIANCE MONITORING

1. Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, the Fair Housing Act, state laws, local codes, Agency loan documents, **Appendix F** (incorporated herein by reference), and any other legal requirements. The Agency may treat any failure to do so as a violation of the Plan.
2. The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and online reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**. The Agency will have access to any project information, including physical access to the property, all financial records and tenant information.

VIII. DEFINITIONS

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

4% Tax Credit: Low-income housing tax credits available pursuant to Section 42(h)(4) of the Code.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity considered under Section III(C)(6).

Choice-Limiting Activity: Includes leasing or disposition of real property and any activity that will result in a physical change to the property, including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction.

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the project, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Person who is Homeless: An adult who is living in places not meant for habitation (such as streets, cars, parks), emergency shelter, or in transitional or temporary housing but originally came from a place not meant for habitation or emergency shelter.

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from the development fee of such project, and such amount earned exceeds the lesser of twenty-five percent (25%) of the development fee for such project or \$100,000, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the lesser of twenty-five percent 25% of the development fee for such project or \$100,000. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

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 09 – OFFICES OF THE GOVERNOR AND LT. GOVERNOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Information Technology intends to adopt the rules cited as 09 NCAC 06A .0104; and 06D .0101-.0104.

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

Proposed Effective Date: December 1, 2020

Public Hearing:

Date: September 9, 2020

Time: 2:00 p.m.

Location: Webex, Link to join:
<https://ncgov.webex.com/ncgov/onstage/g.php?MTID=ec981cc268140a3b47da9ea4e714fb65c>

Reason for Proposed Action: Agency is submitting the rules for adoption pursuant to G.S. 143B-1321(a)(16), G.S. 150B-20 and G.S. 116E-4(b). Chapter 150B requires that agencies with rulemaking authority adopt rules regarding the public's right to petition the agency to adopt rules. The first proposed rule aims to put the public on notice as to how they can communicate a proposed rule to the NC Department of Information Technology (NC DIT).

Chapter 116E provides that the Government Data Analytics Center (GDAC) within NC DIT is charged with specific oversight and operation of the ELDS, and requires that rules be adopted to implement the Article. GDAC's primary purpose for pursuing rulemaking is to meet the statutory requirement found in Chapter 116E and to ensure that the agencies and institutions that exchange data for the purposes listed in the Chapter are doing so under the same rules and legal framework.

Comments may be submitted to: Leigh Jackson, PO Box 17209, Raleigh, NC 27619-7209; phone (919) 917-6620; email DITrulesrequests@nc.gov

Comment period ends: October 16, 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 06 - OFFICE OF INFORMATION AND TECHNOLOGY SERVICES

SUBCHAPTER 06A – INFORMATION TECHNOLOGY PROCUREMENT

SECTION .0100 – FORMS, TERMS AND CONDITIONS AND DEFINITIONS

09 NCAC 06A .0104 PETITIONS FOR RULE-MAKING

(a) Any person submitting a petition requesting the adoption, amendment, or repeal of a rule under this Chapter shall address the petition to the Rules Coordinator, Attn: DIT Legal Services, Mail Service Center 4101, Raleigh, North Carolina 27699-4101. Alternatively, a petition can also be emailed to DITrulesrequests@nc.gov.

(b) The petition shall contain the following:

- (1) for petitions to adopt or amend a rule, a draft of the proposed rule or amendment;
- (2) a statement of the effect of the requested rule change; and
- (3) the name and address of the petitioner.

(c) The petition may contain the following:

- (1) the reason for the proposal;
- (2) the effect of the new rule on existing rules; or
- (3) any data supporting the rule proposal.

Authority G.S. 143B-1321(a)(16); 116E-4(b).

SUBCHAPTER 06D – GOVERNMENT DATA ANALYTICS CENTER

SECTION .0100 – NORTH CAROLINA EDUCATION LONGITUDINAL DATA SYSTEM

09 NCAC 06D .0101 DEFINITIONS

In addition to the definitions set forth in 116E-1, the following definitions shall apply to the rules in this Section:

- (1) "Aggregated" means the act of collecting or combining information and presenting it in a way that does not include personally identifying information of individuals. Aggregated data can be used for the purposes of making comparisons or identifying patterns within or among groups of subjects or individuals. An example of aggregated data would be the number of high school graduates from Wake County who graduated from the University of North Carolina System with a Bachelor of Science in Engineering within the past three years and their average salary.
- (2) "Applicable law" means all statutes and rules of North Carolina and all relevant United States federal statutes, regulations, standards and policy requirements pertaining to the protection of privacy and security of confidential data. Applicable law includes the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; the Health Insurance Portability and Accountability Act, 42 U.S.C. 300gg, 29 U.S.C 1181 et seq., and 42 USC 1320d et seq.; the Workforce Innovation and Opportunity Act, 29 U.S.C. Ch. 32; and all regulations promulgated thereunder.
- (3) "Contributor" means an entity that discloses Data to the System. The Contributors may be one or more of the entities specified in G.S. 116E-5(d)(1).
- (4) "Data" means student data as defined in G.S. 116E-1(4), workforce data as defined in G.S. 116E-1(7), or other personally identifying data disclosed by the Contributors to the System and any data released from the System in response to data requests.
- (5) "GDAC" means the Government Data Analytics Center, which has the authority to operate and oversee the System pursuant to G.S. 116E-4.
- (6) "North Carolina Education Longitudinal Data System" or "System" means the technical system operated by GDAC along with the technical systems maintained and operated by the Contributors to collect, store, aggregate, and report or disclose Data solely when those systems are being utilized to respond to a Request.
- (7) "Report" means the de-identified or aggregated information, data extract, or data file generated by the System using Data on a specified group of students, workforce members, or both, to fulfill a Request.
- (8) "Request" means an inquiry for a Report containing information on a specified group of

students, workforce members, or both from the System by a Requestor.

- (9) "Requestor" means an entity or individual that makes a Request to the System for a Report. A Requestor may also be a Contributor.

Authority G.S. 143B-1321(a)(16); 116E-4(b).

09 NCAC 06D .0102 DATA REQUEST PROCESS

(a) In order to initiate a Request for a Report from the System, a Requestor must complete an Education Longitudinal Data System Report Request Form located at: <https://it.nc.gov/services/nc-gdac>. The Requestor shall submit the form through the website if submission is available online, by emailing it to gdacadmin@nc.gov, or by mailing a hard copy to the following address: Government Data Analytics Center, 4101 Mail Service Center, Raleigh, NC 27699-4101.

(b) The Requestor shall include, at a minimum, the following information in the Request form:

- (1) the name of the Requestor individual and his or her contact information;
- (2) the name of the organization for whom Requestor is making the Request on behalf of, if applicable;
- (3) whether or not the Requestor, or the organization the Requestor is making the Request on behalf of, is considered a public official as defined under 20 C.F.R. 603.2(d);
- (4) the categories or types of Data needed to generate the Reports being requested, e.g., data pertaining to students who graduated high school in 2013 who were students in the University of North Carolina School System in 2014;
- (5) the purposes for which the Requestor will utilize the Reports; and
- (6) to whom or in what medium the Requestor plans to publish research based on or interpretations of the Report.

(c) Requestors who receive data shall:

- (1) store Reports on servers or media utilizing safeguards based on nationally accepted standards, including those published by the National Institute of Standards and Technology (NIST);
- (2) comply with all Applicable Law and the Requestor data sharing agreement in storing and using the Reports, if applicable; and
- (3) use a data destruction policy based on nationally accepted standards, including NIST standards, to destroy the Report after it has served the Requestor's stated purpose if the Report contains de-identified but not aggregated workforce data from the Division of Employment Security.

Authority G.S. 143B-1321(a)(16); 116E-4(b).

09 NCAC 06D .0103 CONTRIBUTOR DATA

SHARING AGREEMENTS

(a) All Contributors that plan to contribute Data to the System shall enter into one or more Memoranda of Understanding with the Government Data Analytics Center and one or more Contributor that contain, at a minimum, the following:

- (1) obligations to comply with all Applicable Law when disclosing, accessing, or using Data in the System;
(2) limitations on Data access to authorized persons employed or contracted by the parties of the Memorandum of Understanding;
(3) requirements for safeguarding any Data disclosed by a Contributor; and
(4) terms regarding the relevant limitations of liability for State and local government agencies and private or non-governmental Contributors.

(b) In accordance with G.S. 143B-1385(d)(2), each Contributor shall be the sole custodian of the Data it stores and maintains and that may be disclosed to the System. Each Contributor shall only disclose Data to the System and to GDAC that the Contributor is authorized to disclose in compliance with Applicable Law.

Authority G.S. 143B-1321(a)(16); 116E-4(b).

09 NCAC 06D .0104 REQUESTOR DATA SHARING AGREEMENTS AND REQUIREMENTS

(a) Except as provided in Paragraph (b) of this Rule, all Requestors shall enter into a data sharing agreement with the Contributors that are the custodians of the Data that may be needed to generate a requested report. The requestor data sharing agreement shall be separate and distinct from the Memorandum of Understanding between the Contributors and GDAC.

(b) Requestors who are also Contributors and parties to the Contributor Memorandum of Understanding shall not be required to enter into a Requestor data sharing agreement unless one or more of the Contributors responding to the party's Request requires a data sharing agreement to be entered into before Data is disclosed. An example of when a Requestor data sharing agreement may be required is an instance where a Contributor is making a Request of the NC Department of Commerce for Data that has not been Aggregated.

(c) The Requestor data sharing agreements shall contain, at a minimum, the following:

- (1) limitations on Report access to authorized persons;
(2) prohibition on the re-identification of persons included in Reports as only de-identified information may be presented to Requestors in Reports from the System pursuant to G.S. 116E-(5)(e);
(3) information technology system and data security standards required by the Contributor who will be providing Data for the Report;
(4) privacy compliance standards;
(5) data breach procedures, including notification of DIT of any cybersecurity incidents as described by G.S. 143B-1320(a)(12) or G.S.

143b-1320(a)(15) using the incident report form available at: https://it.nc.gov/resources/cybersecurity-risk-management/statewide-cybersecurity-incident-report-form;

- (6) terms regarding the disclaimer of liability and warranties as applied to Contributors; and
(7) data retention and data removal standards, if applicable.

Authority G.S. 143B-1321(a)(16); 116E-4(b).

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Child Care Commission intends to amend the rules cited as 10A NCAC 09 .0102, .0302, .0403, .0601, .0606, .0607, .0701, .0713, .0801, .0802, .1103, .1106, .1402, .1403, .1702, .1703, .1706, .1707, .1714, .1718, .1721, .1724, .1729, .1730, .2204, .2206, .2209, .2318, .2408, .2410, .2509, .2703, .2809, .2817, .2903, and .3012.

Link to agency website pursuant to G.S. 150B-19.1(c): https://ncchildcare.ncdhhs.gov/Whats-New

Proposed Effective Date: December 1, 2020

Public Hearing:

Date: September 14, 2020

Time: 1:00 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 WebEx.

To join as an attendee: https://ncgov.webex.com/ncgov/onstage/g.php?MTID=e8053308a46e9ea6d1b04550aed4faa37

Reason for Proposed Action:

10A NCAC 09 .0102 DEFINITIONS

A new definition was added for the "North Carolina Early Childhood Administration Credential." Amendments were made to the definition of "Teacher's aide or Aide" by removing the stipulation that they be monetarily compensated and allows them to be uncompensated. The purpose of this definition is to allow teacher aides or aides that are at least sixteen but less than 18 years old the opportunity to gain child care experience by working under someone who meets all qualifications who is at least 21 years of age. The definition of "Toddler" was revised to define the age of a toddler as 13 months to 35 months.

10A NCAC 09 .0302 APPLICATION FOR A LICENSE FOR A CHILD CARE CENTER

Proposed amendments were made to reflect new terminology by replacing the word "background" with "record." New rule language was added to clarify the requirement for centers to maintain daily records of arrival and departure times for children as they arrive and depart the center.

10A NCAC 09 .0403 TEMPORARY LICENSES FOR CENTERS

Language is added to clarify that a temporary license remains in effect even after the six-month time period while waiting on the issuance of a rated license or administrative action. This change reflects current policy and practice.

10A NCAC 09 .0601 SAFE ENVIRONMENT

New language is added to clarify the expectation that all child care centers are to be free of lead poisoning hazards.

10A NCAC 09 .0606 SAFE SLEEP PRACTICES

“Play pen” was added to make the rule consistent with language in other sections related to rest. Additional language is proposed to promote safe sleep practices for infants during rest time, specifically noting children’s faces shall not have anything over their face during naptime.

10A NCAC 09 .0607 EMERGENCY PREPAREDNESS AND RESPONSE IN CHILD CARE CENTERS

This amendment lists the correct name of the agency that develops the Emergency Preparedness training as the Child Care Health and Safety Resource Center.

10A NCAC 09 .0701 HEALTH STANDARDS FOR CHILD CARE PROVIDERS, SUBSTITUTE PROVIDERS, VOLUNTEERS, AND UNCOMPENSATED PROVIDERS

This rule is amended to meet ADA federal requirements to say the medical report must be completed prior to employment rather than within 60 days of employment. Language is also included that the medical information must also be maintained separately from the personnel file which is a new requirement.

10A NCAC 09 .0713(f) STAFF/CHILD RATIOS FOR CENTERS

This is a recurring change with amended language to the staff/child ratio section, clarifying the combination of groups in a child care setting. New language is added to reflect the combination of children between the ages of 12 months and 24 months and to reflect the posting of staff/child ratio. New language and a chart were added clarifying staff/ratios for centers with multi-age group classrooms.

10A NCAC 09 .0801 APPLICATION FOR ENROLLMENT

Proposed language is added to the medication action plan to clarify when to update the plan, in addition to updating it annually. The rule now includes when changes are made by the parent or health care professional.

10A NCAC 09 .0802 EMERGENCY MEDICAL CARE

Proposed language adds the child’s name back into rule as what shall be included on an incident report. The words “if applicable” was added for clarification.

10A NCAC 09 .1103 ON-GOING TRAINING REQUIREMENTS

The rule is amended to allow technical assistance to count toward annual ongoing training requirements at a ratio of 3hrs:1hr under certain conditions.

10A NCAC 09 .1106 DOCUMENTATION OF TRAINING

“On-going” and “Professional Development” was added to the rule title. On-going training requirements were amended; and Paragraph (b) is a new addition requiring the documentation of countable TA.

10A NCAC 09 .1402 OUTDOOR SPACE

This proposed amendment clarifies outdoor space requirements, which are less than previously required. Prior to 2017, the rule required 75 square feet for half of the capacity. The suggested change is 75 square feet for the children using the space.

10A NCAC 09 .1403 ACTIVITIES INVOLVING WATER IN CHILD CARE CENTERS

Amendments made to reflect terminology used when children participate in aquatic activities away from the center. “Off-premises” replaces the word “field trip.”

10A NCAC 09 .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME

Change made in existing rule to reflect new terminology by replacing “background” with “record.”

New rule language added to clarify the requirement for centers to maintain daily records of arrival and departure as the children arrive and depart the center.

10A NCAC 09 .1703 ON-GOING REQUIREMENTS FOR FAMILY CHILD CARE HOME OPERATORS

The rule is amended to allow technical assistance to count toward annual ongoing training requirements at a ratio of 3hrs:1hr under certain conditions.

10A NCAC 09 .1706 NUTRITION STANDARDS

Changes “center” to “family child care home” to clarify rule type.

10A NCAC 09 .1707 BUILDING REQUIREMENTS

Proposed language added to require family child care homes to be free of lead poisoning hazards.

10A NCAC 09 .1714 EMERGENCY PREPAREDNESS

Correction made to clarify facility type. The rule referenced Child Care Centers and should have referenced Family Child Care Homes.

10A NCAC 09 .1718 REQUIREMENTS FOR DAILY

Proposed language matches this Rule with the Child Care Center rules. Individual sleeping space noting possible types and the need for linens was added. This Rule was inadvertently left out of the review of existing rules process. Individual linens are already addressed, and facilities are already giving each child individual space.

10A NCAC 09 .1721 REQUIREMENT FOR RECORDS

This is a recurring change. Language added to clarify the medical action rules and when to update them. Corrections were made to this Rule to match the Child Care Center rules.

10A NCAC 09 .1724 SAFE SLEEP PRACTICES

Language added to make rule consistent with Child Care Center rules (mat, play pen and cot was added).

10A NCAC 09 .1729 ADDITIONAL CAREGIVER AND SUBSTITUTE PROVIDER QUALIFICATIONS

Language added to clarify rule and to be consistent with Child Care Center rules. The word screening was added.

10A NCAC 09 .1730 ACTIVITIES INVOLVING WATER

This is a recurring change. Language added to rule and added new language about documentation. "The policies shall be reviewed with additional caregivers and substitute providers prior to caring for children participating in aquatic activities."

10A NCAC 09 .2204 PROVISIONAL CHILD CARE FACILITY LICENSE OR PROVISIONAL NOTICE OF COMPLIANCE

Language added to clarify policy regarding time for a facility to correct lead poisoning hazards as determined by 15A NCAC 18A .2816.

10A NCAC 09 .2206 SUSPENSION

Proposed language adds additional circumstance to the time period for correcting a violation due to suspension.

10A NCAC 09 .2209 REVOCATION OF A CHILD CARE FACILITY LICENSE OR AN ORDER TO CEASE OPERATION

Amendment sets the standards for a revocation of a child care facility when in receipt of a disapproved sanitation classification.

10A NCAC 09 .2318 CHILD CARE CENTER RECORD RETENTION

Language added to clarify the types of records that shall be kept at the Center. Under child records policy was added for "off-premises" and "shaken baby syndrome and abusive head trauma." The words "or screening" was added to proof of Tuberculosis Test to be kept in personnel records.

10A NCAC 09 .2408 STAFF QUALIFICATIONS

The revision in this Rule was to provide clarifying language to support an existing requirement in Rule .1102. There is no new requirement, only noting it in this Section as well as the other.

10A NCAC 09 .2410 CHILDREN'S ACTIVITIES

Language added that provided a reference of the daily outdoor time requirements for child care centers.

10A NCAC 09 .2509 ACTIVITIES: OFF PREMISES

Language added to reflect word change, from "field trip" to "off-premises."

10A NCAC 09 .2703(f) CRIMINAL HISTORY RECORD CHECK REQUIREMENTS FOR CHILD CARE PROVIDERS

The option for provisional qualification allows child care providers who moved to North Carolina within the last five years to become provisionally qualified if they comply with the out of state requirement. Language was ad

Comments may be submitted to: Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2201; phone (919) 814-6307; fax (919) 715-0968; email Dedra.Alston@dhhs.nc.gov

Comment period ends: October 16, 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 09 - CHILD CARE RULES

SECTION .0100 - DEFINITIONS

10A NCAC 09 .0102 DEFINITIONS

The terms and phrases used in this Chapter are defined as follows except when the context of the rule requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Activity area" means a space that is accessible to children and where related equipment and materials are kept in accordance with G.S. 110-91(12).
- (2) "Agency" as used in this Chapter means Division of Child Development and Early Education, Department of Health and Human Services located at 333 Six Forks Road, Raleigh, North Carolina 27609.
- (3) "Appellant" means the person or persons who request a contested case hearing.
- (4) "Basic School-Age Care" training (BSAC training) means the training on the elements of quality afterschool care for school-age children, developed by the North Carolina State University Department of 4-H Youth Development and subsequently revised by the North Carolina School-age Quality Improvement Project.

PROPOSED RULES

- (5) "Biocontaminant" means blood, bodily fluids, or excretions that may spread infectious disease.
- (6) "Child Care Center" means an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care. This does not include arrangements described in Item (18) of this Rule regarding Family Child Care Homes.
- (7) "Child Care Facility" means child care centers, family child care homes, and any other child care arrangement not excluded by G.S. 110-86(2), that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.
- (8) "Child care provider" as defined by G.S. 110-90.2(a)(2) includes the following employees who have contact with the children in a child care program:
 - (a) facility directors;
 - (b) child care administrative staff;
 - (c) teachers;
 - (d) teachers' aides;
 - (e) substitute providers;
 - (f) uncompensated providers;
 - (g) cooks;
 - (h) maintenance personnel; and
 - (i) drivers.
- (9) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (10) "Curriculum" means a curriculum that has been approved as set forth in these Rules by the NC Child Care Commission as comprehensive, evidenced-based, and with a reading component.
- (11) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (12) "Division" means the Division of Child Development and Early Education within the Department of Health and Human Services.
- (13) "Domains" means the developmental areas of learning described in the North Carolina Foundations for Early Learning and Development © 2013, available on the Division's website at http://ncchildcare.nc.gov/providers/pv_foundations.asp. This instrument is incorporated by reference and does not include subsequent editions. The domains address children's emotional and social development, health and physical development, approaches to play and learning, language development, and communication and cognitive development.
- (14) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (15) "Early Childhood Environment Rating Scale - Revised Edition" (Harms, Clifford, and Cryer, 2005, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html. The cost of this scale is twenty-four dollars and ninety-five cents (\$24.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours. For the purposes of this Rule, "regular business hours" for the Division means 8 a.m. to 5 p.m. during weekdays, excluding state holidays.
- (16) "Experience working with school-age children" means working with school-age children as a child care administrator, program coordinator, group leader, assistant group leader, lead teacher, teacher or aide.
- (17) "Family Child Care Environment Rating Scale – Revised Edition" (Harms, Cryer and Clifford, 2007, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html. The cost of this scale is twenty-four dollars and ninety-five cents (\$24.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.
- (18) "Family Child Care Home" means a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care. Family child care home operators must reside at the location of the family child care home.
- (19) "First aid kit" is a collection of first aid supplies (such as bandages, tweezers, disposable

- nonporous gloves, micro shield or face mask, liquid soap, cold pack) for treatment of minor injuries or stabilization of major injuries.
- (20) "Group" means the children assigned to a specific caregiver or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and in this Chapter, using space the Division has identified for each group.
 - (21) "Health care professional" means:
 - (a) a physician licensed in North Carolina;
 - (b) a nurse practitioner approved to practice in North Carolina; or
 - (c) a licensed physician assistant.
 - (22) "Household member" means a person who resides in a family home as evidenced by factors including maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
 - (23) "If weather conditions permit" means:
 - (a) temperatures that fall within the guidelines developed by the Iowa Department of Public Health and specified on the Child Care Weather Watch chart. These guidelines shall be used when determining appropriate weather conditions for taking children outside for outdoor learning activities and playtime. This chart may be downloaded free of charge from <http://idph.iowa.gov/Portals/1/Files/HCCI/weatherwatch.pdf>; and is incorporated by reference and includes subsequent editions and amendments;
 - (b) following the air quality standards as set out in 15A NCAC 18A .2832(d). The Air Quality Color Guide can be found on the Division's web site at <https://xapps.ncdenr.org/aq/ForecastCenter> or call 1-888-RU4NCAIR (1-888-784-6224); and
 - (c) no active precipitation. Caregivers may choose to go outdoors when there is active precipitation if children have appropriate clothing such as rain boots and rain coats, or if they are under a covered area.
 - (24) "Infant" means any child from birth through 12 months of age.
 - (25) "Infant/Toddler Environment Rating Scale - Revised Edition" (Harms, Cryer, and Clifford, 2003, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than 30 months old, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teachers College Press website at http://www.teacherscollegepress.com/assessment_materials.html. The cost of this scale is twenty-four dollars and ninety-five cents (\$24.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.
 - (26) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation and administered by the North Carolina Child Care Health and Safety Resource Center for the Division of Child Development and Early Education for caregivers of children ages 12 months and younger. Information regarding trainer and training availability can be found on the Division's website at http://ncchildcare.ncdhhs.gov/providers/pv_its_sidsproject.asp.
 - (27) "Lead Teacher" means an individual who is responsible for planning and implementing the daily program of activities for a group of children in a child care facility. A lead teacher is counted in staff/child ratio, has unsupervised contact with children, and is monetarily compensated by the facility.
 - (28) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility. The owner of a facility is the licensee.
 - (29) "Lockdown drill" means an emergency safety procedure in which occupants of the facility remain in a locked indoor space and is used when emergency personnel or law enforcement determine a dangerous person is in the vicinity.
 - (30) "North Carolina Early Childhood Administration Credential" means the state early childhood administration credential that is based on completion of required early childhood coursework taken at any NC Community College. Other post secondary curriculum coursework shall be approved as equivalent if the Division determines that the content of the other post secondary curriculum coursework offered is substantially equivalent to the NC Early Childhood Administration Credential Coursework. A copy of the North Carolina Early Childhood Administration Credential requirements is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection or copying at no charge during regular business

hours. This information can be found on the Division's website at <http://ncchildcare.ncdhhs.gov/providers/credential.asp>.

~~(30)~~(31) "North Carolina Early Educator Certification (certification)" is an acknowledgement of an individual's verified level of educational achievement based on a standardized scale. The North Carolina Institute for Child Development Professionals certifies individuals and assigns a certification level on two scales:

- (a) the Early Care and Education Professional Scale (ECE Scale) in effect as of July 1, 2010; or
- (b) the School Age Professional Scale (SA Scale) in effect as of May 19, 2010.

Each scale reflects the amount of education earned in the content area pertinent to the ages of children served. The ECE Scale is designed for individuals working with or on behalf of children ages birth to five. The SA Scale is designed for individuals working with or on behalf of children ages 5 to 12 who are served in school age care settings. Information on the voluntary certification process can be found on the North Carolina Institute for Child Development Professionals website at

<http://ncicdp.org/certification-licensure/eec-overview/>.

~~(31)~~(32) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of required early childhood coursework taken at any NC Community College. Other post secondary curriculum coursework shall be approved as equivalent if the Division determines that the content of the other post secondary curriculum coursework offered is substantially equivalent to the NC Early Childhood Credential Coursework. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection or copying at no charge during regular business hours. This information can be found on the Division's website at <http://ncchildcare.ncdhhs.gov/providers/credential.asp>.

~~(32)~~(33) "Operator" means the owner, director, or other person having responsibility for operation of a child care facility subject to licensing.

~~(33)~~(34) "Owner" means any person with a five percent or greater equity interest in a child care facility; however, stockholders of corporations who own child care facilities shall not be subject to

mandatory criminal history checks pursuant to G.S. 110-90.2 unless they are a child care provider.

~~(34)~~(35) "Parent" means a child's parent, legal guardian, or full-time custodian.

~~(35)~~(36) "Passageway" means a hall or corridor.

~~(36)~~(37) "Person" means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association.

~~(37)~~(38) "Premises" means the entire child care building and grounds including natural areas, outbuildings, dwellings, vehicles, parking lots, driveways and other structures located on the property.

~~(38)~~(39) "Preschooler" or "preschool-age child" means any child who is at least three years of age and does not fit the definition of school-age child in this Rule.

~~(39)~~(40) "Reside" refers to any person that lives at a child care facility location. Factors for determining residence include:

- (a) use of the child care facility address as a permanent address for personal identification or mail delivery;
- (b) use of the child care facility to store personal belongings such as furniture, clothing, and toiletry items; and
- (c) names listed on official documents such as criminal records or property tax records.

~~(40)~~(41) "School-Age Care Environment Rating Scale, Updated Edition" (Harms, Jacobs, and White, 2014, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three or more points for the program standards of a rated license. This instrument is incorporated by reference and does not include subsequent editions. A copy of the scale is available for purchase on the Teacher College Press website at http://www.teacherscollegepress.com/assessment_materials.html. The cost of this scale is twenty-four dollars and ninety-five cents (\$24.95). A copy of this instrument is on file at the Division at the address given in Item (2) of this Rule and is available for public inspection during regular business hours.

~~(41)~~(42) "School-age child" means any child who is attending or who has attended a public or private grade school or kindergarten and meets age requirements as specified in G.S. 115C-364.

~~(42)~~(43) "Seasonal Program" means a recreational program as set forth in G.S. 110-86(2)(b).

- ~~(43)~~(44) "Shelter-in-Place drill" means staying in place to take shelter rather than evacuating. It involves selecting a small interior room, with no or few windows, and used when emergency personnel or law enforcement determine there is an environmental or weather related threat.
- ~~(44)~~(45) "Staff" or "staff member" as used in this Chapter includes child care providers, substitute providers, and uncompensated providers. Volunteers, as defined in this Rule, are not staff members.
- ~~(45)~~(46) "Substitute provider" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months and may or may not be monetarily compensated by the facility. Any substitute provider ~~shall~~ must be at least 18 years of age and literate.
- ~~(46)~~(47) "Teacher" means an individual who assists the Lead Teacher in planning and implementing the daily program of activities for a group of children in a child care facility. A teacher is counted in staff/child ratio, has unsupervised contact with children, and is monetarily compensated by the facility.
- ~~(47)~~(48) "Teacher's aide" or "Aide" means a person who assists the lead teacher or the teacher in planning and implementing the daily program, ~~is monetarily compensated, shall be at least 16 years old and less than 18 years old, shall be literate, and may count in staff/child ratio as long as they work under the direct supervision of a credentialed staff person who is at least 21 years of age, shall not be counted in staff/child ratio or have unsupervised contact with children.~~
- ~~(48)~~(49) "Toddler" means any child ages 13 months to ~~3 years of age.~~ 35 months of age.
- ~~(49)~~(50) "Track-Out Program" means any child care provided to school-age children when they are out of school on a year-round school calendar.
- ~~(50)~~(51) "Uncompensated provider" means a person who works in a child care facility and is counted in staff/child ratio or has unsupervised contact with children, but who is not monetarily compensated by the facility. Any uncompensated provider ~~shall~~ must be at least 18 years of age and literate.
- ~~(51)~~(52) "Volunteer" means a person who works in a child care facility and is not counted in staff/child ratio, does not have unsupervised contact with children, and is not monetarily compensated by the facility. A person who is at least 13 years of age, but less than 16 years of age, may work on a volunteer basis, as long as he or she is supervised by and works with a staff person who is at least 21 years of age and meets staff qualification requirements.

Authority G.S. 110-85; 110-88; 110-90.2; 143B-168.3.

SECTION .0300 - PROCEDURES FOR OBTAINING A LICENSE

10A NCAC 09 .0302 APPLICATION FOR A LICENSE FOR A CHILD CARE CENTER

(a) An application for a license for a child care center shall be submitted on the form provided by the Division, which may be found online at http://ncchildcare.ncdhhs.gov/PDF_forms/FacilityProfileApp.pdf. The application for a child care center license shall include the following information:

- (1) owner name;
- (2) center name, address, phone number, and location address;
- (3) center contact information;
- (4) requested age range of children in the child care center;
- (5) hours of operation;
- (6) type of care to be provided;
- (7) type of building;
- (8) type of center;
- (9) proposed opening date;
- (10) proposed number of children to be served;
- (11) type of business operation;
- (12) history of operation or licensing of child care facilities; and
- (13) signature of applicant of either:
 - (A) the individual who will be responsible for the operation of the center and for assuring compliance with G.S. 110, Article 7 and this Chapter; or
 - (B) an officer of an entity who will be responsible for the operation of the center and for ensuring compliance with G.S. 110, Article 7 and this Chapter.

Upon receipt of the application, the Division shall assess the information provided to determine if the prospective licensee may be denied a license for one or more of the reasons set forth in 10A NCAC 09 .2215.

(b) In addition to the application, an applicant shall submit the following documentation:

- (1) the required criminal ~~record~~ background check qualification letter as set forth in 10A NCAC 09 .2703;
- (2) inspection reports required by G.S. 110-91(1), (4), and (5). If a center does not conform with a building, fire, or sanitation standard, the Division shall accept an inspector's determination that equivalent, alternative protection is provided;
- (3) measurements of all rooms to be used for child care and a sketch of the center's floor plan, including ceiling height, location of bathrooms, doors, and required exits; and

- (4) written information to verify compliance with G.S. 110, Article 7 and the Rules in this Chapter as follows:
 - (A) emergency medical plan;
 - (B) activity plans;
 - (C) discipline policy;
 - (D) incident reports; and
 - (E) incident logs.

(c) During the pre-licensing visits, the applicant or the operator shall be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center shall comply with applicable requirements for activities, equipment, and staff-child ratios for the capacity of the center and type of license requested.

(d) During the pre-licensing visit the applicant shall have the following available for review pursuant to 10A NCAC 09 .0304(g):

- (1) staff records that include:
 - (A) an application for employment and date of birth;
 - (B) documentation of education, training, and experience;
 - (C) medical and health records;
 - (D) documentation of staff orientation, participation in training, and staff development activities; and
 - (E) required criminal history ~~records~~ background check documentation;
- (2) children's records that include an application for enrollment, medical and immunization records, and permission to seek emergency medical care;
- (3) daily attendance records;
- (4) daily records of arrival and departure times at the center for each ~~child~~; child and shall be maintained as children arrive and depart;
- (5) records of monthly fire drills documenting the date and time of each drill, the length of time taken to evacuate the building, and the signature of the person who conducted the drill as required by NC Fire Code 405.5; A copy of the form may be found on the Division's website at http://ncchildcare.ncdhhs.gov/pdf_forms/EPR_EmergencyDrillLog_Centers.pdf;
- (6) records of monthly playground inspections documented on a checklist provided by the Division; A copy of the form may be found on the Division's website at http://ncchildcare.ncdhhs.gov/pdf_forms/playground.pdf;
- (7) records of administered medications;
- (8) records of lockdown or shelter-in-place drills as defined in 10A NCAC 09 .0102, giving the date each drill was held, the time of day, the length of time taken to get into designated locations and the signature of the person who conducted the drill. A copy of the form may be found on the Division's website at

https://ncchildcare.ncdhhs.gov/pdf_forms/EPR_EmergencyDrillLog_Centers.pdf; and
 (9) an electronic mail address for the center.

(e) The Division shall make one or more inspections of the center and premises to assess compliance with all applicable licensure statutes and rules and either:

- (1) issue a single license for the address of the center if all applicable requirements of G.S. 110, Article 7 and this Section are met;
- (2) issue a provisional license pursuant to 10A NCAC 09 .2204; or
- (3) deny the application in accordance with 10A NCAC 09 .2215.

Authority G.S. 110-85; 110-86; 110-88(2); 110-88(5); 110-91; 110-91(1), (4) and (5); 110-92; 110-93; 110-99; 143B-168.3.

SECTION .0400 - ISSUANCE OF PROVISIONAL AND TEMPORARY LICENSES

10A NCAC 09 .0403 TEMPORARY LICENSES FOR CENTERS

(a) When an operator proposes to open a new center or to change the ownership or location of an existing center, the Division shall issue the operator a temporary license upon the receipt of a license application pursuant to 10A NCAC 09 .0204 or .0302 and the documents specified in 10A NCAC 09 .0301 and .0302.

(b) The temporary license shall be posted in a prominent place in the center that parents are able to view daily.

(c) The temporary license shall remain in effect for a minimum of six months or until expire after six months or upon the issuance of a star-rated license, provisional license, a special provisional, provisional, or probationary license, summary suspension, suspension, or a denial of a rated license to the operator, operator whichever occurs earlier.

Authority G.S. 110-88(10); 110-99; 143B-168.3.

SECTION .0600 - SAFETY REQUIREMENTS FOR CHILD CARE CENTERS

10A NCAC 09 .0601 SAFE ENVIRONMENT

(a) A safe indoor and outdoor environment shall be provided for the children in care in accordance with rules in this Section.

(b) All equipment and furnishings shall be in good repair. All commercially manufactured equipment and furnishings shall be assembled and installed according to procedures specified by the manufacturer. For equipment and furnishings purchased after September 1, 2017, the manufacturer's instructions shall be kept on file or electronically accessible, if available.

(c) Equipment and furnishings shall be sturdy, stable, and free of hazards that may injure children including sharp edges, lead based or peeling paint, rust, loose nails, splinters, protrusions (excluding nuts and bolts on sides of fences), and pinch and crush points.

(d) All broken equipment or furnishings referenced in Paragraph (c) of this Rule shall be removed from the premises immediately or made inaccessible to the children.

(e) Each child care center shall provide equipment and furnishings that are child-size or that can be adapted use by

children. Chairs and tables shall be of appropriate height for the children who will be using them.

(f) Each child care center shall be free of lead poisoning hazards as defined in G.S. 130A-131.7(7).

Authority G.S. 110-91(3),(6); 143B-168.3.

10A NCAC 09 .0606 SAFE SLEEP PRACTICES

(a) Each center licensed to care for infants aged 12 months or younger shall develop, adopt, and comply with a written safe sleep policy that:

- (1) specifies that caregivers shall place infants aged 12 months or younger on their backs for sleeping, unless:
 - (A) for an infant aged six months or less, the center receives a written waiver of this requirement from a health care professional; or
 - (B) for an infant older than six months, the center receives a written waiver of this requirement from a health care professional, or a parent or a legal guardian;
- (2) specifies no pillows, wedges or other positioners, pillow-like toys, blankets, toys, bumper pads, quilts, sheepskins, loose bedding, towels and washcloths, or other objects may be placed with a sleeping infant aged 12 months or younger;
- (3) specifies that children shall not be swaddled;
- (4) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
- (5) specifies that the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75° F;
- (6) specifies that caregivers shall visually check, in person, sleeping infants aged 12 months or younger at least every 15 minutes;
- (7) specifies how caregivers shall document compliance with visually checking on sleeping infants aged 12 months or younger;
- (8) specifies that pacifiers that attach to infant clothing shall not be used with sleeping infants;
- (9) specifies that infants aged 12 months or younger sleep alone in a crib, bassinet, play pen, mat, or cot;
- (10) specifies that infants aged 12 months or younger are prohibited from sleeping in sitting devices, including car safety seats, strollers, swings, and infant carriers. Infants that fall asleep in sitting devices shall be moved to a crib, bassinet, play pen, mat, or cot; and
- (11) specifies any other steps the center shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The center shall post a copy of its safe sleep policy about infant safe sleep practices in the infant room where it can be easily seen by parents and caregivers.

(c) A copy of the center's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the center. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:

- (1) the infant's name;
- (2) the date the infant first attended the center;
- (3) the date the center's safe sleep policy was given and explained to the parent; and
- (4) the date the parent signed the acknowledgement.

The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.

(d) If a center amends its safe sleep policy, it shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.

(e) A caregiver shall place a child age 12 months or younger on the child's back for sleeping, unless for a child age 6 months or younger, the operator obtains a written waiver from a health care professional; or for a child older than 6 months, the operator obtains a written waiver from a health care professional or parent.

Waivers shall include the following:

- (1) the infant's name and birth date;
- (2) the signature and date of the infant's health care professional or parent;
- (3) if a wedge is needed specify why it is needed and how it is to be used; and
- (4) the infant's authorized sleep positions.

The center shall retain the waiver in the child's record as long as the child is enrolled at the center.

(f) For each infant with a waiver on file at the center as specified in Paragraph (e) of this Rule, a notice shall be posted for quick reference near the infant's crib, bassinet, play pen, cot or mat that shall include:

- (1) the infant's name;
- (2) the infant's authorized sleep position; and
- (3) the location of the signed waiver.

No confidential medical information, including an infant's medical diagnosis, shall be shown on the notice.

(g) Documents that verify staff member's compliance with visual checks on infants shall be maintained for a minimum of one month.

(h) A bed, crib, or cot, equipped with a firm waterproof mattress at least four inches thick and a fitted sheet shall be provided for each child who remains in the center after midnight. The top of bunk beds shall be used by school-age children only.

(i) A caregiver shall not place anything over the face of a child during rest time.

Authority G.S. 110-85; 110-91(15); 143B-168.3.

10A NCAC 09 .0607 EMERGENCY PREPAREDNESS AND RESPONSE IN CHILD CARE CENTERS

(a) For the purposes of this Rule, the Emergency Preparedness and Response in Child Care is a session training developed by the

~~Division of Public Health~~ North Carolina Child Care Health and Safety Resource Center for child care operators and providers on creating an Emergency Preparedness and Response Plan and practicing, responding to and recovering from emergencies in child care centers.

(b) Existing child care centers shall have one person on staff who has completed the Emergency Preparedness and Response in Child Care training. New centers shall have one person on staff who has completed the Emergency Preparedness and Response in Child Care training within one year of the effective date of the initial license. When the trained staff member leaves employment, the center shall ensure that another staff member completes the required training within four months of the vacancy. Documentation of completion of the training shall be maintained in the individual's personnel file or in a file designated for emergency preparedness and response plan documents.

(c) Upon completion of the Emergency Preparedness and Response in Child Care training, the trained staff shall develop the Emergency Preparedness and Response Plan. The Emergency Preparedness and Response Plan means a written plan that addresses how a child care center will respond to both natural and man-made disasters, such as fire, tornado, flood, power failures, chemical spills, bomb threats, earthquakes, blizzards, nuclear disasters, or a dangerous person or persons in the vicinity, to ensure the safety and protection of the children and staff. This Plan must be on a template provided by the Division available at <https://rmp.nc.gov/portal/#>, and completed within four months of completion of the Emergency Preparedness and Response in Child Care training.

(d) The Emergency Preparedness and Response Plan shall include:

- (1) written procedures for accounting for all in attendance including:
 - (A) the location of the children, staff, volunteer and visitor attendance lists; and
 - (B) the name of the person(s) responsible for bringing the children, staff, volunteer and visitor attendance lists in the event of an emergency.
- (2) a description for how and when children shall be transported;
- (3) methods for communicating with parents and emergency personnel or law enforcement;
- (4) a description of how children's nutritional and health needs will be met;
- (5) the relocation and reunification process;
- (6) emergency telephone numbers;

- (7) evacuation diagrams showing how the staff, children, and any other individuals who may be present will evacuate during an emergency;
- (8) the date of the last revision of the plan;
- (9) specific considerations for non-mobile children and children with special needs; and
- (10) the location of a Ready to Go File. A Ready to Go File means a collection of information on children, staff and the facility, to utilize, if an evacuation occurs. The file shall include, a copy of the Emergency Preparedness and Response Plan, contact information for individuals to pick-up children, each child's Application for Child Care, medication authorizations and instructions, any action plans for children with special health care needs, a list of any known food allergies of children and staff, staff contact information, Incident Report forms, an area map, and emergency telephone numbers.

(e) The trained staff shall review the Emergency Preparedness and Response Plan annually, or when information in the plan changes, to ensure all information is current.

(f) All staff shall review the center's Emergency Preparedness and Response Plan during orientation and on an annual basis with the trained staff. Documentation of the review shall be maintained at the center in the individual's personnel file or in a file designated for emergency preparedness and response plan documents.

(g) All substitutes and volunteers counted in ratio shall be informed of the child care center's Emergency Preparedness and Response Plan and its location. Documentation of this notice shall be maintained in the individual personnel files or in a file designated for emergency preparedness and response plan documents.

(h) Centers operated by a Local Education Agency that have completed critical incident training and a School Risk Management Plan as set forth by the Department of Public Instruction shall be exempt from Paragraphs (a) through (e) of this Rule. When a School Risk Management Plan has been completed, the requirements of Paragraphs (f) and (g) of this Rule shall be applicable. The School Risk Management Plan shall be available for review by the Division. More information regarding the School Risk Management Plan is located online at <https://sera.nc.gov/srmp/>.

Authority G.S. 110-85; 143B-168.3.

SECTION .0700 - STAFF QUALIFICATIONS

10A NCAC 09 .0701 HEALTH STANDARDS FOR CHILD CARE PROVIDERS, SUBSTITUTE PROVIDERS, VOLUNTEERS, AND UNCOMPENSATED PROVIDERS

(a) Health and emergency information shall be obtained for staff members as specified in the chart below:

Required for:	Item Requirements:	Due Date:
Child care providers and uncompensated providers who are not substitute providers or volunteers as defined in 10A	Medical Report A statement signed by a health care professional that indicates that the	Within 60 days of employment. <u>Prior to employment.</u>

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NCAC 09 .0102, including the director.	person is emotionally and physically fit to care for children.	When submitted, the medical statement shall not be older than 12 months.
All staff, including the director and individuals who volunteer more than once per week.	Tuberculin (TB) Test or Screening The results indicating the individual is free of active tuberculosis shall be obtained within the 12 months prior to the date of employment.	On or before first day of work.
Child care providers, including the director, uncompensated providers, substitute providers, and volunteers.	Emergency Information Form, including the name, address, and telephone number of the person to be contacted in case of an emergency, <u>and</u> the responsible party's choice of health care <u>professional</u> . professional, any chronic illness, any medication taken for that illness, and any other information that has a direct bearing on ensuring safe medical treatment for the individual.	On or before the first day of work. The emergency information shall be updated as changes occur and at least annually.
All staff, including the director.	Health Questionnaire A statement signed by the staff member that indicates that the person is emotionally and physically fit to care for children.	Annually following the initial medical statement.
Substitute providers and volunteers.	Health Questionnaire A statement signed by the substitute provider or volunteer that indicates that the person is emotionally and physically fit to care for children.	On or before first day of work and annually thereafter.

(b) The Division, or the director of the child care center, may request an evaluation of a staff member's emotional and physical fitness to care for children when there is reason to believe that there has been deterioration in the staff member's emotional or physical fitness to care for children. This request may be based upon factors such as observations by the director or center staff, reports of concern from family, reports from law enforcement or reports from medical personnel.

(c) A copy of the forms in the chart in Paragraph (a) of this Rule may be found on the Division's website at http://ncchildcare.nc.gov/providers/pv_provideforms.asp.
http://ncchildcare.ncdhhs.gov/providers/pv_provideforms.asp.

(d) Staff medical statements, proof of a tuberculosis test or screening, and completed health questionnaires shall be included in the staff member's medical file, which must be maintained separately from the staff member's individual personnel file in the center.

Authority G.S. 110-85; 110-91(1),(8),(9); 143B-168.3.

10A NCAC 09 .0713 STAFF/CHILD RATIOS FOR CENTERS

(a) The staff/child ratios and group sizes for single-age groups of children in centers shall be as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
0 to 12 Months	1/5	10
12 to 24 Months	1/6	12
2 to 3 Years	1/10	20
3 to 4 Years	1/15	25
4 to 5 Years	1/20	25
5 Years and Older	1/25	25

- (1) ~~in any multi age group situation, when combining age groups,~~ the staff/child ratio for the youngest child in the group shall be maintained for the entire group;
- (2) children of all ages may be cared for together in groups younger than two years old may be cared for in groups with older children for the

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- first and last operating hour of the day, provided the staff/child ratio for the youngest child in the group is maintained;
- (3) a child two years of age and older may be placed with children under one year of age when a physician certifies that the developmental age of the child makes this placement appropriate;
- (4) when determined to be developmentally appropriate by the operator and parent, a child age two or older may be placed one age level above his or her chronological age without affecting the staff/child ratio for that group. This provision shall be limited to one child per group;
- (5) except as provided in Subparagraphs (2) and (3) of this Paragraph, children under one year of age shall be kept separate from children two years of age and over;
- (6) children between the ages of 12 months and 24 months shall not be grouped with older children unless all children in the group are less than three years of age;
- ~~(6)~~(7) when only one caregiver is required to meet the staff/child ratio and no children under two years of age are in care, that caregiver may concurrently perform food preparation or other duties that are not direct child care responsibilities as long as supervision of the children as specified in 10A NCAC 09 .1801 is maintained;
- ~~(7)~~(8) except as provided in Subparagraph ~~(6)~~(7) of this Paragraph, staff members and child care administrators who are counted in meeting the staff/child ratios as stated in this Rule shall not concurrently perform food preparation or other duties that are not direct child care responsibilities; and
- ~~(8)~~(9) when only one caregiver is required to meet the staff/child ratio, the operator shall select one of the following options for emergency relief:
- (A) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief; or

- (B) there shall be a second adult on the premises who is available to provide emergency relief.
- (10) the staff/child ratio applicable to a classroom as described in Paragraph (a) of this Rule shall be posted in that classroom in an area that parents are able to view at all times.
- (b) The staff/child ratios for a center located in a residence with a licensed capacity of 3 to 12 children when any preschool-age child is enrolled, or with a licensed capacity of 3 to 15 children when only school-age children are enrolled, are as follows:

Age of Children	Ratio Staff/Children
0 to 12 Months	1/5 preschool children plus three additional school-age children
12 to 24 Months	1/6 preschool children plus two additional school-age children
2 to 13 Years	1/10
3 to 13 Years	1/12
All school-age	1/15

- (c) The staff/child ratio applicable to a classroom for a center located in a residence as described in Paragraph (b) of this Rule shall be posted in that classroom in an area that parents are able to view at all times.
- (d) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) of this Rule and children under two years of age are in care, that person shall not concurrently perform food preparation or other duties that are not direct child care responsibilities.
- (e) When only one caregiver is required to meet the staff/child ratio for a center located in a residence, as described in Paragraph (b) of this Rule the operator shall select one of the following options for emergency relief:
- (1) the center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief and who can respond within a reasonable period of time; or
- (2) there shall be a second adult on the premises who is available to provide emergency relief.

(f) This Paragraph is for centers designed to care for children in multi-age group settings. Before meeting the ratios outlined in the chart of this Paragraph, or before changing from multi-age group ratios to single age group ratios, the Division must be notified in writing. The ratios are as follows:

Age of Children	Ratio Staff/Children	Maximum Group Size
<u>0 to 3 years of age</u>	<u>1/4</u>	<u>8</u>
<u>12 months to 36 months</u>	<u>1/5</u>	<u>10</u>
<u>24 months to 60 months</u>	<u>1/6</u>	<u>10</u>

- (1) Paragraphs (a) through (e) of this Rule do not apply to centers that choose to meet the ratios outlined in this Paragraph; and
- (2) The staff/child ratio applicable for a multi-age group as described in this Paragraph shall be

posted in that classroom in an area that parents are able to view at all times.

Authority G.S. 110-85; 110-91(7); 143B-168.3.

SECTION .0800 - HEALTH STANDARDS FOR CHILDREN

10A NCAC 09 .0801 APPLICATION FOR ENROLLMENT

(a) Each child in care shall have an individual application for enrollment completed and signed by the child's parent, as defined in 10A NCAC 09 .0102. The completed, signed application shall be on file in the center on the first day the child attends and shall include the following information:

- (1) emergency medical information as set forth in Rule .0802(c) of this Section;
(2) the child's full name and the name the child is to be called;
(3) the child's date of birth;
(4) any allergies and the symptoms and type of response required for allergic reactions;
(5) any health care needs or concerns, symptoms of and the type of response required for these health care needs or concerns;
(6) fears or behavior characteristics that the child has; and
(7) the names of individuals to whom the center may release the child, as authorized by the person who signs the application.

(b) For any child with health care needs such as allergies, asthma, or other chronic conditions that require specialized health services, a medical action plan shall be attached to the application. The medical action plan shall be completed by the child's parent or a health care professional and may include the following:

- (1) a list of the child's diagnosis or diagnoses including dietary, environmental, and activity considerations that are applicable;
(2) contact information for the child's health care professional(s);
(3) medications to be administered on a scheduled basis; and
(4) medications to be administered on an emergency basis with symptoms, and instructions.

The medical action plan shall be updated on an annual basis. ~~basis~~ and when changes to the plan are made by the child's parent or health care professional. Sample medical action plans may be found on the Division's website at http://ncchildcare.ncdhhs.gov/providers/pv_provideforms.asp;

(c) Center administrators and staff shall release a child only to an individual listed on the application.

(d) The information contained in Subparagraphs (a)(1) through (a)(7) and Paragraph (b) of this Rule, shall be accessible to caregiving staff during the time the child is in care.

(e) Center administrators and staff shall use the information provided on the application to ensure that each individual child's needs are met during the time the child is in care.

Authority G.S. 110-88; 143B-168.3.

10A NCAC 09 .0802 EMERGENCY MEDICAL CARE

(a) Each child care center shall have a written plan that sets forth the steps to follow in the event of a child medical emergency. The

plan shall be reviewed with all staff annually and whenever the plan is revised. This plan shall give the procedures to be followed to ensure that any child who becomes ill or is injured and requires medical attention while in care at the center receives appropriate medical attention. The following information shall be included in the center's emergency medical care plan:

- (1) The name of the person and at least one alternate, responsible for carrying out that plan of action, ensuring that appropriate medical care is given, and determining which of the following is needed:
(A) first aid given at the center for an injury or illness needing only minimal attention; and
(B) calling 911 in accordance with CPR or First Aid training recommendations.
(2) The name of the person and one alternate, at the center responsible for:
(A) ensuring that the signed authorization described in Paragraph (d) of this Rule is taken with the ill or injured child to the medical facility;
(B) accompanying the ill or injured child to the medical facility;
(C) notifying a child's parents or emergency contact person about the illness or injury and where the child has been taken for treatment;
(D) obtaining substitute staff, if needed, to maintain required staff/child ratio and adequate supervision of children who remain in the center; and
(3) A statement giving the location of the telephone located on the premises available for use in case of emergency. A telephone located in an office in the center that is sometimes locked during the time the children are present shall not be designated for use in an emergency.

(b) One person identified as the person or alternate responsible for carrying out the emergency medical care plan and ensuring that appropriate medical care is given shall:

- (1) be on the premises at all times; and
(2) accompany children for ~~off-premise~~ off-premises activities.

(c) Emergency medical care information shall be on file for each child. That information shall include:

- (1) the name, address, and telephone number of the parent or other person to be contacted in case of an emergency;
(2) the responsible party's choice of health care professional;
(3) any chronic illness and any medication taken for that illness; and
(4) any other information that has a direct bearing on ensuring safe medical treatment for the child.

This emergency medical care information shall be on file in the center on the child's first day of attendance and shall be updated as changes occur and at least annually.

(d) Each child's parent, legal guardian, or full-time custodian shall sign a statement authorizing the center to obtain medical attention for the child in an emergency. That statement shall be on file on the first day the child attends the center. It shall be easily accessible to staff so that it can be taken with the child whenever emergency medical treatment is necessary.

(e) The child care provider shall complete an incident report each time a child is injured as a result of an incident occurring while the child is in care. This incident report shall include:

- (1) ~~facility identifying information; the child's name, date and time of incident, part of body injured, type of injury;~~
- (2) ~~the child's name;~~
- (2)(3) ~~date and time of the incident; the names of adult witnesses to incident;~~
- (3)(4) ~~witness to the incident; a description of how and where incident occurred;~~
- (4)(5) ~~time the parent is notified of the incident and by whom; the piece of equipment involved (if any);~~
- (5)(6) ~~piece of equipment involved, if applicable; any treatment received; and~~
- (6)(7) ~~cause of injury, if applicable; the steps taken to prevent reoccurrence.~~
- (8) ~~type of injury, if applicable;~~
- (9) ~~body part injured, if applicable;~~
- (10) ~~where the child received medical treatment, if applicable;~~
- (11) ~~description of how and where the incident occurred, and the First Aid received; and~~
- (12) ~~steps taken to prevent reoccurrence.~~

This report shall be signed by the person completing it and by the parent, a copy given to the parent, and the report maintained in the child's file. A copy of the form may be found on the Division's website at http://ncchildcare.ncdhhs.gov/pdf_forms/DCDEE-0058.pdf.

(f) When medical treatment is required by a health care professional, community clinic, or local health department as a result of an incident occurring while the child is in care, a copy of the incident report shall be mailed to a representative of the Division within seven calendar days after the incident.

(g) An incident log shall be completed any time an incident report is completed. This log shall:

- (1) include the name of the child;
- (2) include the date of the incident;
- (3) include the date the incident report was submitted to the Division, if applicable;
- (4) include the name of the staff member who complete the incident report;
- (5) be cumulative and maintained in a separate file; and
- (6) be available for review by a representative of the Division.

This log shall be completed on a form provided by the Division. A copy of the log may be found on the Division's website at https://ncchildcare.ncdhhs.gov/Portals/0/documents/pdf/I/incident_log_i.pdf?ver=2017-05-16-105723-723.

(h) A First Aid information sheet shall be posted in a place for referral. The information sheet shall include first aid guidance

regarding burns, scalds, fractures, sprains, head injuries, poisons, skin wounds, stings and bites. An information sheet may be requested free of charge from the North Carolina Child Care Health and Safety Resource Center at 1-800-367-2229.

Authority G.S. 110-85; 110-91(1),(9); 143B-168.3.

SECTION .1100 – CONTINUING EDUCATION AND PROFESSIONAL DEVELOPMENT

10A NCAC 09 .1103 ON-GOING TRAINING AND PROFESSIONAL DEVELOPMENT REQUIREMENTS

(a) After the first year of employment, the child care administrator and any staff who have responsibility for planning and supervising a child care center, and staff who work with children, shall participate in on-going training activities annually, as follows:

<u>Education and Experience</u>	<u>Required Training</u>
Four-year degree or higher advanced degree in a child care related field of study from a regionally accredited college or university	5 clock hours
Two-year degree in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Administration Credential	8 clock hours
Certificate or diploma in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Credential	10 clock hours
10 years documented experience as a teacher, director, or caregiver in a licensed child care arrangement	15 clock hours
If none of the other criteria in this chart apply	20 clock hours

(b) Health and safety training shall be completed as part of on-going training so that every five years, all of the topic areas set forth in 10A NCAC 09 .1102(b) will have been covered.

(c) Completion of cardiopulmonary resuscitation (CPR) and First Aid training shall not be counted toward meeting annual on-going training requirements.

~~(d) A combination of college coursework, Continuing Education Units (CEU's) or clock hours shall be used to complete the requirements in Paragraph (a) of this Rule.~~

~~(e)~~(d) Any staff working less than 40 hours per week may choose to complete on-going training requirements as outlined in Paragraph (a) of this Rule, or the training requirement may be prorated as follows:

<u>WORKING HOURS PER WEEK</u>	<u>CLOCK HOURS REQUIRED</u>
0-10	5
11-20	10
21-30	15
31-40	20

(f)(e) For purposes of this Rule, "regionally accredited" means a college or university accredited by one of the following accrediting bodies:

- (1) Middle States Association of Colleges and Schools;
- (2) New England Association of School and Colleges;
- (3) North Central Association of Colleges and Schools;
- (4) Northwest Accreditation Commission;
- (5) Southern Association of Colleges and Schools; or
- (6) Western Association of Schools and Colleges.

(f) For every three hours of countable technical assistance provided, one hour may be counted toward annual training requirements set forth in Paragraph (a) of this Rule, not to exceed 50 percent of the total required so long as:

- (1) the child care center has a 3-5 star rated license; and
- (2) the participating administrator or staff member has earned at least 18 semester hours in early childhood education.

(g) For purposes of this Section, "countable technical assistance" means technical assistance provided to administrative or caregiving staff members at a child care center by a person who has been endorsed by the NC Institute for Child Development Professionals as a technical assistance provider and shall include:

- (1) a cycle of observation;
- (2) identified goals based on the observation;
- (3) a timeline for completion of identified goals;
- (4) evaluation and feedback for each participant;
- (5) technical assistance time in the classroom; and
- (6) one-on-one consultation with each participant at a time when they are not responsible for a child or group of children.

(h) A combination of college coursework, Continuing Education Units (CEU's), clock hours, or countable technical assistance shall be used to complete the requirements in Paragraph (a) of this Rule.

Authority G.S. 110-85; 110-91(11); 143B-168.3.

10A NCAC 09 .1106 DOCUMENTATION OF ON-GOING TRAINING AND PROFESSIONAL DEVELOPMENT

(a) Each center shall have a record of training activities in which each staff member participates, including copies of training certificates or official documentation provided by the trainer. That record shall include the subject matter, topic area in G.S. 110-91(11), training provider, date provided, hours, and name of staff

who completed the training. This documentation shall be on file and current.

(b) Each center shall have a record of countable technical assistance in which each staff member participates, including copies of documentation, observations and evaluations provided by the person who has been endorsed by the NC Institute for Child Development Professionals as a technical assistance provider. That record shall include the dates and times of technical assistance with staff, names of all participating staff members and the name of the technical assistance provider. This documentation shall be on file and current.

Authority G.S. 110-85; 110-91(9),(11); 143B-168.3.

SECTION .1400 - SPACE REQUIREMENTS

10A NCAC 09 .1402 OUTDOOR SPACE

(a) ~~When a center is licensed for 6 to 29 children, the~~ The outdoor play area shall be no smaller than 75 square feet times the total number of children for which the center is licensed, for each child using the outdoor learning environment at any one time.

~~(b) When a center is licensed for 30 or more children, the outdoor play area shall be no smaller than 75 square feet times one half of the total number of children for which the center is licensed or shall be 2,250 square feet, whichever is larger.~~

~~(e)(b) Paragraphs (a) and (b)~~ Paragraph (a) of this Rule apply only to child care centers initially licensed after April 1, 1984.

~~(d)(c)~~ The outdoor play area shall provide an area that is shaded by a building, awnings, trees, or other methods.

~~(e)(d)~~ The outdoor area shall be designed so that staff is able to adequately supervise the entire area in accordance with 10A NCAC 09 .1801(a).

Authority G.S. 110-85(1),(2); 110-91(6); 143B-168.3.

10A NCAC 09 .1403 ACTIVITIES INVOLVING WATER IN CHILD CARE CENTERS

(a) The requirements in this Rule apply to child care center "aquatic activities," which are defined as activities that take place in or around a body of water such as swimming, swimming instruction, wading, and visits to water parks. Aquatic activities do not include water play activities such as water table play, slip and slide activities, or playing in sprinklers.

(b) Aquatic activities involving the following are prohibited:

- (1) hot tubs;
- (2) spas;
- (3) saunas or steam rooms;
- (4) portable wading pools; and
- (5) natural bodies of water and other unfiltered, nondisinfected containments of water.

(c) For every 25 children in care participating in aquatic activities, there shall be at least one person who has a life guard training certificate issued by the Red Cross or other training determined by the Division to be equivalent to the Red Cross training, appropriate for both the type of body of water and type of aquatic activity. These lifeguards shall not be counted in the required staff/child ratios referenced in Paragraph (e) of this Rule.

(d) Children under the age of three shall not participate in aquatic activities except to the extent necessary to implement any child's

Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP).

(e) The following staff/child ratios shall be maintained whenever children participate in aquatic activities:

Age of Children	Ratio Staff/Children
3 to 4 Years	1/8
4 to 5 Years	1/10
5 Years and Older	1/13

Notwithstanding the staff/child ratios, at no time shall there be fewer than two staff members supervising the aquatic activity.

(f) Children shall be adequately supervised by center staff at all times while participating in aquatic activities. For purposes of this Rule, "Adequate supervision" means that half of the center staff needed to meet the staff/child ratios in Paragraph (e) of this Rule is in the water and the other half is out of the water. If an uneven number of staff are needed to meet the required staff/child ratios, the majority shall be in the water. Staff shall be stationed in pre-assigned areas that will enable them at all times to hear, see, and respond to the children whether in or out of the water. Children shall not enter the water before center staff are stationed in their pre-assigned areas. Center staff shall devote their full attention to supervising the children in their pre-assigned areas of coverage and shall communicate with one another about children moving from one area to another area.

(g) Prior to children participating in aquatic activities, the center shall develop policies that address the following:

- (1) aquatic safety hazards;
- (2) pool and aquatic activity area supervision including restroom or changing room use;
- (3) how discipline will be handled during aquatic activities;
- (4) the facility's ~~field trip~~ off-premises and transportation policies and procedures; and
- (5) that children shall be directed to exit the water during an emergency.

(h) Before staff first supervise children on an aquatic activity, and annually thereafter, staff shall sign and date statements that they have reviewed:

- (1) the center policies as specified in Paragraph (g) of this Rule;
- (2) any guidelines provided by the pool operator or other off-site aquatic facility; and
- (3) the requirements of this Rule.

The statement shall be maintained in the staff person's personnel file for one year or until it is superseded by a new statement.

(i) Centers shall obtain written permission from parents for participation in aquatic activities. The written permission shall include a statement that parents are aware of the center's aquatic policies specified in Paragraph (g) of this Rule. The center shall maintain copies of written parental permission in each child's file.

(j) Any outdoor swimming pool located on the child care center premises shall be enclosed by a fence that is at least four feet high, separated from the remaining outdoor play area by that fence, and locked and inaccessible to children when not in use.

(k) Swimming pool safety rules shall be posted and visible to children and staff for any swimming pool located on the child care center premises. These rules shall state:

- (1) the location of a First Aid kit;
- (2) that only water toys are permitted;

- (3) that children are not allowed to run or push one another;
- (4) that swimming is allowed only when at least two adults are present; and
- (5) that glass objects are not allowed.

(l) All swimming pools used by children shall meet the "Rules Governing Public Swimming Pools" in accordance with 15A NCAC 18A .2500 which are incorporated by reference, including subsequent amendments. A copy of these Rules can be found at <http://ehs.ncpublichealth.com/docs/rules/294306-9-2500.pdf> and is available at no charge.

(m) Educational activities, such as observing tadpoles, exploring mud, or learning about rocks and vegetation shall be permitted.

(n) Boating, rafting, and canoeing activities are permitted. Prior to participating in recreational activities conducted on the water, children shall wear an age or size appropriate personal floatation device approved by the United States Coast Guard. This personal floatation device shall be worn for the duration of the activity.

Authority G.S. 110-85; 110-88(5); 110-91(1),(6); 143B-168.3.

SECTION .1700 – FAMILY CHILD CARE HOME REQUIREMENTS

10A NCAC 09 .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME

(a) Any person who plans to operate a family child care home (FCCH) shall apply for a license using a form provided by the Division. Only one licensed family child care home shall operate at the location address of any home. The form can be found on the Division's website at http://ncchildcare.nc.gov/pdf_forms/FacilityProfileApp.pdf, https://ncchildcare.nc.gov//PDF_forms/Family_Child_Care_Home_Application_Packet.pdf. The application for a family child care home license shall include the following information:

- (1) owner name;
- (2) facility name, address, phone number, email address, and location address;
- (3) facility contact information;
- (4) requested age range of children in the child care center;
- (5) hours of operation;
- (6) type of care to be provided;
- (7) type of building;
- (8) type of family child care home;
- (9) proposed opening date;
- (10) proposed number of children to be served;
- (11) type of business operation;
- (12) history of operation or licensing of child care facilities; and
- (13) signature of applicant of either:
 - (A) the individual who will be responsible for the operation of the family child care home and for assuring compliance with G.S. 110, Article 7 and this Chapter; or
 - (B) an officer of an entity who will be responsible for the operation of the family child care home and for

ensuring compliance with G.S. 110, Article 7 and this Chapter.

Upon receipt of the application, the Division shall assess the information provided to determine if the prospective licensee may be denied a license for one or more of the reasons set forth in 10A NCAC 09 .2215.

(b) The applicant for a family child care home license shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include:

- (1) a copy of a non-expired qualification letter in accordance with 10A NCAC 09 .2702;
- (2) a copy of documentation of completion of a First Aid and cardiopulmonary resuscitation (CPR) course within 12 months prior to applying for a license;
- (3) a copy of documentation of completion of ITS-SIDS training within 12 months prior to applying for a license, if requesting a license to care for infants ages 12 months and younger;
- (4) proof of negative results of the applicant's tuberculosis test or screening completed within the past 12 months;
- (5) a completed health questionnaire; a copy of the health questions can be found on the Division's website, http://ncchildcare.nc.gov/pdf_forms/emergency_information_health_questionnaire_i.pdf and includes a statement signed by the staff member that indicates that the person is emotionally and physically fit to care for children;
- (6) a copy of non-expired pet vaccinations for any pet in the home;
- (7) if a home has a private well, a negative well water bacteriological analysis;
- (8) copies of any inspections required by local ordinances; and
- (9) any other documentation required by the Division according to the rules in this Section to support the issuance of a license.

(c) Upon receipt of a complete application for a family child care home and supporting documentation, a Division representative shall make an announced visit to each home. An announced visit shall not be required by a Division representative if the applicant is subject to the circumstances in 10A NCAC 09 .2214. The issuance of a license applies as follows:

- (1) if all applicable requirements of G.S. 110, Article 7 and this Section are met, a six month temporary license shall be issued;
- (2) a one- star rated license shall be issued to a family child care home operator who complies with the minimum standards for a license contained in this Section and G.S. 110-91 at the end of the six month temporary time period;
- (3) a two- through five- star rated license shall be issued to a family child care home operator who complies with minimum and voluntary standards for a license contained in this Section, Section .2800 of this Chapter and G.S. 110-91,

at the end of the six month temporary time period;

- (4) if the applicable requirements of G.S. 110, Article 7 and this Section are not met, the Division representative shall establish with the applicant a time period for the home to achieve compliance. If the Division representative determines that all applicable requirements of G.S. 110, Article 7 and this Section are met within the established time period, a license shall be issued; or

- (5) ~~if all applicable requirements of G.S. 110, Article 7 and this Section are not met or cannot be met within the established time, the Division shall deny the application. The temporary license shall remain in effect for a minimum of six months or until the issuance of a star-rated license, a special provisional license, provisional license, summary suspension, suspension, probationary license, or a denial of a rated license to the operator.~~

(d) A family child care home operator shall notify the Division no later than 30 calendar days prior to relocation of a family child care home. The operator must apply for a license for the new physical location as described in Paragraph (a) of this Rule. An operator requesting relocation of the family child care home shall not operate until he or she has received a license from the Division for the new location.

(e) When a family child care home operator wants to change ownership of the program, the prospective new operator shall apply for a new license in accordance with Paragraph (a) of this Rule, at least 30 days before the change occurs. The family child care home license shall not be bought, sold, or transferred from one individual to another.

(f) The family child care home license shall be valid only for the location address listed on it.

(g) The family child care home license shall be returned to the Division in the event of termination, revocation, suspension, or summary suspension.

(h) A family child care home licensee shall notify the Division in writing if a change occurs that affects the information shown on the license. The Division shall issue a new license upon verification of the operator's compliance with all applicable requirements in this Section for the change. This includes the following:

- (1) decreasing the capacity of the family child care home;
- (2) increasing the capacity of the family child care home;
- (3) changes to shifts of care;
- (4) requests to change the age range of the family child care home;
- (5) requests to remove a restriction from the license, including documentation of steps taken by the operator to comply with requirements which resulted in the licensure restriction; and
- (6) changes to the operator's legal name.

(i) The family child care home license shall be posted in a place in the home that parents are able to view daily.

Authority G.S. 110-88(5); 110-86; 110-91; 110-93; 110-99; 143B-168.3.

10A NCAC 09 .1703 ON-GOING REQUIREMENTS FOR FAMILY CHILD CARE HOME OPERATORS

(a) After receiving a license, family child care home operator shall:

- (1) Update the health questionnaire annually. The Division may request an evaluation of the operator's emotional and physical fitness to care for children when there is reason to believe that there has been a deterioration in the operator's emotional or physical fitness to care for children. This request may be based upon factors such as observations by the director or center staff, reports of concern from family, reports from law enforcement or reports from medical personnel. The Division may require the operator to obtain written proof that he or she is free of active tuberculosis when the Division determines that the operator was exposed to a person with active tuberculosis;
- (2) Renew First Aid training on or before expiration of the certification appropriate for the ages of children in care;
- (3) Renew CPR course on or before the expiration of the certification appropriate for the ages of children in care;
- (4) Renew ITS-SIDS training every three years from the completion of previous ITS-SIDS training; and
- (5) Complete Recognizing and Responding to Suspicions of Child Maltreatment training within 90 days of licensure. This training shall count toward requirements set forth in Paragraph (d) of this Rule. Recognizing and Responding to Suspicions of Child Maltreatment training is available at <https://www.preventchildabusenc.org/>.

(b) Family child care home operators and staff members shall complete health and safety training within one year of employment, unless the operator or staff member has completed the training within the year prior to beginning employment or within the year prior to receiving a license. Health and safety training shall be in addition to the pre-licensing visit and new staff orientation requirements set forth in Rules .1702(d) and .1729(c) of this Section. The following persons shall be exempt from this requirement:

- (1) service providers such as speech therapists, occupational therapists, and physical therapists; and
- (2) substitutes who provide services for less than 10 days in a 12-month period.

(c) The health and safety training shall include the following topic areas:

- (1) Prevention and control of infectious diseases, including immunization;
- (2) Administration of medication, with standards for parental consent;

- (3) Prevention of and response to emergencies due to food and allergic reactions;
- (4) Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (5) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event;
- (6) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
- (7) Precautions in transporting children, if applicable;
- (8) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
- (9) CPR and First Aid training as required in Rule .1102(c) and (d) of this Chapter;
- (10) Recognizing and reporting child abuse, child neglect, and child maltreatment; and
- (11) Prevention of sudden infant death syndrome and use of safe sleeping practices.

(d) After the first year of employment, the family child care home operator, and staff who work with children shall complete on-going training activities as follows:

(1)

Education and Experience	Required Training
Four-year degree or higher advanced degree in a child care related field of study from a regionally accredited college or university	5 clock hours
Two-year degree in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Administration Credential	8 clock hours
Certificate or diploma in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Credential	10 clock hours
10 years documented experience as a teacher, director, or caregiver in a licensed child care arrangement	15 clock hours
If none of the other criteria in this chart apply	20 clock hours

- (2) complete health and safety training as part of on-going training so that every five years, all the topic areas set forth in Paragraph (c) of this Rule will have been covered;
- (3) cardiopulmonary resuscitation (CPR) and First Aid training shall not be counted toward

- meeting annual on-going training activities in Subparagraph (d)(1) of this Rule;
- (4) ~~a combination of college coursework, Continuing Education Units (CEU's) or clock hours shall be used to complete the requirements in Subparagraph (d)(1) of this Rule; and~~
- (5)(4) any staff working less than 40 hours per week may choose to complete on-going training requirements as outlined in Paragraph (d)(1) of this Rule or the training requirement may be prorated as follows:

WORKING HOURS PER WEEK	CLOCK HOURS REQUIRED
0-10	5
11-20	10
21-30	15
31-40	20

(e) For purposes of this Rule, "regionally accredited" means a college or university accredited by one of the following accrediting bodies:

- (1) Middle States Association of Colleges and Schools;
- (2) New England Association of School and Colleges;
- (3) North Central Association of Colleges and Schools;
- (4) Northwest Accreditation Commission;
- (5) Southern Association of Colleges and Schools; or
- (6) Western Association of Schools and Colleges.

(f) For every three hours of countable technical assistance provided, one hour may be counted toward annual training requirements set forth in Subparagraph(d)(1) of this Rule, not to exceed 50 percent of the total required so long as:

- (1) the family child care home has a 3-5 star rated license; and
- (2) the participating operator or staff member has earned at least 18 hours semester hours in early childhood education.

(g) For purposes of this Rule, "countable technical assistance" means technical assistance provided to operator or caregiving staff members at a family child care home by a person who has been endorsed by the NC Institute for Child Development Professionals as a technical assistance provider and shall include:

- (1) a cycle of observation;
- (2) identified goals based on the observation;
- (3) a timeline for completion of identified goals;
- (4) evaluation and feedback for each participant;
- (5) technical assistance time in the family child care home; and
- (6) one-on-one consultation with each participant at a time when they are not responsible for a child or group of children.

(h) A combination of college coursework, Continuing Education Units (CEU's), clock hours, or countable technical assistance shall be used to complete the requirements in Subparagraph (d)(1) of this Rule.

~~(f)~~(i) The family child care home operator and staff members shall complete a professional development plan within one year of employment and at least thereafter. The plan shall:

- (1) document the individual's professional development goals;
- (2) be appropriate for the ages of children in their care;
- (3) include the continuing education, coursework or training needed to meet the individual's planned goals;
- (4) be completed by the operator and staff member in a collaborative manner; and
- (5) be maintained in their personnel file.

Sample professional development plan templates may be found on the Division's website at http://ncchildcare.nc.gov/providers/pv_provideforms.asp.

Another form may be used other than the sample templates provided by the Division as long as the form includes the information set forth in this Rule.

~~(g)~~(j) Each family child care home operator shall have a record of training activities in which each staff member participates, including copies of training certificates or official documentation provided by the trainer. That record shall include the subject matter, topic area in G.S. 110-91(11), training provider, date provided, hours, and name of staff who completed the training. This documentation shall be on file and current.

(k) Each family child care home operator shall have a record of countable technical assistance in which the operator and each staff member participates, including copies of documentation, observations and evaluations provided by the person who has been endorsed by the NC Institute for Child Development Professionals as a technical assistance provider. That record shall include the dates and times of technical assistance with the operator or staff, names of all participating staff members and the name of the technical assistance provider. This documentation shall be on file and current.

~~(h)~~(l) The family child care home operator and staff members may meet on-going training requirements by attending child-care workshops, conferences, seminars, or courses, provided each training activity satisfies the following criteria:

- (1) Prior approval from the Division shall not be required for training offered by a college or university with nationally recognized regional accreditation, a government agency, or a state, or international professional organization or its affiliates, provided the content complies with G.S. 110-91(11). Government agencies or state or national professional organizations who provide training shall submit an annual training plan for review by the Division. The plan is not required for any state, national, or international conferences sponsored by a professional child care organization.
- (2) Prior approval from the Division shall be required for any agencies, organizations, or

individuals not specified in Subparagraph (1) of this Paragraph who wish to provide training for child care operators and staff. To obtain such approval, the agency, organization, or individual shall:

- (A) complete and submit on-going training approval forms provided by the Division 15 business days prior to the training event that includes the name and qualifications of the trainer, name of training, target audience and content of the training;
 - (B) submit a training roster, to the Division, listing the attendees' name, the county of employment, and day time phone number no later than 15 days after the training event;
 - (C) provide training evaluations to be completed by attendees; and
 - (D) keep the training rosters and evaluations on file for two years.
- (3) Distance learning shall be permitted from trainers approved by the Division or offered by an accredited post-secondary institution, as listed on the United States Department of Education's Database of Accredited Post-Secondary Institutions and Programs at <http://ope.ed.gov/accreditation/>. Distance learning shall not be permitted for Cardiopulmonary Resuscitation (CPR) and First Aid.

~~(+)(m)~~ The Division shall approve training based upon the following factors:

- (1) the trainer's education, training, and experience relevant to the training topic;
- (2) content that is in compliance with G.S. 110-91(11); and
- (3) contact hours for the proposed content and scope of the training session.

~~(+)(n)~~ The Division shall deny approval of training to:

- (1) Agencies, organizations, or individuals not meeting the standards listed in this Rule and in G.S. 110-91(11); and
- (2) Agencies, organizations, or individuals who intentionally falsify any information submitted to the Division.

~~(+)(o)~~ Agencies, organizations, or individuals who intentionally falsify any information submitted to the Division pursuant to this Rule shall be permanently ineligible to apply for approval of training.

~~(+)(p)~~ Denial of approval of training or a determination of falsification is appealable pursuant to G.S. 110-94 and the North Carolina Administrative Procedure Act, G.S. 150B-23.

Authority G.S. 110-85; 110-88; 110-91; 143B-168.3.

10A NCAC 09 .1706 NUTRITION STANDARDS

(a) Meals and snacks served to children in a Family Child Care Home shall comply with the Meal Patterns for Children in Child

Care Programs from the United States Department of Agriculture (USDA) which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food, number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care Programs are incorporated by reference and include subsequent amendments. A copy of the Meal Patterns for Children in Child Care Programs is available online at <https://www.fns.usda.gov/cacfp/meals-and-snacks>.

(b) When children bring their own food for meals and snacks to the program, if the food does not meet the nutritional requirements specified in Paragraph (a) of this Rule, the operator must provide additional food necessary to meet those requirements.

(c) A child's parent may opt out of the supplemental food provided by the operator as set forth in G.S. 110-91(2) h.1. When a child's parent opts out of the supplemental food provided by the ~~center~~, family child care home, the operator shall obtain the parents signature acknowledging the parental decision and shall maintain the acknowledgment in the child's file at the home and provide a copy to the parent. A child's parent may opt out of the supplemental food provided by the ~~center~~, family child care home, subject to the following:

- (1) the operator shall not provide any food or drink so long as the child's parent or guardian provides all meals, snacks, and drinks scheduled to be served at the program's designated times;
- (2) the opt out ability is not available for specific meals or days based on menu options;
- (3) if a child requests specific foods being served to other children, but the parent has opted out, the operator shall not serve supplemental food; and
- (4) If the child's parent has opted out, but does not provide all meals and snacks for the child, the operator shall replace the missing meal or snack as if the child's parent or guardian had not opted out of the supplemental food program.

(d) The food required by special diets for medical, religious or cultural reasons, or parental preferences, may be provided by the operator or may be brought to the program by the parents. If the diet is prescribed by a health care professional, a statement signed by the health care professional shall be on file at the program and written instructions must be provided by the child's parent, health care professional or a licensed dietitian/nutritionist. If the diet is not prescribed by a health care professional, written instructions shall be provided by the child's parent and shall be on file at the program.

(e) Children's special diets or food allergies shall be posted in the food preparation area and in the child's eating area.

(f) Food that does not meet the nutritional requirements specified in Paragraph (a) of this Rule, such as cupcakes, cakes, and donuts shall only be offered for special occasions such as holidays and birthdays.

(g) The operator, additional caregivers, and substitute providers shall role model appropriate eating behaviors by consuming only food or beverages that meet the nutritional requirements specified in Paragraph (a) of this Rule in the presence of children in care.

PROPOSED RULES

(h) Meals and snacks shall be planned according to the number of hours a child is in care. For children ages 15 months and older a meal or snack must be provided at least every four hours. These

Rules shall apply in all situations except during sleeping hours and nighttime care:

Hours Child Is in Care	Age of Child	Snack and Meal Requirement
At least 2 hours but less than 4 hours	Preschool-age children	1 snack, unless child is present during the time a meal is being served
Any hours in care	School-age children	1 snack, unless child is present during the time a meal is being served
At least 4 hours but less than 6 hours	All Children	1 meal equal to 1/3 of the child's daily food needs
At least 6 hours but less than 12 hours	All Children	2 meals and 1 snack OR 2 snacks and 1 meal equal to ½ of the child's daily food needs
More than 12 hours	All Children	2 snacks and 2 meals equal to 2/3 of the child's daily food needs
Second Shift (approximately 3:00 p.m. to 11:00 p.m.)	All Children	1 meal

(i) The parent or health care professional of each child under 15 months of age shall provide the operator an individual written feeding plan for the child. This plan shall be followed at the home. This plan shall include the child's name, be signed by the parent or health care professional, and be dated when received by the operator. Each infant's plan shall be modified in consultation with the child's parent or health care professional to reflect changes in the child's needs as he or she develops. The feeding plans for each infant shall include the type and amount of milk, formula and food, the frequency of feedings and be available for reference by the operator.

(j) Parents shall be allowed to provide breast milk for their children. Accommodations for breastfeeding mothers shall be provided that include seating and an electrical outlet, in a place other than a bathroom, that is shielded from view by staff and the public, which may be used by mothers while they are breastfeeding or expressing milk.

(k) Each infant shall be held for bottle feeding until able to hold his or her own bottle. Bottles shall not be propped. Each child shall be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed. The feeding chair or other seating apparatus shall be disassembled for cleaning purposes.

(l) Breast milk, formula and other bottled beverages sent from home shall be fully prepared, dated, and labeled with individual child names. All beverages shall be returned to the child's parent or discarded at the end of each day.

(m) Frozen breast milk that is sent from home may be stored frozen for up to seven days. Frozen breast milk shall be labeled with the date received, date thawed for use and individual child name. Once thawed, the breast milk shall be refrigerated for no more than 24 hours. Thawed breast milk shall not be refrozen. The thawed breast milk shall be returned to the child's parent or discarded at the end of each day.

(n) Any formula which is prepared by the operator shall be prepared according to the instructions on the formula package or label, or according to written instructions from the child's health care professional.

(o) Baby food, snack items and meal items sent from home shall be dated and labeled with individual child names.

(p) Microwaves shall not be used to thaw or warm breast milk, baby food, formula or other bottled beverages. Bottle warming equipment and power cords shall be inaccessible to children when in use. Bottle warming equipment shall be emptied and cleaned daily.

(q) Infants shall not be served juice in a bottle without a prescription or written statement on file from a health care professional or licensed dietitian/nutritionist.

(r) Each infant shall be served only formula, breast milk and bottles labeled with their individual name.

(s) Drinking water shall be freely available and offered to children on a frequent basis. Individual drinking utensils shall be provided by the parent or operator.

(t) When milk, milk products, or fruit juices are provided by the operator, only pasteurized products or products which have undergone an equivalent process to pasteurization shall be used.

- (u) The operator shall serve only the following beverages:
- (1) breast milk, as specified in Paragraph (k) of this Rule;
 - (2) formula;
 - (3) water;
 - (4) unflavored whole milk, for children ages 12-23 months;
 - (5) unflavored skim or lowfat milk for children 24 months through five years;
 - (6) unflavored skim milk, unflavored low-fat milk, or flavored skim milk for children six years and older; or
 - (7) 100 percent fruit juice, limited to 6 ounces per day, for all ages.

Authority G.S. 110-85; 110-91(2); 143B-168.3.

10A NCAC 09 .1707 BUILDING REQUIREMENTS

The applicant shall ensure that the family child care home complies with the following requirements:

- (1) all children are kept on the ground level with an exit at grade;
- (2) all family child care homes must be free of lead poisoning hazards as defined in G.S. 130A-131.7(7);
- (3)(2) all homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other;
- (4)(3) all homes are provided with at least one five pound 2-A: 10-B: C type extinguisher for every 2,500 square feet of floor area;
- (5)(4) heating appliances shall be installed and maintained according to the NC Building Code;
- (6)(5) all indoor areas used by children are heated when the temperature is below 65 degrees and ventilated when the temperature is above 85 degrees;
- (7)(6) pipes or radiators that are hot enough to be capable of burning children and are accessible to the children are covered or insulated; and
- (8)(7) children are cared for in space designated as the caregiving area on a floor plan provided by the operator to the Division as specified in 10A NCAC 09 .1709. Changes to the designated caregiving space shall be submitted to the Division 30 days prior to the new space being used by children. For family child care homes licensed prior to October 1, 2017, the floor plan showing designated caregiving space shall be submitted to the Division by November 30, 2017 or the next annual inspection, whichever is sooner. For family child care homes licensed after October 1, 2017, the floor plan showing designated caregiving space shall be submitted to the Division prior to licensure.

Authority G.S. 110-85; 110-86(3); 110-91; 143B-168.3.

10A NCAC 09 .1714 EMERGENCY PREPAREDNESS AND RESPONSE

(a) For purposes of this Rule, the Emergency Preparedness and Response in Child Care is a training developed by the ~~Division of Public Health~~ North Carolina Child Care Health and Safety Resource Center for child care operators and providers on creating an Emergency Preparedness and Response Plan and practicing, responding to, and recovering from emergencies in child care facilities.

(b) Existing family child care home operators (operator or operators) shall complete the Emergency Preparedness and Response in Child Care training. Within one year of the effective date of a new license, the operator of a new family child care home shall have completed the Emergency Preparedness and Response in Child Care training. When the trained staff member leaves employment, the ~~center~~ family child care home shall ensure that

another staff member completes the required training within four months of the vacancy. Documentation of completion of the training shall be maintained in the operator's personnel file.

(c) Upon completion of the Emergency Preparedness and Response in Child Care training, the operator shall develop the Emergency Preparedness and Response Plan. The Emergency Preparedness and Response Plan means a written plan that addresses how a child care facility will respond to both natural and man-made disasters, such as fire, tornado, flood, power failures, chemical spills, bomb threats, earthquakes, blizzards, nuclear disaster, or a dangerous person in the vicinity, to ensure the safety and protection of the children and additional caregivers. This Plan shall be on a template provided by the Division available at <https://rmp.nc.gov/portal/#>, completed within four months of completion of the Emergency Preparedness and Response in Child Care training, and available for review.

(d) The Emergency Preparedness and Response Plan shall include the following:

- (1) written procedures for accounting for all in attendance, including:
 - (A) the location of the children, staff, volunteer and visitor attendance lists; and
 - (B) the name of the person(s) responsible for bringing the children, staff, volunteer and visitor attendance lists in the event of an emergency.
- (2) a description for how and when children shall be transported;
- (3) methods for communicating with parents and emergency personnel or law enforcement;
- (4) a description of how children's nutritional and health needs will be met;
- (5) the relocation and reunification process;
- (6) emergency telephone numbers;
- (7) evacuation diagrams showing how the operator, family members, children and any other individuals who may be present will evacuate during an emergency;
- (8) the date of the last revision of the plan;
- (9) specific considerations for non-mobile children and children with special needs; and
- (10) the location of the Ready to Go File. A Ready to Go File means a collection of information on children, additional caregivers and the facility, to utilize, if an evacuation occurs. The file shall include a copy of the Emergency Preparedness and Response Plan, contact information for individuals to pick-up children, each child's Application for Child Care, medication authorizations and instructions, any action plans for children with special health care needs, a list of any known food allergies of children and additional caregiver, additional caregiver contact information, Incident Report forms, an area map, and emergency telephone numbers.

- (e) The operator shall review the Emergency Preparedness and Response Plan annually, or when information in the plan changes, to ensure all information is current.
- (f) The operator shall review the Family Child Care Home's Emergency Preparedness and Response Plan with additional caregivers prior to the individual caring for children and on an annual basis.
- (g) All substitute providers and volunteers who provide care to children shall be informed of the Emergency Preparedness and Response Plan and its location. Documentation of this notice shall be maintained in the individual personnel files.

Authority 110-85; 110-88; 110-91; 143B-168.3.

10A NCAC 09 .1718 REQUIREMENTS FOR DAILY OPERATIONS

(a) The family child care home operator (operator or operators) shall provide the following on a daily basis for all children in care:

- (1) Developmentally appropriate equipment and materials for a variety of outdoor activities that allow for vigorous play, large and small muscle development, and social, emotional, and intellectual development. For purposes of this Rule "vigorous" means done with force and energy. Each child shall have the opportunity for a minimum of one hour of outdoor play each day that weather conditions permit. The operator shall provide space and time for vigorous indoor activities when children cannot play outdoors;
- (2) Individual sleep requirements for infants aged 12 months or younger shall be provided for as specified in 10A NCAC 09 .1724(a)(2). A supply of clean linens must be on hand so that linens can be changed whenever they become soiled or wet. Linens shall be changed weekly or whenever they become soiled or ~~wet~~; wet. An individual sleeping space such as a bed, crib, play pen, cot, mat, or sleeping bag with individual linens for each pre-school age child in care for four hours or more, or for all children if overnight care is provided, to rest;
- (3) A safe sleep environment by ensuring that when a child is sleeping or napping, bedding or other objects shall not be placed in a manner that covers the child's face;
- (4) A separate area that can be supervised pursuant to 10A NCAC 09 .1720(a) for children who become ill to the extent that they can no longer participate in group activities. Parents shall be notified if their child becomes too sick to remain in care;
- (5) The opportunity each day for each child under the age of 12 months for supervised play while awake and alert while positioned on his or her stomach;
- (6) Developmentally appropriate activities as planned on a written schedule and activity plan. The schedule and activity plan may be

combined as one document. Materials or equipment shall be available indoors and outdoors to support the activities listed on the written schedule and activity plan;

- (7) A written schedule that shall:
 - (A) Show blocks of time assigned to types of activities and include periods of time for both active play and quiet play or rest;
 - (B) Show times and activities that are developmentally appropriate for the ages of children in care;
 - (C) Reflect daily opportunities for both free choice and guided activities;
 - (D) Include a minimum of one hour of outdoor play throughout the day, if weather conditions permit;
 - (E) Include a daily gross motor activity that may occur indoors or outdoors; and
 - (F) For children under two years old, interspersed among the daily events shall be individualized caregiving routines such as eating, napping, and toileting;
- (8) A written activity plan that shall:
 - (A) Include activities intended to stimulate the following developmental domains, in accordance with North Carolina Foundations for Early Learning and Development, available on the Division's website at https://www.ncchildcare.ncdhhs.gov/pdf_forms/nc_foundations.pdf:
 - (i) emotional and social development;
 - (ii) health and physical development;
 - (iii) approaches to play and learning;
 - (iv) language development and communication; and
 - (v) cognitive development.
 - (B) Identify activities that allow children to choose to participate with the whole group, part of the group, or independent of the group;
 - (C) Reflect that children have at least four different activities daily, at least one of which is outdoors, if weather conditions permit, as specified in G.S. 110-91(12) as follows:
 - (i) art and other creative play;
 - (ii) children's books;
 - (iii) blocks and block building;
 - (iv) manipulatives; and
 - (v) family living and dramatic play.

- (D) Provide materials and opportunities at least weekly, indoors or outdoors, for the following:
 - (i) music and rhythm;
 - (ii) science and nature; and
 - (iii) sand and water play.
 - (9) A clean and open area that allows freedom of movement shall be available, both indoors and outdoors; and
 - (10) Operators who provide care to school-age children shall provide a balance of activities appropriate to the age, needs and interests of the school-age children.
- (b) When screen time is provided on any electronic media device with a visual display, it shall be:
- (1) offered to stimulate a developmental domain in accordance with the North Carolina Foundations for Early Learning and Development as referenced in this Section;
 - (2) limited to a maximum of 30 minutes per day and no more than a total of two and a half hours per week per child; ~~and~~
 - (3) documented on a cumulative log or activity plan, and shall be available for review by the ~~Division.~~ Division; and
 - (4) usage time periods may be extended for school assigned homework for school-age children.
- (c) Screen time is prohibited for children under the age of three years. The operator shall offer alternate activities for children under the age of three years.

Authority G.S. 110-85; 110-88; 110-91(12); 143B-168.3.

10A NCAC 09 .1721 REQUIREMENTS FOR RECORDS

(a) The family child care home operator shall maintain the following health records for each enrolled child, including his or her own preschool child(ren):

- (1) a copy of the child's health assessment as required by G.S. 110-91(1);
- (2) a copy of the child's immunization record;
- (3) an application for enrollment that includes information set forth in this Subparagraph provided by the Division that is completed and signed by a child's parent, as defined in 10A NCAC 09 .0102. A copy of the form may be found on the Division's website at https://ncchildcare.ncdhhs.gov/pdf_forms/DC-D-0377.pdf. The completed form shall be on file the first day the child attends. An operator may use another form other than the one provided by the Division, as long as the form includes the following information:
 - (A) the child's full name and the name the child is to be called;
 - (B) the child's date of birth;
 - (C) any allergies and the symptoms and type of response required for allergic reactions;

- (D) any health care needs or concerns, symptoms of and the type of response required for these health care needs or concerns;
 - (E) fears or behavior characteristics that the child has;
 - (F) the names of individuals to whom the operator may release the child as authorized by the person who signs the application;
 - (G) the names and phone numbers of persons to be contacted in an emergency situation;
 - (H) the name and phone number of the child's physician; and
 - (I) authorization for the operator to seek emergency medical care in the parent's absence.
- (4) For any child with health care needs such as allergies, asthma, or other chronic conditions that require specialized health services, a medical action plan shall be attached to the application. The medical action plan shall be completed by the child's parent or a health care professional and may include the following:
- (A) a list of the child's diagnosis or diagnoses including dietary, environmental, and activity considerations that are applicable;
 - (B) contact information for the health care professional(s);
 - (C) medications to be administered on a scheduled basis; and
 - (D) medications to be administered on an emergency basis with symptoms, and instructions.

The medical action plan shall be updated on an annual ~~basis.~~ basis and when changes to the plan are made by the child's parent or health care professional. Sample medical action plans may be found on the Division's website at https://ncchildcare.ncdhhs.gov/providers/pv_pr ovideforms.asp;

- (5) when medication is administered, authorization for the operator to administer the specific medication according to the parent's or physician's instructions.
- (b) The family child care home operator and staff shall release a child only to an individual listed on the application.
- (c) The information contained in Parts (a)(3)(A) through (a)(3)(J) and Subparagraph (a)(4) of this Rule, shall be accessible to caregiving staff during the time the child is in care at the family child care home.
- (d) The family child care home operator and staff shall use the information provided on the application to ensure that individual child's needs are met during the time the child is in care.
- (e) The family child care home operator shall complete and maintain other records that include:

- (1) documentation of the operator's Emergency Preparedness and Response Plan on a template provided by the Division of Emergency Management at <http://rmp.nc.gov/portal/#>;
 - (2) documentation that monthly fire drills are practiced. The documentation shall include the date each drill is held, the time of day, the length of time taken to evacuate the home, and the operator's signature;
 - (3) incident reports that are completed each time a child is injured or when a child receives medical treatment by a health care professional, community clinic, or local health department as a result of an incident occurring while the child is in care. ~~The incident report shall include: form shall contain the following information:~~
 - (A) facility identifying information;
 - (B) the child's name;
 - ~~(B)~~(C) date and time of the incident;
 - ~~(C)~~(D) witness to the incident;
 - ~~(D)~~(E) time the parent is notified of the incident and by ~~who;~~ whom;
 - ~~(E)~~(F) piece of equipment ~~involved;~~ involved, if applicable;
 - ~~(F)~~(G) cause of ~~injury;~~ injury, if applicable;
 - ~~(G)~~(H) ~~type of injury;~~ description of injury or incident;
 - ~~(H)~~(I) body part ~~injured;~~ injured, if applicable;
 - ~~(I)~~(J) where the child received medical ~~treatment;~~ treatment, if applicable;
 - ~~(J)~~(K) description of how and where the incident occurred and ~~pediatric~~ First Aid received; and
 - ~~(K)~~(L) steps taken to prevent ~~reoccurrence;~~ reoccurrence.
 - ~~(L)~~ ~~signature of staff member and date form completed; and~~
 - ~~(M)~~ ~~signature of parent and date.~~

This report shall be signed by the person completing it and by the parent, a copy given to the parent, and the report maintained in the child's file. When medical treatment is required, a copy of the incident report shall be mailed to a representative of the Division within seven calendar days after the incident. A copy of the form can be found on the Division's website at https://ncchildcare.ncdhhs.gov/pdf_forms/DC_DEE-0058.pdf;
 - (4) an incident log that is filled out any time an incident report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by the Division. This log shall be completed on a form supplied by the Division. A copy of the form can be found on the Division's website at https://ncchildcare.ncdhhs.gov/pdf_forms/incident_log_i.pdf;
 - (5) documentation that a monthly check for hazards on the outdoor play area is completed. This form shall be supplied by the Division and shall be maintained in the family child care home for review by the Division. The form shall include the following information:
 - (A) Name of facility, time and date the form was completed;
 - (B) Signature of individual completing form;
 - (C) General inspection items;
 - (D) Surfacing;
 - (E) General hazard items; and
 - (F) Deterioration of equipment.

For items on the checklist the operator has to check if pass or fail, if fail identify the problem and solution. A copy of the form can be found of the Division's website at https://ncchildcare.ncdhhs.gov/pdf_forms/fcch_outdoor_inspection_checklist.pdf;
 - (6) daily attendance records for all children in care, including the operator's own preschool children. The attendance record shall indicate the date and time of arrival and departure for each ~~child;~~ child and shall be maintained as children arrive and depart; and
 - (7) documentation of lockdown or shelter-in-place drills giving the date each drill is held, the time of day, the length of time taken to get into designated locations and the signature of the person who conducted the drill.
- (f) Written records shall be maintained as follows in a family child care home:
- (1) All children's records as required in this Section, except medication permission slips as required in Rule .1720(b)(13) of this Section, shall be kept on file as long as the child is enrolled and for one year from the date the child is no longer enrolled.
 - (2) Records regarding administration of medications required by Rule .1720(b)(13) of this Section shall be maintained during the time period the medication is being administered and for six months after the medication is administered.
 - (3) Additional caregiver and substitute provider records as required in this Section shall be maintained on file for as long as the individual is employed and for one year from the employee's last date of employment.
 - (4) All program records, including documentation of operator qualifications, as required in this Section shall be maintained on file for as long as the license remains valid except as follows:
 - (A) A minimum of 30 days from the revision or replacement date:

Record	Rule
Daily Schedule	.1718(a)(6)
Activity Plan	.1718(a)(6)
Infant Feeding Plan	.1706(i)
Menu	.1706(b)
Allergy Posting	.1706(e)
SIDS Sleep Chart/Visual Check	.1724(a)(8)

- (B) A minimum of one year from the revision or replacement date:

Record	Rule
Attendance	.1721(e)(6)
Emergency Numbers	.1719(a)(12)
Safe Sleep Policy	.1724(c) and (d)
Written Plan of Care	.1712
Emergency Medical Care Plan	.1713
Emergency Preparedness and Response Plan	.1721(e)(1)
Field Trip/Transportation Off-Premises and routine Transportation Permission	.1723(5) <u>.1723(5),</u> <u>.1723(15)(a)</u> <u>and .1723(b)</u>
List and Identifying Information for Children being Transported	.1723(13) and .1723(15)(c)
Fire Drill Log	.1721(e)(2)
Lockdown or Shelter-in-Place Drill Log	.1721(e)(7)
Incident Log	.1721(e)(4)
Playground Outdoor Play Area Inspection	.1721(e)(5)
Pet Vaccinations	.1719(b)(1)
Medication Error Log	.1720(b)(14)

- (5) Well-water analysis, pool inspection and inspections for local ordinances as referenced in Rules .1702(b)(7), .1730(i), and .1725(a)(1), of this Section and G.S. 110-91 shall remain on file at the family child care home for as long as the license remains valid.
- (6) Records may be maintained in a paper format or an electronic format, provided that all required signatures are preserved in a paper format, PDF, or other graphic format.

- (7) All records required in this Chapter shall be available at the family child care home for review by the Division during the hours of operation listed on the child care license.

Authority G.S. 110-88; 110-91(1),(9).

10A NCAC 09 .1724 SAFE SLEEP PRACTICES

(a) Each operator licensed to care for infants aged 12 months or younger shall develop, adopt, and comply with a written safe sleep policy that:

- (1) specifies that the operator shall place infants aged 12 months or younger on their backs for sleeping, unless:
 - (A) for an infant aged six months or less, the operator receives a written waiver of this requirement from a health care professional; or
 - (B) for an infant older than six months, the operator receives a written waiver of this requirement from a health care professional, or a parent or a legal guardian;
- (2) specifies that infants aged 12 months or younger shall be placed in a crib, bassinet or play ~~pen~~ pen, mat, or cot with a firm padded surface when sleeping;
- (3) specifies no pillows, wedges or other positioners, pillow-like toys, blankets, toys, bumper pads, quilts, sheepskins, loose bedding, towels and washcloths, or other objects may be placed in a crib with a sleeping infant aged 12 months or younger;
- (4) specifies that children shall not be swaddled;
- (5) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
- (6) specifies that the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75°F;
- (7) specifies the operator shall visually check sleeping infants aged 12 months or younger at least every 15 minutes;
- (8) specifies how the operator shall document compliance with visually checking on sleeping infants aged 12 months or younger;
- (9) specifies that pacifiers that attach to infant clothing shall not be used with sleeping infants;
- (10) specifies that infants aged 12 months or younger sleep alone in a crib, bassinet, play pen, mat, or cot;
- (11) specifies that infants aged 12 months or younger shall be prohibited from sleeping in sitting devices, including car safety seats, strollers, swings, and infant carriers. Infants that fall asleep in sitting devices shall be moved to a crib, bassinet, play pen, mat, or cot; and

(12) specifies any other steps the operator shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The operator shall post a copy of the safe sleep policy and poster about safe sleep practices in the infant room where it can be easily seen by parents and caregivers.

(c) A copy of the operator's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the home. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:

- (1) the infant's name;
- (2) the date the infant first attended the home;
- (3) the date the operator's safe sleep policy was given and explained to the parent; and
- (4) the date the parent signed the acknowledgement.

The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(d) If an operator amends a home's safe sleep policy, the operator shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(e) The operator shall place a child aged 12 months or younger on the child's back for sleeping, unless for a child aged 6 months or younger, the operator obtains a written waiver from a health care professional; or for a child older than 6 months, the operator obtains a written waiver from a health care professional or parent. Waivers shall include the following:

- (1) the infant's name and birth date;
- (2) be signed and dated by the infant's health care professional or parent;
- (3) if a wedge is needed, specify why it is needed and how it should be used; and
- (4) the infant's authorized sleep positions.

The operator shall retain the waiver in the child's record as long as the child is enrolled at the home.

(f) Documents that verify staff member's compliance with visual checks on infants shall be maintained for a minimum of one month.

(g) For each infant with a waiver on file at the home as specified in Paragraph (e) of this Rule, a notice shall be posted for quick reference near the infant's crib, bassinet, play pen, or mat that shall include:

- (1) the infant's name;
- (2) the infant's authorized sleep position; and
- (3) the location of the signed waiver.

No confidential medical information, including an infant's medical diagnosis, shall be shown on the notice.

Authority G.S. 110-85; 110-91(15); 143B-168.3.

10A NCAC 09 .1729 ADDITIONAL CAREGIVER AND SUBSTITUTE PROVIDER QUALIFICATIONS

(a) An individual who provides care for five hours or more in a week during planned absences of the family child care home operator shall:

- (1) be 21 years old;
- (2) have a high school diploma or GED;
- (3) have completed a First Aid and cardiopulmonary resuscitation (CPR) course within 12 months prior to caring for children;
- (4) have completed a health questionnaire;
- (5) have proof of negative results of a tuberculosis test or screening completed within 12 months prior to the first day of providing care;
- (6) have submitted criminal background check forms as required in Rule .2703 of this Chapter;
- (7) have documentation of annual on-going training as described in Rule .1703(d) of this Section after the first year of employment;
- (8) have completed ITS-SIDS training, if licensed to care for infants;
- (9) have completed Recognizing and Responding to Suspicions of Child Maltreatment training; and
- (10) have documentation that the operator has reviewed the requirements found in this Chapter, including the Emergency Preparedness and Response Plan, and in G.S. Chapter 110, Article 7.

While the individual provides care at a family child care home, copies of information required by Subparagraphs (1) through (10) of this Paragraph shall be on file in the home and available for review by the Division.

(b) An individual who provides care for less than five hours in a week during planned absences of the operator shall be literate and meet all requirements listed in Paragraph (a) of this Rule except the requirements for annual training and a high school diploma or GED.

(c) The operator shall conduct 16 hours of orientation with all caregivers, prior to the individual caring for children, including substitute providers, volunteers, and uncompensated providers, who are providing care. The orientation shall include an overview of the following topics, specifically focusing on the operation of the facility:

- (1) recognizing, responding to, and reporting child abuse, neglect, or maltreatment pursuant to G.S. 110-105.4 and G.S. 7B-301;
- (2) review of the home's operational policies, including the written plan of care, safe sleep policy, the transportation policy, identification of building and premises safety issues, the emergency medical care plan, and the Emergency Preparedness and Response Plan;
- (3) adequate supervision of children in accordance with Rule .1711(a) of this Section;
- (4) information regarding prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

- (5) prevention and control of infectious diseases, including immunization;
- (6) firsthand observation of the home's daily operations;
- (7) instruction regarding assigned duties;
- (8) instruction in the maintenance of a safe and healthy environment;
- (9) instruction in the administration of medication to children in accordance with Rule .1720(b) of this Section;
- (10) review of the home's purposes and goals;
- (11) review of G.S. 110, Article 7 and 10A NCAC 09;
- (12) review of Section .2800 of this Chapter if the operator has a two- through five- star license at the time of employment;
- (13) an explanation of the role of State and local government agencies in the regulation of child care, their impact on the operation of the center, and their availability as a resource;
- (14) an explanation of the individual's obligation to cooperate with representatives of State and local government agencies during visits and investigations;
- (15) prevention of and response to emergencies due to food and allergic reactions; and
- (16) review of the home's handling and storage of hazardous materials and the appropriate disposal of biocontaminants.

The operator and individual providing care shall sign and date a statement that attests that this review was completed. This statement shall be kept on file in the home and available for review by the Division.

(d) An individual who provides care during unplanned absences of the operator, such as medical emergencies, shall be 18 years old and submit criminal records check forms as required in Rule .2703(j) of this Chapter. The children of an emergency caregiver shall not be counted in the licensed capacity for the first day of the emergency caregiver's service.

Authority G.S. 110-85; 110-88; 110-91; 143B-168.3.

10A NCAC 09 .1730 ACTIVITIES INVOLVING WATER

(a) The requirements in this Rule apply to "aquatic activities," which are defined as activities that take place in a body of water such as swimming, swimming instruction, wading, and visits to water parks. Aquatic activities do not include water play activities such as water table play, slip and slide activities, or playing in sprinklers.

(b) Aquatic activities involving the following are prohibited:

- (1) hot tubs;
- (2) spas;
- (3) saunas or steam rooms;
- (4) portable wading pools; and
- (5) natural bodies of water and other unfiltered, nondisinfected containments of water.

(c) When children enrolled in a family child care home participate in aquatic activities, there shall be at least one person who has a

life guard training certificate issued by the Red Cross or other training determined by the Division to be equivalent to the Red Cross training, appropriate for both the type of body of water and type of aquatic activity. Verification of the operator's completion of this course from an approved training organization shall be maintained in their personnel file in the family child care home. The Division shall post a list of approved training organizations on its website at http://ncchildcare.nc.gov/providers/pv_sn2_ov_pd.asp and http://ncchildcare.ncdhhs.gov/providers/pv_sn2_ov_pd.asp.

(d) The family child care home operator shall be responsible for adequately supervising the aquatic activity for the duration of the activity. For purposes of this Rule, "Adequate supervision" means that the operator shall be able to hear, see, and respond to the children whether in or out of the water.

(e) Prior to children participating in aquatic activities, the operator shall develop policies that address the following:

- (1) aquatic safety hazards;
- (2) pool and aquatic activity area supervision, including restroom or changing room use;
- (3) how discipline will be handled during aquatic activities;
- (4) the operator's ~~field trip~~ off premise and transportation policies; and
- (5) that children shall be directed to exit the water during an emergency.

The policies shall be reviewed with additional caregivers and substitute providers prior to caring for children participating in aquatic activities.

(f) Family child care home operators shall obtain written permission from parents for participation in aquatic activities. The written permission shall include a statement that parents are aware of the operator's aquatic policies specified in Paragraph (f) of this Rule. The operator shall maintain copies of written parental permission in each child's file.

(g) Any outdoor swimming pool located on the family child care home premises shall be enclosed by a fence that is at least four feet high, separated from the remaining outdoor play area by that fence, and locked and inaccessible to children when not in use.

(h) Swimming pool safety rules shall be posted and visible to children and staff for any swimming pool located on the child care facility premises. These rules shall state:

- (1) the location of a First Aid kit;
- (2) that only water toys are permitted;
- (3) that children are not allowed to run or push one another;
- (4) that swimming is allowed only when the operator is present; and
- (5) that glass objects are not allowed.

(i) All swimming pools used by children in care shall meet the "Rules Governing Public Swimming Pools" in accordance with 15A NCAC 18A .2500 which are incorporated by reference, including subsequent amendments. A copy of these Rules can be found at <http://ehs.ncpublichealth.com/docs/rules/294306-9-2500.pdf> and is available at no charge.

(j) Educational activities, such as observing tadpoles, exploring mud, or learning about rocks and vegetation shall be permitted.

(k) Boating, rafting, and canoeing activities are permitted. Prior to participating in recreational activities conducted on the water,

children shall wear an age or size appropriate personal floatation device approved by the United States Coast Guard. This personal floatation device shall be worn for the duration of the activity.

Authority G.S. 110-88; 110-91(1),(3),(6); 143B-168.3.

SECTION .2200 - ADMINISTRATIVE ACTIONS AND CIVIL PENALTIES

10A NCAC 09 .2204 PROVISIONAL CHILD CARE FACILITY LICENSE OR PROVISIONAL NOTICE OF COMPLIANCE

A provisional child care facility license or provisional notice of compliance may be issued to an operator for any period of time not to exceed 12 months for, among other things, the following reasons:

- (1) a substantiation of one or more violations as a result of a complaint that do not meet the criteria for a maltreatment finding pursuant to G.S. 110-105.3(b)(3) but for which more than three months is needed to monitor for corrective action implementation;
- (2) to allow a time period for correcting a violation of the building, fire, or sanitation requirements; ~~requirements, provided that the inspector documents that the violation is not hazardous to the health or safety of the children, including lead hazard remediation;~~
- (3) to allow a time period for remediation of an identified lead poisoning hazard as defined in G.S. 130A-131.7(7), regardless of whether a provisional sanitation classification has been issued;
- ~~(3)~~(4) to allow a time period for correction of an administratively dissolved corporation status from the North Carolina Secretary of State;
- ~~(4)~~(5) when the compliance history of the facility drops below the minimum requirement set forth in G.S. 110-90;
- ~~(5)~~(6) change of location of a child care facility without proper notification to the Division as specified in Rules 10A NCAC 09 .0204(b), .0403(a), and .1702(d); or
- ~~(6)~~(7) pattern of noncompliance.

Authority G.S. 110-88(6); 110-90; 110-99; 143B-168.3.

10A NCAC 09 .2206 SUSPENSION

A suspension of a license or suspension of a notice of compliance may be issued to an operator for a time period not to exceed 12 consecutive months for the following reasons:

- (1) the operator of the child care facility is a corporate entity that has been placed under revenue suspension by the North Carolina Secretary of State;
- (2) when the Division has issued a provisional child care facility license or notice of compliance related to building, fire, or

- (3) sanitation requirements and the operator has failed to comply; or
- (3) to allow a specific time period for correcting a violation of building, fire, or sanitation requirements, provided that the appropriate inspector documents that closure of the child care facility is necessary to protect health or safety of children during ~~correction.~~ correction, or when a disapproved sanitation classification is issued to a child care facility.

The suspension of a child care facility license or suspension of a notice of compliance shall not be stayed during the pendency of an appeal.

Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3.

10A NCAC 09 .2209 REVOCATION OF A CHILD CARE FACILITY LICENSE OR AN ORDER TO CEASE OPERATION

Revocation of a child care facility license or an order to cease operation may be issued to an operator for the following reasons:

- (1) child maltreatment has occurred in a child care facility and harm occurred as set forth in Rule .2201(c)(2) of this Section;
- (2) more than two determinations of child maltreatment have occurred at a child care facility within three years;
- (3) violation of any section of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 has been willful or continual as evidenced by:
 - (a) a pattern of noncompliance, and the operator has not made efforts to correct repeated violations or is unable to comply; or
 - (b) the operator has failed to comply with the terms of a corrective action plan issued with a special provisional or probationary license or notice of compliance;
- (4) violation of any section of G.S. 110, Article 7 or the Rules of this Chapter or 10A NCAC 10 is hazardous to health or safety of children;
- (5) the operator fails to comply with an implemented protection plan as set forth in G.S. 110-105.3(e);
- (6) the operator falsifies information in violation of G.S. 110-91(14);
- (7) the compliance history of the facility drops below the minimum requirement set forth in G.S. 110-90 and the conditions at the facility are hazardous to the health and safety of the children or staff;
- (8) receipt of a disapproved sanitation classification that is not corrected with a ~~provisional superior~~ classification within 12 months of issuance of a Suspension as set forth in Rule .2206 of this Section; or

- (9) the operator of the child care facility is a corporate entity that has been placed under revenue suspension from the North Carolina Secretary of State that has not been corrected within one year of issuance of a Suspension as set forth in Rule .2206 of this Section.

- (2) Records may be maintained in a paper format or an electronic format, provided that all required signatures are preserved in a paper format, PDF or other used graphic format.
- (3) Records regarding administration of medications required by Rules .0302(d)(7) and .0803(13) of this Chapter shall be maintained during the time period the medication is being administered and for six months after the medication is administered.
- (4) All building inspections as referenced in G.S. 110-91, and in Rule .0302 of this Chapter shall remain on file at the center for as long as the license remains valid.
- (5) All fire, sanitation, and pool, inspections as referenced in G.S. 110-91, and Rules .0302 and .1403 of this Chapter shall remain on file at the center for a minimum of three years.
- (6) Each child care center shall retain records for children as follows:

Authority G.S. 110-88; 110-90; 110-102.2; 143B-168.3; 150B-3.

SECTION .2300 - FORMS

10A NCAC 09 .2318 CHILD CARE CENTER

RECORD RETENTION

All records required in this Chapter shall be maintained for review by representatives of the Division as specified in G.S. 110-91(9), Rule .0304(g) of this Chapter, and as follows:

- (1) The records shall be available at the center during the hours of operation listed on the child care license.

Type of Child Record	In each child's file, for as long as the child is enrolled	For 1 year after the child is no longer enrolled
Child Medical Report Rule .0302(d)(2)	X	X
Immunization Record Rule .0302(d)(2)	X	X
Child Application Rules .0302(d)(2) and .0801(a)	X	X
Child Emergency Medical Care Information Rules .0302(d)(2), .0801(a)(1) and .0802(c) through (d)	X	X
Safe Sleep Policy Rule .0606(c)	X	X
Notice of Amendment to Safe Sleep Policy Rule .0606(d)	X	X
Safe Sleep Waiver Rule .0606(e)	X	X
Child Medical Action Plan Rule .0801(b)	X	X
Incident Report Rule .0802(e)	X	X
Parental Permission for Administration of Medication Rules .0803(3), (4), (6) through (9) and (11)	X	X
Supplemental Food "Opt Out" Statement Rule .0901(d)	X	X
Parental Permission for Transportation and Off-Premises Activities Rules .1003(i) and (j), .1005(b)(3) and (4)	X	X
Parental Permission for Aquatic Activities Rule .1403(i)	X	X

PROPOSED RULES

Type of Child Record	In each child's file, for as long as the child is enrolled	For 1 year after the child is no longer enrolled
Discipline Policies Rule .1804(a)	X	X
Notice of Change to Discipline Policies Rule .1804(b)	X	X
<u>Shaken Baby Syndrome and Abusive Head Trauma Policy</u> Rule .0608	X	X

(7) Each child care center shall retain records for personnel as follows:

Type of Personnel Record	For at least 1 year after employee is no longer employed	For 1 Year After Record Created	Until the record is superseded by a new statement	In each personnel file or designated emergency preparedness file
Application for Employment Rule .0302(d)(1)(A)	X			
Staff Medical Report Rules .0302(d)(1)(C) and .0701(a)	X			
Health Questionnaire Rules .0302(d)(1)(C) and .0701(a)	X			
Proof of Tuberculosis Test or Screening Rules .0302(d)(1)(C) and .0701(a)	X			
Staff Emergency Medical Care Information Rules .0302(d)(1)(C) and .0701(a)	X			
Evaluation of Emotional and Physical Fitness (as applicable) Rule .0701(b)	X			
Verification of Age Rules .0302(d)(1)(A), .0703, and .0704	X			
Criminal Record Check Information Rules .0302(d)(1)(E);	X			
Education and Equivalency Forms Rules .0302(d)(1)(B), .0703, .0704 and .2510	X			
Record of On-going Training Rules .0302(d)(1)(D), and .1103(a)	X			
Documentation of Staff Orientation Rules .0302(d)(1)(D), and .1101(a)	X			
Documentation of Emergency Preparedness and Response in Child Care Training Rule .0607(b)				X

PROPOSED RULES

Type of Personnel Record	For at least 1 year after employee is no longer employed	For 1 Year After Record Created	Until the record is superseded by a new statement	In each personnel file or designated emergency preparedness file
Documentation of Review of Emergency Preparedness and Response Plan Rules .0607(e), (f) and (g)				X
Documentation of First Aid training Rule .1102(c)	X			
Documentation of CPR training Rule .1102(d)	X			
Documentation of Playground Safety Training if applicable Rule .1102(e)	X			
Documentation of ITS-SIDS Safe Sleep Training if applicable Rule .1102(f)	X			
Documentation of Aquatic Activities Policy Receipt Rule .1403(h)		X	X	
Documentation of BSAC training if applicable Rule .2510	X			

(8) Each child care center shall retain records for the program as follows:

Type of Program Record	As long as the license remains valid	A minimum of 30 days after record revised or replaced	A minimum of 1 year after record created, revised or replaced
Attendance Rule .0302(d)(3)			X
Daily record of arrival and departure times for children Rule .0302(d)(4)			X
Fire Drill Log .0604(t) Rule .0302(d)(5)			X
Playground Inspection Rules .0302(d)(6) and .0605(q)			X
Lockdown or Shelter-In-Place Drill Record Rules .0302(d)(8) and .0604(u)			X
Daily Schedule Rule .0508(a)			X
Activity Plan Rule .0508(a)		X	
Manufacturer's Instructions for equipment and furnishings Rules .0601(b) and .0605(b)	X		
Fire Evacuation Procedures Rule .0604(r)	X		

PROPOSED RULES

Type of Program Record	As long as the license remains valid	A minimum of 30 days after record revised or replaced	A minimum of 1 year after record created, revised or replaced
Written plan for evacuation in centers that do not meet institutional building code Rule .0604(r)			X
Safe Pick-Up and Delivery Procedures Rule .1003			X
Safe Sleep Policy Rule .0606(a)	X		
SIDS Sleep Chart/Visual Check Rule .0606(a)(7)		X	
Emergency Preparedness and Response Plan Rules .0607(c) and (d)			X
<u>Shaken Baby Syndrome and Abusive Head Trauma Policy</u> Rule .0608	X		
Emergency Medical Care Plan Rule .0802(a)			X
Incident Log Rule .0802(f)			X
Menu Rule .0901(b)		X	
Allergy Postings Rule .0901(g)		X	
Infant Feeding Plan Rule .0902(a)		X	
Identifying Information for Children being Transported Rule .1003(d)			X
List of children being transported Rules .1003(l) and .1005(b)(6)			X
Schedule of Off-Premise Off-Premises Activities Rule .1005(b)(5)			X
Aquatic Activity Policies Rule .1403(g)	X		
Documentation of emergency situation that necessitated a lack of direct supervision Rule .1801(a)	X		
Discipline Practices Rules .1803 and .1804	X		

Authority G.S. 110-85; 110-91(9); 143B-168.3.

SECTION .2400 - CHILD CARE FOR MILDLY ILL CHILDREN

10A NCAC 09 .2408 STAFF QUALIFICATIONS

(a) All staff working with the mildly sick children shall complete all requirements in this Chapter pertaining to preservice training in 10A NCAC 09 .0704, .0710 and .0711, orientation in 10A NCAC 09 .1101, health and safety training requirements in 10A NCAC 09 .1102, on-going training in 10A NCAC 09 .1103, and staff records in 10A NCAC 09 .0701. In addition, the requirements for staff who care for children with Level One

symptoms as described in Rule .2404, Paragraphs (a)(1)(A) and (B) of this Section shall be as follows:

- (1) Each group of children shall have a lead teacher present who has the North Carolina Early Childhood Credential or its equivalent prior to assuming care giving responsibilities.
- (2) ~~Each group of children shall have a staff person present who meets the requirements in 10A NCAC 09 .0705(a), (b), and (d). This may be the same individual referenced in Subparagraph (a)(1) of this Rule.~~

- ~~(3)~~(2) In addition to staff orientation requirements in 10A NCAC 09 .1101 of this Chapter prior to assuming care giving duties all caregivers shall complete 10 hours of training on the following:
 - (A) storage and administration of medication;
 - (B) infection control procedures;
 - (C) aspiration of nasal secretions;
 - (D) positioning for sleeping and eating;
 - (E) temperature and respiratory rate taking;
 - (F) documentation of signs, symptoms, physical appearance, intake and output, and communication with family and physicians;
 - (G) recognizing when to stop, increase, or decrease oral intake of fluids;
 - (H) recognizing signs and symptoms associated with the increased severity of illness including behavioral changes, changes in bowel movements, increased sluggishness, etc.;
 - (I) developing individualized plans of care;
 - (J) special dietary requirements and maintaining hydration; and
 - (K) emergency procedures, including notification of a parent, should a child's condition worsen.
- ~~(4)~~(3) Any caregiver caring for a child whose illness requires special knowledge, skills, or equipment shall have training and equipment prior to caring for the child.
- ~~(5)~~(4) Completion of the training required by Subparagraph (a)(2) of this Rule shall count toward meeting one year's annual on-going training requirements in 10A NCAC 09 .1103.
- ~~(6)~~(5) When a center cares for mildly sick children as a component of a child care center, the administrator shall meet the education requirements for administrators as required by G.S. 110-91(8).

(b) In addition to the staffing requirements listed in Subparagraphs (a)(1) through (a)(4) of this Rule, if children with Level Two symptoms as described in Parts (a)(2)(A) through (a)(2)(E) of Rule .2404 of this Section are in care, the following number of medical staff shall be on site based upon the total number of children in care:

<u>No. of Children</u>	<u>Type of Medical Staff</u>
1 to 10	an RN, or a LPN with a health care professional in the immediate vicinity
10 to 20	an RN
20 to 40	an RN and an additional LPN

Each medical staff shall have one year of full-time pediatric nursing experience, and may count in staff/child ratio. Medical staff may also act as lead teachers if they have the North Carolina Early Childhood Credential or equivalent.

Authority G.S. 110-88(11); 143B-168.3.

10A NCAC 09 .2410 CHILDREN'S ACTIVITIES

- (a) Daily activities shall be provided in accordance with Section .0500 of these Rules and in accordance with each child's individualized plan of care. Activity areas shall not be required, but developmentally appropriate equipment and materials must be available daily for mildly sick children in care.
- (b) Eating, toileting, sleeping, resting, and playing shall be individually determined and flexible to allow each child to decide when and whether to participate in available activities, and to nap or rest at any time.
- (c) Daily outdoor time shall be available for children with Level One ~~symptoms~~ symptoms, as set forth in Rule .0508(c) of this Chapter, who are present more than three consecutive days unless deemed inappropriate by the child's attending health care professional.

Authority G.S. 110-88(11); 143B-168.3.

SECTION .2500 - CARE FOR SCHOOL-AGE CHILDREN

10A NCAC 09 .2509 ACTIVITIES: ~~OFF-PREMISES~~ OFF-PREMISES

- (a) The requirements of this Rule and Section .1000 of this Chapter shall apply when activities for school-age children are conducted outdoors or off the premises for 75 percent of each day.
- (b) The facility shall develop a plan of activities which is posted in a place in the home base or given to the parents. The plan shall include the location, purpose, time and date, person in charge, and telephone number or method for contacting the person in charge.
- (c) Activities shall be planned to accommodate a variety of individual interests and shall provide opportunities for choice.
- (d) Written permission from parents shall be obtained before transporting children on ~~field trips or leaving the premises~~ off-premises activities.
- (e) Blanket permissions from parents for ~~field trips or leaving the premises~~ off-premises activities shall be acceptable only when a plan of activities to be conducted off the premises is posted in a place for review by parents and staff in advance on a weekly basis.

Authority G.S. 110-91(6),(12); 143B-168.3.

SECTION .2700 - CRIMINAL BACKGROUND CHECKS

10A NCAC 09 .2703 CRIMINAL HISTORY RECORD CHECK REQUIREMENTS FOR CHILD CARE PROVIDERS

- (a) In addition to the requirements in Rules .0302 and .1702 of this Chapter, a child care provider shall submit the following to the Division prior to the issuance of a license or prior to beginning employment:
 - (1) a signed and completed Authority for Release of Information form; and
 - (2) fingerprint impressions submitted on the forms required by the Division and State Bureau of Investigation;
 - (3) if a child care provider is an out-of-state resident, he or she shall also submit a certified

local history from the Clerk of Superior Court in his or her county of residence.

All required forms can be found on the Division's website at http://ncchildcare.dhhs.state.nc.us/general/dhhsrsc_childcare.asp

(b) If the child care provider has a criminal history of convictions, pending indictment of a crime, or pending criminal charges, he or she may submit to the Division additional information concerning the conviction or charges that the Division shall use in making the determination of the child care provider's qualification. The Division shall also consider the following in making its decision:

- (1) the length of time since conviction;
- (2) whether the child care provider is currently on probation;
- (3) the nature of the offense;
- (4) the circumstances surrounding the commission of the offense or offenses;
- (5) the evidence of rehabilitation;
- (6) the number and type of prior offenses; and
- (7) the age of the child care provider at the time of occurrence.

(c) If the child care provider is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity or a person designated by the chief executive officer as responsible for the operation of the facility, shall complete the criminal history record check as specified in Paragraph (a) of this Rule.

(d) If a Letter of Intent to Operate pursuant to G.S. 110-106 is submitted to the Division, the person signing the Letter of Intent shall submit all forms as required in Paragraph (a) of this Rule.

(e) Child care providers shall have a valid qualification letter prior to employment or living in the family child care home, and the qualification letter shall be kept on file at the facility for review by representatives of the Division.

(f) Provisional child care providers may be employed at a child care facility or reside in a family child care home, nonlicensed home, or child care center in a residence and shall be counted in staff/child ratio. Provisional child care providers shall be supervised at all times by an individual who received a qualifying result on a criminal background check within the past three years and may not be left alone with children. Owners found to be in violation of this Paragraph may be issued an administrative action up to and including revocation of their child care license or notice of compliance in accordance with Section .2200 of this Chapter.

(g) Within five days of applying for provisional status through the Division's online portal, the applicant shall complete and submit any documents specific to their former state(s) of residence that are necessary to complete the out-of-state portion of their background check. The applicant shall also certify in writing within five days to the Division that they have made the required requests. When requested by the Division, the applicant shall submit a copy and proof of submission of the documents necessary to complete the out-of-state portion of their background check. The Division shall provide to the applicant the necessary information to make these requests, if applicable.

(h)(g) After six months, the Division shall issue a qualification letter to a provisional child care provider if the Division does not receive a response to its request for the state sex offender registry check, the state abuse and neglect registry, or the state criminal

history check from the state or states in which the provisional provider currently resides or has resided at any time during the five years prior to submitting documents for a criminal history check. However, nothing in this Rule shall prevent the Division from disqualifying a provisional child care provider at a later date based upon failure to comply with the requirements of Paragraph (g) of this Rule or if information is received from any other state after six months have elapsed.

(i)(h) Child care providers found to be disqualified shall not be eligible for employment in child care until a qualification letter has been issued by the Division.

(j)(i) Child care providers determined by the Division to be disqualified shall be terminated by the center or family child care home immediately upon receipt of the disqualification notice.

(k)(j) Disqualification of a child care provider living in a family child care home or a center located in a residence shall be grounds for issuance of a summary suspension of the license in accordance with 10A NCAC 09 .2213.

(l)(k) Refusal on the part of the employer to dismiss a child care provider who has been found to be disqualified shall be grounds for suspension, denial, or revocation of the license or any other administrative action or civil penalty permitted by law or rule. If an applicant appeals the disqualification, the child care provider shall not be employed during the appeal process.

(m)(l) Operators, as defined by G.S. 110-86(7), shall include the criminal history mandatory reporting requirement in all new employee orientation information. All child care providers and household members who have incurred any pending charges, indictments, or convictions (other than minor traffic offenses) since the last qualification letter was issued by the Division shall notify the operator of such charges within five business days or before returning to work, whichever comes first. The operator shall notify the Division of any such pending charges, indictments, or convictions within one business day of being notified.

(n)(m) The qualification letter shall be valid for a maximum of three years from the date of issuance.

(o)(n) Prior to the expiration date of the qualification letter, the child care provider shall complete and submit the forms listed in Paragraph (a) of this Rule.

(p)(o) After a child care provider has been qualified, the Division shall complete a new criminal history record check if the Division of Child Development and Early Education conducts an investigation involving alleged criminal activity by the child care provider.

(q)(p) Individuals who live in the household who have had their 16th birthday after the initial licensing of a family child care home shall complete and submit the forms listed in Paragraph (a) of this Rule to the Division within five business days of their 16th birthday.

(r)(q) Child care operators shall notify the Division of all new child care providers who are hired or have moved into the home or center located with a residence within five business days by submitting the form provided by the Division.

Authority G.S. 110-85; 110-86(7); 110-90.2; 110-90.2(a); 110-106; 114-19.5; 143B-168.3; S.L. 2012-160, s.1.

SECTION .2800 - TWO THROUGH FIVE STAR RATED LICENSES

(b) There shall be an area that can be arranged for administrative and private conference activities.

Authority G.S. 110-88(7); 110-90(4); 143B-168.3.

10A NCAC 09 .2809 ENHANCED SPACE REQUIREMENTS

(a) There shall be at least 30 square feet inside space per child per the total licensed capacity and 75 square feet outside space for ~~one-third of the total number of the capacity for which the center is licensed, each child using the outdoor learning environment at any one time.~~ In the alternative there shall be at least 35 square feet inside space per child per the total licensed capacity and 75 square feet outside space per child for ~~at least 50 percent of the total licensed capacity.~~

10A NCAC 09 .2817 ENHANCED PROGRAM STANDARDS FOR CHILD CARE CENTERS

(a) To achieve one point for program standards, the center shall be in compliance with all applicable requirements in Rules .0513-.0516 of this Chapter.

(b) To achieve two through seven points for program standards, the center shall meet all the applicable requirements in Rule .2806 of this Section and the criteria listed in the following chart:

Program Standards (.2817) Point Level	Staff/Child Ratio Requirement	Space Requirement	Environment Rating Scale (ERS) Requirements (as referenced in Rule .2802(f) of this Section)
2 Points	Meets enhance Staff/Child Ratio in Rule .2818(b), OR	Meets Enhanced Space in Rule .2809	N/A
3 Points	Meets enhance Staff/Child Ratio in Rule .2818(b), OR	Meets Enhanced Space in Rule .2809; AND	Each classroom has at least a score of 4.0 or higher
4 Points	Meets enhanced Staff/Child Ratio in Rule .2818(b), AND	Meets Enhanced Staff/Child Ratio in Rule .2809 AND N/A	Have an average combined score of 4.5, with no one classroom score lower than 4.0 in each classroom evaluated
5 Points	Meets enhanced Staff/Child Ratio in Rule .2818(b), AND	Meets Enhanced Staff/Child Ratio in Rule .2809 AND N/A	Have an average combined score of 4.75, with no one classroom score lower than 4.0 in each classroom evaluated
6 Points	Meets enhanced Staff/Child Ratio in Rule .2818(b), AND	Meets Enhanced Space in Rule .2809; AND	Have an average combined score of 5.0, with no one classroom score lower than 4.0 in each classroom evaluated
7 Points	Meets enhanced Staff/Child Ratio in Rule .2818(b), and (c) AND	Meets Enhanced Space in Rule .2809; AND	Have a score of 5.0 in each classroom evaluated

Authority G.S. 110-88(7); 110-90(4); 143B-168.3.

SECTION .2900 - DEVELOPMENTAL DAY SERVICES

10A NCAC 09 .2903 STAFF QUALIFICATIONS

(a) Each center serving children ages birth to three years shall have:

- (1) one staff who holds a NC Birth-through-Kindergarten (B-K) Continuing or Initial License issued by the North Carolina Department of Public Instruction;
- (2) a NC Provisional B-K or Pre-K/K ~~Preschool~~ Add-on License issued by the North Carolina Department of Public Instruction; ~~or~~
- (3) a NC Lateral Entry B-K License issued by the North Carolina Department of Public ~~Instruction.~~ Instruction;

- (4) a NC Residency B-K License issued by the North Carolina Public Instruction; or
- (5) a NC Emergency B-K License issued by the North Carolina Department of Public Instruction as determined by the Early Educator Support, Licensure and Professional Development (EESLPD) Unit.

This staff shall provide program oversight and supervision for any caregivers in classrooms with children ages birth to three years.

(b) In accordance with G.S. 115C-84.2(a)(1), during the [185 day] school year (as defined by the State Board of Education), each child aged three-years-old and older on or before the initial school entry date specified in G.S. 115C-364 (school entry date) shall be served in a classroom with at least one lead teacher who holds ~~a B-K Standard Professional I licensure or provisional licensure in B-K, or Preschool~~ an Initial B-K License or another

NC Educator's License and a Provisional B-K or Pre-K/K Add-on licensure license issued from the Department of Public Instruction.

(c) Children who turn three-years-old after the school entry date who are identified as a child with a disability as evidenced by an Individualized Education Program (IEP), shall be served in a classroom by a teacher who holds a NC ~~B-K~~ Continuing B-K or Initial B-K License; or a ~~another~~ NC Educator's License and a Provisional B-K or Pre-K/K ~~Preschool~~ Add-on License or License; or a NC Lateral Entry B-K License. License or a Residency B-K License.

(d) Teachers who are required to hold a NC ~~B-K~~ Continuing B-K or Initial License issued by the North Carolina Department of Public Instruction as specified in Paragraph (a) of this Rule shall be enrolled with the Early Educator Support, Licensure & Professional Development Unit of the Division of Child Development and Early Education. Enrollment procedures may be found online at http://ncchildcare.dhhs.state.nc.us/general/mb_eeslpd.asp; https://ncchildcare.ncdhhs.gov/Portals/0/documents/pdf/N/NCPrK_EESLPD_Enrollment_Application_REV_JUL2019.pdf?ver=2019-08-16-135555-313.

(e) For centers operating for 12 months as specified by Rule .2902(a) of this Section, during the two additional months of operation each group of preschool children shall have at least one lead teacher with a minimum of an A.A.S. degree in early childhood education or child development, or an A.A.S. degree in any major with 12 semester hours in early childhood education or child development.

(f) For centers operating for 10 months as specified by Rule .2902(a) of this Section, during the 10-month school year, (as defined by the State Board of Education), each group of school-age children shall have at least one teacher who holds State certification as a Special Education Teacher. For centers operating for 12 months as specified by Rule .2902(a) of this Section, during the two additional months of operation each group of school-age children shall have at least one teacher who has completed at least two semester hours of school-age care related coursework and has completed or is enrolled in at least two additional semester hours of school-age related coursework.

(g) Center administrators shall have a Level III North Carolina Early Childhood Administration Credential and two years of work experience with children with developmental delays or disabilities.

Authority G.S. 110-85; 110-88(5); 110-88(14).

SECTION .3000 - NC PRE-KINDERGARTEN SERVICES

10A NCAC 09 .3012 NC PRE-K TEACHER EDUCATION, LICENSURE AND CREDENTIALS

(a) All teachers shall hold, or be working toward a North Carolina (NC) Birth through Kindergarten (B-K) Continuing License or B-K or ~~Preschool~~ Pre-K/K Add-on License issued by the North Carolina Department of Public Instruction. Teachers working toward the required education and license shall meet one of the following requirements:

- (1) a ~~North Carolina~~ NC B-K Initial License; or

- (2) a NC Lateral Entry B-K License; North Carolina K-6 license and a Provisional Preschool Add-on license;
- (3) ~~another North Carolina or another state's license and a NC Provisional B-K license; or a NC Residency B-K License;~~
- (4) a NC Emergency B-K License as determined by the Early Educator Support, Licensure and Professional Development (EESLPD) Unit;
- (5) another NC Educator's License and a Provisional B-K or Pre-K/K license;
- (6) another state's license; or
- (7)(4) ~~a BA/BS degree in B-K, child development, early childhood education, or an early childhood education related field; and be eligible for a NC Lateral Entry Residency B-K License.~~

(b) Pre-K teachers with a NC Lateral Entry B-K License as specified in Subparagraph (a)(4)(a)(2) of this Rule shall make progress toward the B-K Continuing License by:

- (1) obtaining a and following an official Lateral Entry B-K Plan of Study issued by an accredited college or university with a North Carolina Department of Public Instruction approved teacher education program; B-K Teacher Education Program;
- (2) submitting to the ~~Division~~ Division, college or university transcripts verifying the completion of a minimum of six semester credit hours per school year in accordance with Subparagraph (1) of this Paragraph;
- (3) completing the three-year North Carolina State Board of Education Beginning Teacher Support Program in accordance with G.S. ~~115C-296(e)~~ 115C-300.1 and North Carolina State Board of Education Policy LICN-004; ~~LICN-004; TCED-0016~~; and
- (4) achieving the NC B-K Initial or Continuing License issued by the North Carolina Department of Public Instruction within three years.

(c) Pre-K teachers with a NC Residency B-K License as specified in Subparagraph (a)(3) of this Rule shall make progress toward the B-K Continuing License by:

- (1) obtaining and following an official Residency B-K Plan of Study issued by an approved North Carolina Department of Public Instruction (NCDPI) Educator Preparation Program (EPP) based on:
 - (A) submission of all college transcripts to the EPP;
 - (B) overall GPA of 2.7 or higher on the undergraduate degree or as determined by the EPP; and
 - (C) employment as a Lead Teacher in a non-public NC Pre-K or Developmental Day Preschool classroom;

- (2) submitting to the Division, college or university transcripts verifying the completion of a minimum of six semester credit hours per school year in accordance with Subparagraph (1) of this Paragraph;
- (3) meet the Division's and EPP's requirements to renew the Residency License no more than two times within a three-year period; and
- (4) achieving the NC B-K Initial or Continuing License issued by the North Carolina Department of Public Instruction within three years.

(d) Pre-K teachers with a NC Emergency License shall make progress toward the B-K Continuing License by:

- (1) obtaining and following an official Plan of Study prepared by an EPP. This official Plan of Study must specify how to qualify for a Residency B-K License during the upcoming school year.
- (2) submitting to the Division, college or university transcripts verifying the completion of a minimum of six semester credit hours or less per school year in accordance with Subparagraph (1) of this Paragraph; and
- (3) holding an Emergency License does not guarantee conversion to a Residency B-K License the following school year.

(e) Pre-K teachers with a NC Provisional B-K or ~~Pre-school~~ Pre-K/K Add-on License shall make progress toward the B-K Continuing License by:

- (1) obtaining and following a Plan of Study issued by an accredited college or university with a North Carolina Department of Public Instruction approved ~~teacher education program;~~ B-K Teacher Education Program;
- (2) submitting to the Division college or university transcripts verifying the completion of a minimum of six semester credit hours per year in accordance with Subparagraph (1) of this Paragraph;
- (3) completing the three-year North Carolina State Board of Education Beginning Teacher Support Program in accordance with G.S. ~~415C-296(e)~~ 115C-300.1 and North Carolina State Board of Education Policy LICN-004; TCED-0016; and
- (4) achieving the NC B-K Initial or Continuing License issued by the North Carolina Department of Public Instruction within five years.

(f) Teachers not meeting the annual minimum semester hours as set forth in Subparagraphs ~~(b)(2) and (b)(3)~~(b)(1), (c)(1) and (d)(1) of this Rule shall submit a written request to the Division of Child Development and Early Education Early Educator Support, Licensure and Professional Development Unit requesting an extension to complete the requirement. Teachers shall submit a written request to the Division of Child Development and Early Education Early Educator Support, Licensure and Professional Development Unit. The written request shall include the reason for not meeting the provisions of

this Rule, a list of the required coursework and semesters hours to be completed as prescribed by the Plan of Study, a timeline for completing the required semester hours, and documentation supporting course enrollment and expected completion dates.

(g) In determining whether to approve less than the annual minimum required semester hours, the Division shall consider reasons, including:

- (1) maternity parental or family leave;
- (2) death, disability, or illness; and
- (3) natural or man-made disasters.

(h) Teachers shall maintain the B-K or ~~Pre-school~~ Pre-K/K Add-on Continuing License in accordance with G.S. ~~415C-296(b)(1)b.4.~~ 115C-296 (II), and NC State Board of Education Policy LICN-005. These policies can be found at http://www.nega.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-296.html <https://simbli.eboardsolutions.com/ePolicy/policy.aspx?PC=LICN-005&Sch=10399&S=10399&C=LICN&RevNo=1.03&T=A&Z=P&St=ADOPTED&PG=6&SN=true>.

(i) Teachers with expired B-K Continuing licenses shall meet the provisions set forth in G.S. ~~415C-296(b)(1)b.4.~~ 115C-296(II), which can be found at http://www.nega.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-296.html <https://simbli.eboardsolutions.com/ePolicy/policy.aspx?PC=LICN-005&Sch=10399&S=10399&C=LICN&RevNo=1.03&T=A&Z=P&St=ADOPTED&PG=6&SN=true> and North Carolina State Board of Education Policy LICN-005. These policies can be found at https://stateboard.nepublicschools.gov/policy-manual/licensure/copy2_of_licensure_renewal_requirements. <https://simbli.eboardsolutions.com/ePolicy/policy.aspx?PC=LICN-005&Sch=10399&S=10399&C=LICN&RevNo=1.03&T=A&Z=P&St=ADOPTED&PG=6&SN=true>.

(j) The site-level administrator shall maintain documentation available for review by the Division, of the progress toward the ~~required standard requirements~~ as specified in this Rule.

(k) All NC Pre-K lead teachers employed by nonpublic schools must be enrolled with the Early Educator Support, Licensure & Professional Development Unit of the Division of Child Development and Early Education. Enrollment requirements may be found on the Division of Child Development and Early Education website at http://ncchildcare.dhhs.state.nc.us/general/mb_eeslpd.asp. <https://ncchildcare.ncdhhs.gov/Portals/0/documents/pdf/N/NCPre-K EESLPD Enrollment Application REV JUL2019.pdf?ver=2019-08-16-135555-313>.

Authority G.S. 110-85; 110-88; S.L. 2011-145, s. 10.7(a).

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Sheriffs' Education and Training Standards Commission intends to amend the rule cited as 12 NCAC 10B .2005.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://ncdoj.gov/law-enforcement-training/sheriffs/>

Proposed Effective Date: January 1, 2021

Public Hearing:

Date: September 2, 2020

Time: 8:30 a.m.

Location: 1700 Tryon Park Drive, Raleigh, NC 27610

Reason for Proposed Action: 12 NCAC 10B .2005 sets out the annual in-service training topics for 2021.

Comments may be submitted to: Diane Konopka, 1700 Tryon Park Drive, Raleigh, NC 27615; email dkonopka@ncdoj.gov

Comment period ends: October 16, 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 10 - SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .2000 - IN-SERVICE TRAINING FOR JUSTICE OFFICERS

12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topic areas developed by another entity such as a different law enforcement agency or training provider. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training and as described in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly increments. A student who completes the training shall receive the number of credits that correspond to the number of hours assigned to the course, regardless of the amount of time the student spends completing the course, where each hour of instruction shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

(b) The in-service training for topic areas of the Sheriff's or Department Head's choosing required by this Rule shall either:

- (1) meet the requirements of Paragraph (a) of this Rule; or
(2) be delivered pursuant to National Certification Programs administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) completed during the mandated in-service year to satisfy these topics in part or in whole. It is not required that this IADLEST training be written in the Instructional Systems Design (ISD) format or delivered by a Commission certified instructor.

(c) The 2019 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:

- (1) Legal Update;
(2) Juvenile Law Update;
(3) Individual Wellness: Coping with Stress and PTSD;
(4) Best Practices for Officers During Community Dissent;
(5) Law Enforcement Intelligence Update: Gangs and Divisive Groups;
(6) Domestic Violence: Law and Procedure Update;
(7) Opioid Awareness and Response;
(8) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and

~~(9) — Any topic areas of the Sheriff's choosing.~~
~~(d) The 2019 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~(1) — Detention Officer Legal Update;~~
- ~~(2) — Detention Intelligence Update: Gangs and Divisive Groups;~~
- ~~(3) — Individual Wellness: Coping with Stress and PTSD;~~
- ~~(4) — Inmate Suicide Prevention;~~
- ~~(5) — Opioid Awareness and Response; and~~
- ~~(6) — Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(e) The 2019 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~(1) — Individual Wellness: Coping with Stress and PTSD;~~
- ~~(2) — Civil Liability for Telecommunicators;~~
- ~~(3) — Human Fatigue in Shift Work; Strategies for Improving Performance;~~
- ~~(4) — Handling Difficult Callers; and~~
- ~~(5) — Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(f)(c) The 2020 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:~~

- ~~(1) 2020 Legal Update;~~
- ~~(2) 2020 Long-Term Effects of Childhood Adversity;~~
- ~~(3) 2020 The Signs Within: Suicide Prevention Education and Awareness;~~
- ~~(4) 2020 Career Survival: Training and Standards Issues;~~
- ~~(5) 2020 Communication Strategies When Encountering Persons Who are Deaf or Hard of Hearing;~~
- ~~(6) 2020 Armed/Unarmed Security/Company Police: Understanding Their Roles and Authority;~~
- ~~(7) 2020 Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and~~
- ~~(8) Any topic areas of the Sheriff's choosing.~~

~~(g)(d) The 2020 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~(1) 2020 Overcoming Negativity in the Detention Center;~~
- ~~(2) 2020 Documenting the Incident Refresher;~~
- ~~(3) 2020 The Signs Within: Suicide Prevention Education and Awareness~~
- ~~(4) 2020 Career Survival: Training and Standards Issues;~~
- ~~(5) 2020 Recognizing Signs of Assaultive Behavior; and~~
- ~~(6) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(h)(e) The 2020 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~(1) 2020 Suicide Callers;~~
- ~~(2) 2020 Overcoming Negativity in the Communications Center;~~
- ~~(3) 2020 Processing Calls/Quality Assurance;~~
- ~~(4) 2020 Responding to Domestic Violence Callers;~~
- ~~(5) 2020 Career Survival: Training and Standards Issues; and~~
- ~~(6) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(f) The 2021 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:~~

- ~~(1) 2021 Legal Update;~~
- ~~(2) 2021 Continue to Make a Difference: Positive Engagement Stories and Studies;~~
- ~~(3) 2021 School Safety and Responding to School Incidents;~~
- ~~(4) 2021 Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and~~
- ~~(5) Any topic areas of the Sheriff's choosing.~~

~~(g) The 2021 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~(1) 2021 Detention Legal Updates;~~
- ~~(2) 2021 Followership: Being an Influential Employee;~~
- ~~(3) 2021 Inmate Mental Health; and~~
- ~~(4) Any topic areas of the Sheriff's or Department Head's choosing.~~

~~(h) The 2021 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:~~

- ~~(1) 2021 Followership: Being an Influential Employee;~~
- ~~(2) 2021 Critical Thinking for Telecommunicators;~~
- ~~(3) 2021 Crisis Negotiations; and~~
- ~~(4) Any topic areas of the Sheriff's or Department Head's choosing.~~

Authority G.S. 17E-4; 17E-7.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02N .0406; 02O .0101, .0102, repeal the rules cited as 15A NCAC 02O .0103, .0312-.0316, readopt with substantive changes the rules cited as 15A NCAC 02N .0203, .0301, .0303, .0304, .0504, .0901-.0907; 02O .0203, .0204, .0302, .0304, .0308, .0402, .0503, .0504, readopt without substantive changes the rules cited as 15A NCAC 02N .0201, .0202, .0302, .0401-.0405, .0501-.0503, .0505, .0506,

.0601-.0604, .0701-.0708, .0801-.0805, and repeal through readoption the rules cited as 15A NCAC 02O .0201, .0202, .0301, .0303, .0305-.0307, .0311, .0401, .0501, and .0502.

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

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

Proposed Effective Date: January 1, 2021

Public Hearing:

Date: September 1, 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=ea7c3cc345db4ec5f828a4d6da313da85>

Event number: 161 526 8266 Event password: NCDWM

Reason for Proposed Action: The rule changes to 15A NCAC 02N are necessary to incorporate input from stakeholders, and make technical corrections such as: formatting of rule text; updating websites; adding clarifying language; deleting sampling methods, industry standards and code of practice, and other standard procedures that were no longer relevant and replacing them with those that are current; deleting unnecessary language and obsolete rules; and correcting grammar, cross-references, inconsistencies, authorities, etc., and as a part of the readoption of the 15A NCAC 02N rules as required by G.S. 150B-21.3A (Periodic Review of Existing Rules).

The rule changes to 15A NCAC 02O are necessary to make technical corrections such as: formatting of rule text; updating websites; adding clarifying language; deleting unnecessary language and obsolete rules; and correcting grammar, cross-references, inconsistencies, authorities, etc., and as part of the readoption of the 15A NCAC 02O rules as required by G.S. 150B-21.3A (Periodic Review of Existing Rules).

Comments may be submitted to: Andria Merritt, NCDEQ/DWM/UST Section, 1646 Mail Service Center, Raleigh, NC 27699-1646; phone (919) 707-8157; fax (919) 715-1117; email andria.merritt@ncdenr.gov

Comment period ends: October 16, 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 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02N - CRITERIA AND STANDARDS APPLICABLE TO UNDERGROUND STORAGE TANKS

SECTION .0200 - PROGRAM SCOPE AND INTERIM PROHIBITION

15A NCAC 02N .0201 APPLICABILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0202 INSTALLATION REQUIREMENTS FOR PARTIALLY EXCLUDED UST SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0203 DEFINITIONS

(a) The regulations governing "Definitions" set forth in 40 CFR 280.12 (Subpart A) are hereby incorporated by reference, reference excluding any subsequent amendments and editions, except that:

- (1) 40-CFR-280.12 "UST system" shall be changed to read "'UST system' or 'Tank system' means an underground storage tank, connected underground piping, underground ancillary equipment, dispenser, and containment system, if any";
(2) 40-CFR-280.12 "Class A operator" shall not be incorporated by reference;
(3) 40-CFR-280.12 "Class B operator" shall not be incorporated by reference;
(4) 40-CFR-280.12 "Class C operator" shall not be incorporated by reference;
(5) 40-CFR-280.12 "Replaced" shall not be incorporated by reference; and
(6) 40-CFR-280.12 "Secondary containment or secondarily contained" shall not be incorporated by reference.

(b) This Rule shall apply throughout this Subchapter except that:

- (1) "Implementing agency" shall mean the "Division of Waste Management."

- ~~(2)~~ "Division" shall mean the "Division of Waste Management."
- ~~(3)~~ "Director" and "Director of the Implementing Agency" shall mean the "Director of the Division of Waste Management."
- ~~(b)~~ The following definitions shall apply throughout this Subchapter:
 - (1) "De minimis concentration" means the amount of a regulated substance that does not exceed one percent (~~1%~~) of the capacity of a tank, excluding piping and vent lines.
 - ~~(2)~~ "Director" and "Director of the Implementing Agency" means the "Director of the Division of Waste Management."
 - (3) "Division" means the "Division of Waste Management."
 - ~~(2)(4)~~ "Expediently emptied after use" means the removal of a regulated substance from an emergency spill or overflow containment UST system within 48 hours after use of the UST system has ceased.
 - (5) "Implementing agency" means the "Division of Waste Management."
 - ~~(3)(6)~~ "Previously closed" means:
 - (A) An UST system from which all regulated substances had been removed, the tank had been filled with a solid inert material, and tank openings had been sealed or capped prior to December 22, 1988; or
 - (B) An UST system removed from the ground prior to December 22, 1988.
 - ~~(4)(7)~~ "Temporarily closed" means:
 - (A) An UST system from which the product has been removed such that not more than one inch of product and residue are present in any portion of the tank; or
 - (B) Any UST system in use as of December 22, 1988 that complies with the provisions of ~~15A NCAC 02N .0801~~. Rule .0801 of this Subchapter.
 - ~~(5)(8)~~ "Secondary containment" means a method or combination of methods of release detection for UST systems that includes:
 - (A) For tank installations or replacements completed prior to November 1, 2007, double-walled construction and external ~~liners (including vaults);~~ liners, including vaults;
 - (B) For underground piping installations or replacements completed prior to November 1, 2007, trench liners and double-walled construction;
 - (C) For tank installations or replacements completed on or after November 1, 2007, double-walled construction and interstitial release detection monitoring that meet the requirements

of Section .0900 of this Subchapter; and

- (D) For all other UST system component installations or replacements completed on or after November 1, 2007, double-walled construction or containment within a liquid-tight sump and interstitial release detection monitoring that meet the requirements of Section .0900 of this Subchapter. Upon written request, the Division shall approve other methods of secondary containment for connected piping that it determines are capable of meeting the requirements of Section .0900 of this Subchapter.

~~(6)(9)~~ "Interstitial space" means the opening formed between the inner and outer wall of an UST system with double-walled construction or the opening formed between the inner wall of a containment sump and the UST system component that it contains.

~~(7)(10)~~ "Replace" means to remove an UST system or UST system component and to install another UST system or UST system component in its place.

~~(8)(11)~~ "UST system component or tank system component" means any part of an UST system.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); ~~150B-21.6.~~

SECTION .0300 - UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION, AND NOTIFICATION

15A NCAC 02N .0301 PERFORMANCE STANDARDS FOR UST SYSTEM INSTALLATIONS OR REPLACEMENTS COMPLETED AFTER DECEMBER 22, 1988 AND BEFORE NOVEMBER 1, 2007

(a) The regulations governing "Performance standards for new UST systems" set forth in 40 CFR 280.20 (Subpart B) are hereby incorporated by ~~reference,~~ reference excluding any subsequent amendments and editions, except that:

- (1) 40 CFR 280.20(a)(4) shall not be incorporated by reference;
- (2) 40 CFR 280.20(b)(3) shall not be incorporated by reference; ~~and~~
- (3) UST system or UST system component installations or replacements completed on or after November 1, 2007, shall also meet the requirements of Section .0900 of this ~~Subchapter.~~ Subchapter; and
- (4) Note to Paragraph (d) of 40 CFR 280.20 is amended to include Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems."

(b) No UST system shall be installed within 100 feet of a well serving a public water system, as defined in G.S. 130A-313(10),

or within 50 feet of any other well supplying water for human consumption.

(c) An UST system existing on January 1, 1991, and located within the area described in Paragraph (b) of this Rule may be replaced with a new tank meeting the performance standards of 40 CFR 280.20 and the secondary containment provisions of 40 CFR 280.42(a) through (d). The replacement UST system shall not be located nearer to the water supply source than the UST system being replaced.

(d) Except as prohibited in Paragraph (b) of this Rule, an UST system shall meet the requirements for secondary containment described at 40 CFR 280.42(a) through (d):

- (1) Within 500 feet of a well serving a public water supply or within 100 feet of any other well supplying water for human consumption; or
- (2) Within 500 feet of any surface water classified as High Quality ~~Water (HQW)~~, Waters (HQW); Outstanding Resource ~~water (ORW)~~, Waters (ORW); ~~WS-I, WS-II or SA~~, Water Supply I – Natural (WS-I); Water Supply II – Undeveloped (WS-II); Market Shellfishing, Salt Water (SA).

(e) An UST system or UST system component installation completed on or after November 1, 2007, to replace an UST system or UST system component located within the areas described in Paragraphs (b), (c), or (d) of this Rule shall meet the requirements of Section .0900 of this Subchapter.

~~(f) 40 CFR 280.20 Note to paragraph (d) is amended to include Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems."~~

Authority ~~G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); 150B-21-6.~~

15A NCAC 02N .0302 UPGRADING OF EXISTING UST SYSTEMS AFTER DECEMBER 22, 1998 AND BEFORE NOVEMBER 1, 2007 (READoption WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0303 NOTIFICATION REQUIREMENTS

The regulations governing "Notification requirements" set forth in 40 CFR 280.22 (Subpart B) are hereby incorporated by ~~reference, reference excluding any subsequent amendments and editions,~~ except that:

- (1) Owners and operators of an UST system shall submit to the Division, on forms provided by the Division, a notice of intent to conduct any of the following activities:
 - (a) notice of installation of a new UST system or UST system component shall be in accordance with Rule .0902 of this Subchapter;
 - (b) notice of installation of a leak detection device installed outside of the outermost wall of the tank and piping, such as vapor detection or groundwater monitoring devices, shall be given at least 30 days before the

activity begins. The notice shall be provided on form "UST-8 Notification of Activities Involving Underground Storage Tank Systems," which may be accessed free of charge at <http://deq.nc.gov/about/divisions/wast-e-management/underground-storage-tanks-section/forms>. Form "UST-8 Notification of Activities Involving Underground Storage Tank Systems" shall include:

- (i) the same information provided in Appendix I to 40 CFR 280, except that Sections X (2) and (3), and Section XI shall not be included on the form;
- (ii) operator identification and contact information;
- (iii) number of tank compartments and tank compartment identity, capacity, and product stored;
- (iv) identity of tanks that are manifold together with piping;
- (v) stage I Vapor Recovery equipment type and installation date;
- (vi) corrosion protection methods for metal flexible connectors, submersible pumps, and riser pipes;
- (vii) UST system and UST system component installation date, manufacturer, model, and leak detection monitoring method;
- (viii) spill containment equipment installation date, manufacturer, model, and leak detection monitoring method;
- (ix) overflow prevention equipment installation date, manufacturer, and model; and
- (x) leak detection equipment manufacturer and model;

(c) notice of permanent closure or change-in-service of an UST system shall be given at least 30 days before the activity begins, ~~unless a North Carolina Professional Engineer or North Carolina Licensed Geologist retained by the owner or operator to provide professional services for the tank closure or change in service submits the notice. A North Carolina~~

~~Professional Engineer or North Carolina Licensed Geologist may submit the notice at least five business days before the activity begins. begins.~~

The notice shall be provided on form "UST-3 Notice of Intent: UST Permanent Closure or Change-in-Service," which may be accessed free of charge at <http://deq.nc.gov/about/divisions/wast-e-management/underground-storage-tanks-section/forms>. Form "UST-3 Notice of Intent: UST Permanent Closure or Change-in-Service" shall include:

- (i) owner identification and contact information;
- (ii) site location information;
- (iii) site contact information;
- (iv) contractor and consultant identification and contact information;
- (v) identity of UST systems to be permanently closed or that will undergo a change-in-service;
- (vi) for permanent closure, the proposed method of UST System closure – removal or fill in-place;
- (vii) for a change-in-service, the new contents to be stored;
- (viii) proposed UST system closure or change-in-service date; and
- (ix) signature of UST system owner;
- (d) notice of a change of ownership of a UST system pursuant to 40 CFR 280.22(b) shall be provided on form "UST-15 Change of Ownership of UST System(s)," which may be accessed free of charge at <http://deq.nc.gov/about/divisions/wast-e-management/underground-storage-tanks-section/forms>. Form "UST-15 Change of Ownership of UST System(s)" shall include:
 - (i) the same information provided in Appendix II to 40 CFR 280;
 - (ii) site location information;
 - (iii) notarized signature of the new owner of an UST system;
 - (iv) name and notarized signature of the previous owner of an UST system; and

(v) appended information shall include documentation of an UST system ownership transfer such as a property deed or bill of sale ~~and for a sale. A person signing the form on behalf of another, another shall provide documentation they can legally sign in such capacity,~~ such as an officer of a corporation, administrator of an estate, representative of a public agency, or as having power of attorney, ~~documentation showing that the person can legally sign in such capacity.~~ attorney.

- (2) Owners and operators of UST systems that were in the ground on or after May 8, 1986, were required to notify the Division in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by the Environmental Protection Agency on November 8, 1985 (50-FR 46602) 46602), unless notice was given pursuant to Section 103(c) of CERCLA. Owners or operators who have not complied with the notification requirements shall complete the appropriate form "UST-8 Notification of Activities Involving Underground Storage Tank Systems" and submit the form to the Division.
- (3) Beginning October 24, 1988, any person who sells a tank intended to be used as an UST shall notify the purchaser of such tank of the owner's notification obligations under Item (1) of this Rule.
- (4) Any reference in 40 CFR Part 280 to the notification form in Appendix I shall refer to the North Carolina notification form "UST-8 Notification of Activities Involving Underground Storage Tank ~~Systems".~~ Systems."

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); ~~150B-21-6.~~

15A NCAC 02N .0304 IMPLEMENTATION SCHEDULE FOR PERFORMANCE STANDARDS FOR NEW UST SYSTEMS AND UPGRADING REQUIREMENTS FOR EXISTING UST SYSTEMS LOCATED IN AREAS DEFINED IN RULE .0301(D)

(a) The following implementation schedule shall apply only to owners and operators of UST systems located within areas described in Rule .0301(d) of this Section. This implementation schedule shall govern tank owners and operators in complying with the secondary containment requirements set forth in Rule .0301(d) of this Section for new UST systems and the secondary

containment requirements set forth in Rule .0302(a) of this Section for existing UST systems.

- (1) All new UST systems and replacements to an UST system shall be provided with secondary containment as of April 1, 2001.
- (2) All steel or metal connected piping and ancillary equipment of an UST, regardless of date of installation, shall be provided with secondary containment as of January 1, 2005.
- (3) All fiberglass or non-metal connected piping and ancillary equipment of an UST, regardless of date of installation, shall be provided with secondary containment as of January 1, 2008.
- (4) All UST systems installed on or before January 1, 1991 shall be provided with secondary containment as of January 1, 2008.
- (5) All USTs installed after January 1, 1991, and prior to April 1, 2001, shall be provided with secondary containment as of January 1, 2020. Owners of USTs located within 100 to 500 feet of a public water supply well, if the well serves only a single facility and is not a community water system, may seek a variance in accordance with Paragraphs (d) through (i) of this Rule.

(b) All owners and operators of UST systems shall implement the following enhanced leak detection monitoring as of April 1, 2001. The enhanced leak detection monitoring shall consist of the following:

- (1) An automatic tank gauging system for each UST;
- (2) An electronic line leak detector for each pressurized piping system;
- (3) One 0.1 gallon per hour (gph) test per month or one 0.2 gph test per week on each UST system;
- (4) A line tightness test capable of detecting a leak rate of 0.1 gph, once per year for each suction piping system. No release detection shall be required for suction piping that is designed and constructed in accordance with 40 CFR 280.41(b)(1)(ii)(A) through (E);
- (5) If the UST system is located within 500 feet of a public water supply well or within 100 feet of any other well supplying water for human consumption, owners or operators shall sample the water supply well at least once per year. The sample collected from the well shall be characterized in accordance with:

- (A) Standard Method 6200B, Volatile Organic Compounds Purge and Trap Capillary-Column Gas Chromatographic/Mass Spectrometric Method, which is incorporated by reference including subsequent amendments and editions, and may be obtained at <http://www.standardmethods.org/> at a cost of ~~sixty-nine dollars (\$69.00);~~ seventy-five dollars (\$75.00);

- (B) EPA Method ~~625,~~ 625.1, Base/Neutrals and Acids, which is incorporated by reference including subsequent amendments and editions, and may be accessed free of charge at http://water.epa.gov/scitech/methods/cwa/organics/upload/2007_07_10_methods_method_organics_625.pdf ; and

- (C) If a waste oil UST system is present that does not meet the requirements for secondary containment in accordance with 40 CFR 280.42(b)(1) through (4), the sample shall also be analyzed for lead and chromium using Method ~~6010C,~~ 6010D, Inductively Coupled ~~Plasma-Atomic~~ Plasma-Optical Emission Spectrometry, which is incorporated by reference including subsequent amendments and editions, and may be accessed free of charge at ~~<http://www.epa.gov/epawaste/hazard/testmethods/sw846/pdfs/6010c.pdf>~~ <https://www.epa.gov/sites/production/files/2015-12/documents/6010d.pdf> or Method ~~6020A,~~ 6020B, Inductively Coupled Plasma-Mass Spectrometry, which is incorporated by reference including subsequent amendments and editions, and may be accessed free of charge at ~~<http://www.epa.gov/epawaste/hazard/testmethods/sw846/pdfs/6020a.pdf>~~; <https://www.epa.gov/sites/production/files/2015-12/documents/6020b.pdf>; and

- (6) The first sample collected in accordance with Subparagraph (b)(5) of this Rule shall be collected and the results received by the Division by October 1, 2000, and yearly thereafter.

(c) An UST system or UST system component installation completed on or after November 1, 2007, to upgrade or replace an UST system or UST system component as required in Paragraph (a) of this Rule shall meet the performance standards of Section .0900 of this Subchapter.

(d) The Environmental Management Commission may grant a variance from the secondary containment requirements in Subparagraph (a)(5) of this Rule for USTs located within 100 to 500 feet of a public water supply well if the well serves only a single facility and is not a community water system. Any request for a variance shall be in writing by the owner of the UST for which the variance is sought. The request for variance shall be submitted to the Director, Division of Waste Management, 1646 Mail Service Center, Raleigh, NC 27699-1646. The Environmental Management Commission shall grant the variance if the Environmental Management Commission finds facts to support the following conclusions:

- (1) The variance will not endanger human health and welfare or groundwater; and
 - (2) UST systems are operated and maintained in compliance with 40 CFR Part 280, Article 21A of G.S. 143B, and the rules in this Subchapter.
- (e) The Environmental Management Commission may require the variance applicant to submit such information as the Environmental Management Commission deems necessary to make a decision to grant or deny the variance. Information that may be requested includes the following:
- (1) Water supply well location, depth, construction specifications, and sampling results;
 - (2) Groundwater depth and flow direction; and
 - (3) Leak detection monitoring and testing results.
- (f) The Environmental Management Commission may impose such conditions on a variance as the Environmental Management Commission deems necessary to protect human health and welfare and groundwater. Conditions for a variance may include the following:
- (1) Increased frequency of leak detection and leak prevention monitoring and testing;
 - (2) Periodic water supply well sampling; and
 - (3) Increased reporting and recordkeeping.
- (g) The findings of fact supporting any variance under this Rule shall be in writing and made part of the variance.
- (h) The Environmental Management Commission may rescind a variance that was previously granted if the Environmental Management Commission discovers through inspection or reporting that the conditions of the variance are not met or that the facts no longer support the conclusions in Subparagraphs (d)(1) and (2) of this Rule.
- (i) An owner of an UST system who is aggrieved by a decision of the Environmental Management Commission to deny or rescind a variance or to conditionally grant a variance may commence a contested case by filing a petition pursuant to G.S. 150B-23 within 60 days after receipt of the decision.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

SECTION .0400 - GENERAL OPERATING REQUIREMENTS

15A NCAC 02N .0401 SPILL AND OVERFILL CONTROL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0402 OPERATION AND MAINTENANCE OF CORROSION PROTECTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0403 COMPATIBILITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0404 REPAIRS ALLOWED (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0405 REPORTING AND RECORDKEEPING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0406 PERIODIC TESTING OF SPILL PREVENTION EQUIPMENT AND CONTAINMENT SUMPS USED FOR INTERSTITIAL MONITORING OF PIPING AND PERIODIC INSPECTION OF OVERFILL PREVENTION EQUIPMENT

The regulations governing "Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment" set forth in 40 CFR 280.35 (Subpart C) are hereby incorporated by ~~reference~~, reference excluding any subsequent amendments and editions, except ~~that that~~:

- (1) UST system or UST system component installations or replacements completed on or after November 1, 2007, shall meet the requirements of Section .0900 of this Subchapter.
- (2) 40 CFR 280.35(a)(1)(ii)(C) shall be rewritten as follows: (C) Requirements determined by the Division to be no less protective of human health and the environment than the requirements listed in Paragraphs (a)(1)(ii)(A) and (B) of this section.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); ~~150B-21-6.~~

SECTION .0500 - RELEASE DETECTION

15A NCAC 02N .0501 GENERAL REQUIREMENTS FOR ALL UST SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0502 REQUIREMENTS FOR PETROLEUM UST SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0503 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0504 METHODS OF RELEASE DETECTION FOR TANKS

(a) The regulations governing "Methods of release detection for tanks" set forth in 40 CFR 280.43 (Subpart D) are hereby incorporated by ~~reference~~, reference excluding any subsequent amendments and editions, except that 40 CFR 280.43(f)(3), (f)(4), and (f)(5) shall not be adopted by reference.

(b) Wells used for monitoring or testing for free product in the groundwater shall be:

- (1) ~~Located as follows:~~ located
 - (A) ~~for new installations, within and at the end of the excavation having the lowest elevation and along piping at intervals not exceeding 50 feet; or~~
 - (B) ~~for existing installations, in the excavation zone or as near to it as~~

technically feasible and installed in a borehole at least four inches larger than the diameter of the casing;

(2) A a minimum of two inches in ~~diameter~~ diameter;

(3) ~~The number of wells installed shall be sufficient to detect releases from the UST system; installed such that a release from any portion of the UST will be detected;~~

(3)(4) ~~Equipped~~ equipped with a screen that extends from two feet below land surface to a depth of 20 feet below land surface or two feet below the seasonal low water level, whichever is shallower. The screen shall be designed and installed to prevent the migration of natural soils or filter pack into the well while allowing the entry of regulated substances into the well under both high and low groundwater level conditions;

(4)(5) ~~Surrounded~~ surrounded with clean sand or gravel to the top of the screen, plugged and grouted the remaining distance to finished grade with cement grout;

(5)(6) ~~Constructed~~ constructed of a permanent casing and screen material that is inert to the stored substance and is corrosion resistant;

(6)(7) ~~Developed~~ developed upon completion of installation until the water is clear and sediment free;

(7)(8) ~~Protected~~ protected with a water-tight cover and lockable cap;

(8)(9) ~~Labeled~~ labeled as a liquid monitor well; and

(9)(10) ~~Equipped~~ equipped with a liquid leak detection device ~~continuously~~ operating on an uninterrupted basis; or

(A) For tanks storing petroleum products, tested at least once every 14 days with a device or hydrocarbon-sensitive paste capable of detecting the liquid stored; or

(B) For tanks storing hazardous substances, sampled and tested at least once every 14 days for the presence of the stored substance.

(c) Wells used for monitoring or testing for free product in the groundwater at new installations and constructed in accordance with Paragraph (b) of this Rule shall be deemed to be permitted in accordance with the requirements of 15A NCAC 02C .0105.

(d) Any person completing or abandoning any well used for testing of vapors or monitoring for free product in the groundwater shall submit the ~~record~~ report required by 15A NCAC 02C .0114(b).

(e) Wells used for monitoring for the presence of vapors in the soil gas of the excavation zone shall be equipped with a ~~continuously operating~~ vapor detection device operating on an uninterrupted basis or tested at least once every 14 days for vapors of the substance stored.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h); ~~150B-21.6.~~

15A NCAC 02N .0505 METHODS OF RELEASE DETECTION FOR PIPING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0506 RELEASE DETECTION RECORDKEEPING (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0600 - RELEASE REPORTING, INVESTIGATION, AND CONFIRMATION

15A NCAC 02N .0601 REPORTING OF SUSPECTED RELEASES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0602 INVESTIGATION DUE TO OFF-SITE IMPACTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0603 RELEASE INVESTIGATION AND CONFIRMATION STEPS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0604 REPORTING AND CLEANUP OF SPILLS AND OVERFILLS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0700 - RELEASE RESPONSE AND CORRECTIVE ACTION FOR UST SYSTEMS CONTAINING PETROLEUM OR HAZARDOUS SUBSTANCES

15A NCAC 02N .0701 GENERAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0702 INITIAL RESPONSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0703 INITIAL ABATEMENT MEASURES AND SITE CHECK (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0704 INITIAL SITE CHARACTERIZATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0705 FREE PRODUCT REMOVAL (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0706 INVESTIGATIONS FOR SOIL AND GROUNDWATER CLEANUP (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0707 CORRECTIVE ACTION PLAN (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0708 PUBLIC PARTICIPATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0800 - OUT-OF-SERVICE UST SYSTEMS AND CLOSURE

15A NCAC 02N .0801 TEMPORARY CLOSURE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0802 PERMANENT CLOSURE AND CHANGES-IN-SERVICE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0803 ASSESSING THE SITE AT CLOSURE OR CHANGE-IN-SERVICE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0804 APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02N .0805 CLOSURE RECORDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .0900 - PERFORMANCE STANDARDS FOR UST SYSTEM OR UST SYSTEM COMPONENT INSTALLATION OR REPLACEMENT COMPLETED ON OR AFTER NOVEMBER 1, 2007

15A NCAC 02N .0901 GENERAL REQUIREMENTS

(a) This Section applies to a UST system or UST system component installation or replacement completed on or after November 1, 2007.

(b) A UST system or UST system component shall not be installed or replaced within an area defined ~~at 15A NCAC 02N .0301(b);~~ in Rule .0301(b) of this Subchapter.

(c) A tank shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule.

(d) All UST system components other than tanks including connected piping, underground ancillary equipment, dispensers, line leak detectors, submersible pumps, spill buckets, siphon bars, and remote fill pipes shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule. Gravity-fed vertical fill pipes, vapor recovery, vent lines, and containment sumps are excluded from the secondary containment requirements in this Rule.

(e) A UST system design is required for installation or replacement of a UST system, UST, or connected piping. If required by G.S. 89C, UST system designs must be prepared by a Professional Engineer licensed by the North Carolina Board of Examiners for Engineers and Surveyors.

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined via letter dated December 20, 1993, that preparation of a UST system design constitutes practicing engineering under G.S. 89C.]

(f) If required by the equipment manufacturer, persons installing, replacing or repairing UST systems or UST system components must be trained and certified by the equipment manufacturer or the equipment manufacturer's authorized representative to install, replace or repair such equipment.

(g) UST systems or UST system components shall be installed, tested, operated, and maintained in accordance with the manufacturer's specifications and the codes of practice, and industry standards described ~~at 15A NCAC 02N .0907;~~ in Rule .0907 of this Section.

(h) UST systems or UST system components shall not be installed or replaced in areas where they will be in contact with contaminated soil or free product.

(i) Secondary containment systems shall be designed, constructed, installed and maintained to:

- (1) ~~Detect~~ detect the failure of the inner wall and outer wall for UST system components with double wall construction;
- (2) ~~Contain~~ contain regulated substances released from a UST system until they are detected and removed;
- (3) ~~Prevent~~ prevent a release of regulated substances to the environment outside of the containment system;
- (4) ~~Direct~~ direct releases to a monitoring point or points;
- (5) ~~Provide~~ provide a release detection monitoring device or monitoring method for the interstitial space;
- (6) ~~Continuously~~ on an uninterrupted basis, monitor the inner and outer walls of double-walled tanks for breaches of integrity using pressure, vacuum or hydrostatic monitoring methods or monitor the interstitial space of double-walled tanks for releases using an electronic liquid detecting sensor method along with periodic testing as specified in Rule ~~.0903(f);~~ .0903(f) of this Section;
- (7) ~~Continuously~~ on an uninterrupted basis, monitor the inner and outer walls of double-walled non-tank components for breaches of integrity using pressure, vacuum, or hydrostatic methods, or monitor a non-tank component for releases by using an electronic liquid detecting sensor placed in a containment sump and in the interstitial space of a double-walled spill bucket along with periodic integrity testing as specified in Rules ~~.0904(h), .0905(f),~~ .0904(f), .0905(g) and .0906(e); .0906(e) of this Section; and
- (8) ~~Provide~~ provide a printed record of release detection monitoring results and an alarm history for each month.

(j) Electronic liquid detecting sensors used to monitor the interstitial space of double-walled tanks and non-tank components shall meet the following requirements:

- (1) Electronic liquid detecting sensors used for tanks and spill buckets ~~must~~ shall be located at the lowest point in the interstitial space. Electronic liquid detecting sensors used for containment sumps ~~must~~ shall be located as specified in Rule ~~.0905(d);~~ .0905(d) of this Section.
- (2) A tank ~~must~~ shall have a method to verify that an electronic liquid detecting sensor is located

at the lowest point of the interstitial space. Verification of the sensor location ~~must~~ shall be available for inspection.

- (3) Electronic liquid detecting sensors ~~must~~ shall detect the presence of any liquid in the interstitial space and ~~must~~ shall activate an alarm when any type of liquid is detected.
- (4) Any liquid detected in the interstitial space must be removed within 48 hours of discovery.

(k) New or replacement dispensers shall be provided with under dispenser containment sumps and shall meet the secondary containment requirements and performance standards of this Rule.

(l) All release detection monitoring equipment shall be installed, calibrated, operated and maintained in accordance with manufacturer's instructions. All release detection monitoring equipment shall be checked annually for operability, proper operating condition and proper calibration in accordance with the ~~manufacturers~~ manufacturer's written guidelines. The results of the last annual check must be recorded, maintained at the UST site or the tank owner or operator's place of business, and made available for inspection.

(m) Releases detected in an interstitial space shall be reported in accordance with Rule .0601 of this Subchapter and investigated in accordance with the ~~manufacturers~~ manufacturer's written guidelines. Any changes in the original physical characteristics or integrity of a piping system or a containment sump ~~must~~ shall also be reported in accordance with Rule .0601 of this Subchapter and investigated in accordance with the manufacturer's written guidelines.

(n) UST systems and UST system components shall also meet all of the ~~installation~~ requirements specified in 40 CFR 280.20(c), (d) and (e). In addition, overfill prevention equipment shall be checked annually for operability, proper operating condition and proper calibration in accordance ~~with the manufacturer's written guidelines~~ with:

- (1) written requirements developed by the manufacturer;
- (2) a code of practice developed by a nationally recognized association or independent testing laboratory; or
- (3) requirements determined by the Division to be no less protective of human health and the environment than the requirements listed in Subparagraph (1) or (2) of this Paragraph. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in 40 CFR 280.20(c)(1)(ii) and will activate when regulated substance reaches that level.

The results of the last annual check ~~must~~ shall be recorded, maintained at the UST site or the tank owner or operator's place of business, and made available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

15A NCAC 02N .0902 NOTIFICATION

(a) Owners and operators ~~must~~ shall provide notification of installation or replacement of an UST system, UST, or connected

piping to the Division in accordance with ~~15A NCAC 02N .0303- Rule .0303 of this Subchapter~~. The notice shall also include:

- (1) An UST system design.
- (2) Equipment to be installed including model and manufacturer and the materials of construction.
- (3) Device or method to be used to allow piping to be located after it is buried underground.
- (4) A site plan drawn to scale showing the proposed location of UST systems relative to buildings and other permanent structures, roadways, utilities, other UST systems, monitoring wells, and water supply wells within 500 feet used for human ~~consumption~~ consumption ~~within 500 feet~~.
- (5) A schedule for UST system installation or replacement.

(b) Owners and operators ~~must~~ shall notify the Division at least 48 hours prior to the following stages of construction so that the Division may perform an inspection of the installation:

- (1) ~~Pre installation~~ pre-installation tightness testing of tanks; and
- (2) ~~Final~~ final tightness testing of piping before it is backfilled.

(c) Documents showing the following information shall be submitted to the Division within 30 days after UST system, UST, or connected piping installation or replacement is completed and shall be maintained at the UST system site or the owner's or operator's place of business for the life of the UST system. These records shall be transferred to a new tank owner at the time of a transfer of tank ownership:

- (1) Certification from the UST system installer containing:
 - (A) ~~The~~ the UST system installer's name, address and telephone number; training and any certification received from the manufacturer of the equipment that was installed or replaced or the equipment manufacturer's authorized representative including any certification number;
 - (B) ~~An~~ an as-built diagram drawn to scale showing: the name and address of the UST system site; the date of UST system, UST, or connected piping installation or replacement; the equipment that was installed including model and manufacturer; the information described ~~at 15A NCAC 02N .0903(b); in Rule .0903(c) of this Section~~; the method used to anchor a tank in the ground; if the equipment has single-walled or double-walled construction; the year the piping was manufactured and any production code; and the device or method used to allow piping to be located after it is buried underground. The as-built diagram shall also show the location of

the installed or replaced UST systems relative to: buildings and other permanent structures, utilities, monitoring wells and other UST systems located at the site; adjacent roadways; and water supply wells used for human consumption within 500 feet;

- (C) ~~A~~ a listing of the manufacturer's written guidelines, codes of practice, and industry standards used for installation; and
 - (D) ~~A~~ a statement that the UST system was installed in accordance with the design and the manufacturer's specifications.
- (2) ~~Manufacturer~~ manufacturer warranties;
 - (3) ~~Any~~ any equipment performance claims; and
 - (4) ~~Records~~ records of all tightness testing performed.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

15A NCAC 02N .0903 TANKS

- (a) Tanks ~~must~~ shall be protected from external corrosion in accordance with 40 CFR 280.20(a)(1), (2), (3), or (5).
- (b) Owners and operators of tanks installed in accordance with 40 CFR 280.20(a)(2) shall comply with all applicable requirements for corrosion protection systems contained in this Subchapter.
- (c) The exterior surface of a tank shall bear a permanent marking, code stamp, or label showing the following information:
 - (1) ~~The~~ the engineering standard used;
 - (2) ~~The~~ the diameter in feet;
 - (3) ~~The~~ the capacity in gallons;
 - (4) ~~The~~ the materials of construction of the inner and outer walls of the tank, including any external or internal coatings;
 - (5) ~~Serial~~ serial number or other unique identification number designated by the tank manufacturer;
 - (6) ~~Date~~ date manufactured; and
 - (7) ~~Identity~~ identify of manufacturer.
- (d) Tanks that will be reused shall be certified by the tank manufacturer prior to re-installation and meet all of the requirements of this Section. Tank owners and operators shall submit proof of certification to the Division along with a notice of intent (~~Rule .0902~~) in accordance with Rule .0902 of this Section.
- (e) Tanks shall be tested before and after installation in accordance with the following requirements:
 - (1) Pre- Installation Test - Before installation, the primary containment and the interstitial space shall be tested in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems" is hereby incorporated by reference including subsequent amendments

and editions. A copy may be obtained from Petroleum Equipment ~~Institute, P.O. Box 2380, Tulsa, Oklahoma 74101-2380~~ Institute at <https://my.pei.org/productdetails?id=a1Bf4000001yPEBEA2> at a cost of one hundred and ninety-five dollars (\$95.00). ~~(\$195.00)~~. The presence of soap bubbles or water droplets during a pressure test, any change in vacuum beyond the limits specified by the tank manufacturer during a vacuum test, or any change in liquid level in an interstitial space liquid reservoir beyond the limits specified by the tank manufacturer, shall be considered a failure of the integrity of the tank.

- (2) Post-installation Test – The interstitial space shall be checked for a loss of pressure or vacuum, or a change in liquid level in an interstitial space liquid reservoir. Any loss of pressure or vacuum beyond the limits specified by the tank manufacturer, or a change in liquid level beyond the limits specified by the tank manufacturer, shall be considered a failure of the integrity of the tank.
- (3) If a tank fails a pre-installation or post-installation test, tank installation shall be suspended until the tank is replaced or repaired in accordance with the manufacturer's specifications. Following any repair, the tank shall be re-tested in accordance with Subparagraph ~~(e)(1)(1)~~ of this ~~Rule Paragraph~~ if it failed the pre-installation test and in accordance with Subparagraph ~~(e)(2)(2)~~ of this ~~Rule Paragraph~~ if it failed the post-installation test.

(f) The interstitial spaces of tanks that are not monitored using vacuum, pressure, or hydrostatic methods shall be tested for tightness before UST system start-up, between six months and the first anniversary of start-up, and every three years thereafter. The interstitial space shall be tested using an interstitial tank tightness test method that is capable of detecting a 0.10 gallon per hour leak rate with a probability of detection (Pd) of at least 95 percent and a probability of false alarm (Pfa) of no more than ~~5~~ five percent. The test method shall be evaluated by an independent testing laboratory, consulting firm, not-for-profit research organization, or educational institution using the most recent version of the United States Environmental Protection Agency's (EPA's) "Standard Test Procedures for Evaluating ~~Leak Release Detection Methods~~." Methods: Volumetric and Non-volumetric Tank Tightness Testing (EPA 510-B-19-003). EPA's "Standard Test Procedures for Evaluating ~~Leak Release Detection Methods~~." Methods: Volumetric and Non-volumetric Tank Tightness Testing (EPA 510-B-19-003)" is hereby incorporated by reference including subsequent amendments and additions. A copy may be obtained by visiting EPA's Office of Underground Storage Tank website: <http://www.epa.gov/OUST/pubs/protocol.htm> <https://www.epa.gov/ust/standard-test-procedures-evaluating-various-leak-detection-methods> and may be accessed free of charge. The independent testing laboratory, consulting firm, not-

for-profit research organization, or educational institution shall certify that the test method can detect a 0.10 gallon per hour leak rate with a Pd of at least 95 percent and a Pfa of no more than ~~5~~ five percent for the specific tank model being tested. If a tank fails an interstitial tank tightness test, it shall be replaced by the owner or operator or repaired by the manufacturer or the manufacturer's authorized representative in accordance with manufacturer's specifications. Tank owners and operators shall report all failed interstitial tank tightness tests to the Division within 24 hours. Failed interstitial tank tightness tests shall be reported by fax to the Division of Waste Management, Underground Storage Tank Section, at (919) 715-1117. Following any repair, the tank interstitial space shall be re-tested for tightness. The most recent interstitial tightness test record shall be maintained at the UST site or the tank owner's or operator's place of business and shall be available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

15A NCAC 02N .0904 PIPING

(a) Piping, with the exception of flexible connectors and piping connections, shall be pre-fabricated with double-walled construction. Any flexible connectors or piping connections that do not have double-walled construction shall be installed in containment sumps that meet the requirements of ~~15A NCAC 02N .0905. Rule .0905 of this Section.~~

(b) ~~Piping~~ Piping, with the exception of metal flex connectors and piping connections, shall be ~~constructed of non-corroding materials.~~ meet the requirements of Subparagraph (1) or (2) of this Paragraph. Metal flexible connectors and piping connections shall be installed in containment sumps that meet the requirements of ~~15A NCAC 02N .0905. Rule .0905 of this Section.~~

(~~e~~)(1) ~~Piping shall~~ Primary and secondary piping are constructed of non-corroding materials and comply with the UL Underwriters Laboratories Standard (UL) 971 standard "Nonmetallic Underground Piping for Flammable Liquids;" ~~Liquids;~~ Liquids that is in effect at the time the piping is installed. ~~UL 971 standard "Nonmetallic~~ "Standard for Nonmetallic Underground Piping for Flammable Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062 2096 Laboratories at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=7936> at a cost of four hundred and two dollars (\$402.00).

(2) Primary piping is constructed of stainless steel and secondary piping is constructed of non-corroding materials and complies with UL 971A "Outline of Investigation for Metallic Underground Fuel Pipe." UL 971A "Outline of Investigation for Metallic Underground Fuel Pipe" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories at

<https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=15373> at a cost of two hundred and twenty-five dollars (\$225.00).

~~(d)~~(c) Piping that is buried underground shall be constructed with a device or method that allows it to be located once it is installed. ~~(e)~~(d) Piping that conveys regulated substances under pressure shall also be equipped with an automatic line leak detector that meets the requirements of 40 CFR 280.44(a).

~~(f)~~(e) At the time of installation, the primary containment and interstitial space of the piping shall be initially tested, monitored during construction, and finally tested in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." The presence of soap bubbles or water droplets or any loss of pressure beyond the limits specified by the piping manufacturer during testing shall be considered a failure of the integrity of the piping. If the piping fails a tightness test, it shall be replaced by the owner or operator or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's written specifications. Following any repair, the piping shall be re-tested for tightness in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems."

~~(g)~~(f) Piping that is not monitored continuously for releases using vacuum, pressure, or hydrostatic methods, shall be tested for tightness every three years following installation. The primary containment ~~and shall be tested using a piping tightness test method that is capable of detecting a 0.10 gallon per hour leak rate with a probability of detection (Pd) of at least 95 percent and a probability of false alarm (Pfa) of no more than five percent. The test method shall be evaluated by an independent testing laboratory, consulting firm, not-for-profit research organization, or educational institution using the most recent version of the United States Environmental Protection Agency's (EPA's) "Standard Test Procedures for Evaluating Release Detection Methods: Pipeline Release Detection (EPA 510-B-19-005)." EPA's "Standard Test Procedures for Evaluating Release Detection Methods: Pipeline Release Detection (EPA 510-B-19-005)" is hereby incorporated by reference including subsequent amendments and additions. The independent testing laboratory, consulting firm, not-for-profit research organization, or educational institution shall certify that the test method can detect a 0.10 gallon per hour leak rate with a Pd of at least 95 percent and a Pfa of no more than five percent. The interstitial space of the piping shall be tested in accordance with the manufacturers~~ manufacturer's written guidelines and PEI/RP100 "Recommended Practice for Installation of Underground Liquid Storage Systems." or a code of practice developed by a nationally recognized association or independent testing laboratory. If the piping fails a tightness test, it shall be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the piping shall be re-tested for ~~tightness.~~ tightness in accordance with Paragraph (f) of this Rule. The most recent periodic tightness test record shall be maintained at the UST site or the tank owner or operator's place of business and shall be available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

15A NCAC 02N .0905 CONTAINMENT SUMPS

(a) Containment sumps ~~must shall~~ be constructed of non-corroding materials.

(b) Containment sumps ~~must shall~~ be designed and manufactured expressly for the purpose of containing and detecting a release.

(c) Containment sumps ~~must shall~~ be designed, constructed, installed and maintained to prevent water infiltration.

(d) Electronic sensor probes used for release detection monitoring ~~must shall~~ be located no more than two inches above the lowest point of the containment sump.

(e) At installation, containment sumps shall be tested for tightness after construction, but before backfilling. Tightness testing shall be conducted in accordance with the ~~manufacturers~~ manufacturer's written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." ~~Any change in water level shall be considered a failure of the integrity of the sump.~~ Other tightness test methods may be used if they are approved by the Division. In approving a containment sump tightness testing method the Division shall consider the following factors:

- (1) ~~The the~~ inner surface of the sump is tested to at least ~~six four~~ inches above the highest joint or penetration fitting, whichever is higher; and
- (2) ~~The the~~ method is capable of detecting a fracture, perforation or gap in the sump within the specified test period.

(f) If a containment sump fails an installation tightness test, the sump ~~must shall~~ be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following replacement or repair, the containment sump ~~must shall~~ be re-tested for tightness in accordance with Paragraph (e) of this Rule.

~~(g) Containment sumps that are not monitored continuously on an uninterrupted basis for releases using vacuum, pressure or hydrostatic interstitial monitoring methods shall be tested for tightness every three years following installation in accordance with the manufacturers written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." with:~~

- (1) written requirements developed by the manufacturer;
- (2) a code of practice developed by a nationally recognized association or independent testing laboratory; or
- (3) requirements determined by the Division to be no less protective of human health and the environment than the requirements listed in Subparagraph (1) and (2) of this Paragraph.

If a containment sump fails a periodic tightness test, the sump ~~must shall~~ be replaced in accordance with Paragraphs (a), (b) and (c) of this Rule or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's ~~specifications.~~ specifications or a code of practice developed by a nationally recognized association or independent testing laboratory. Following replacement or repair, the containment sump ~~must shall~~ be re-tested for tightness in accordance with Paragraph (e) of this Rule. The last periodic

tightness test record ~~must shall~~ be maintained at the UST site or the tank owner or operator's place of business and ~~must shall~~ be ~~readily~~ available for inspection.

~~(g)(h) All containment sumps shall be visually inspected at least annually for the presence of water or regulated substance. in accordance with Rule .0407 of this Subchapter. Any water or regulated substance must present in a sump at the time of inspection shall be removed from the sump within 48 hours of discovery. The visual inspection results must shall be documented and must shall be maintained for at least one year at the UST site or the tank owner's or operator's place of business and must shall be readily available for inspection.~~

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h).

15A NCAC 02N .0906 SPILL BUCKETS

(a) Spill buckets shall be pre-fabricated with double-walled construction.

(b) Spill buckets ~~must shall~~ be protected from corrosion by being constructed of non-corroding materials.

(c) Spill buckets ~~must shall~~ be designed, constructed, ~~installed~~ installed, and maintained to prevent water infiltration.

(d) After installation but before backfilling, the primary containment and interstitial space of the spill bucket shall be tested in accordance with the ~~manufacturers~~ manufacturer's written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." or a code of practice developed by a nationally recognized association or independent testing laboratory. Any change in vacuum during a vacuum test or any change in liquid level in an interstitial space liquid reservoir beyond the limits specified by the equipment manufacturer shall be considered a failure of the integrity of the spill bucket. If the spill bucket fails a tightness test, it ~~must shall~~ be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the spill bucket ~~must shall~~ be re-tested for tightness in accordance with the manufacturers' written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." or a code of practice developed by a nationally recognized association or independent testing laboratory.

~~(e) Spill buckets that are not monitored continuously on an uninterrupted basis for releases using vacuum, pressure or hydrostatic methods, must shall be tested for tightness at installation and every three years following installation. The primary containment and interstitial space of the spill bucket shall be tested in accordance with the manufacturers' written guidelines and PEI/RP100 "Recommended Practice for Installation of Underground Liquid Storage Systems." with:~~

- (1) written requirements developed by the manufacturer;
- (2) a code of practice developed by a nationally recognized association or independent testing laboratory; or
- (3) requirements determined by the Division to be no less protective of human health and the environment than the requirements listed in Subparagraph (1) and (2) of this Paragraph.

If the spill bucket fails a tightness test, it ~~must~~ shall be replaced and tested in accordance with Paragraphs (a) through (d) of this Rule or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the spill bucket ~~must~~ shall be re-tested for ~~tightness.~~ tightness in accordance with the manufacturers' written guidelines or a code of practice developed by a nationally recognized association or independent testing laboratory. The last periodic tightness test record ~~must~~ shall be maintained at the UST site or the tank owner or operator's place of business and ~~must~~ shall be readily available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h).

15A NCAC 02N .0907 NATIONAL CODES OF PRACTICE AND INDUSTRY STANDARDS

In order to comply with this Section, owners and operators must comply with ~~either~~ of the following standards:

- (1) The most recent versions of the following national codes of practice and industry standards applicable at the time of UST system installation or replacement shall be ~~used to comply with this Section.~~ used.
 - (a) American Concrete Institute (ACI) International ~~224R-89,~~ 224R-01, "Control of Cracking in Concrete Structures." ACI International ~~224R-89,~~ 224R-01, "Control of Cracking in Concrete Structures" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ACI International, P.O. Box 9094, Farmington Hills, Michigan 48333-9094 International at <https://www.concrete.org/store/productdetail.aspx?ItemID=22401&Format=DOWNLOAD&Language=English&Units=US AND METRIC> at a cost of ~~sixty-seven~~ seventy-four dollars and fifty cents (~~\$67.50~~). (\$74.50).
 - (b) ACI International 350-06, "Environmental Engineering Concrete Structures." ACI International 350-06, "Environmental Engineering Concrete Structures" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ACI ~~International,~~ P.O. Box 9094, Farmington Hills, Michigan 48333-9094 International at <https://www.concrete.org/store/productdetail.aspx?ItemID=35006&Language=English&Units=US Units> at a cost of one hundred ~~sixty-six~~ eighty-one dollars and fifty cents (~~\$166.50~~). (\$181.50).
 - (c) American Petroleum Institute (API) Standard 570, "Piping Inspection

Code: Inspection Repair, Alteration and Re-rating of In-Service Piping Systems." API Standard 570, "Piping Inspection Code: Inspection Repair, Alteration and Re-rating of In-Service Piping Systems" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API ~~Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80412-5776~~ Publications at https://www.techstreet.com/api/standards/api-570?product_id=1910713 at a cost of one hundred ~~eight~~ eighty-five dollars (~~\$108.00~~). (\$185.00).

- (d) API Recommended Practice 1110, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines." API Recommended Practice 1110, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API ~~Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80412-5776~~ Publications at https://www.techstreet.com/api/standards/api-rp-1110-r2018?product_id=1852115 at a cost of ~~fifty-five~~ ninety-eight dollars (~~\$55.00~~). (\$98.00).
- (e) API Recommended Practice 1615, "Installation of Underground Petroleum Storage Systems." API Recommended Practice 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from API ~~Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80412-5776~~ Publications at https://www.techstreet.com/api/standards/api-rp-1615?product_id=1780646 at a cost of ~~one~~ two hundred eight eleven dollars (~~\$108.00~~). (\$211.00).
- (f) API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets." API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets" is hereby incorporated by reference including subsequent amendments and editions. A copy may

- be obtained from ~~API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112 5776 Publications~~ at https://www.techstreet.com/api/standards/api-rp-1621-r2012?product_id=14616 at a cost of ~~seventy three eighty-five~~ dollars (\$73.00). (\$85.00).
- (g) API Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks." API Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ~~API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112 5776 Publications~~ at https://www.techstreet.com/api/standards/api-rp-1631?product_id=913787 at a cost of ~~seventy six eighty-nine~~ dollars (\$76.00). (\$89.00).
- (h) API Recommended Practice 1637, "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations Gasoline Dispensing Facilities and Distribution Terminals." API Recommended Practice 1637, "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations Gasoline Dispensing Facilities and Distribution Terminals" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ~~API Publications, 15 Inverness Way East, M/S C303B, Englewood, Colorado 80112 5776 Publications~~ at https://www.techstreet.com/api/standards/api-rp-1637-r2012?product_id=1274225 at a cost of ~~fifty nine sixty-eight~~ dollars (\$59.00). (\$68.00).
- (i) American Society of Mechanical Engineers (ASME) International: B31.4-2006, "2006 Pipeline "Pipeline Transportation Systems for Liquid Hydrocarbons Liquids and other Liquids." Slurries." ASME International: B31.4-2006, "2006 Pipeline "Pipeline Transportation Systems for Liquid Hydrocarbons Liquids and other Liquids." Slurries" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ~~ASME, 22 Law Drive, Box 2900, Fairfield, NJ 07007 2900 ASME~~ at <https://www.asme.org/codes-standards/find-codes-standards/b31-4-pipeline-transportation-systems-liquids-slurries> at a cost of ~~one two hundred twenty nine fifteen~~ dollars (\$129.00). (\$215.00).
- (j) National Fire Protection Association (NFPA) 30, "Flammable and Combustible Liquids Code." NFPA 30, "Flammable and Combustible Liquids Code" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ~~National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169 7471 Association~~ at <https://catalog.nfpa.org/NFPA-30-Flammable-and-Combustible-Liquids-Code-P1164.aspx?icid=D729> at a cost of ~~forty two dollars and fifty cents (\$42.50).~~ seventy-five dollars (\$75.00).
- (k) NFPA 30A, "Automotive and Marine Service Station Code." "Code for Motor Fuel Dispensing Facilities and Repair Garages." NFPA 30A, "Automotive and Marine Service Station Code" "Code for Motor Fuel Dispensing Facilities and Repair Garages" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from ~~National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169 7471 Association~~ at <https://catalog.nfpa.org/NFPA-30A-Code-for-Motor-Fuel-Dispensing-Facilities-and-Repair-Garages-P1165.aspx?icid=D729> at a cost of ~~thirty three fifty~~ dollars and fifty cents (\$33.50). (\$50.50).
- (l) NFPA 329, "Handling Underground "Recommended Practice for Handling Releases of Flammable and Combustible Liquids." Liquids and Gases." NFPA 329, "Handling Underground "Recommended Practice for Handling Releases of Flammable and Combustible Liquids." Liquids and Gases" is

- hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471 Association at <https://catalog.nfpa.org/NFPA-329-Recommended-Practice-for-Handling-Releases-of-Flammable-and-Combustible-Liquids-and-Gases-P1287.aspx?icid=D729> at a cost of ~~thirty three fifty~~ dollars and fifty cents (~~\$33.50~~), (\$50.50).
- (m) PEI: PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." PEI: PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Petroleum Equipment Institute at https://www.techstreet.com/pei/standards/pei-rp100-17?gateway_code=pei&product_id=1945712 at a cost of one hundred ninety-five dollars (\$195.00).
- (n) PEI: PEI/RP1200, "Recommended Practice for Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities." PEI: PEI/RP1200, "Recommended Practice for Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Petroleum Equipment Institute at https://www.techstreet.com/pei/standards/pei-rp1200-17?product_id=1952629 at a cost of one hundred ninety-five dollars (\$195.00).
- (o) Steel Tank Institute (STI) ACT 100 F894, "Specifications for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks." Steel Tank Institute (STI) ACT 100 F894, "Specifications for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, Illinois 60047 Institute at <https://www.steeltank.com/Publications/STISPFASore/ProductDetail/tabid/502/rvdsfpid/act-100-specification-for-external-corrosion-protection-of-frp-composite-steel-usts-f894-2/Default.aspx> at a cost of ~~thirty six~~ dollars (~~\$50.00~~), (\$60.00).
- (p) STI ACT 100-U F961, "Specifications for External Corrosion Protection of Composite Steel Underground Storage Tanks." STI ACT 100-U F961, "Specifications for External Corrosion Protection of Composite Steel Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, Illinois 60047 Institute at <https://www.steeltank.com/Publications/STISPFASore/ProductDetail/tabid/502/rvdsfpid/act-100u-specification-for-external-corrosion-protection-of-composite-steel-underground-storage-tanks-f961-250/Default.aspx> at a cost of ~~thirty six~~ dollars (~~\$50.00~~), (\$60.00).
- (q) STI 922, F922, "Specifications for Permatank." STI 922, F922, "Specifications for Permatank" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Steel Tank Institute, 570 Oakwood Road, Lake Zurich, Illinois 60047 Institute at <https://www.steeltank.com/Publications/STISPFASore/ProductDetail/tabid/502/rvdsfpid/permatank-f922-specification-for-permatank-231/Default.aspx> at a cost of ~~thirty six~~ dollars (~~\$50.00~~), (\$60.00).
- (r) Underwriters UL 58, "Steel Underground tanks for Flammable and Combustible Liquids." UL 58, "Steel Underground tanks for Flammable and Combustible Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 Laboratories at <https://www.shopulstandards.com/Pur>

- ~~chaseProduct.aspx?UniqueKey=33920~~ at a cost of ~~four~~ five hundred ~~forty-five~~ and two dollars ~~(\$445.00)~~; ~~(\$502.00).~~
- (+) (s) UL 567, "Pipe Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP Gas." UL 567, "Pipe Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings Petroleum Products and LP Gas" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 Laboratories at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=27791> at a cost of eight hundred ~~eighty-five~~ ninety-seven dollars ~~(\$885.00)~~; ~~(\$897.00).~~
- (t) UL 567A, "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0 – E85)." UL 567A, "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0 – E85)" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=29197> at a cost of six hundred thirty-one dollars (\$631.00).
- (u) UL 567B, "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil." UL 567B, "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent
- (B20), Kerosene, and Fuel Oil" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=29195> at a cost of four hundred and two dollars (\$402.00).
- (+) (v) UL 971, "Nonmetallic Standard for Nonmetallic Underground Piping for Flammable Liquids;" Liquids." UL 971, "Standard for Nonmetallic Underground Piping for Flammable Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from UL at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=7936> at a cost of four hundred and two dollars (\$402.00).
- (w) UL 971A, "Outline of Investigation for Metallic Underground Fuel Pipe." UL 971A, "Outline of Investigation for Metallic Underground Fuel Pipe" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from UL at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=15373> at a cost of two hundred and twenty-five dollars (\$225.00).
- (+) (x) UL 1316, "Glass Fiber Reinforced Plastic Standard for Fibre Reinforced Underground Storage Tanks for Petroleum Products, Alcohols, Flammable and Alcohol-Gasoline Mixtures." Combustible Liquids." UL 1316, "Glass Fiber Reinforced Plastic Standard for Fibre Reinforced Underground Storage Tanks for Petroleum Products, Alcohols, Flammable and Alcohol-Gasoline Mixtures." Combustible Liquids" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 Laboratories at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=35172> at a cost of four hundred ~~forty-five~~ and two dollars ~~(\$445.00)~~; ~~or~~ ~~(\$402.00).~~
- (+) (y) UL 1746, "External Corrosion Protection Systems for Steel

Underground Storage Tanks." UL 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks" is hereby incorporated by reference including subsequent amendments and editions. A copy may be obtained from Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062-2096 Laboratories at <https://www.shopulstandards.com/PurchaseProduct.aspx?UniqueKey=15742> at a cost of ~~eight nine~~ eighty five ninety-eight dollars (\$885.00); ~~or (\$998.00); and~~

- (2) Other appropriate codes or standards applicable at the time of UST system installation or replacement may be used provided they are developed by ACI, American National Standards Institute (ANSI), API, ASME, ASTM, NFPA, National Leak Prevention Association (NLPA), PEI, STI and UL.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

SUBCHAPTER 020 - FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

SECTION .0100 - GENERAL CONSIDERATIONS

15A NCAC 020 .0101 GENERAL

(a) ~~The purpose of this Subchapter is to establish the requirements for financial responsibility for owners~~ Owners and operators of underground storage tanks underground storage tank systems that are subject to regulation pursuant to 40 CFR 280.10 and located in North Carolina. North Carolina, shall comply with the financial responsibility requirements in this Subchapter.

(b) The Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality (Department), Division of Waste Management (Division) shall administer the underground storage tank financial responsibility compliance program for the State of North Carolina.

(c) Department staff may conduct inspections ~~as necessary~~ to ensure compliance with this Subchapter.

Authority G.S. 143-215.3(a)(15); 143-215.94H; 143B-282(2)(h) 143B-282(a)(2)(h).

15A NCAC 020 .0102 COPIES OF REFERENCED FEDERAL REGULATIONS FINANCIAL RESPONSIBILITY

(a) ~~Copies of applicable Code of Federal Regulations sections incorporated in this Subchapter are available for inspection at Department of Environment, Health, and Natural Resources regional offices. They are:~~

- (1) ~~Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina 28802;~~

- (2) ~~Winston Salem Regional Office, Suite 100, 8025 North Point Boulevard, Winston Salem, North Carolina 27106;~~
- (3) ~~Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;~~
- (4) ~~Raleigh Regional Office, 3800 Barrett Drive, Post Office Box 27687, Raleigh, North Carolina 27611;~~
- (5) ~~Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;~~
- (6) ~~Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;~~
- (7) ~~Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.~~

~~(b) Copies of such regulations can be made at these regional offices for ten cents (\$0.10) per page. Individual complete copies may be obtained from the U.S. Environmental Protection Agency, Office of Underground Storage Tanks, Post Office Box 6044, Rockville, Maryland 20850 for no charge.~~

The governing Federal Regulations set forth below are hereby incorporated by reference excluding any subsequent amendments and editions. Copies may be obtained at www.ecfr.gov/cgi-bin/ECFR?page=browse at no cost.

- (1) 40 CFR 280.90, "Applicability";
- (2) 40 CFR 280.91, "Compliance Dates";
- (3) 40 CFR 280.94, "Allowable Mechanisms and Combinations of Mechanisms";
- (4) 40 CFR 280.96, "Guarantee";
- (5) 40 CFR 280.98, "Surety Bond";
- (6) 40 CFR 280.99, "Letter of Credit";
- (7) 40 CFR 280.102, "Trust Fund";
- (8) 40 CFR 280.103, "Standby Trust Fund";
- (9) 40 CFR 289.104, "Local Government Bond Rating Test";
- (10) 40 CFR 280.105, "Local Government Financial Test";
- (11) 40 CFR 280.106, "Local Government Guarantee";
- (12) 40 CFR 280.107, "Local Government Fund";
- (13) 40 CFR 280.108, "Substitution of Financial Assurance Mechanisms by Owner or Operator";
- (14) 40 CFR 280.109, "Cancellation or Nonrenewal by a Provider of Financial Assurance";
- (15) 40 CFR 280.110, "Reporting by Owner or Operator";
- (16) 40 CFR 280.112, "Drawing on Financial Assurance Mechanisms";
- (17) 40 CFR 290.113, "Release from the Requirements".

Authority G.S. 12-3.1(c); 143-215.3(a)(15); 143B-282(2)(h).

15A NCAC 020 .0103 SUBSTITUTED SECTIONS

~~(a) References to sections of the Federal Regulations incorporated by reference will refer to those sections and any subsequent amendments and editions.~~

~~(b) References to 40 CFR 280.93 are to be taken as references to Rule .0204 of this Subchapter, with Paragraph correspondence being: 40 CFR 280.93(a) corresponds to 15A NCAC 2O .0204(a) and (b); 40 CFR 280.93(b) corresponds to 15A NCAC 2O .0204(c) and (d); 40 CFR 280.93(e) and (d) have no correspondence; and 40 CFR 280.93(e), (f), (g), and (h) correspond to 15A NCAC 2O .0204(f), (g), (h), and (i), respectively.~~

~~(c) References to 40 CFR 280.95 are to be taken as references to Rule .0302 of this Subchapter, with Paragraph correspondence being: 40 CFR 280.95(a), (e), (f), and (g) correspond to 15A NCAC 2O .0302(a), (e), (d), and (e), respectively; 40 CFR 280.95(b) and (c) correspond to 15A NCAC 2O .0302(b); 40 CFR 280.95(d) corresponds to 15A NCAC 2O .0302(f) and (g).~~

Authority G.S. 143-215.94H; 143-215.94T; 150B-21.6.

SECTION .0200 - PROGRAM SCOPE

15A NCAC 020 .0201 APPLICABILITY

~~(a) The provisions for "Applicability" contained in 40 CFR 280.90 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

~~(b) The Rules contained in this Subchapter apply to all dual usage tanks as defined in Rule .0203 of this Section.~~

Authority G.S. 143-215.94A; 143-215.94H; 143-215.94T; 150B-21.6.

15A NCAC 020 .0202 COMPLIANCE DATES

~~The provisions for "Compliance Dates" contained in 40 CFR 280.91 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

Authority G.S. 143-215.94A; 143-215.94H; 150B-21.6.

15A NCAC 020 .0203 DEFINITIONS

~~(a) The definitions contained in 15A NCAC 2N .0203 and 40 CFR 280.92 are hereby incorporated by reference including any subsequent amendments and editions, reference, except for "Director of the Implementing Agency", "Occurrence", and "Financial Reporting Year". Locations where this material is available are specified in Rule .0102 of this Subchapter. as modified below. The federal regulation may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.~~

(1) "Director of the Implementing Agency" shall mean the Director of the Division of Waste Management.

(2) "Financial reporting year" shall be modified to allow a compilation report to be used to support a financial test. The compilation report shall be prepared by a Certified Public Accountant

(CPA) or Certified Public Accounting Firm (CPA Firm) as defined in 21 NCAC 08A .0301.

(b) The following definitions are defined for the purposes of shall apply throughout this Subchapter:

(1) "Annual Operating Fee" is an annual fee required to be paid by the owner or operator of each commercial underground storage tank, as defined in G.S. 143-215.94A, in use on or after January 1 of the year, beginning with 1989.

(2) "Dual Usage Tank" means an underground storage tank which has had varied usage which would cause the tank to be considered an underground storage tank regulated in accordance with 15A NCAC 2N during certain times and an unregulated tank during other times and for which both the regulated and unregulated usages were integral to the operation or existence of the tank.

(3) "Director of the Implementing Agency" means the Director of the Division of Environmental Management of the Department of Environment, Health, and Natural Resources.

(4) "Financial reporting year" means the latest consecutive twelve month period for which any of the following reports used to support a financial test is prepared:

- (A) a 10K report submitted to the SEC;
- (B) an annual report of tangible net worth submitted to Dun and Bradstreet;
- (C) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration;
or
- (D) a compilation report by a Certified Public Accountant or Certified Public Accounting Firm.

(5) "Occurrence" means one or more releases which result(s) in a single plume of soil, groundwater, and/or surface water contamination (consisting of free product and/or associated dissolved contaminants exceeding standards established under 15A NCAC 2L .0202 or any other applicable laws, rules, or regulations) emanating from a given site.

(1) "Independent" Certified Public Accountant or Certified Public Accounting Firm shall mean a CPA or CPA firm that examines the financial records and business transactions of an owner, operator or guarantor for whom the CPA or CPA firm is not affiliated.

(2) "Financial assurance" shall mean per occurrence and annual aggregate amounts of financial responsibility, collectively.

Authority G.S. 143-215.94A; 143-215.94H; 150B-21.6.

15A NCAC 020 .0204 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY

~~(a) Owners or operators of petroleum underground storage tanks located in North Carolina must demonstrate financial responsibility for at least one million dollars (\$1,000,000) per occurrence for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks.~~

~~(b) Compliance with all laws, rules, and regulations relating to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund shall constitute demonstration of financial responsibility for that amount specified in Paragraph (a) of this Rule which is in excess of the sum of the amounts required to be paid per occurrence by the owner or operator for cleanup and for third party claims.~~

~~(c) Owners or operators of petroleum underground storage tanks located in North Carolina must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:~~

- ~~(1) For owners or operators of one to 100 petroleum underground storage tanks, one million dollars (\$1,000,000); and~~
- ~~(2) For owners or operators of 101 or more petroleum underground storage tanks, two million dollars (\$2,000,000).~~

~~(d) If all laws, rules, and regulations relating to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund are complied with, the owner or operator may meet the financial responsibility requirements of Paragraph (c) of this Rule by providing an annual aggregate financial assurance of at least the sum of the amounts specified in Subparagraphs (d)(1), (2), and (3) of this Rule as follows, in addition to the assurance provided by the Commercial Fund:~~

- ~~(1) The average maximum amount required to be paid by an owner or operator per occurrence for cleanup as determined in accordance with Paragraph (c) of this Rule;~~
- ~~(2) The average maximum amount required to be paid by an owner or operator per occurrence for third party claims as determined in accordance with Paragraph (c) of this Rule; and~~
- ~~(3) Three percent of the multiple of:

 - ~~(A) the amount in Subparagraph (d)(1) of this Rule; and~~
 - ~~(B) the number of tanks being covered.~~~~

~~(e) An owner or operator providing financial assurance for more than one underground storage tank where the various tanks do not all require the same maximum amounts to be paid per occurrence for cleanup and/or third party claims shall calculate an average maximum amount to be paid per occurrence as follows:~~

- ~~(1) Determine the maximum amount to be paid per occurrence for each underground storage tank being assured;~~

- ~~(2) Sum the values determined in Subparagraph (e)(1) of this Rule and divide by the number of underground storage tanks being assured.~~

~~(a) Pursuant to G.S. 143-215.94H(a)(2), owners or operators shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. The minimum financial responsibility that must be maintained per occurrence is determined by calculating the sum of the following:~~

- ~~(1) \$20,000 for taking corrective action to cleanup environmental damage pursuant to G.S. 143-215.94(B)(b)(3);~~
- ~~(2) \$100,000 for compensating third parties for bodily injury and property damage pursuant to G.S. 143-215.94(B)(b)(5); and~~
- ~~(3) the multiple of \$600 and the number of petroleum underground storage tanks that an owner or operator owns or operates in the state of North Carolina.~~

~~(b) The minimum financial responsibility that shall be maintained as an annual aggregate is equal to the per occurrence amount.~~

~~(f)(c) Owners or operators shall annually review the amount of aggregate financial assurance provided. The amount of required financial responsibility and annual aggregate assurance shall be adjusted at the time of the review to that required in Paragraphs (a), (b), (c), and (d) of this Rule. All changes in status, including installations and closures, shall be reported to the Department, and all fees due shall be paid in accordance with applicable laws, rules, and regulations. review.~~

~~(g)(d) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate amount of financial assurance required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.~~

~~(h)(e) The amounts amount of financial assurance required under this Rule exclude a legal defense costs.~~

~~(i)(f) The required per occurrence and annual aggregate coverage amounts do amount of financial assurance does not in any way limit the liability of the owner or operator.~~

~~(j)(g) Assurance Evidence of financial responsibility for petroleum underground storage tanks located in North Carolina must shall be provided separately from that provided for petroleum underground storage tanks not located in North Carolina.~~

Authority G.S. 143-215.94H; 143-215.94T.

SECTION .0300 - ASSURANCE MECHANISMS

15A NCAC 020 .0301 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS

The provisions for "Allowable Mechanisms and Combinations of Mechanisms" contained in 40 CFR 280.94 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter. "Guarantee" and

"Surety Bond" are acceptable mechanisms in the State of North Carolina.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0302 SELF INSURANCE

(a) Assurance of financial responsibility may be provided by an owner or operator or guarantor as a self insurer if the owner or operator has complied with all of the laws, rules, and regulations relative to the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and the owner or operator or guarantor either establishes a Trust Fund as set out in Paragraph (h) of this Rule or qualifies to be a self insurer. An owner, operator or guarantor may meet the financial responsibility requirements by passing the financial test specified in Paragraph (b) of this Rule or a financial test of 40 CFR 280.95. of this Rule.

(b) To qualify as an insurer, an An owner, operator, operator or guarantor, individually or collectively, must shall meet the following criteria based on year-end financial statements for the latest completed fiscal year.

(1) The owner or operator, operator or guarantor, individually or collectively must shall have a total tangible net worth of at least: at least \$150,000 and not more than \$3,000,000:

(A) The sum of the amounts specified in Subparagraphs (b)(1)(A)(i) and (ii) of this Rule as follows, not to exceed three million dollars (\$3,000,000) and not to be less than one hundred fifty thousand dollars (\$150,000):

(i) the multiple of:

(2) A cleanup cost factor determined by multiplying the following:

(I) the number of tanks being covered by this mechanism,

(A) the number of petroleum underground storage tanks that an owner or operator owns and/or operates in the state of North Carolina and that are covered by self-insurance. USTs that are manifolded together are considered separate USTs. A multi-compartment UST is considered one UST;

(II) the cleanup costs required to be paid by the owner or operator per occurrence in accordance with G.S. 143-215.94B(b),

(B) \$20,000 for taking corrective action to cleanup environmental damage pursuant to G.S. 143-215.94(B)(b)(3);

(III) the proportion of the required financial assurance required pursuant to Rule

.0204 of this Subchapter being covered by this mechanism, and

(C) the proportion of financial assurance required pursuant to Rule .0204 of this Subchapter being covered by self-insurance; and

(IV) a constant representing an average value per tank calculated from 0.05 for each underground storage tank covered by this mechanism which is in compliance with any performance standards required on December 22, 1998, and 0.18 for each underground storage tank covered by this mechanism which is not in compliance with any performance standards required on December 22, 1998.

(D) a constant equal to 0.05.

(ii) two percent of the multiple of:

(3) A third party liability cost factor determined by multiplying the following:

(I) the number of tanks being covered by this mechanism;

(A) the number of petroleum underground storage tanks that an owner or operator owns and/or operates in the state of North Carolina and that are covered by self-insurance;

(II) the amount for third party claims required to be paid by the owner or operator per occurrence in accordance with G.S. 143-215.94B(b);

(B) \$100,000 for compensating third parties for bodily injury and property damage pursuant to G.S. 143-215.94(B)(b)(5); and

- ~~(III) — the proportion of the required financial assurance required pursuant to Rule .0204 of the Subchapter being covered by this mechanism;~~
- (C) the proportion of financial assurance required pursuant to Rule .0204 of this Subchapter being covered by self-insurance; and
- (D) a constant equal to 0.02.
- ~~(B) Any amount of tangible net worth used to assure financial responsibility for petroleum underground storage tanks not located in North Carolina;~~
- (4) The amount of tangible net worth used to assure financial responsibility for petroleum underground storage tanks not located in North Carolina;
- ~~(C) Ten times the sum of the corrective action cost estimates, the current closure and post closure care cost estimates, and amount of liability coverage for Hazardous Waste Management Facilities and Hazardous Waste Storage Facilities for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and~~
- (5) Ten times the sum of the corrective action cost estimates (40 CFR 264.101(b)), the closure (40 CFR 264.143 and 265.143) and post-closure care (40 CFR 264.145 and 265.145) cost estimates, and amount of liability coverage (40 CFR 264.147 and 265.147) for Hazardous Waste Management Facilities and Hazardous Waste Storage Facilities for which a financial test is used to demonstrate financial responsibility to EPA or to a State implementing agency under a State program authorized by EPA under 40 CFR 271; and
- ~~(D) Ten times the sum of current plugging and abandonment cost estimates for injection wells for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Part 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.~~
- (6) Ten times the sum of current plugging and abandonment cost estimates for injection wells
- (40 CFR 144.63) for which a financial test is used to demonstrate financial responsibility to the EPA under 40 CFR 144.63 or to a State implementing agency under a State program authorized by EPA under 40 CFR Part 145.
- ~~(2)(7) In addition to any other requirements of this Section, a Guarantor must guarantor shall have a net worth of at least two hundred thousand dollars (\$200,000) \$200,000 greater than any tangible net worth used by the guarantor in Subparagraph (b)(1) of this Rule. Subparagraph (1) of this Paragraph.~~
- ~~(3) The owner or operator, or guarantor, individually or collectively, must each have a letter signed by the chief financial officer, worded as specified in Paragraph (g) of this Rule, and must do one of the following:~~
- (A) ~~Obtain annually a compilation report issued by an independent certified public accountant or certified public accounting firm;~~
- (B) ~~File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or~~
- (C) ~~Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.~~
- (c) The owner or operator, operator or guarantor, individually or collectively, must shall each have a letter signed by the chief financial officer, worded as specified in Paragraph (g) of this Rule, and must shall do one of the following:
- (1) Obtain annually a compilation report issued by an independent certified public accountant or certified public accounting firm;
- (2) File Pursuant to 40 CFR 280.95(b)(4)(i), file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or
- (3) Report Pursuant to 40 CFR 280.95(b)(4)(ii), report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.
- ~~(4) The firm's year end financial statements must be independently compiled and cannot include an adverse accountant's report or a "going concern" qualification.~~
- (d) The firm's year-end financial statements cannot include an adverse accountant's report or a "going concern" qualification.
- ~~(e)(e) If an owner or operator is acting as a self insurer in accordance with Paragraph (b) of this Rule and finds that he or she no longer meets the requirements of the test in Paragraph (b) of this Rule based on the year end financial statements, the owner or operator must obtain alternative coverage within 150 days of~~

PROPOSED RULES

~~the end of the year for which financial statements have been prepared. 40 CFR 280.95(d), (e), (f) and (g) are incorporated by reference except that "financial test" means the financial test specified in Paragraph (b) of this Rule.~~

~~(d) The Department may require reports of financial condition at any time from a guarantor and from an owner or operator who is self insuring. If the Department finds, on the basis of such reports or other information, that the owner, operator, or guarantor no longer meets the financial test requirements of Paragraph (b) of this Rule, the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.~~

~~(e) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the~~

~~requirements of the financial test based on the year end financial statements, or within 30 days of notification by the Department that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.~~

(f) To demonstrate that it meets the financial test under Paragraph (b) of this Rule, the chief financial officer of each ~~owner or~~ owner, operator or guarantor must shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as in Paragraph (g) of this Rule, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

(g) LETTER FROM CHIEF FINANCIAL OFFICER

I, [insert: name of chief financial officer], the chief financial officer of [insert: name and address of the ~~owner or operator,~~ owner, operator or guarantor] have prepared this letter in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," or "guarantor"]:

[List or attach the following information for each facility: the name and address of the facility where tanks assured by this financial test are ~~located,~~ located and facility number(s) assigned by the ~~Department, and date(s) of last payment of annual tank operating fee(s).~~ Department. If separate mechanisms or combinations of ~~mechanisms, other than the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund~~ mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test.]

[When appropriate, include the following for Hazardous Waste Management Facilities, Hazardous Waste Storage Facilities, and Injection Wells:

A {insert: "financial test," or "guarantee"} [insert: "financial test" or "guarantee"] is also used by this {insert: "owner or operator," or "guarantor"} [insert: "owner, operator" or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations	Amount
Closure (including □264.143 and □265.143 <u>40 CFR 264.143 and 265-143</u>)	\$ _____
Post-Closure Care (including □264.145 and □265.145 <u>40 CFR 264.145 and 265.145</u>)	\$ _____
Liability Coverage (including □264.147 and □265.147 <u>40 CFR 264.147 and 265.147</u>)	\$ _____
Corrective Action (including □264.101(b) <u>40 CFR 264.101(b)</u>)	\$ _____
Plugging and Abandonment (including □144.63 <u>40 CFR 144.63</u>)	\$ _____
Total	\$ _____]

This [insert: "~~owner or operator,"~~ owner, operator" or "guarantor"] has not received an adverse report or a "going concern" qualification from an independent accountant on his financial statements for the latest completed fiscal year.

1.	a.	Number of USTs being covered	_____
	b.	Average maximum amount of cleanup costs (Rule .0204(d)(1))	_____
	e.	Average maximum amount of third party costs (Rule .0204(d)(2))	_____
	d.	Proportion covered	_____
	e.	Constant (Rule .0302(b)(1)(A)(i))	_____
	f.	Cleanup Total (a x b x d x e)	\$ _____
	g.	Third Party Total (0.02 x a x e x d)	\$ _____
	h.	If Guarantor, list \$200,000	\$ _____
2.		Tangible assets applied to USTs not in North Carolina	\$ _____
3.		Ten times the costs for Hazardous Waste Facilities and Injections Wells	\$ _____
4.		Sum of lines 1f, 1g, 1h, and 2	\$ _____
5.		Total tangible assets	\$ _____
6.		Total liabilities [if any of the amount reported on line 4 is included in total liabilities, you may deduct that amount from this line and add that amount to line 7]	\$ _____
7.		Tangible net worth [subtract line 6 from line 5]	\$ _____

PROPOSED RULES

1.	a.	<u>Number of USTs in North Carolina being covered</u>	_____
	b.	<u>Proportion covered</u>	_____
	c.	<u>Cleanup cost factor (multiply 0.05 x \$20,000 x #1a and #1b)</u>	\$ _____
	d.	<u>Third party liability cost factor (multiply 0.02 x \$100,000 x #1a and #1b)</u>	\$ _____
2.		<u>Cleanup and third-party liability cost factor total (sum of #1c and #1d)</u>	\$ _____
3.		<u>Guarantor factor (enter \$200,000, if guarantor)</u>	\$ _____
4.		<u>Net worth used to assure environmental liabilities for Hazardous Waste Management Facilities, Hazardous Waste Storage Facilities, and Injection Wells multiplied by 10</u>	\$ _____
5.		<u>Net worth used to assure environmental liabilities for USTs outside of North Carolina</u>	\$ _____
6.		<u>Total net worth required to self-insure or to be a guarantor (sum of #2, #3, #4 and #5)</u>	\$ _____
7.		<u>Total tangible assets</u>	\$ _____
8.		<u>Total liabilities (if any of the amount reported for #6 is included in total liabilities, you may deduct that amount from this line and add that amount to #9)</u>	\$ _____
9.		<u>Tangible net worth (subtract #8 from #7)</u>	\$ _____
			Yes No
8- 10.		Is line 7 9 at least [for an owner or operator: \$150,000; for a guarantor: \$350,000]?	_____ _____
9- 11.		Is line 7 9 equal to or greater than line 4? 6?	_____ _____
40- 12.		Has a compilation report been issued by an <u>independent</u> certified public accountant or certified public accounting firm?	_____ _____
41- 13.		Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?	_____ _____
42- 14.		Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	_____ _____
43- 15.		Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration?	_____ _____
44- 16.		Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met]	_____ _____

I hereby certify that the wording of this letter is identical to the wording specified in 15A NCAC 20 .0302, as such regulations were constituted on the date shown immediately below, and that the information contained herein is complete and accurate.

[Signature of chief financial officer]
 [Name]
 [Title]
 [Date]

~~(h) The provisions for "Trust Fund" contained in 40 CFR 280.102 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

Authority G.S. 58-2-205; 143-215.94H; 150B-21.6.

15A NCAC 020 .0303 GUARANTEE

~~The provisions for "Guarantee" contained in 40 CFR 280.96 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0304 INSURANCE AND RISK RETENTION GROUP COVERAGE

~~The provisions for "Insurance and Risk Retention Group Coverage" contained in 40 CFR 280.97 entitled "Insurance and Risk Retention Group Coverage" are hereby is incorporated by reference including reference, excluding any subsequent amendments and editions, except that "licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states" in 280.97(b)(1),~~

40 CFR 280.97(b)(1), (b)(2), and (c) is replaced by "licensed, registered, or otherwise authorized to provide insurance in North Carolina". Locations where this material is available are specified in Rule .0102 of this Subchapter. This document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge. The requirements in 40 CFR 280.97 shall be met to demonstrate financial responsibility by insurance pursuant to G.S. 143-215.94H.

Authority G.S. 58-2-125; 58-22; 143-215.94H; 150B-21.6.

15A NCAC 020 .0305 SURETY BOND

~~The provisions for "Surety Bond" contained in 40 CFR 280.98 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0306 LETTER OF CREDIT

The provisions for "Letter of Credit" contained in 40 CFR 280.99 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0307 STANDBY TRUST FUND

The provisions for "Standby Trust Fund" contained in 40 CFR 280.103 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0308 INSURANCE POOLS

(a) Insurance Pools established by owners and operators may be used alone or in combination to demonstrate financial assurance in accordance with ~~Rules .0204 and .0304~~ Rule .0204 of this Subchapter.

(b) To be an eligible ~~mechanism~~, mechanism for demonstrating financial assurance, Insurance Pools ~~must~~ shall comply with the requirements of G.S. 143-215.94I and any other requirements imposed by the Commissioner of Insurance of the State of North Carolina and any relevant law, rule, or regulation. G.S. 143-215.94I.

(c) Each owner and operator ~~provided~~ providing financial assurance through an Insurance Pool ~~must~~ shall maintain a certificate of insurance issued by the Insurance Pool ~~listing, at least; that lists at a minimum the following information:~~

- (1) the name and address of the member;
- (2) the location of the facilities owned by that member where underground storage tanks are being insured by the pool;
- (3) the number of insured underground storage tanks at each facility;
- (4) the capacity of each insured underground storage tank;
- (5) the amount of insurance provided for each underground storage tank; and
- (6) the name, address, and signature of the Administrator of the Insurance Pool.

Authority G.S. 143-215.94H; 143-215.94I.

15A NCAC 020 .0311 LOCAL GOVERNMENT BOND RATING TEST

The regulations governing "Local Government Bond Rating Test" set forth in 40 CFR 280.104 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0312 LOCAL GOVERNMENT FINANCIAL TEST

The regulations governing "Local Government Financial Test" set forth in 40 CFR 280.105 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0313 LOCAL GOVERNMENT GUARANTEE

The regulations governing "Local Government Guarantee" set forth in 40 CFR 280.106 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0314 LOCAL GOVERNMENT FUND

The regulations governing "Local Government Fund" set forth in 40 CFR 280.107 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0315 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS

The regulations governing "Substitution of Financial Assurance Mechanisms by Owners or Operators" set forth in 40 CFR 280.108 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-21 5.94H; 150B-21.6.

15A NCAC 020 .0316 CANCELLATION OR RENEWAL BY A PROVIDER OF ASSURANCE

The regulations governing "Cancellation or Non renewal by a Provider of Financial Assurance " set forth in 40 CFR 280.109 (Subpart H) are hereby incorporated by reference.

Authority G.S. 143-21 5.94H; 150B-21.6.

SECTION .0400 - RESPONSIBILITIES OF OWNERS AND OPERATORS

15A NCAC 020 .0401 REPORTING BY OWNER OR OPERATOR

The provisions for "Reporting by Owner or Operator" contained in 40 CFR 280.106 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0402 RECORD KEEPING

(a) The provisions for "Record Keeping" contained in 40 CFR 280.107 280.111 entitled "Record Keeping" are hereby is incorporated by reference including any reference, excluding subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this

~~Subchapter. This document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.~~

~~(b) In addition to the requirements incorporated in Paragraph (a) of this Rule, the following are required as evidence of financial responsibility: an owner or operator using an Insurance Pool as a financial assurance mechanism in accordance with Rule .0308 of this Subchapter, shall maintain a copy of the signed insurance certificate as specified in Rule .0308(c) of this Subchapter.~~

- ~~(1) An owner or operator using an "Insurance Pool" must maintain a copy of the signed insurance certificate as specified in Rule .0308(c) of this Subchapter.~~
- ~~(2) Each owner or operator must maintain copies of cancelled checks for payment of annual tank operating fees for the preceding three years or any alternate evidence of payment of the annual operating fees supplied by the Department.~~

Authority G.S. 143-215.94H; 150B-21.6.

SECTION .0500 - CHANGES IN STATUS

15A NCAC 020 .0501 DRAWING ON FINANCIAL ASSURANCE MECHANISMS

~~The provisions for "Drawing on Financial Assurance Mechanisms" contained in 40 CFR 280.108 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0502 RELEASE FROM THE REQUIREMENTS

~~The provisions for "Release From the Requirements" contained in 40 CFR 280.109 are hereby incorporated by reference including any subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter.~~

Authority G.S. 143-215.94H; 150B-21.6.

15A NCAC 020 .0503 INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF ASSURANCE

~~(a) The provisions for "Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance" contained in 40 CFR 280.110, 280.114 entitled "Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance, except for Subsection 280.110(d), are hereby is incorporated by reference including any reference, excluding subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter. This document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.~~

~~(b) Within 30 days after receipt of notification that the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator ~~must~~ shall obtain financial assurance for the full amounts~~

~~specified in Rule .0204, Paragraphs (a) and (c), of this Subchapter. 40 CFR 280.93.~~

~~(e) Within 30 days after receipt of notification that the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund has become incapable of paying for additional cleanup actions to be undertaken by the Department, any owner or operator or guarantor who self insures or guarantees based on Rule .0302, Paragraph (b), of this Subchapter must obtain financial assurance for at least twice the amount specified in Rule .0204, Paragraph (d), of this Subchapter assured in accordance with Rule .0302, Paragraph (b), of this Subchapter.~~

Authority G.S. 143-215.94H; 143-215.94T; 150B-21.6.

15A NCAC 020 .0504 REPLENISHMENT

~~(a) The provisions for "Replenishment of Guarantees, Letters of Credit, or Surety Bonds" contained in 40 CFR 280.111 are hereby 280.115 entitled "Replenishment of Guarantees, Letters of Credit, or Surety Bonds" is incorporated by reference including any reference, excluding subsequent amendments and editions. Locations where this material is available are specified in Rule .0102 of this Subchapter. This document may be accessed at www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.~~

~~(b) If at any time after a standby trust (40 CFR 280.103) is funded upon the instruction of the Department with funds drawn from a guarantee, guarantee (40 CFR 280.96), letter of credit, credit (40 CFR 280.99), or surety bond, bond (40 CFR 280.98), and the amount in the standby trust is reduced to less than the amount for which the owner or operator is responsible per occurrence for third party claims, the owner or operator shall within 60 days from which the funds were drawn:~~

- ~~(1) Replenish replenish the value of financial assurance to equal the full amount of coverage required, or required pursuant to Rule .0204 of this Subchapter; or~~
- ~~(2) Acquire acquire another financial assurance mechanism for the full amount of coverage provided by the Standby Trust. the amount by which funds in the standby trust fund have been reduced.~~

Authority G.S. 143-215.94H; 143-215.94T; 150B-21.6.

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 13B .0208, .0403-.0406, .0567, amend the rule cited as 15A NCAC 13B .0207, readopt with substantive changes the rules cited as 15A NCAC 13B .0101-.0106, .0201-.0203, .0301, .0302, .0401, .0402, .0503-.0505, .0508-.0510, .0562-.0566, .0601, .0602, and repeal through readoption the rules cited as 15A NCAC 13B .0204, .0501, .0502, .0701-.0706 and .1301.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are

available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

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

Proposed Effective Date: January 1, 2021

Public Hearing to accept comments on 15A NCAC 13B Sections .0100-.0400, .0700, and .1300

Date: September 22, 2020

Time: 4:00 p.m.

Location: A virtual public hearing will be held by webinar as follows:

WebEx Events meeting link: <https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=edf436aa9ee60dbf985cf90eaa899672>

Event number (access code): 161 941 0693

Event password: NCDWM1

Call +1-415-655-0003 US TOLL, enter access code

If you wish to attend the hearing, you must register before 5:00 pm on Monday, September 21, 2020. Registration information can be found on the DEQ Proposed Rule webpage at the following link: <https://deq.nc.gov/documents/15a-ncac-13b-0100-0700-and-1300-solid-waste-management>.

Public Hearing to accept comments on 15A NCAC 13B Rules .0501-.0505, .0508-.0510, .0562-.0567, .0601, and .0602

Date: September 24, 2020

Time: 6:00 p.m.

Location: A virtual public hearing will be held by webinar as follows:

WebEx Events meeting link: <https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e3e75cbcac19c33e3262a6999487e89cb>

Event number (access code): 161 570 3065

Event password: NCDWM1

Call +1-415-655-0003 US TOLL, enter access code

If you wish to attend the hearing, you must register before 5:00 pm on Wednesday, September 23, 2020. Registration information can be found on the DEQ Proposed Rule webpage at the following link: <https://deq.nc.gov/documents/15a-ncac-13b-0100-0700-and-1300-solid-waste-management>

Reason for Proposed Action: Rules .0101-.0106, .0201-.0203, .0301, .0302, .0401, .0402, .0503-.0505, .0508-.0510, .0562-.0566, .0601, and .0602 for solid waste management are proposed for re-adoption in accordance with G.S. 150B-21.3A, with changes to update these rules to be consistent with current statutes and other rules, provide clarification, and to incorporate into rule current policies or permit conditions. Rules .0403 - .0406 and .0567 are proposed for adoption to provide clarification and to incorporate into rule what was required by permit condition and operational plans under existing rule for transfer stations and the closure of LCID landfills. Rule .0207 is proposed for amendment to make some minor technical corrections. Rule .0208 is proposed for adoption to incorporate into rule existing policies and procedures regarding collection centers and temporary disaster

debris staging sites. Rules .0204, .0501, .0502, .0701-.0706, and .1301 are proposed for repeal because the requirements of these rules are now in general statute, so these rules are no longer necessary.

Comments may be submitted to: Jessica Montie, 1646 Mail Service Center, Raleigh, NC 27699-1646; phone (919) 707-8247; fax (919) 707-8247; email dwm.publiccomments@ncdenr.gov (Please include "Solid Waste Rule Re-adoption" in the subject line)

Comment period ends: October 16, 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 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 13B .0101 DEFINITIONS

The definitions in ~~G.S. 130A-290~~ Article 9 of Chapter 130A of the General Statutes and the following definitions shall apply throughout this Subchapter:

- (1) "Aerated static pile composting" means the process in which decomposing organic material is placed in piles over an active aeration system that is used to supply oxygen and to control temperature for the purpose of producing compost.
- (2)(+) "Agricultural Waste" ~~waste~~ means waste materials produced from the raising of plants and animals, including animal manures, bedding, plant stalks, hulls, and vegetable matter.

- (3)(2) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.
- (4) "Anaerobic digestion" means the biological process in which microorganisms break down biodegradable organic material in the absence of oxygen.
- (5)(3) "Backyard ~~Composting~~ composting" means the on-site composting of yard waste and food residuals by the owner or tenant of a residential property. The waste material is generated only onsite, and the resulting compost is used only onsite or on the owner or tenant's property. from residential property by the owner or tenant for non-commercial use.
- (6) "Backyard vermicomposting" means the on-site vermicomposting by the owner or tenant of a residential property using organic material from the residential property with the product produced used only onsite or on the owner or tenant's property.
- (4) "~~Blood products~~" means ~~all bulk blood and blood products.~~
- (7)(5) "Cell" means compacted solid waste completely enveloped by a compacted cover material.
- (8) "Collection center" means a collection point for the temporary storage of solid waste for individual residential households who choose to transport solid waste generated on their own property to a facility owned or operated by a local government, rather than directly to a solid waste management facility permitted in accordance with the rules of this Subchapter. Collection centers are also known as "convenience centers" and "drop-off-centers," and are not transfer facilities or transfer stations for the purpose of this Subchapter. A person, business, or local government facility that collects materials for the purpose of recycling, and does not collect any solid waste for the purpose of disposal, is not a collection center for the purpose of this Subchapter. A collection center shall be in accordance with Rule .0208(a) of this Subchapter.
- (9)(6) "Compost" means a decomposed, humus-like organic matter, produced in an aerobic composting process that is designed and monitored to ensure that the product is free from pathogens, offensive odors, toxins toxins, or materials harmful at the point of end use. Compost is suitable for use as a soil conditioner, conditioner and may have with varying nutrient values.
- (10)(7) "Compost facility" ~~Facility~~ means a solid waste facility established in accordance with Section .1400 of this Subchapter ~~which that~~ utilizes a controlled biological process of degrading non-hazardous solid waste. A compost facility may ~~include~~ include:
- (a) materials processing and hauling equipment;
 - (b) structures to control drainage; ~~and~~
 - (c) structures to collect and treat leachate; and
 - (d) storage areas for the incoming waste, the final products, and residual materials.
- (11)(8) "Composting" means the ~~controlled biological~~ decomposition of organic waste by naturally occurring bacteria under an aerobic process that is designed and monitored to yield a stable, humus-like, pathogen-free compost product. final product resulting in volume reduction of 30-75 percent.
- (12)(9) "Composting pad" ~~Pad~~ means a surface, whether soil or manufactured, where the process of composting takes place, and where raw and finished materials are stored.
- (13) "Construction and demolition debris landfill" and "C&DLF" mean a sanitary landfill unit established in accordance with Rules .0531 through .0546 of this Subchapter for the land disposal of C&D solid waste.
- (14)(40) "Curing" means a continuation of the composting process after the high heat stage during which compost stability and maturity continue to increase. Curing occurs after completing the process to further reduce pathogens and the requirements for vector attraction reduction. the final state of composting, after the majority of the readily metabolized material has been decomposed, in which the compost material stabilizes and dries.
- (15) "C&D solid waste" means solid waste generated solely from the construction, remodeling, repair, or demolition operations on pavement and buildings or structures. C&D solid waste may include municipal and industrial wastes that are identical to materials generated from the construction, remodeling, repair, or demolition operations on pavement and buildings or structures.
- (16)(44) "Demolition landfill" means a sanitary landfill that was limited to receiving stumps, limbs, leaves, concrete, brick, wood, uncontaminated earth or other solid wastes approved by the Division, which either ceased operation or was converted to a LCIDLF. Land Clearing and Inert Debris Landfill pursuant to Rule .0563.
- (17) "Digestate" means the organic material produced during the anaerobic digestion process. The digestate is a wet mixture of solid and liquid that is rich in nutrients.
- (18)(42) "Division" means the Director of the Division of Waste Management or the Director's authorized representative.

- (19)(13) "Erosion control measure, structure, or device" means physical devices constructed, and management practices utilized, to control sedimentation and soil erosion such as silt fences, sediment basins, check dams, channels, swales, energy dissipation pads, seeding, ~~mulching~~ mulching, and other similar items.
- (20)(14) "Explosive gas" means ~~Methane (CH₄)~~, a landfill gas that will propagate a flame in air at 25 degrees Celsius and atmospheric pressure, such as methane or hydrogen sulfide.
- (15) "~~Federal act~~" means ~~the Resource Conservation and Recovery Act of 1976, P.L. 94 580, as amended.~~
- (21)(16) "~~Floodplain~~" "Floodplain," "base floodplain," "one-hundred-year floodplain," or "100-year floodplain" mean "base floodplain" as defined in G.S. 143-215.52. ~~means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the 100-year flood.~~
- (22)(17) "~~Foreign matter~~" Matter" means metals, glass, plastics, rubber, bones, and leather, but does not include sand, grit, ~~rocks~~ rocks, or other similar materials.
- (23) "Hazardous waste" means the term as defined in G.S. 130A-290(a)(8). The term does not include those solid wastes excluded from regulation pursuant to 40 CFR 261.4, incorporated by reference in 15A NCAC 13A .0106. The term does include hazardous waste generated by very small quantity generators as defined by 40 CFR 260.10, incorporated by reference in 15A NCAC 13A .0102(b).
- (18) "~~Hazardous waste landfill facility~~" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules promulgated under this article.
- (24)(19) "~~Incineration~~" means the ~~process~~ disposal of burning solid, semi-solid semi-solid, or gaseous combustible wastes through a burning process designed to create to an inoffensive a waste gas emission that complies with 15A NCAC 02D and a waste residue containing little or no combustible material. material; but is not open burning.
- (25) "Incinerator" means a device designed to dispose of solid, semi-solid, or gaseous combustible wastes by incineration.
- (26)(20) "Industrial process waste" ~~Process Waste~~" means any solid, semi-solid, or liquid waste generated by a manufacturing or processing plant ~~which that~~ is a result of the manufacturing or processing process. This definition does not include packaging materials associated with such activities.
- (27) "Industrial solid waste" means the term as defined in G.S. 130A-290(a)(13b). Such waste

may include waste resulting from electric power generation, water treatment, and manufacturing processes for the following:

- (a) fertilizer/agricultural chemicals;
- (b) food and related products or byproducts;
- (c) inorganic chemicals;
- (d) iron and steel;
- (e) leather and leather products;
- (f) nonferrous metals or foundries;
- (g) organic chemicals;
- (h) plastics and resins;
- (i) pulp and paper;
- (j) rubber and miscellaneous plastic products;
- (k) stone, glass, clay, and concrete products;
- (l) textiles; and
- (m) transportation equipment.

This term does not include mining waste or oil and gas waste.

- (28)(24) "~~Industrial solid waste landfill~~ Solid Waste Landfill" and "~~ISWLF~~" means mean a sanitary landfill unit established in accordance with Rules .0503 through .0505 of this Subchapter for the disposal of industrial solid waste, or for the exclusive disposal of scrap tires also known as a tire monofill, facility for the land disposal of "industrial solid waste" as defined in Item (11) of Rule .1602 of this Subchapter, and is not a The term land application unit, surface impoundment, injection well, or waste pile, as defined under 40 CFR Part 257.
- (29) "Inert debris waste" means inert debris that consists solely of asphalt, cured concrete, brick, concrete block, gravel, and rock. Inert debris waste shall not contain chemical adhesives or sealants, or lead-based paint.
- (30) "In-vessel composting" or "within-vessel" means the process in which decomposing organic material is enclosed in a drum, silo, bin tunnel, or other container for the purpose of producing compost under aerobic conditions.
- (31)(22) "~~Land clearing and inert debris landfill~~" or "LCIDLF" means mean a landfill unit established in accordance with Rules .0563 through .0567 of this Subchapter for the disposal of yard waste and inert debris waste. facility for the land disposal of land-clearing waste, concrete, brick, concrete block, uncontaminated soil, gravel and rock, untreated and unpainted wood, and yard trash.
- (32)(23) "Land clearing waste" means land-clearing debris that consists solely of solid waste which is generated solely from land-clearing activities such as stumps, trees, limbs, brush, grass, and other naturally occurring vegetative material.

- (33) "Landfill gas" means a gas or mixture of gases generated by the decomposition of solid waste in a landfill.
- (24) ~~"Leachate" means any liquid, including any suspended components in liquid, that has percolated through or drained from solid waste.~~
- (34) "Licensed geologist" means the term as defined in G.S. 89E.
- (35) "Licensed professional engineer" means "professional engineer" as defined in G.S. 89C.
- (36) "Licensed professional land surveyor" means "professional land surveyor" as defined in G.S. 89C.
- (37) "Licensed soil scientist" means the term as defined in G.S. 89F.
- (38)(25) ~~"Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases that which will propagate a flame in air at 25 degrees Celsius and atmospheric pressure.~~
- (39)(26) ~~"Microbiological wastes" waste" means and includes cultures and stocks of etiologic agents. The term includes cultures of specimens from medical, pathological, pharmaceutical, research, commercial, and industrial laboratories.~~
- (40)(27) "Mulch" means a material generated from the chipping or grinding of naturally occurring wood waste such as tree stumps, limbs, and branches. Mulch shall not contain engineered, treated, or manufactured wood waste such as creosote telephone poles or railroad ties; wooden pallets or skids; laminated wood including flooring; painted, stained, or oiled wood; plywood; or composite boards such as particle board, medium-density fiberboard (MDF), oriented strand board (OSB), or similar products manufactured by binding or fixing the strands, particles, fibers, veneers or boards of wood together to form a composite material. a protective covering of various substances; substances especially organic, to which no plant food has been added and for which no plant food is claimed. Mulch is generally placed around plants to prevent erosion, compaction, evaporation of moisture, freezing of roots, and weed growth.
- (41) "Municipal solid waste landfill" and "MSWLF" mean a sanitary landfill unit established in accordance with Section .1600 of this Subchapter for the disposal of municipal solid waste.
- (42)(28) ~~"One hundred year flood" "One-hundred-year flood." "100-year flood." or "base flood" means "base flood" as defined in G.S. 143-215.52. means a flood that has a one percent or less chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.~~
- (43)(29) ~~"Open burning" means the term as defined in 15A NCAC 02D .1902. any fire wherein the products of combustion are emitted directly into the outdoor atmosphere and are not directed thereto through a stack or chimney, incinerator, or other similar devices.~~
- (44)(30) "Pathogens" means organisms that are capable of producing infection or diseases, often found in waste materials.
- (45)(31) ~~"Pathological wastes" waste" means and includes the following wastes that are removed during surgery and autopsies: human tissues, organs, body parts, secretions and excretions, and blood and body fluids fluids, that are removed during surgery and autopsies; and It also includes the carcasses and body parts of all animals that were have been exposed to pathogens that are infectious to humans during in research, were used in the production of biologicals or in the in vivo testing of pharmaceuticals, or that died of a known or suspected infectious disease transmissible to humans. disease.~~
- (32) ~~"Putrescible" means solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as kitchen wastes, offal and carcasses.~~
- (46) "Putrescible waste" and "Putrescent" means solid waste that is capable of or is generating odors and gases from the process of decomposition by microorganisms. Putrescible waste or solid waste that may become putrescent may include medical waste, kitchen and food waste, offal, and carcasses.
- (33) ~~"Radioactive waste material" means any waste containing radioactive material as defined in G.S. 104E 5(14).~~
- (47)(34) ~~"Regulated Medical Waste" medical waste" means blood and body fluids in individual containers in volumes greater than 20 milliliters, ml; microbiological waste, and pathological waste that have not been treated pursuant to Rule .1207 .1204 of this Subchapter.~~
- (48)(35) ~~"Residues from Agricultural Products and Processing" agricultural products and processing" means solids, semi-solids semi-solids, or liquid residues from food and beverage processing and handling, silviculture, agriculture, handling; silviculture; agriculture; and aquaculture operations. operations The residues shall be that are non-toxic, non-hazardous, and shall contain no domestic wastewater.~~
- (49)(36) "Respondent" means the person against whom an administrative penalty has been assessed.
- (37) ~~"Runoff" means the portion of precipitation that drains from an area as surface flow.~~

- (50) "Sanitary landfill" means the term as defined in G.S. 130A-290(31). Landfills permitted in accordance with Rules .0503 through .0505 and .0510; Rules .0531 through .0546; and Section .1600 of this Subchapter are sanitary landfills. Land clearing and inert debris landfills are not sanitary landfills.
- (51) "Seasonal high groundwater table" and "SHGT" means the highest level of the uppermost aquifer during a year with normal rainfall. SHGT may be determined in the field through identification of redoximorphic features in the soil profile, monitoring of the water table elevation, or modeling of predicted groundwater elevations.
- (52)(38) "Sediment" means solid particulate matter both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site location of origin.
- (53) "Septage management facility" means land, personnel, and equipment used in the management of septage, including septage management firms as defined in G.S. 130A-290(a)(33), septage detention and treatment facilities, and septage land application sites established in accordance with Rules .0831 through .0846 of this Subchapter.
- (39) "Sharps" means and includes needles, syringes, and scalpel blades.
- (54)(40) "Siltation" means sediment resulting from accelerated erosion ~~which that~~ is settleable or removable by ~~properly~~ designed, constructed, and maintained control measures and ~~which~~ has been transported from its point of origin within the site land-disturbing activity and ~~which~~ has been deposited, or is in suspension in water.
- (55)(41) "Silviculture ~~Waste~~ waste" means waste materials produced from the care and cultivation of forest trees, including bark and woodchips.
- (56) "Soil" means the unconsolidated mineral and organic material of the land surface. It consists of a mixture of organic matter and of sand, silt, and clay minerals.
- (42) "Soil Group I" means soil group I as defined in 15A NCAC 13B .0807(a)(1)(A) of the Septage Management Rules.
- (57)(43) "Soil ~~Scientist~~ scientist" means a person who is a licensed soil scientist as defined in G.S. 89F, or an individual who is a North Carolina Licensed Soil Scientist, a Certified Professional Soil Scientist or Soil Specialist by the American Registry of Certified Professionals Professional in Agronomy, Crops, and Soils, Soils (ARCPACS) or an individual that demonstrates or a person with equivalent experience or education.
- (58)(44) "Solid waste collector" means any person who collects or transports solid waste by ~~whatever~~
- ~~means, methods such as including but not limited to,~~ highway, rail, and navigable waterway.
- (59)(45) "Solid waste generator" means any person who produces solid waste.
- (60)(46) "Spoiled food" means any food ~~which that~~ has been removed from sale by the United States Department of Agriculture, ~~the N.C. Department of Agriculture and Consumer Services, North Carolina Department of Agriculture, Food and Drug Administration,~~ or any other regulatory agency having jurisdiction in determining that food is unfit for consumption.
- (61) "Temporary debris storage and reduction site" mean parcels of land that are reviewed by the Division to be used to store and process waste generated from an incident that caused a declaration of a state of emergency or disaster in accordance with Chapter 166A, Article 1A, Part 4 of the General Statutes to assist with local and State recovery and compliance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended. These sites may also be established to store or process additional from a natural disaster such as a hurricane, tornado, severe storm, ice storm, or a 100-year flood event, even if no declaration of a state of emergency or disaster occurs. These sites shall be in accordance with Rule .0208(b) of this Subchapter.
- (47) "Steam sterilization" means treatment by steam at high temperatures for sufficient time to render infectious waste non-infectious.
- (62)(48) "Transfer ~~facility~~ station" means a permanent structure with mechanical equipment established in accordance with Section .0400 of this Subchapter that is used for the ~~collection~~ collection, consolidation, or compaction of solid waste prior to the transportation of solid waste for final disposal.
- (63)(49) "Treatment and processing facility" means a facility established in accordance with Section .0300 of this Subchapter for used in the treatment and processing of solid waste ~~for~~ prior to the transportation of solid waste for final disposal or for utilization by reclaiming or recycling.
- (64)(50) "Vector" means a ~~carrier~~ carrier such as rodents, insects, and birds ~~earrier, usually an arthropod,~~ that is capable of transmitting a pathogen from one organism to another.
- (65) "Vermicompost" means the product of the vermicomposting process that is a dark, fertile mixture of decomposed organic waste, bedding material, and granular castings.

- (66) "Vermicomposting" means the controlled and managed process by which live worms convert organic materials into vermicompost.
- (67) "Vermiculture" means raising of earthworms for the purpose of vermicomposting.
- ~~(68)(51)~~ "Water supply watershed" means an area from which water drains to a point or impoundment, and the water is then used as a source for a public water supply.
- ~~(69)(52)~~ "Water table" and "groundwater table" mean ~~means~~ the upper limit of the portion of the ground wholly saturated with water.
- ~~(70)(53)~~ "Windrow" "Windrow composting" means a process for compost production in which decomposing organic materials are placed in piles and are turned or agitated to assure all parts of the decomposing material meet the requirements of Section .1400 of this Subchapter for pathogen reduction and vector attraction reduction. ~~an elongated compost pile (typically eight feet wide by ten feet high).~~
- ~~(71)(54)~~ "Working face" means that portion of the ~~land~~ solid waste disposal site where solid wastes are discharged, spread, and compacted prior to the placement of cover material.
- (55) ~~"Yard trash" means Solid waste resulting from landscaping and yard maintenance such as brush, grass, tree limbs, and similar vegetative material.~~
- ~~(72)(56)~~ "Yard Waste" ~~waste~~ means ~~land-clearing waste and yard trash. "Yard Trash" and "Land-clearing Debris" as defined in G.S. 130A 290, including stumps, limbs, leaves, grass, and untreated wood.~~

Authority G.S. 130A-294.

15A NCAC 13B .0102 APPLICABILITY

(a) The management of solid waste is subject to Chapter 130A Article 1 Part 2 and Article 9 of the General Statutes; and shall be subject to the rules of this Subchapter. The rules of this Subchapter shall not apply to the management of hazardous waste, with the exception of Rule .0103(h) of this Section.

(b) The rules of this Section are applicable to the general management of solid waste by all persons in the State unless exempted by Article 9 of Chapter 130A of the General Statutes or the rules of this Subchapter.
~~These solid waste management rules are for general application throughout the State of North Carolina unless otherwise specifically indicated by their context. Rules found in Section .0700 of this Subchapter apply to the Division's program for solid waste management and also to the Division's program for hazardous waste management. All other rules of this Subchapter apply to the Division's program for solid waste management but not to the Division's program for hazardous waste management. Other hazardous waste management program rules are found in 15A NCAC 13A. The official policy and purpose of the State of North Carolina in regard to solid waste control is set forth in Article 9 of Chapter 130A of the North Carolina General Statutes.~~

Authority G.S. 130A-294.

15A NCAC 13B .0103 GENERAL CONDITIONS REQUIREMENTS

- (a) All solid waste shall be stored, collected, transported, separated, processed, recycled, recovered, and disposed of in a manner consistent with the requirements of ~~these Rules. the rules of this Subchapter.~~ The Division of Solid Waste Management is responsible for the enforcement of ~~these Rules. the rules of this Subchapter.~~
- (b) No ~~solid waste containing~~ radioactive waste material ~~as defined in G.S. 104E-5~~ shall be collected and transported, stored, treated, processed, disposed ~~of~~, or reclaimed, except as specifically authorized by a radioactive material license issued by the Department of Health and Human Services, Division of Health Service Regulation, Radiation Protection Section, Radiation Protection, DEHNR.
- (c) Solid waste shall be disposed of ~~at a solid waste disposal site~~ in accordance with Article 9 of Chapter 130A of the General Statutes and the rules of this Subchapter. The disposal of solid waste shall be in accordance with the hierarchy of methods of managing solid waste in G.S. 130A-309.04(a)(1) through (6), the Solid Waste Management Act and the Federal Act. Hazardous waste, lead acid batteries, liquid waste, including used oil, regulated medical waste, and any other wastes that may pose a threat to the environment or the public health, as determined by the Division, are prohibited from disposal at a solid waste disposal site.
- (d) In addition to the requirements of G.S. 130A-309.10, hazardous waste, liquid waste, and regulated medical waste are prohibited from disposal at a solid waste disposal site. The Division may prohibit a waste stream of a particular type or from a particular source from being accepted at solid waste management facilities or disposed of at a solid waste disposal site if the Division determines that the waste stream contains an emerging contaminant or pathogen that may pose a risk to the environment or public health through the management or disposal of such waste at a particular solid waste management facility. If the Division prohibits such a waste stream, the Division shall notify all affected facilities in writing and shall post a notice on the Division's Solid Waste Section website at <https://deq.nc.gov/about/divisions/waste-management/solid-waste-section> no less than 48 hours prior to the effective date of the prohibition. The notice shall contain the type or source of the prohibited waste stream, the reason for the prohibition, the effective date of the prohibition, and the ending date of the prohibition or a statement that the prohibition shall be in effect until the Division removes the prohibition.
- (d) The Division has developed a "Procedure and Criteria for Waste Determination" which is used to determine whether a waste is:
 - (1) hazardous as defined by 15A NCAC 13A, and
 - (2) suitable for disposal at a solid waste management facility. Information required for evaluation includes the identity of the generator, identity of the waste and how it was generated, and laboratory results indicating the chemical constituency of the waste. Copies of "Procedure and Criteria for Waste

Determination" may be obtained from and inspected at the Division, P.O. Box 27687, Raleigh, N.C. 27611 7687. The waste determination procedure shall be used for:

- (A) ~~Waste which is generated outside the population and geographic area which the solid waste management facility is permitted to serve under .0504(1)(g).~~
- (B) ~~Waste from a transfer facility other than a facility permitted under these Rules.~~
- (C) ~~Waste generated by a new generator inside the population and geographic area which the Solid Waste Management Facility is permitted to serve if the components of the waste cannot be readily determined otherwise.~~
- (D) ~~Waste generated through a change in industrial process by an existing generator, provided the components of the waste cannot be readily determined otherwise.~~
- (E) ~~A load of waste which a sanitary landfill operator suspects may contain materials which the facility is not permitted to receive.~~
- (F) ~~Requests by a generator interested in transporting waste to an identified solid waste management facility for treatment and processing, transfer or disposal.~~
- (G) ~~All sludges except sludge from water treatment plants.~~
- (H) ~~Other wastes deemed appropriate by the Division for testing before transporting to a solid waste management facility.~~

(e) No person shall dispose or cause the disposal of solid waste in or on waters in a manner that results in solid waste's entering waters or being deposited upon lands of the ~~state~~. State.

(f) Solid waste disposal sites including sanitary landfills, land clearing and inert debris landfills, and incinerators shall comply with the same requirements as "new solid waste disposal facilities" provided in G.S. 143-215.54 in accordance with the applicability and effective dates of S.L. 2000-150. White Goods shall not be disposed of at a solid waste disposal site after January 1, 1991.

(g) ~~By July 1, 1991, all~~ All solid waste management facilities owned and operated by or on behalf of a local government government, except facilities which will receive no waste after July 1, 1992, shall ~~install~~ have scales and ~~shall~~ weigh all solid waste when it is received at the facility.

(h) ~~By July 1, 1991, each local government operating a permitted solid waste management facility shall initiate a solid waste recycling program which shall be designed to achieve the goal of recycling at least 25 percent of the municipal solid waste stream by January 1, 1993, prior to final disposal or incineration at a solid waste disposal facility.~~

~~(i) After January 1, 1998, all active sanitary landfills (except land clearing and inert debris landfills) shall be equipped with liners, leachate collection systems and final cover systems as required in Sections .0500 and .1600 of this Subchapter.~~

~~(h) When the Division assesses an administrative penalty for violations of Article 9 of Chapter 130A of the General Statutes and the rules adopted thereunder, the penalty shall be assessed in accordance with G.S. 130A-22 and the following assessment procedures:~~

- (1) For all violations for which a penalty is assessed, a notice of the assessment shall be sent to the respondent by US Postal Service registered or certified mail, or hand-delivered. The notice shall describe the nature of the violation, state the amount of the penalty and the costs assessed in accordance with G.S. 130A-22(j) ("investigative costs"), state when the penalty and investigative costs are due, state that each day of a continuing violation will constitute a separate violation, and advise the respondent of the right to appeal in accordance with G.S. 150B.
- (2) After the notice has been issued, the respondent may request to settle the penalty assessment and violations through informal procedures as set forth in G.S. 150B-22(a). The Division may reduce the amount of the assessed penalty as a part of a settlement agreement resulting from the informal procedure process.
- (3) The assessed penalty and the investigative costs shall be due and payable within 60 days of receipt of the notice issued in accordance with Subparagraph (1) of this Paragraph.
- (4) The assessment of a penalty does not prevent the Division from also suspending or revoking a permit in accordance with G.S. 130A-23.

Authority G.S. 130A-294.

15A NCAC 13B .0104 SOLID WASTE STORAGE

(a) The owner or occupant of any property, ~~unless except that~~ exempted from the rules of this Subchapter in accordance with G.S. 130A-294(b), as specified in Rule .0103(e) of this Subchapter shall be responsible for the sanitary storage of all solid waste accumulated on the property.

(b) ~~Unless another type of container is required by the unit of local government, garbage~~ Garbage shall be stored in ~~either durable durable, rust-resistant rust-resistant,~~ nonabsorbent, watertight, rodent proof, and ~~easily~~ cleanable containers with a close-fitting cover that is impervious to flies, close-fitting flytight cover, when applicable, or other types of containers acceptable to the local governing agency and conforming to the intent of this Section.

(c) Refuse shall be stored in durable containers that are consistent with the requirements of the unit of local government, containers or as otherwise provided in this Section. ~~Where garbage is stored in combination with refuse, containers shall meet the requirements for garbage containers.~~

~~(d) Hazardous waste shall be stored as prescribed in the applicable state or federal rules.~~

~~(e) All containers for the storage of solid waste shall be maintained in such a manner as to prevent the creation of a nuisance or insanitary conditions. Containers that are broken or otherwise fail to meet this Rule shall be replaced with acceptable containers. Refuse too large or otherwise not suitable for storage in containers shall be stored in a nuisance free manner consistent with requirements with the unit of local government.~~

~~(f)(d) All solid waste shall be stored in such a manner using safe and sanitary practices for the preservation of the public health and welfare and the environment that prevents the generation of leachate, the attraction of vectors, the release of odors, and the release of waste or leachate to the environment, as to prevent the creation of a nuisance, insanitary conditions, or a potential public health hazard.~~

Authority G.S. 130A-294.

15A NCAC 13B .0105 COLLECTION AND TRANSPORTATION OF SOLID WASTE

(a) The solid waste collector shall be responsible for the collection and transportation of all solid waste to a solid waste management facility as defined in G.S. 130A-290 that is permitted by the Division.

(b) The solid waste collector shall transport to a solid waste disposal site or solid waste management facility only those solid wastes that are allowed by the site or facility permit.

(c) Vehicles or containers used for the collection of solid waste, and transportation by whatever means, including highway, rail, and navigable waterway, shall be constructed, operated, and maintained to be leak resistant in order to prevent the creation of a nuisance to public health from the escape of solid, semi-solid, or liquid waste. In order to meet the requirement to be leak resistant, the owner ~~or and/or~~ operator of the vehicle or container shall adhere to the following standards:

- (1) All surfaces that come in contact with waste shall be smooth and non-absorbent.
- (2) All drain holes and valves shall be closed, plugged, or sealed.
- (3) The vehicle or container shall be equipped with seals, gaskets, or other devices pursuant to manufacturer specifications in order to prevent the escape of liquids. Such seals, gaskets, and other devices shall be maintained and replaced pursuant to manufacturer specifications.
- (4) The vehicle or container body, waste holding area, and hopper, if so equipped, shall be free of holes, cracks, rusting, corrosion, or other evidence of damage or weakness that may allow the escape of solid, semi-solid, or liquid waste.
- (5) The waste holding area, including the hopper and around the packer blade, if so equipped, shall be clean clear of debris to prevent vectors or the accumulation of litter.
- (6) The vehicle or container shall be loaded, transported, operated, and maintained to

prevent the escape of solid, semi-solid, or liquid waste to the environment.

- (7) The vehicle or container shall be serviced, repaired, and cleaned ~~to maintain sanitary conditions~~, to preserve the integrity of the door seal, to prevent the accumulation of mechanical fluids, dirt, leachate, and fill waste particulates on the vehicle's exterior, and to prevent contamination of the environment by fluids.

Authority G.S. 130A-294(b); S.L. 2013-413.

15A NCAC 13B .0106 GENERATOR OF SOLID WASTE

(a) Unless exempted from the rules of this Subchapter in accordance with G.S. 130A-294(b), a A solid waste generator shall be responsible for storing, collecting, and disposing of solid waste in accordance with the rules of this Subchapter. ~~the satisfactory storage, collection and disposal of solid waste.~~

(b) Unless exempted from the rules of this Subchapter in accordance with G.S. 130A-294(b), the The solid waste generator shall ensure that his or her waste is disposed of at a solid waste disposal site or solid waste management facility ~~which that~~ is permitted by the Division to receive ~~the waste.~~ such waste in accordance with the rules of this Subchapter.

Authority G.S. 130A-294.

SECTION .0200 - PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES

15A NCAC 13B .0201 PERMIT REQUIRED

(a) No person shall treat, process, store, or dispose of solid waste or arrange for the treatment, processing, storage, or disposal of solid waste except at a solid waste management facility permitted by the Division for such activity, except as provided in G.S. 130A-294(b).

(b) No person shall cause, suffer, allow, or permit the treatment, storage, ~~or processing~~ processing, or disposal of solid waste upon any real or personal property owned, operated, leased, or in any way controlled by that person without ~~first having been issued~~ obtaining a permit for a solid waste management facility from the Division authorizing such activity, except as provided in G.S. 130A-294(b).

(c) No solid waste management facility shall be established, operated, maintained, constructed, expanded, or modified without a ~~currently~~ valid permit issued by the Division for the specified type of disposal activity. It is the responsibility of every owner ~~or and~~ operator of a proposed solid waste management facility to apply for a permit for the facility. The term "owner" shall include record owners of the land where the facility is located or proposed to be located and holders of any leasehold interest, however denominated, in any part of the land or structures where the facility is located or proposed to be located.

(d) The solid waste management facility permit, except for permits authorizing land clearing and inert debris ~~permits,~~ landfills, septage management facilities, or compost facilities, shall have two parts, as follows:

- (1) A permit approval to construct a solid waste management facility or portion of a facility shall be issued by the Division after site and construction plans have been approved by the Division and it has been determined that the facility can be operated in accordance with Article 9 of Chapter 130A and the applicable rules set forth in this Subchapter, and other applicable ~~state~~, State, federal, and local laws. An applicant shall not clear or grade land or commence construction for a solid waste management facility or a portion thereof until a permit approval to construct has been issued.
- (2) A permit approval to operate a solid waste management facility shall not be issued unless it has been determined that the facility has been constructed in accordance with the construction plans, that any pre-operation conditions of the permit to construct have been met, and that the permit has been recorded, if applicable, in accordance with ~~Rule .0204 of this Section.~~ G.S. 130A-301.

(e) Land clearing and inert debris ~~facilities~~ landfills, septage management facilities, and compost facilities may be issued a combined permit that includes approval to construct and operate the facility.

~~(f) Land clearing and inert debris facilities subject to Rule .0563(1) of this Subchapter may construct and operate after notification as provided for under Rule .0563(2) of this Subchapter.~~

~~(f)(g)~~ All solid waste management facilities shall be operated in conformity with ~~these Rules~~ the rules of this Subchapter and shall utilize safe and sanitary practices for the preservation of the public health and welfare and the environment by preventing the generation of leachate, the attraction of vectors, the release of odors, and the release of waste or leachate to the environment, not create a nuisance, or an unsanitary condition, or a potential public health hazard.

(g) Disposal area boundaries for landfills permitted in accordance with Sections .0500 or .1600 of this Subchapter shall be delineated with permanent markers on the ground. The markers shall be of adequate height and spacing so that they are distinguishable from the surrounding landscape, and so that the adjacent markers are visible when standing at a marker.

(h) The owner or operator shall notify the Department within 30 days of a significant change in accordance with G.S. 130A-295.2(g). The owner or operator shall submit an application to amend a permit for a change in ownership or corporate structure of a permitted solid waste management facility. If the facility is required to establish financial assurance pursuant to Section .1800 of this Subchapter, then the facility shall not be released from the requirement to establish financial assurance until the Division has issued a permit to the new owner.

(i) Permits issued by the Division are subject to review by the Division. The Division shall provide written notice to a facility no less than 180 days prior to an unscheduled review.

(j) Solid waste management facilities permitted by the Division in accordance with this Subchapter are subject to Article 1 Part 2 and Article 9 of Chapter 130A of the General Statutes, 15A

NCAC 02C, 02L, 04, and the surface water quality standards in 15A NCAC 02B. [Note this list is not comprehensive, and is provided for information only.]

Authority G.S. 130A-294; S.L. 2015-286, s.4.9.

15A NCAC 13B .0202 PERMIT APPLICATION

~~(a) Application~~ Applications for permits required by Rule .0201 of this Section shall be ~~forwarded~~ submitted to the Department of ~~Environment, Health, and Natural Resources,~~ Environmental Quality, Division of ~~Solid Waste Management, Solid Waste Section, Post Office Box 27687, 1646 Mail Service Center,~~ Raleigh, North Carolina ~~27699-1646, 27611.~~ Permit applications shall contain the following information:

- (1) ~~Site~~ site and construction plans;
- (2) ~~An~~ an approval letter from the unit of local government having zoning authority over the area where the facility is to be located stating that the proposed facility meets all of the requirements of the local zoning ordinance, or that the site is not zoned;
- (3) ~~Detailed~~ Detailed plans and specifications for solid waste management facilities shall be prepared and certified by a licensed professional engineer if required by G.S. 89C, except for land clearing and inert debris landfills subject to Rule .0563(1) of this Subchapter. The plans shall bear an imprint of the registration seal of the engineer and geological Geological studies shall be certified by bear the seal of a licensed professional geologist, in accordance with N.C.G.S. Chapter if required by G.S. 89E; and
- (4) ~~Any~~ Any other information for pertinent to the proposed facility. facility, if it is necessary to determine compliance with the requirements of this Subchapter.

(b) Specific information for a permit application is found in Sections .0300 through .1600 .0300, .0400 and .0500 of this Subchapter.

(c) All applications for a permit approval to construct as set forth in Rule .0201(d)(1) of this Section shall also include documentation necessary to determine compliance with G.S. 130A-295.2 and G.S. 130A-295.3, such as the following:

- (1) cost estimates for financial assurance if the facility is subject to Section .1800 of this Subchapter;
- (2) documentation that the Division may request to determine compliance with the requirements for financial qualifications in accordance with G.S. 130A-295.2(d), if any;
- (3) the environmental compliance history for the applicant as defined in G.S. 130A-295.3(a); and
- (4) if the applicant is a business entity, an organizational chart showing the structure of the applicant as defined in G.S. 130A-295.3(a)(i) through (iii).

(d) All applications for a permit approval to operate as set forth in Rule .0201(d)(2) of this Section shall also include

documentation necessary to determine compliance with G.S. 130A-295.2 and G.S. 130A-295.3, such as the following:

- (1) updated cost estimates for financial assurance if the facility is subject to Section .1800 of this Subchapter;
- (2) the executed financial assurance mechanism if the facility is subject to Section .1800 of this Subchapter;
- (3) an updated environmental compliance history for the applicant as defined in G.S. 130A-295.3(a); and
- (4) if the applicant is a business entity, an updated organizational chart showing the structure of the applicant as defined in G.S. 130A-295.3(a)(i) through (iii).

(e) When a permit applicant submits a complete application for a permit to the Division prior to the expiration date of the existing permit for the facility, including the payment of an annual fee and permit application fee if required by G.S. 130A-291.1 or 130A-295.8, the existing permit shall not expire until a decision on the permit application is made by the Division.

Authority G.S. 130A-294.

15A NCAC 13B .0203 PERMIT APPROVAL OR DENIAL

(a) Upon receipt of a permit application, the Division shall review the request to assure that all provisions of these Rules, the Solid Waste Management Act, and the Federal Resource Conservation and Recovery Act, as amended, will be met. The Division shall review permit applications in accordance with the timelines established in G.S. 130A-295.8(e). Based on its review, the Division shall either approve or deny the request in writing.

(b) When an application is approved, the applicant shall be provided a permit. If the approval is contingent upon certain conditions being met by the applicant, such as a final construction inspection or obtaining a local government franchise approval, such conditions shall be noted on the permit.

(c) Before receiving solid waste at a newly permitted facility, an inspection shall be made by a representative of the Division to assure that the site is prepared in accordance with the permit, and the permit shall be recorded in accordance with G.S. 130A-301, with the Register of Deeds in the county where the facility is located in accordance with the recordation requirements set out in 15A NCAC 13B .0204.

(d) By receiving solid waste at a permitted facility, the ~~permittee(s)~~ permittee shall be considered to have accepted the conditions of the permit and shall comply with the conditions of the permit.

(e) When the Division denies a permit for a solid waste management facility, it shall state in writing the reason for such denial and shall also state its estimate of the changes in the applicant's proposed activities or plans ~~which that~~ that will be required for in order that the applicant may to obtain a permit. A denial shall be without prejudice to the submission of a future application for a permit after revisions are made to meet objections specified as reasons for denial. The Division shall deny a permit as set forth in G.S. 130A-294(a)(4)c, or for the following reasons: Reasons for denial include:

- (1) ~~Submission~~ submission of incomplete information;
- (2) ~~Failure~~ failure to meet applicable the requirements of this Subchapter; ~~or~~
- (3) ~~Failure~~ failure to meet ~~any applicable~~ a requirement or standard set forth in Article 9 of Chapter 130A of the ~~N.C.~~ General Statutes; or
- (4) ~~Any other reasons which siting, design, construction, or operation plans that would prevent the solid waste management facility or site from being operated in the future in accordance with Article 9, Chapter 130A of the General Statutes, these Rules, the requirements of this Subchapter, the Federal Resource Conservation and Recovery Act, as amended, or G.S. 89C or 89E. Act, or acceptable engineering or public health and environmental standards.~~

(f) Appeals of permit decisions shall be in accordance with Article 3, Chapter 150B of the General Statutes ~~3 of N.C.G.S., Chapter 150B,~~ and the ~~Rules~~ rules adopted thereunder.

(g) The Division may suspend or revoke a permit in accordance with G.S. 130A-23. If the Division revokes or suspends a permit, the Division shall notify the owner or operator in writing of the reasons for the permit action.

Authority G.S. 130A-294.

15A NCAC 13B .0204 RECORDATION OF LAND DISPOSAL PERMITS

Authority G.S. 130A-294.

15A NCAC 13B .0207 LIFE-OF-SITE PERMIT ISSUED FOR A SANITARY LANDFILL OR TRANSFER STATION

(a) A transfer station permit issued in accordance with Section .0400 of this Subchapter, or a new or existing sanitary landfill permit issued in accordance with Section .0500 of this Subchapter for industrial solid waste landfill facilities or construction and demolition landfill facilities or Section .1600 of this Subchapter for municipal solid waste landfill facilities or transfer station permit shall be subject to Section .0400, .0500, or .1600 of this Subchapter and shall be for the life-of-site as defined in G.S. 130A-294(a2).

(b) A ~~life-of-site~~ life-of-site permit application for a ~~new~~ sanitary landfill for the life-of-site shall contain design, construction, site development, and operation plans. Site development plans shall state the duration of the life-of-site in the site development or facility plan prepared in accordance with Section .0500 or .1600 of this Subchapter; and shall show the phases or progression of operation in periods of no less than five years and no greater than the life-of-site, life of the site as contained in the facility plan. The life-of-site of a sanitary landfill shall be specified in the facility plan prepared in accordance with Section .0500 or .1600 of this Subchapter.

(c) A sanitary landfill that has an existing permit issued by the Division as of prior to July 1, 2016 shall be approved for a life-

~~of site permit for the life-of-site~~ within 90 days of submittal of the following updated permit information:

- (1) a specification of the duration of the life-of-site stated ~~quantified~~ in the site development or facility plan;
- (2) landfill capacity in years, projected for the life-of-site; life of the site;
- (3) average monthly disposal rates and estimated variances; and
- (4) a copy of the local government franchise agreement or approving resolution for the life-of-site; life of the site.

(d) Each phase within a ~~life-of-site~~ permit for sanitary landfills shall be designed and constructed in accordance with Sections .0500 or .1600 of this Subchapter. Site development plans shall show the phases or progression of construction and operation in periods of no less than five years and no greater than the life-of-site life of the site as ~~contained~~ stated in the site development or facility plan.

(e) A ~~life-of-site~~ permit application for a ~~new~~ transfer station for the life-of-site shall conform to the requirements of Section .0400 of this ~~Subchapter. Subchapter~~ and shall ~~contain a site plan for the life of the site.~~ A specification of the life of site of a transfer station shall be quantified. The duration of the life-of-site shall be stated in the site plan prepared in accordance with Section .0400 of this ~~Subchapter. Subchapter.~~ The site plan shall be for the life-of-site.

(f) A transfer ~~facility station~~ that has an existing permit ~~as~~ issued by the Division prior to July 1, 2016 shall be approved for a life-of-site permit upon submittal of a written request for approval of a permit for the life of the site for the transfer station. The duration of the life-of-site shall be stated in the request. ~~that shall include a specification of the quantified life of site.~~

Authority G.S. 130A-294; S.L. 2015-286, s. 4.9.

15A NCAC 13B .0208 PERMIT EXEMPTIONS

(a) A collection center shall not be required to obtain a permit from the Division for the construction or operation of these facilities if the facility operations comply with Article 9 Chapter 130A of the General Statutes, the rules of this Subchapter, and the following conditions:

- (1) This Rule does not exempt collection centers and their operations from any other applicable local, State, or federal permitting and operational requirements, if such requirements exist.
- (2) Collection centers shall not receive solid waste generated from non-residential activities or by commercial waste collection services. Facilities that receive such waste shall comply with the requirements for transfer stations in accordance with Section .0400 of this Subchapter.
- (3) Solid waste received at collection centers shall be stored in accordance with Rule .0104 of this Subchapter. Garbage shall not be stored at the collection center for more than seven days between the time of collection and the time of disposal at a solid waste management facility

permitted in accordance with the rules of this Subchapter to accept such waste. Refuse shall not be stored at the collection center more than 90 days between the time of collection and the time of removal to a solid waste management facility permitted in accordance with the rules of this Subchapter to accept such waste.

(4) Source-separated recyclables such as paper, plastic, and electronics that would commonly be collected by a local curbside recycling collection program but are instead being collected at the collection center for the purpose of recycling are not subject to the requirements of Subparagraph (2) of this Paragraph, and shall be managed in accordance with G.S. 130A-309.05(c).

(5) The following items shall not be accepted at collection centers for the purposes of disposal:

- (A) construction, demolition, or industrial wastes from commercial or industrial sources;
- (B) burning or smoldering waste;
- (C) asbestos-containing materials, unless it is generated by an individual property owner and is packaged and handled to prevent the material from being friable;
- (D) radioactive waste;
- (E) hazardous waste;
- (F) regulated medical waste;
- (G) animal carcasses;
- (H) liquid waste unless it is in containers similar in size to containers found in household waste; and
- (I) items banned from landfill disposal pursuant to G.S. 130A-309.10.

(6) Owners and operators of collection centers shall allow the Division to enter the collection center property to inspect any facilities, equipment, practices, or operations to determine compliance with Article 9 Chapter 130A of the General Statutes or the rules of this Subchapter.

(b) A temporary debris storage and reduction site (site) shall not be required to obtain a permit from the Division for the temporary operation of these sites for solid waste management after a disaster event if the operations comply with Article 9 Chapter 130A of the General Statutes, the rules of this Subchapter, and the following conditions:

- (1) The landowner or operator of the site shall submit notification of the proposed site to the Division on a site evaluation form that shall include the following:
 - (A) site name, address, city, county, parcel identification number, and latitude and longitude in decimal degrees, driving directions to the site, and acreage of the site;

- (B) a description of the responsible parties for the site and their affiliation to the site;
- (C) primary operator contact name, telephone number, and e-mail address;
- (D) local government contact name, telephone number, and e-mail address;
- (E) landowner name, address, telephone number, and e-mail address;
- (F) waste types proposed to be accepted;
- (G) proposed site operations and procedures for waste acceptance, handling, reduction, and removal;
- (H) proposed destination of waste or materials removed from the site; and
- (I) an aerial photograph indicating the proposed waste handling areas at the site and the buffer areas required in accordance with this Rule.

[Note: the site evaluation form may be found on the Division's website at: <https://deq.nc.gov/about/divisions/waste-management/waste-management-permit-guidance/solid-waste-section/disaster-debris>]

(2) Unless a site is located at a solid waste management facility that has been permitted by the Division in accordance with the rules of this Subchapter, or that has submitted notification to the Division in accordance with Rule .1402(g)(1)(A) of this Subchapter, sites shall be owned or operated by one of the following:

- (A) a county government as defined in G.S. 153A-10;
- (B) a city government as defined in G.S. 160A-1;
- (C) a State or federal agency or institution;
- (D) a State or federally-recognized Indian tribe; or
- (E) a third-party entity under contract with one of the entities in Parts (A) through (D) of this Subparagraph with authorization of the landowner.

(3) A site shall meet the following siting requirements for the acceptance, storage, and processing of yard waste and demolition debris:

- (A) Waste storage, processing, and handling areas shall be located no less than 100 feet from property boundaries, on-site structures, residences, private or public wells, septic tank systems, and surface waters.
- (B) Waste storage, processing, and handling areas for demolition debris shall be located no less than 250 feet from potable wells.
- (C) Grinding operations shall be located no less than 300 feet from residence and business properties and publicly

owned roads and properties, unless the Division states a reduced buffer in the conditional approval letter because the type of grinding equipment or procedures proposed to be utilized will reduce the impacted area.

(D) A site shall not be located in wetlands as delineated by the U.S. Fish and Wildlife Service (FWS) National Wetlands Inventory Wetlands Mapper, which can be accessed from the U.S. FWS website at <https://www.fws.gov/wetlands/index.html>.

(E) A site shall not be located in the floodway as defined in 44 CFR 9.4, which can be accessed free of charge at <https://www.ecfr.gov>.

(F) A site shall not be located in the 100-year floodplain as delineated by the NC Flood Risk Information System (FRIS) unless exempted from this requirement by the Division in the letter of conditional site approval. When making the determination to exempt a site, the Division shall consider the availability of other potential locations for a that are not in the 100-year floodplain, the need for additional sites following an emergency or major disaster, the amount and types of waste proposed to be stored at the site, and the proposed waste handling activities at the site. The NC FRIS mapping tool can be accessed from the NC Floodplain Mapping Program website at <https://fris.nc.gov/fris/?ST=NC>.

(G) A site shall not damage or destroy a property of archaeological or historical significance that has been listed on the National Register of Historic Places or included on the Study List for the Register pursuant to 07 NCAC 04R .0206 and .0300, which are incorporated by reference including subsequent amendments and editions. The Division or the site operator shall obtain a site-specific survey from the State's Historic Preservation Office (SHPO) in the Department of Natural and Cultural Resources, and the Division shall include the site-specific survey response on SHPO letterhead with the letter of site pre-approval obtained in accordance with Subparagraph (8) of this Paragraph.

- (H) The location, access, size, and operation of the site shall not have an adverse impact on any component included in the State Nature and Historic Preserve pursuant to G.S. 143-260.10. The Division or the site operator shall obtain a site-specific survey from the Natural Heritage Program (NHP) in the Department of Natural and Cultural Resources, and the Division shall include the site-specific survey response on NHP letterhead with the letter of site pre-approval obtained in accordance with Subparagraph (8) of this Paragraph.
- (I) A site shall not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Federal Endangered Species Act of 1973, Public Law 93-205, as amended. The Division or the site operator shall obtain a site-specific survey from the Natural Heritage Program (NHP) in the Department of Natural and Cultural Resources, and the Division shall include the site-specific survey response on NHP letterhead with the letter of site pre-approval obtained in accordance with Subparagraph (8) of this Paragraph.
- (J) The site shall comply with 15A NCAC 04 for sedimentation and erosion control. 15A NCAC 04 is incorporated by reference including subsequent amendments and editions.

The Division may amend the buffer requirements of Parts (A) through (C) of this Subparagraph if it is necessary for the preservation of the public health and the environment, or if additional waste handling areas are necessary to expedite recovery from a disaster or emergency.
- (4) A site shall accept only waste generated by a disaster event for storage, segregation, processing, and reduction. A site shall not be used for solid waste management at any time other than following a disaster event. For the purposes of this Rule, "disaster event" means one of the following:
 - (A) a natural or man-made event that causes a declaration of a state of emergency or disaster in accordance with Chapter 166A, Article 1A, Part 4 of the General Statutes;
 - (B) a hurricane, tornado, severe storm, ice storm, or a 100-year flood event.
- (5) A site shall not accept any waste other than yard waste and demolition debris, except that it may accept household hazardous waste, white goods, or electronics under the following conditions:
 - (A) the solid waste management facility that accepted the household hazardous waste, white goods, or electronics prior to the disaster event is not able to accept these wastes after the disaster event;
 - (B) the site operator shall submit to the Division a plan for the handling and removal of household hazardous waste, white goods, and electronics in writing prior to accepting these wastes after a disaster event;
 - (C) the household hazardous waste, white goods, and electronics shall be stored in containers that comply with Rules .0104 and .0105 of this Subchapter; and
 - (D) the household hazardous waste, white goods, and electronics shall be removed from the site within 30 days of receipt and managed in accordance with Article 9 of Chapter 130A of the general statutes and the rules of this Subchapter.
- (6) A site shall comply with any local, State, and federal siting, permitting, and operational laws, rules, and ordinances, and with the requirements of the Federal Emergency Management Act.
- (7) The open burning of solid waste is prohibited at a site unless approved by the Division of Air Quality or an EPA-delegated local air program prior to burning after a disaster event. The site shall comply with 15A NCAC 02D, and any additional siting buffers that may apply to burning activities. Ash generated by the burning of solid waste at a site shall be handled in the same manner as ash generated by a solid waste management facility in accordance with G.S. 130A-309.05(b).
- (8) The site operator shall obtain a letter of site pre-approval from the Division stating that the Division has determined that the site meets the conditions of Subparagraphs (1) through (6) of this Paragraph, and providing the site identification number designated by the Division. The Division may provide additional conditions for site use in the letter of site pre-approval if it is necessary to comply with the requirements of this Subchapter, or to assist with local and State recovery and compliance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended. The Division may revoke the letter

- of site pre-approval if the site no longer complies with the requirements of this Rule.
- (9) The site operator shall notify the Division verbally or in writing that the site is accepting waste within 14 days of initial acceptance of waste after a disaster event.
- (10) All solid waste shall be removed from the site for disposal, recycling, or reuse within 180 days of initial waste acceptance after a disaster event or emergency, unless the owner or operator requests an extension of time for waste removal in writing, and the Division grants the extension in writing. In making the determination to grant the extension, the Division shall consider factors such as the type of emergency or disaster and the effects on the part of the State in which it occurred, the amount and types of waste stored at the site, the efforts taken by the owner or operator to remove the waste; the compliance history of the owner or operator, and any extenuating circumstances that have caused the delay provided by the owner or operator in the request.
- (11) Yard waste that has been reduced or processed, such as chipped wood or mulch, and removed from a site is not subject to regulation as a solid waste or the requirements of this Subchapter if it is managed as a recovered material in accordance with G.S. 130A-309.05(c) by the person receiving the material.
- (12) Within 30 days of the removal of all solid waste, the site shall be graded to prevent ponding of surface water, and vegetative groundcover shall be established.

- which are incorporated by reference including subsequent amendments and editions.
- (3) State Nature and Historic Preserve Restrictions: The location, access, size, and operation of the site shall not have an adverse impact on any component included in the State Nature and Historic Preserve pursuant to G.S. 143-260.10.
- (4) Endangered and Threatened Species Restrictions: A site shall not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973, Public Law 93-205, as amended.
- (5) Clean Water Act requirements: a site or its operations shall:
 - (A) not cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including the National Pollutant Discharge Elimination System (NPDES) requirements pursuant to Section 402 of the Clean Water Act.
 - (B) comply with Section 404 of the Clean Water Act.
 - (C) not cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or Statewide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act.
- (6) Buffer Requirements: Unless otherwise stated in the site permit or local zoning requires larger buffers, the waste handling, treatment, processing, and storage areas shall be:
 - (A) no less than 100 feet from supply wells;
 - (B) no less than 100 feet from property lines;
 - (C) no less than 50 feet from waters of the State as defined in G.S. 143-212, or wetlands as defined in 40 CFR 232.2; and
 - (D) surrounded by an unused and cleared area of no less than 25 feet to allow access for fire or emergency response vehicles.
- (b) A permit applicant shall submit to the Division one electronic copy of a permit application, and the application shall contain the plans described in Paragraphs (c) and (d) of this Rule.
- (c) Site Plan. An application for a permit for a site shall contain a site plan that includes the following information:
 - (1) an aerial photograph, representative of existing conditions, at a scale of a least one inch equals 400 feet, showing the area within one quarter

Authority G.S. 130A-294.

SECTION .0300 - TREATMENT AND PROCESSING FACILITIES

15A NCAC 13B .0301 SITING AND APPLICATION REQUIREMENTS

~~This Rule contains the information required for a permit application for each treatment and processing facility. A minimum of three sets of the following information shall be required in each application:~~

(a) A treatment and processing facility (site) shall meet the following siting requirements:

- (1) Floodplain Restrictions: Any portions of the site property where storage or processing of solid waste occurs shall not be located in the 100-year floodplain.
- (2) Cultural Resources Restrictions: A site shall not damage or destroy a property of archaeological or historical significance that has been listed on the National Register of Historic Places or included on the Study List for the Register pursuant to 07 NCAC 04R .0206 and .0300.

mile of the proposed site's boundaries with the following identified:

- (A) property lines of the entire property where the site will be located;
- (B) waste treatment, processing, and storage areas;
- (C) buffer areas and distances to wells, residences, wetlands and water bodies, and descriptions of any buffer requirements by local government zoning regulations;
- (D) existing land use and zoning;
- (E) location of all private residences, commercial and industrial buildings, public or private utilities, roads, and schools;
- (F) on-site easements;
- (G) location of potable wells and public water supplies;
- (H) historic sites described in Subparagraph (a)(2) of this Rule;
- (I) state nature and historic preserves described in Subparagraph (a)(3) of this Rule;
- (J) the existing topography and features of the site including general surface water drainage patterns and watersheds, 100-year floodplains, perennial and intermittent streams, rivers, and lakes; and
- (K) the classification of the surface water drainage from the site in accordance with 15A NCAC 02B .0300;

(2) a letter from the unit of government having zoning jurisdiction over the site that states that the proposed use is allowed within the existing zoning, if any; that any necessary zoning approval or permit has been obtained, and that states the local zoning buffers that apply to the site; and

(3) letters from both the State Historic Preservation Office and the Natural Heritage Program within the Department of Cultural and Natural Resources stating whether the proposed use of the property will impact the historic sites described in Subparagraph (a)(2) of this Rule; State nature and historic preserves described in Subparagraph (a)(3) of this Rule; or the endangered or threatened species described in Subparagraph (a)(4) of this Rule located at the site.

(d) Operations Plan. An application for a permit for a site shall contain an operations plan that shall include a discussion of each of the following items:

- (1) the type and quantity of wastes that will be accepted, the anticipated sources of the waste accepted, and the intended destination of recyclables and waste removed from the site;

- (2) the procedures for receiving, screening, processing, handling, salvaging, storage, treating, and removal of waste and recovered materials, including the anticipated processing, treatment, and storage times;
- (3) procedures for handling recyclables, wastes banned from landfill disposal in accordance with G.S. 130A-309.10(f), and special wastes as defined in G.S. 130A-290(a)(40);
- (4) the solid waste treatment, processing, and storage areas, and the buffer areas required by Subparagraph (a)(6) of this Rule;
- (5) the hours of operation, staffing, parking for visitors and employees, and traffic routing;
- (6) methods for vector control, dust and odor control, drainage and erosion control, fire prevention, and daily cleanup;
- (7) record keeping procedures;
- (8) planned compliance with the operational and closure requirements of Rule .0302 of this Section;
- (9) for sites that will accept, process, or recycle construction and demolition wastes, a description of how the site will comply with 40 CFR Part 61(M), G.S. 130A-444 through 452, and the rules adopted thereunder;
- (10) a contingency plan that shall address planned operations in the event of loss of power, loss of communications, storm surges, scale malfunctions, and scale software malfunctions; in the event that the disposal site, haul route, or transfer equipment is not available; or during conditions exceeding design parameters. The owner or operator of the site shall provide back-up equipment, and contact information to obtain the equipment, and plans to by-pass the site) in case of equipment breakdown. The contingency plan shall be kept updated on-site and shall include site specific emergency procedures and contact information in case of emergencies;
- (11) additional information for activities or features that the owner or operator may propose that are not otherwise described in this Paragraph, or that the Division may request if it is necessary to determine compliance with the rules of this Subchapter;
- (12) in addition to the information required in this Paragraph, sites that are proposing to accept scrap tires shall also include the information required by Rule .1106(d) of this Subchapter in the operations plan, if it is not already required to be submitted by this Rule; and
- (13) in addition to the information required in this Paragraph, sites that are proposing to accept medical waste shall also include the information required by Rule .1204(b)(4) of this Subchapter in the operations plan, if it is not already required to be submitted by this Rule.

(e) The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter.

(f) Plans and documents submitted in the permit application in accordance with this Rule shall be incorporated into the permit when the permit is issued by the Division, and the site shall comply with the permit in accordance with Rule .0203(d) of this Subchapter.

(g) Permits issued by the Division for treatment and processing facilities are valid for five years; and are subject to the permit fees set forth in G.S. 130A-295.8.

(h) Modifications to the plans. The owner or operator may request to modify plans that were incorporated into the permit by the Division in accordance with Paragraph (f) of this Rule by submitting the request to the Division, including the modified plan and a demonstration showing how the proposed modifications comply with the rules of this Section. The Division shall respond to the request in writing within the timeline provided in G.S. 130A-295.8(e), and the response shall either approve or deny the request as submitted or request that additional information be submitted for the Division to consider the request. The Division's approval shall be based on whether the modification complies with the rules of this Subchapter. If the Division approves the request as submitted or upon receiving the additional information requested, the Division's written approval and the revised pages of the plan shall be added to the sites operating record. The owner or operator shall not implement the modification until the Division has issued an approval.

(i) Sites that received a permit from the Division prior to the readopted effective date of this Rule shall comply with the rules of this Section with the following exceptions:

- (1) buildings, structures, and waste handling areas constructed prior to the readopted effective date of this Rule shall not be required to comply with Paragraph (a) of this Rule for the footprint existing on the readopted effective date of this Rule, or any replacements or modifications within that existing footprint; and
- (2) if a building, structure, or waste handling area was constructed prior to the readopted effective date of this Rule, and is expanded beyond its existing footprint after the readopted effective date of this Rule, the footprint that was existing on the readopted effective date of this Rule shall not be required to comply with Paragraph (a) of this Rule, but the expansion areas shall comply with these requirements.

(j) Site buildings, structures, and waste handling areas that are exempt from the requirements of Paragraph (a) of this Rule shall continue to comply with the siting and buffer requirements stated in their permit issued prior to the readoption date of this Rule, if any.

- (1) Site and operation plans;
- (2) An approval letter from the unit of local government having zoning authority over the area where the facility is to be located, stating that the proposed facility meets all of the requirements of the local zoning ordinance, or that the site is not zoned; and

~~(3) Any other information pertinent to the proposed facility.~~

Authority G.S. 130A-294.

15A NCAC 13B .0302 OPERATIONAL AND CLOSURE REQUIREMENTS

(a) ~~Any person who maintains or operates~~ The owner or operator of a solid waste treatment and processing facility (site) shall maintain and operate the ~~facility~~ site in accordance ~~the permit conditions and the plans incorporated into the permit in accordance with Rule .0301(f) of this Section, and with the following requirements: practices unless otherwise specified in the permit:~~

- ~~(1)~~ Operational plans shall be approved and followed as specified for the facility;
- ~~(1)(2)~~ A a facility site shall only accept wastes that which it is permitted to receive;
- ~~(2)(3)~~ Water that comes in contact with solid waste will leachate shall be contained on-site or properly treated prior to discharge from the site. A NPDES National Pollutant Discharge Elimination System (NPDES) permit may be required by the Department's Division of Water Resources prior to discharge to surface waters;
- ~~(3)(4)~~ Equipment equipment for fire control shall be available;
- ~~(4)(5)~~ Effective vector control measures shall be applied to control flies, rodents, and other insects or vermin;
- ~~(5)(6)~~ Equipment shall be provided in the storage and charging areas and elsewhere as needed or as may be required in order to maintain the facility in a sanitary condition; and the owner or operator shall provide any equipment that is necessary to maintain the site using safe and sanitary practices for the preservation of the public health and welfare and the environment by preventing the generation of leachate, the attraction of vectors, the release of odors, and the release of waste or leachate to the environment;
- ~~(6)(7)~~ Appropriate barrier methods such as fencing or diking shall be provided to confine material subject to be blown by the wind within the site, area. At the conclusion of each day of operation, all windblown material resulting from the operation shall be collected and disposed of or containerized returned to the area by the owner or operator. operator;
- ~~(7)~~ sites that are permitted by the Division to accept scrap tires shall also comply with Section .1100 of this Subchapter;
- ~~(8)~~ sites that are permitted by the Division to accept medical waste shall also comply with Section .1200 of this Subchapter;
- ~~(9)~~ sites shall comply with 15A NCAC 02D, 02L, and the surface water quality standards in 15A NCAC 02B; and shall also comply with 15A

NCAC 04 which is incorporated by reference including subsequent amendments and editions;

- (10) the owner or operator shall submit to the Division upon request any information or records required to be kept under the conditions of the permit or the rules of this Section; and
- (11) the owner or operator shall only conduct the solid waste management activities that the site is permitted to conduct.

(b) When a site ceases the acceptance of waste, closure of the site shall comply with the following requirements:

- (1) The owner or operator shall remove all waste from the site property and dispose of it at a facility permitted by the Division to receive such waste no less than 120 days after the date the site ceased the acceptance of waste.
- (2) The owner or operator shall comply with the closure requirements specified in the permit issued by the Division.
- (3) For a site that accepts medical waste, the owner or operator shall also meet the requirements of Section .1200 of this Subchapter.
- (4) The owner or operator shall notify the Division in writing that the site has been closed in accordance with this Rule.
- (5) The Division shall conduct an inspection to determine compliance with Subparagraphs (1) through (3) of this Paragraph.
- (6) When a site has been closed in accordance with this Paragraph, the permit is terminated, and any future solid waste management at the site shall require a new permit.

Authority G.S. 130A-294.

SECTION .0400 - TRANSFER STATIONS FACILITIES

15A NCAC 13B .0401 APPLICATION REQUIREMENTS PURPOSE AND APPLICABILITY

~~This Rule contains the information required for a permit application for each transfer facility. A minimum of three sets of the following information shall be required in each application:~~

- ~~(1) Site and operation plans;~~
- ~~(2) An approval letter from the unit of local government having zoning authority over the area where the facility is to be located, stating that the proposed facility meets all the requirements of the local zoning ordinance, or that the site is not zoned; and~~
- ~~(3) Any other information pertinent to the proposed facility.~~

(a) Owners or operators of transfer stations shall comply with applicable federal, State, and local laws, rules, regulations, and ordinances, and shall comply with the rules of this Section as follows:

- (1) Transfer stations that did not receive a permit to operate from the Division prior to the readopted

effective date of this Rule shall comply with the rules of this Section.

- (2) Transfer stations that received a permit to operate from the Division prior to the readopted effective date of this Rule shall comply with the rules of this Section with the following exceptions:

- (A) buildings, structures, and waste handling areas constructed prior to the readopted effective date of this Rule shall not be required to comply with Rule .0403(a), (b)(1), or (b)(2) of this Section for the footprint existing on the readopted effective date of this Rule, or any replacements or modifications within that existing footprint; and
- (B) if a building, structure, or waste handling area was constructed prior to the readopted effective date of this Rule, and is expanded beyond its existing footprint after the readopted effective date of this Rule, the footprint that was existing on the readopted effective date of this Rule shall not be required to comply with Rule .0403(a), (b)(1), or (b)(2) of this Section, but the expansion areas shall comply with these requirements.

Transfer station buildings, structures, and waste handling areas that are exempt from the requirements of Rule .0403(a), (b)(1), and (b)(2) of this Section by this Subparagraph shall continue to comply with the comparable siting, buffer, and construction requirements stated in their permit issued prior to the readoption date of this Rule.

(b) Transition period: Transfer stations permitted by the Division prior to the readopted effective date of this Rule shall submit to the Division an assessment report demonstrating compliance with the following conditions and the rules of this Section by no later than six months from the readopted effective date of this Rule:

- (1) The assessment report shall include an assessment of the status of the building, access roads, parking, and leachate collection system of the current operations compared to the design of the site as stated in the site permit, the plans incorporated into the permit by Rule .0404(d) of this Section, and the rules of this Section. If required by G.S. 89C or G.S. 89E and not under the purview of another licensed profession, the assessment report shall be prepared by a licensed professional engineer or a licensed geologist.
- (2) The assessment report shall contain recommendations for any actions necessary to comply with the rules of this Section. The Division shall notify the owner or operator of the site in writing within 12 months of receipt

of the report of the changes required to comply with the rules of this Section, if any.

- (3) The site shall complete the actions required to comply with the rules of this Section within three years of receipt of the Division's notification of the required changes. The site may submit a request to extend this deadline to the Division in writing. The request shall include the reasons for the request and the anticipated date that the work will be completed. The Division shall approve an extension of the deadline in writing if the Division determines that the scope of work needed to comply with the rules of this Section cannot be completed in three years.

(c) Unless otherwise prohibited from accepting waste by local ordinance, transfer stations are not subject to service area restrictions if the receiving disposal site permit includes the origin of waste as identified by franchise or local government approval.

(d) Wastes entering the State via a transfer station are deemed out-of-state waste to the point of disposal, regardless of any further processing, recycling, or other reduction activity.

(e) The transportation of regulated medical waste shall not be subject to the rules of this Section, but shall comply with Section .1200 of this Subchapter. Transfer stations that receive or transport solid waste by rail, roadway, or water shall be subject to the rules of this Section.

Authority G.S. 130A-294.

15A NCAC 13B .0402 OPERATIONAL REQUIREMENTS GENERAL REQUIREMENTS

Any person who maintains or operates a transfer facility shall maintain and operate the facility in conformance with the following practices unless otherwise specified in the permit.

- ~~(1) Operational plans shall be approved and followed as specified for the facility;~~
- ~~(2) A facility shall only accept those wastes which it is permitted to receive;~~
- ~~(3) Water that comes into contact with solid waste will be contained on site or properly treated prior to discharge from the site. An NPDES permit may be required prior to discharge to surface waters;~~
- ~~(4) Equipment for fire control shall be available;~~
- ~~(5) Effective vector control measures shall be applied to control flies, rodents, and other insects or vermin;~~
- ~~(6) Equipment shall be provided in the storage and charging areas and elsewhere as needed or as may be required in order to maintain the facility in a sanitary condition; and~~
- ~~(7) Appropriate method shall be provided to confine material subject to be blown by the wind within the area. At the conclusion of each day of operation, all windblown material resulting from the operation shall be collected and returned to the area by the owner or operator.~~

(a) The owner or operator of a transfer station (site) shall comply with the conditions of the permit issued by the Division. In the event of noncompliance with the permit, the owner or operator shall take all reasonable steps to prevent releases to the environment and shall carry out such measures as are reasonable to prevent adverse impacts to human health or the environment.

(b) The owner or operator shall submit to the Division upon request any information or records required to be kept under the conditions of the permit or the rules of this Section.

(c) In an enforcement action, necessity to halt or reduce the permitted activity to maintain compliance with the conditions of the permit shall not be a defense. Notification of anticipated noncompliance does not stay any existing permit condition.

(d) The owner or operator may submit an application for a permit amendment or modification in accordance with G.S. 130A-294(a3). The filing of an application for a permit modification or amendment, or a notification of a significant change in accordance with G.S. 130A-295.2(g), does not stay any existing permit condition.

(e) The Division shall deny an application for a permit for the reasons provided in G.S. 130A-294(a)(4)c. The Division may suspend or revoke a permit in accordance with G.S. 130A-23. If the Division denies a permit application or revokes or suspends a permit, the Division shall notify the owner or operator in writing of the reasons for the permit action.

(f) If construction is not commenced within 18 months following the issuance date of the permit approval to construct, or an amendment to the permit approval to construct, then the permit shall expire.

(g) The owner or operator shall operate and maintain all sites and related appurtenances that are installed or used by the owner or operator to achieve compliance with the conditions of the permit, the plans incorporated in the permit in accordance with Rule .0404(d) of this Section, and any documents referenced in the permit and the rules of this Section.

(h) The site shall only conduct the solid waste management activities that the site is permitted to conduct. Construction and operation of additional solid waste management activities at the site shall not impede site operations.

(i) Site permits issued by the Division in accordance with this Section are valid for the life-of-site operations in accordance with Rule .0207 of this Subchapter, not to exceed 60 years from the date of the first permit issued for the site.

(j) Sites permitted under the rules of this Section shall be subject to the permit fees set forth in G.S. 130A-295.8.

(k) The owner or operator shall report to the Division verbally or in writing within 24 hours from the time the owner or operator becomes aware of the circumstances of any release or discharge of leachate or contaminants outside the leachate collection system or other containment component at the site.

Authority G.S. 130A-294.

15A NCAC 13B .0403 SITING AND DESIGN REQUIREMENTS

(a) A transfer station (site) shall meet the following siting requirements:

- (1) Floodplain Restrictions: The portions of the site containing the buildings, leachate collection

systems, and any areas where storage or processing of solid waste occurs shall not be located in the 100-year floodplain.

(2) Cultural Resources Restrictions: A site shall not damage or destroy a property of archaeological or historical significance that has been listed on the National Register of Historic Places or included on the Study List for the Register pursuant to 07 NCAC 04R .0206 and .0300 which are incorporated by reference including subsequent amendments and editions.

(3) State Nature and Historic Preserve Restrictions: The location, access, size, and operation of the site shall not have an adverse impact on any component included in the State Nature and Historic Preserve pursuant to G.S. 143-260.10.

(4) Endangered and Threatened Species Restrictions: A site shall not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973, Public Law 93-205, as amended.

(5) Clean Water Act requirements: a site or site operations shall:

(A) not cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including the National Pollutant Discharge Elimination System (NPDES) requirements pursuant to Section 402 of the Clean Water Act.

(B) comply with Section 404 of the Clean Water Act.

(C) not cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or Statewide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act.

(6) Buffer Requirements: Unless otherwise stated in the site permit or local zoning requires larger buffers, the waste loading, unloading, and storage areas at the site shall be:

(A) no less than 100 feet from supply wells;

(B) no less than 100 feet from property lines;

(C) no less than 50 feet from waters of the State as defined in G.S. 143-212, or wetlands as defined in 40 CFR 232.2; and

(D) surrounded by an unused and cleared area of no less than 25 feet to allow

access for fire or emergency response vehicles.

(b) Sites shall meet the following design requirements:

(1) Sites shall be designed and constructed so that all solid waste receiving, handling, transfer, and storage occurs on an impervious surface, such as concrete or asphalt, unless otherwise stated in the site permit.

(2) Tipping areas shall be located within an enclosed building or covered area to prevent precipitation from coming into contact with waste, and all waste shall be contained in the tipping area unless otherwise stated in the site permit.

(3) All recovered materials and recyclables stored at the site shall comply with G.S. 130A-309.05(c).

(4) The site shall be designed to operate within the capacity specified in the permit to accommodate estimated waste volumes, and within schedules prescribed in the permit for removal of all waste streams and materials permitted to be handled at the site. Other activities occurring at a site shall not prohibit compliance with the operational requirements in Rule .0405 of this Section.

(5) A water supply shall be provided for cleaning site floors, walls, and equipment.

(6) Leachate, including wash water and process water, shall be collected and contained within the site's collection and containment system described in the site permit.

(7) All vehicles and containers that contain solid waste shall be staged within the perimeter of a leachate collection system or shall be covered and in compliance with Rule .0105 of this Subchapter.

(8) Leachate collection and treatment systems shall be designed to facilitate the removal of leachate and wastewater, and may include pipes, manholes, trenches, berms, collection sumps or basins, pumps, risers, liners, and liner splices.

(9) The site design shall include barriers such as fencing and gates to prevent unauthorized entry and to minimize the escape of windblown materials off site.

(10) In accordance with G.S. 130A-295.5, sites shall be designed and operated so that traffic congestion from loading and unloading of collection and transportation vehicles is minimized beyond the site entrance onto the public road, and beyond any egress ramp approved by the N.C. Department of Transportation.

(11) An all-weather road that is accessible by the Division and loaded collection vehicles shall be provided from the entrance gate to the unloading, receiving, and tipping areas.

- (12) Storage areas for waste materials shall be designed to prevent potential fires from spreading outside the storage area, to prevent vectors, and to prevent the escape of waste, leachate, odors, dust, and litter from the site.
- (13) If materials banned from landfill disposal in accordance with G.S. 130A-309.10(f) or recyclable materials will be stored on site, the site design shall include a storage area for these materials that is separate from the areas used for handling of waste meant for disposal.
- (14) Sites shall be designed and operated to prevent the attraction of vectors.
- (15) Sites shall be designed and operated to minimize the spread of odors and fugitive dust emissions generated by solid waste over the property line to comply with 15A NCAC 02D .0540 and .1806.
- (16) Sites shall be designed, operated, and maintained to direct surface water run-on and run-off to prevent ponding or collection of surface water in waste handling and storage areas.
- (17) Sites that intend to accept, process, or recycle construction and demolition wastes shall be designed to comply with 40 CFR Part 61(M), G.S. 130A-444 through 452, and the rules adopted thereunder.

Authority G.S. 130A-294.

15A NCAC 13B .0404 APPLICATION REQUIREMENTS

- (a) Applications for transfer station permits submitted in accordance with Paragraph (c) of this Rule shall be submitted to the Division of Waste Management Solid Waste Section for review and approval prior to commencement of construction or operation of a transfer station (site).
- (b) Permit applications for transfer stations are subject to the permit application fees required by G.S. 130A-295.8.
- (c) In accordance with Rule .0201 of this Subchapter, a permit for a transfer station shall have two parts:

- (1) Permit Approval to Construct. An application for a permit approval to construct a transfer station shall meet the requirements of Paragraphs (g) through (m) of this Rule and shall be submitted to the Division prior to commencing construction of the site. The application shall include the plans required in Paragraphs (g) through (j) of this Rule.
- (2) Permit Approval to Operate. The owner or operator shall meet the pre-operative requirements listed in the permit approval to construct to qualify for a permit approval to operate. Construction documentation as outlined in Paragraph (n) of this Rule shall be submitted to the Division prior to receiving waste at the site. The site shall not begin

receiving waste until a permit approval to operate has been issued by the Division.

(d) Permits issued by the Division in accordance with this Section shall incorporate all plans approved by the Division that are required to be submitted by Paragraphs (g) through (j) of this Rule, and a Corrective Action Plan if required in accordance with Rule .0405(a)(2) of this Section.

(e) Amendment to the permit. The owner or operator shall submit an application to amend the permit for a change in ownership or corporate structure of a permitted site. The owner or operator shall notify the Division within 30 days of a change in ownership or corporate structure in accordance with G.S. 130A-295.2(g).

(f) Modifications to the plans. The owner or operator may request to modify plans that were incorporated into the permit by the Division in accordance with the rules of this Section by submitting the request to the Division, including the modified plan and a demonstration showing how the proposed modifications comply with the rules of this Section. The Division shall respond to the request in writing within the timeline provided in G.S. 130A-295.8(e), and the response shall either approve or deny the request as submitted or request that additional information be submitted for the Division to consider the request. The Division's approval shall be based on whether the modification complies with the rules of this Subchapter. If the Division approves the request as submitted or upon receiving the additional information requested, the Division's written approval and the revised pages of the plan shall be added to the site's operating record. The owner or operator shall not implement the modification until the Division has issued an approval.

(g) Site Plan. An application for a permit for a site shall contain a site plan that includes the following information:

- (1) an aerial photograph, representative of existing conditions, at a scale of a least one inch equals 400 feet, showing the area within one quarter mile of the proposed site's boundaries with the following identified:
 - (A) property lines of the entire property where the site will be located;
 - (B) existing land use and zoning;
 - (C) location of all private residences, commercial and industrial buildings, public or private utilities, roads, and schools;
 - (D) on-site easements;
 - (E) location of potable wells and public water supplies;
 - (F) historic sites described in Rule .0403(a)(2) of this Section;
 - (G) state nature and historic preserves described in Rule .0403(a)(3) of this Section;
 - (H) the existing topography and features of the site including general surface water drainage patterns and watersheds, 100-year floodplains, perennial and intermittent streams, rivers, and lakes; and

- (1) the classification of the surface water drainage from the site in accordance with 15A NCAC 02B .0300.
- (2) a siting report demonstrating compliance with the siting criteria of Rule .0403(a) of this Section, including a letter from the unit of government having zoning jurisdiction over the site that states that the proposed use is allowed within the existing zoning, if any; that any necessary zoning approval or permit has been obtained, and that states the local zoning buffers that apply to the site.
- (3) letters from both the State Historic Preservation Office and the Natural Heritage Program within the Department of Cultural and Natural Resources stating whether the proposed use of the site as a solid waste transfer station will impact the historic sites described in Rule .0403(a)(2) of this Section; State nature and historic preserves described in Rule .0403(a)(3) of this Section; or the endangered or threatened species described in Rule .0403(a)(4) of this Section located on the transfer station property.

(h) Construction Plan. An application for a permit for a site shall contain a construction plan that includes the following items:

- (1) Construction drawings showing:
 - (A) existing and proposed contours;
 - (B) property boundaries;
 - (C) the location of barriers, fences, or other structures that control access to the site.
 - (D) buffer areas and distances to wells, residences, wetlands and water bodies and descriptions of any buffer requirements by local government zoning regulations;
 - (E) the water diversion, collection, conveyance, erosion and sedimentation control, treatment, storage, and discharge facilities that will be used, such as drainage patterns and surface water drainage control structures both within the area and at the site perimeter, including berms, ditches, sedimentation basins, pumps, sumps, culverts, pipes, inlets, velocity breaks, sodding, erosion matting, or other methods of erosion control;
 - (F) the solid waste storage, loading, and unloading areas, including the tipping floor;
 - (G) buildings and facilities that will be used in the operation, including their horizontal and vertical dimensions;
 - (H) concrete foundations or pads and identification of all other ground cover for the site operation;
 - (I) location of scales and weigh stations that will be used in the operation;

- (J) a survey grid with base lines and monuments that will be used for field control;
- (K) access roads and traffic flow patterns to and within the site;
- (L) leachate collection, control, and treatment systems including pipes, manholes, trenches, berms, collection sumps or basins, pumps, risers, liners, and liner splices; and
- (M) materials management handling areas for sites that will manage pre-sorted recyclables and any materials diverted from the incoming waste stream; and
- (2) a description of how the site will comply with the design requirements of Rule .0403(b) of this Section.

(i) Operations Plan. An application for a permit for a site shall contain an operations plan that shall include a discussion of each of the following items:

- (1) the type and quantity of waste that will be accepted, the anticipated sources of the waste accepted, the intended destination of waste removed from the site, and the intended destination of recovered materials if any are proposed to be removed from the site;
- (2) the procedures and anticipated processing and storage times for the activities that the site is proposing to conduct, such as receiving, screening, processing, handling, salvaging, storage, and removal of waste and recovered materials including recyclables, wastes banned from landfill disposal in accordance with G.S. 130A-309.10(f), and special wastes as defined in G.S. 130A-290(a)(40);
- (3) the hours of operation, staffing, parking for visitors and employees, and traffic routing;
- (4) methods for vector control, dust and odor control, drainage and erosion control, fire prevention, and daily cleanup;
- (5) record-keeping procedures;
- (6) groundwater and surface water monitoring and corrective action, if required by the Division in accordance with Rule .0405(a)(2) of this Section;
- (7) planned compliance with the operational requirements of Rule .0405 of this Section;
- (8) for sites that will accept, process, or recycle construction and demolition wastes, a description of how the site will comply with 40 CFR Part 61(M), G.S. 130A-444 through 452, and the rules adopted thereunder;
- (9) for sites designed with a leachate collection system, a leachate management plan that includes the following:
 - (A) a description of the performance and design concepts for the leachate collection system and any storm water

- segregation included in the engineering design;
- (B) monitoring procedures for leachate storage tanks, if present, to ensure proper functioning;
- (C) operational control methods to ensure that surface water is diverted from the operational area, and the tipping floor is free of standing water; and
- (D) a process to abandon or remove the leachate collection system upon closure of the site. The Division may allow leachate collection systems to remain in place for future use if the owner or operator provides documentation of measures taken to comply with the requirements of this Section and to protect human health and safety and the environment, such as capping or blocking of any discharge points or open-ended piping to prevent unintended collection, storage, or discharge of leachate. The Division may also require recordation and land use restrictions in accordance with Rule .0406(7) of this Section;

- (10) a contingency plan that shall address planned operations in the event of loss of power, loss of communications, storm surges, scale malfunctions, and scale software malfunctions; in the event that the disposal site, haul route, or transfer equipment is not available; or during conditions exceeding design parameters. The owner or operator of a site shall provide back-up equipment, and contact information to obtain the equipment, and plans to by-pass the site in case of equipment breakdown. The contingency plan shall be kept updated on-site and shall include site-specific emergency procedures and contact information in case of emergencies; and

- (11) additional information for activities or features that the owner or operator is proposing that are not otherwise described in this Paragraph, or that the Division may request if it is necessary to determine compliance with the rules of this Subchapter.

(j) Closure Plan. An application for a permit for a site shall contain a closure plan that describes the steps necessary to close the site at any point during the active life of the site in accordance with the requirements in Rule .0406 of this Section. The closure plan shall include the following information:

- (1) a description of all activities, including the removal of any remaining solid wastes or materials from the site, activities required for the closure of the site, and abandonment of all on-site systems.

- (2) a schedule for completing all activities necessary to satisfy the closure criteria set forth in Rule .0406 of this Section;
- (3) the cost estimate for closure and post closure activities; and
- (4) a plan for retention of operating record and receipts including those from closure activities.

(k) Sites shall comply with financial responsibility requirements in accordance with G.S. 130A-295.2 and Section .1800 of this Subchapter. If the Division requires the site to conduct post-closure care in accordance with Rule .0406(b) of this Section, the site shall maintain financial assurance during the post-closure care period until released from post-closure care by the Division.

(l) Owners or operators of sites are subject to the compliance history review requirements in G.S. 130A-295.3.

(m) Sites shall comply with the traffic study requirements in G.S. 130A.295.5.

(n) Following completion of construction but prior to commencing operations, the owner or operator shall submit to the Division the as-built drawings and a final construction report that the site has been constructed in accordance with the Division-approved drawings and specifications in the permit to construct. If required by G.S. 89C, these items shall be certified by a licensed professional engineer.

Authority G.S. 130A-294.

15A NCAC 13B .0405 OPERATIONAL REQUIREMENTS

(a) The owner or operator of a transfer station (site) shall maintain and operate the site in accordance with the approved operations plan submitted in accordance with Rule .0404(i) of this Section and the following conditions:

- (1) Dust and Odor Control. Fugitive dust emissions generated by site operations shall comply with 15A NCAC 02D .0540. The site shall comply with 15A NCAC 02D .1806 for odors.
- (2) Groundwater and Surface Water Monitoring and Corrective Action Requirements. The site shall prevent the release of leachate and contaminants to groundwater and surface water and shall comply with 15A NCAC 02L and the surface water quality standards in 15A NCAC 02B.
- (3) Fire Protection and Control.
 - (A) Open burning of solid waste is prohibited at all sites, unless approval has been obtained from the Division, and from the Division of Air Quality in accordance with 15A NCAC 02D .1900, and from the local government prior to any burning activity.
 - (B) Hot ashes, hot loads, or cinders shall not be accepted at a site. The waste screening procedures required in accordance with Subparagraph (8) of this Paragraph and described in the operations plan shall address

- identification and rejection of loads containing hot ashes and cinders.
- (C) The operator of a site shall provide equipment on-site to control fires and make documented arrangements with a local fire protection agency to provide fire-fighting services.
- (D) The operator shall verbally notify the Division of fires that occur at a site within 24 hours of the fire and shall submit a written report to the Division within 15 days of the fire. The report shall include the site name and permit number; the date and time of the fire; actions taken by the operator in response to the fire; the cause of the fire; the area, type, and amount of waste that caught fire; and a plan of action to prevent fires in the future; the name and title of the person submitting the information, and the date the information is submitted.
- (4) Vector Control. Owners or operators of a site shall operate and maintain the site to prevent on-site populations of vectors.
- (5) Noise Control. Noise levels shall meet local ordinances if they exist. If local ordinances for noise do not exist, noise levels for site operations, except fire and safety alarms, shall not exceed 85 decibels at the property line.
- (6) Erosion and Sedimentation Control Requirements. The site shall comply with 15A NCAC 04, which is incorporated by reference including subsequent amendments and editions; and the owner or operator shall utilize erosion and sedimentation control measures that prevent sediment from leaving the site and prevent on-site erosion.
- (7) Training. During hours of operation, an operator trained in accordance with G.S. 130A-309.25 shall be on-site. Sites shall provide all staff with no less than eight hours of training updates annually that includes a review of the operations plan and permit documents. Documentation of the training shall be placed in the operating record and provided to the Division upon request.
- (8) Waste Screening. Sites shall comply with the following waste screening requirements:
- (A) Site personnel shall screen incoming loads weekly at a rate of no less than five percent of the average daily waste tonnage reported in the site's annual report for the previous year. Site personnel shall be trained annually to identify liquid waste, hazardous waste, PCB waste, special wastes as defined in G.S. 130A-290(a)(40), wastes banned from landfill disposal
- in accordance with G.S. 130A-309.10(f) if the site receiving the waste for disposal is a landfill, and wastes that the intended final disposal site is not permitted by the Division to accept. The screening shall be conducted as described in the approved operations plan prepared in accordance with Rule .0404(i) of this Section. Waste screening and rejected wastes shall be recorded in writing, and the records shall be kept on site for no less than five years and shall be made available to the Division during a site inspection or upon request.
- (B) The owner or operator shall include in the operations plan a plan to manage any identified hazardous and liquid wastes. The plan shall address identification, removal, storage, and final disposal of the waste.
- (9) Waste Acceptance: Sites shall not accept the following:
- (A) hazardous waste unless the site is permitted by the Division in accordance with 15A NCAC 13A to receive such waste;
- (B) polychlorinated biphenyls (PCB) wastes as defined in 40 CFR 761.3, which is incorporated by reference, including subsequent amendments and editions, and may be accessed at www.ecfr.gov at no cost;
- (C) asbestos waste unless the waste is received and handled in compliance with the requirements of 40 CFR 61.150, which is incorporated by reference, including subsequent amendments and editions, and may be accessed at www.ecfr.gov at no cost. Bags shall be no less than six mil thick and shall be labeled with the warning required by 40 CFR 61.150(a)(1)(iv) that they contain asbestos-containing materials. Sites shall provide notice to the landfill facility receiving the asbestos waste prior to disposal.
- (D) waste banned by G.S. 130A-309.10 at the disposal destination;
- (E) waste banned by local law or ordinance at the disposal destination; and
- (F) waste banned from disposal by a local law or an ordinance at the place of waste origin.
- (10) Windblown waste: Site staff shall conduct daily inspections for windblown waste on the site property. Windblown litter from site operations discovered during the daily inspections or

observed on adjacent properties shall be picked up and containerized for proper disposal by the end of each operating day, unless the landowner of the adjacent property denies access to site staff. The site shall prevent waste from being blown outside the waste handling areas by the wind, using methods such as:

- (A) requiring that vehicles entering and leaving the site keep waste covered;
- (B) providing skirts, such as rubber belting or brushes, around the top of chutes to minimize the space between the chute and the hauling trailer at sites with chutes and hoppers; or
- (C) preventing waste from leaving the site using methods such as fencing, netting, or diking.

(11) Site Cleaning and Maintenance: Unless otherwise stated in the site permit, all waste shall be removed from the tipping floor, the truck loading bays, and from behind push walls by the end of each day of operation and disposed of in accordance with this Subchapter. The tipping floor, push walls, and truck loading bays shall be cleaned with a pressure washer no less than once per month. The remaining areas of the site building including side walls and any material storage areas outside of the building shall be cleaned with a pressure washer no less than twice per year. Wash water generated from cleaning waste handling areas shall be contained and treated as leachate. Cleaning and maintenance records shall be maintained and made available to the Division upon request.

(b) Water that comes into contact with solid waste is leachate and shall be collected from the site for disposal to an approved facility or discharged directly from the site into a sanitary sewer line. A National Pollutant Discharge Elimination System (NPDES) permit may be required prior to the discharge of leachate to surface waters, as provided by 40 CFR Parts 258.26 and 258.27, which are incorporated by reference, including subsequent amendments and editions, and may be accessed at www.ecfr.gov at no cost.

(c) All vehicles and containers being used for the temporary storage of solid waste shall be maintained in accordance with Rule .0105 of this Subchapter; and shall be stored so that any potential release of leachate from the vehicles or containers will be collected by the leachate collection system.

(d) Operating Record and Recordkeeping requirements. The owner or operator of a site shall retain an operating record in electronic or hard copy format at the site, or in an alternative location stated in the permit. The records required by Subparagraphs (1) and (2) of this Paragraph shall be maintained for no less than five years. The records required by Subparagraphs (3) through (9) of this Paragraph shall be maintained for the life of the site. The operating record shall contain the following information:

- (1) records of waste inspections, monitoring results, certifications of training, and training procedures required by the rules of this Section;
- (2) amounts by weight of solid waste received at the site including county and state of generation, in accordance with G.S. 130A-309.09D;
- (3) demonstrations, certifications, findings, monitoring, testing, or analytical data required by the rules of this Section;
- (4) closure or post-closure care monitoring, testing, or analytical data required by the rules of this Section;
- (5) cost estimates and financial assurance documentation required by Section .1800 of this Subchapter;
- (6) site audit records, compliance records, maintenance records, and inspection reports;
- (7) a copy of the current Permit to Construct and Permit to Operate;
- (8) a copy of the plans that have been incorporated into the permit in accordance with Rule .0404(d) of this Section; and
- (9) a Corrective Action Plan, if required by Subparagraph (a)(2) of this Rule.

(e) Access requirements.

- (1) Sites shall be secured to prevent unauthorized entry by means such as gates, chains, berms, or fences.
- (2) An attendant shall always be on duty at the site while it is open for public use to ensure compliance with operational requirements.
- (3) The access roads shall be of all-weather construction and maintained to be accessible by loaded collection vehicles and by the Division.
- (4) Signs shall be posted at the site entrances unless otherwise stated in the site permit. The signs shall be constructed of a durable, weather-resistant material. The signs shall be clear and legible and show the name of the operator of the site, emergency contact information, the operating hours of the site, the permit number of the current permit authorizing operations at the site, the types of waste that can be accepted under the permit, and that hazardous waste and liquid waste cannot be accepted at the site.

Authority G.S. 130A-294.

15A NCAC 13B .0406 CLOSURE REQUIREMENTS

(a) The owner or operator of a transfer station (site) shall schedule and document closure of all sites in accordance with the following criteria:

- (1) The owner or operator shall submit written notification to the Division no less than 90 days prior to the proposed date of cessation of waste acceptance at a site.

- (2) The owner or operator shall begin closure activities no later than 30 days after the date of the final receipt of waste at the site.
- (3) The owner or operator shall remove all waste from the site in accordance with the requirements of this Subchapter, and complete closure activities of the site in accordance with the site permit and the rules of this Section within 180 days following the beginning of closure as specified in Subparagraph (2) of this Paragraph.
- (4) When the requirements of Subparagraph (3) of this Paragraph have been met, the owner or operator shall notify the Division in writing that the requirements have been met. The notification shall describe how the requirements were met and shall be placed in the operating record.
- (5) A final inspection for closure shall be conducted by the Division to verify that the conditions of closure have been met.
- (6) Leachate collection systems, if present, shall be closed in accordance with the approved leachate management plan submitted in accordance with Rule .0404(i)(9) of this Section.
- (7) Recordation and Land Use Restrictions.
 - (A) If the site has been required by the Division to conduct a corrective action program following closure of the site in accordance with this Rule, or elects to leave a leachate collection system or tank in place for future use, the owner or operator shall record a notice for the site property at the local county Register of Deeds office that is discoverable during a title search for the site property, and notify the Division that the notice has been recorded and a copy has been placed in the operating record. The notice shall be in accordance with G.S. 130A-310.71(e) or G.S. 143B-279.10.
 - (B) The notice shall notify any potential purchaser of the property that the land has been used as a solid waste management facility and its use may be restricted by the Division.
 - (C) Upon written request by the owner or operator, the Division shall provide the land owner of record documentation to record with the county Register of Deeds, stating that site use is no longer restricted if all post-closure care activities required by the Rules of this Section are completed, the Division authorizes termination of any corrective action program in accordance with 15A

NCAC 02L .0106, and the leachate collection system has been removed.

(b) If the Division requires groundwater or surface water monitoring or corrective action at a site in accordance with Rule .0405(a)(2) of this Section, the monitoring and corrective action at the site shall continue in a post-closure care period until the Division authorizes termination of corrective action at the site in accordance with 15A NCAC 02L .0106.

Authority G.S. 130A-294.

SECTION .0500 - DISPOSAL SITES

15A NCAC 13B .0501 APPROVED DISPOSAL METHODS

15A NCAC 13B .0502 OPEN DUMPS

Authority G.S. 130A-294.

15A NCAC 13B .0503 SITING AND DESIGN REQUIREMENTS FOR DISPOSAL SITES INDUSTRIAL SOLID WASTE LANDFILLS

(a) An industrial solid waste landfill unit ("site" or "ISWLF unit") Disposal sites shall comply with the following siting requirements in order for a permit to be issued:

~~(1) A site shall meet the following siting requirements:~~

~~(a) A site located in a floodplain shall not restrict the flow of the 100 year flood, reduce the temporary water storage capacity of the floodplain or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.~~

~~(b) A site shall be located in consideration of the following:~~

~~(i) a site shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife;~~

~~(ii) a site shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 C.F.R. Part 17 which is hereby incorporated by reference including any subsequent amendments and editions. This information is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, 401 Oberlin Road, Raleigh, North~~

~~Carolina 27605 where copies can be obtained at no cost;~~
 (iii) ~~a site shall not damage or destroy an archaeological or historical site; and~~
 (iv) ~~a site shall not cause an adverse impact on a state park, recreation or scenic area, or any other lands included in the state nature and historic preserve.~~

- (1) Floodplain Restriction. A site shall not be located in the 100-year floodplain in accordance with G.S. 143-215.54(c) and S.L. 2000-150.
- (2) Cultural Resources Restrictions: A site shall not damage or destroy a property of archaeological or historical significance that has been listed on the National Register of Historic Places or included on the Study List for the Register pursuant to 07 NCAC 04R .0206 and .0300, which are incorporated by reference including subsequent amendments or editions.
- (3) State Nature and Historic Preserve Restrictions: A site shall not have an adverse impact on any component included in the State Nature and Historic Preserve pursuant to G.S. 143-260.10.
- (4) Endangered and Threatened Species Restrictions: A site shall not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973, Public Law 93-205, as amended.
- (5)(e) A new site disposing of putrescible wastes shall not be located within 10,000 feet of an airport runway used by turbojet aircraft or within 5,000 feet of an airport runway used by piston-type aircraft; and
- (6)(d) A site shall have available adequate suitable soils for cover either on-site or from off-site.

(b)(2) A site shall comply with the following design requirements for a permit to be issued: A site shall meet the following design requirements:

- (1)(a) If the site accepts waste types that are expected to generate explosive gases, The the concentration of explosive gases generated by the site, shall not exceed:
 - (A)(i) twenty-five 25 percent of the lower explosive limit for the explosive gases in on-site site structures, excluding structures (excluding gas control or recovery system components); and
 - (B)(ii) the lower explosive limit for the explosive gases at the property boundary;

~~(2)(b) A site shall not allow uncontrolled public access so as to expose the public to potential health and safety hazards at the disposal site; A site shall be secured to prevent unauthorized entry by means such as gates, chains, berms, and fences.~~

~~(3)(e) A site shall meet the following surface water requirements:~~

~~(A)(i) A site shall not cause a discharge of pollutants into waters of the state State that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES), under Section 402 of the Clean Water Act, as amended, or that is in violation of 15A NCAC 02B. standards promulgated under G.S. 143-214.1 and G.S. 143-215;~~

~~(B)(ii) A site shall not cause a discharge of dredged material or fill material into waters of the state State that is in violation of the requirements under Section 404 of the Clean Water Act, as amended, or that is in violation of any state State requirements regulating the discharge of dredged or fill material into waters of the state, State, including wetlands; and~~

~~(C)(iii) A site shall not cause non-point source pollution of waters of the state State that violates assigned water quality standards. 15A NCAC 02B.~~

~~(D) A site shall comply with Rule .0602 of this Subchapter.~~

~~(4)(d) A site shall meet the following ground water groundwater protection requirements:~~

~~(A)(i) A site, except for land clearing and inert debris landfills subject to Rule .0564(8)(e) of this Section, A site shall comply with G.S. 130A-295.6(f), be designed so that the bottom elevation of solid waste will be a minimum of four feet above the seasonal high water table;~~

~~(B)(ii) Operators of new industrial solid waste landfills, lateral expansions of existing industrial solid waste landfills, and industrial solid waste landfills receiving solid waste on or after January 1, 1998 shall submit to the Division a design which satisfies one of the following criteria: A site that has not previously been permitted by the Division for an ISWLF unit, or a lateral expansion of an existing permitted site shall be designed with a leachate collection system, a closure cap system, and a composite liner system consisting of an upper~~

component and lower component. The upper component of the composite liner system shall consist of a flexible membrane liner (FML) no less than 30 mil thick. The lower component of the composite liner system shall consist of a layer of compacted soil no less than two feet thick with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of high-density polyethylene (HDPE) shall be no less than 60 mil thick. The FML component shall be installed in direct and uniform contact with the compacted soil component.

(C)(A) An owner or operator applying for a permit for a site that has not previously been permitted by the Division for an ISWLF unit, or a lateral expansion of an existing permitted site may submit a request to the Division to be exempt from the requirements of Part (B) of this Subparagraph. The request shall be submitted in writing with the proposed site information required to be submitted in accordance with Rule .0504(c) of this Section. The request shall include a description of the types of waste proposed to be disposed of at the site, and a proposed site design that will ensure demonstrates that the post-settlement bottom elevation of the waste will be a minimum of four feet above both the seasonal high groundwater table and the bedrock datum plane contours as required by G.S. 130A-295.6(f). The site design shall also demonstrate that the groundwater groundwater quality standards or interim maximum allowable contaminant levels established under 15A NCAC 2L 02L will not be exceeded in the uppermost aquifer at the compliance boundary established by the Division in accordance with 15A NCAC 2L 02L. The site design shall be based upon modeling methods that include the hydrogeologic characteristics of the site and surrounding lands; the climatic factors of the area; and the volume and physical and chemical characteristics of the leachate. The Division shall approve the request if the request and the proposed site design comply with Article 9 of Chapter 130A of the General Statutes and the rules of this Subchapter. acceptable to the

~~Division, which shall include, at a minimum, the following factors:~~

- ~~(I) the hydrogeologic characteristics of the facility and surrounding lands;~~
- ~~(II) the climatic factors of the area; and~~
- ~~(III) the volume and physical and chemical characteristics of the leachate; or~~

~~(B) a design with a leachate collection system, a closure cap system, and a composite liner system consisting of two components: the upper component shall consist of a minimum 30 ml flexible membrane (FML), and the lower components shall consist of at least a two foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 ml thick.~~

~~The FML component shall be installed in direct and uniform contact with the compacted soil component.~~

~~(iii) The Division reserves the right to require an applicant to submit a liner design if the groundwater protection demonstration is Sub item (ii) in of this Paragraph is not satisfactory.~~

~~(D)(iv) Industrial solid waste landfills A site shall comply with ground water standards established under 15A NCAC 2L Rule .0601 of this Subchapter. at the compliance boundary.~~

~~(5)(e) A site shall not engage in open burning of solid waste. waste unless approval has been obtained from the Division, and from the Division of Air Quality in accordance with 15A NCAC 02D .1900, and from the local government prior to any burning activity.~~

~~(6)(f) A site, except a land clearing and inert debris landfill, A site shall meet the following buffer requirements:~~

~~(A)(i) A site that received site study approval from the Division in accordance with Rule .0504(a)(1) of this Section prior to the readopted effective date of this Rule shall maintain a buffer of 50 feet between all property lines and disposal areas. A site that receives site study approval after the readopted effective date of this Rule shall maintain a buffer of no less than 200 feet A~~

- ~~50-foot minimum buffer~~ between all property lines and disposal areas;
- (B)(ii) A site shall have a buffer of no less than 500 feet ~~500-foot minimum buffer~~ between the disposal area and residential structures ~~private dwellings~~ and supply wells existing at the time that the Division site study approval in accordance with Rule .0504(a)(1) of this Section; and disposal areas; and
- (C)(iii) A site shall have a buffer of no less than 50 feet ~~50-foot minimum buffer~~ between the disposal area and any stream, river, lake, pond, or other waters of the State as defined in G.S. 143-212; streams and rivers and disposal areas; and
- (7)(g) A site shall comply with the requirements in 15A NCAC 04 for sedimentation and erosion control. 15A NCAC 04 is incorporated by reference including subsequent amendments and editions. Requirements of the Sedimentation Pollution Control Law (15A NCAC 4) shall be met.

Authority G.S. 130A-294.

15A NCAC 13B .0504 APPLICATION REQUIREMENTS FOR SANITARY LANDFILLS INDUSTRIAL SOLID WASTE LANDFILLS

~~A permit for a sanitary landfill shall be based upon a particular stream of identified waste, as set forth in Rule .0504(1)(g)(i) and (ii) of this Section. Any substantial change in the population or area to be served, or in the type, quantity or source of waste shall require a new permit and operation plan, including waste determination procedures where appropriate.~~

- (1) ~~The following information shall be required for reviewing a site application for a proposed sanitary landfill:~~

(a) The permit applicant for an industrial solid waste landfill unit ("ISWLF unit" or "site") permit shall prepare a site study in accordance with Paragraph (c) of this Rule, and submit the site study to the Division. The Division shall review the site study for a proposed new site prior to consideration of an application for a permit. Following review of the site study, the Division shall notify the applicant that either:

- (1) the site is deemed suitable for establishing an ISWLF unit and the applicant may prepare an application for a permit in accordance with Paragraph (b) of this Rule; and the site-specific conditions and design requirements stated in the notification, if any; or
- (2) the site is deemed unsuitable for establishing an ISWLF unit and the Division shall specify the reasons that prevent the ISWLF unit from being operated in accordance with Chapter 130A Article 9 of the General Statutes, the rules of this Subchapter, and any applicable federal laws and regulations.

(b) When the site has been deemed suitable for an ISWLF unit by the Division in accordance with Subparagraph (a)(1) of this Rule, the permit applicant shall submit to the Division one electronic copy of a permit application, and the application shall contain the plans described in Paragraphs (d) through (f) of this Rule. A permit for a site shall be based upon a particular type and source of waste, as identified in the operation plan required by Paragraph (e) of this Rule.

(c) The site study shall contain the following information:

- (1)(a) An aerial photograph on a scale of at least 1 inch equals 400 feet showing the area within one-fourth mile of the proposed site's boundaries with the following specifically identified:
- (A)(i) ~~Entire~~ entire property owned or leased by the person proposing the disposal site;
- (B)(ii) Land ~~land~~ use and zoning;
- (C)(iii) Location ~~location~~ of all homes, industrial buildings, public or private utilities, and roads;
- (D)(iv) Location ~~location~~ of wells, watercourses, dry runs, and ~~other applicable details regarding the general topography;~~ and
- (E)(v) Flood plains; ~~floodplains.~~

(2)(b) A map on a scale of at least 1 inch equals 1000 feet showing the area within two miles of the proposed site's boundaries with that identifies known groundwater users, potential or existing sources of groundwater and surface water pollution, water intakes, airports and runways, and subdivisions, the following specifically identified:

- (i) ~~Known ground water users;~~
- (ii) ~~Potential or existing sources of ground water and surface water pollution;~~
- (iii) ~~Water intakes;~~
- (iv) ~~Airport and runways; and~~
- (v) ~~Subdivisions.~~

(3)(e) A geological and hydrological study of the site which that provides:

- (A)(i) Soil ~~soil~~ borings for which the numbers and depths have been confirmed by the Division and lab testing of selected soil samples that provide:
- (i)(A) ~~standard~~ penetration resistance;
- (ii)(B) ~~particle size analysis;~~
- (iii)(C) ~~soil classification using the Unified Soil Classification System;~~
- (iv)(D) geologic considerations such as slopes and solution features; (slopes, solution features, etc.);

- (v)(E) undisturbed representative geologic samples of the unconfined or confined or semiconfined hydrological units within a depth of 50 feet that provide the following information for each major lithologic unit the units:
 - (I) saturated hydraulic conductivity or by in situ, ~~(or by in situ)~~;
 - (II) volume percent ~~water~~; water, and
 - (III) porosity;
- (vi)(F) remolded sample of cover soils that ~~provide the provide~~:
 - (I) saturated hydraulic conductivity,
 - (II) total porosity, and
 - (III) ~~atterberg~~ attemberg limits;
- (vii)(G) ~~stratigraphic~~ stratigraphic cross sections identifying hydrogeological units including lithology;
- (viii)(H) tabulation of water table elevations at time of boring, 24 hours, hours after boring, and seven days after boring; ~~days (The number of cased borings to provide this information shall be confirmed by the Division.);~~ and
 - (ix)(I) boring logs; and
- (B)(ii) A a boundary plat locating soil borings with accurate horizontal and vertical ~~control which controls~~ that are tied to a permanent onsite benchmark;
- (C)(iii) A a potentiometric map of the uppermost surficial aquifer based on stabilized water table elevations; and
- (D)(iv) A a report summarizing the geological and hydrological evaluation.
- (4)(d) A conceptual design plan presenting special engineering features or considerations which must shall be included or maintained in site construction, operation, ~~maintenance~~ maintenance, and closure.
- (e) Local government approvals:
 - (i) ~~If the site is located within an incorporated city or town, or~~
- within the extra-territorial jurisdiction of an incorporated city or town, the approval of the governing board of the city or town shall be required. Otherwise, the approval of the Board of Commissioners of the county in which the site is located shall be required. Approval may be in the form of either a resolution or a vote on a motion. A copy of the resolution, or the minutes of the meeting where the vote was taken, shall be forwarded to the Division.
- (5) A copy of the franchise or local government approval from each unit of local government in whose jurisdiction the site is located in accordance with G.S. 130A-294(b1). No franchise or local government approval shall be required for site used to dispose of waste generated solely by the permit applicant.
- (6)(ii) A letter from the unit of government having zoning jurisdiction over the site which states that the proposal meets all of the requirements of the local zoning ordinance, or that the site is not zoned.
- (7)(f) A discussion of compliance with siting standards in Rule ~~0503(1)~~ 0503(a) of this Section. ~~Subchapter.~~
- (8)(g) A report ~~indicating that describes~~ the following:
 - (A)(i) population and area to be served;
 - (B)(ii) type, ~~quantity~~ quantity, and source of ~~waste; waste that will be disposed of at the site;~~
 - (C)(iii) the equipment that will be used for operating the site;
 - (D)(iv) a proposed water quality groundwater monitoring plan including surface water sampling locations, well location ~~locations,~~ and well schematics showing proposed screened interval, ~~depth~~ depth, and construction; and
 - (E)(v) additional information or a more detailed geologic report may be required ~~depending on specifics of the site. if it is necessary to determine compliance with the rules of this Subchapter.~~ This report may be based on physical evidence, initially, or due to information obtained from the site plan application.
- (9) letters from both the State Historic Preservation Office and the Natural Heritage Program within the Department of Cultural and Natural Resources stating whether the proposed use of

the property will impact the historic sites described in Rule .0503(a)(2) of this Subchapter; State nature and historic preserves described in Rule .0503(a)(3) of this Subchapter; or the endangered or threatened species described in Rule .0503(a)(4) of this Subchapter located at the site.

(10) additional information for activities or features that the owner or operator is proposing that are not otherwise described in this Rule, or that the Division may request if it is necessary to determine compliance with the rules of this Subchapter.

~~(h) Any other information pertinent to the suitability of the proposed site.~~

~~(2) The following information shall be required for reviewing a construction plan application for a proposed sanitary landfill:~~

(d) Construction Plan. An application for a permit for the site shall contain a construction plan that shall include the following information:

(1)(a) A map showing existing features including to include: existing topography of the site on a scale of no less than one inch equals 200 feet with five-foot contours, benchmarks, springs, streams, potential groundwater monitoring sites, pertinent geological features, and soil boring locations;

- ~~(i) existing topography of the site on a scale of at least 1 inch equals 200 feet with five foot contours;~~
- ~~(ii) bench marks;~~
- ~~(iii) springs;~~
- ~~(iv) streams;~~
- ~~(v) potential ground water sites;~~
- ~~(vi) pertinent geological features; and~~
- ~~(vii) soil boring locations.~~

(2)(b) A grading plan that provides: provides proposed excavated contours, soil boring locations, locations and elevations of dikes or trenches, designated buffer zones, diversion and controlled removal of surface water from the work areas, and proposed utilities and structures;

- ~~(i) proposed excavated contours;~~
- ~~(ii) soil boring locations;~~
- ~~(iii) locations and elevations of dikes or trenches;~~
- ~~(iv) designated buffer zones;~~
- ~~(v) diversion and controlled removal of surface water from the work areas; and~~
- ~~(vi) proposed utilities and structures.~~

(3)(e) A construction plan that provides: a site development plan showing the following:

(A) phases or progression of construction and operation in increments of five years up to the life-of-site of the ISWLF;

(B)(i) engineering design for liners, liners and leachate collections systems;

(C)(ii) proposed final contours showing removal of surface water runoff; and

(D)(iii) locations of slope drains or other drop structures; structures.

(4)(d) An an erosion control plan that identifies the following:

(A)(i) locations of temporary erosion control measures such as sediment (sediment basins, stone filters, terraces, or silt fences; fences, etc.);

(B)(ii) locations of permanent erosion control measures such as rip (rip rap, energy dissipators, ditch stabilization, or pipe drains; drain, etc.); earthwork calculations; calculations for temporary and permanent erosion control measures; a discussion of compliance with 15A NCAC 04 for sedimentation and erosion control, which is incorporated by reference including subsequent amendments and editions; and

(C)(iii) seeding specifications and schedules. Engineering engineering diagrams showing typical sections of: of dikes, trenches, diversions, and sediment basins;

- ~~(i) dikes;~~
- ~~(ii) trenches;~~
- ~~(iii) diversions; and~~
- ~~(iv) sediment basins.~~

(6)(f) A minimum of two cross sections two cross sections per operational area showing original elevations, proposed excavated depths, proposed final elevations, the groundwater elevation, and soil borings; and showing:

- ~~(i) original elevations;~~
- ~~(ii) proposed excavated depths;~~
- ~~(iii) proposed final elevations;~~
- ~~(iv) ground water elevation, and~~
- ~~(v) soil borings.~~

(g) Site development showing phases or progression of operation in five year or ten year phases of construction and operation.

(7) a discussion of compliance with the design requirements in Rule .0503(b) of this Section.

(e)(h) Operations Plan. An application for a permit for the site shall contain an operations plan that shall include the following information: A written report that contains the following:

(1)(i) a A copy of the deed or other legal description of the landfill site that would be sufficient as a description in an instrument of conveyance and property owner's name;

- (2)(ii) name and emergency contact information for the Name of individual responsible for operation, maintenance, and closure operation and maintenance of the site;
- (3) type, quantity, and source of waste that will be disposed of at the site;
- (4) a discussion of compliance with the operational requirements in Rule .0505 of this Section;
- (5) a discussion of compliance with the monitoring requirements of Section .0600 of this Subchapter;

(f) Closure and Post-Closure Care Plan. An application for a permit for the site shall contain a closure and post-closure plan that shall include the following information:

- (1) a description of the closure of the site, including quantification of the life-of-site, closure and final cover procedures, and projected use of land after closure; and
- (2) a description of the post-closure care period of the site, including maintenance and monitoring procedures, and a discussion of compliance with Section .0600 of this Subchapter.
- (3) the cost estimate for closure and post-closure activities as required under Section .1800 of this Subchapter.

(g) If required by G.S. 89C or 89E and not under the purview of another licensed profession, a licensed professional engineer or licensed geologist shall certify the information submitted in accordance with Paragraphs (c) through (f) of this Rule.

(h) The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter.

(i) Plans and documents submitted in the permit application in accordance with this Rule shall be incorporated into the permit when the permit is issued by the Division, and the site shall comply with the permit in accordance with Rule .0203(d) of this Subchapter.

(j) Modifications to the plans. The owner or operator may request to modify plans that were incorporated into the permit by the Division in accordance with the Paragraph (i) of this Rule by submitting the request to the Division, including the modified plan and a demonstration showing how the proposed modifications comply with the rules of this Section. The Division shall respond to the request in writing within the timeline provided in G.S. 130A-295.8(e), and the response shall either approve or deny the request as submitted or request that additional information be submitted for the Division to consider the request. The Division's approval shall be based on whether the modification complies with the rules of this Subchapter. If the Division approves the request as submitted or upon receiving the additional information requested, the Division's written approval and the revised pages of the plan shall be added to the site's operating record. The owner or operator shall not implement the modification until the Division has issued an approval.

- (iii) ~~Projected use of land after completion of the sanitary landfill;~~
- (iv) ~~Anticipated lifetime of the project;~~

- (v) ~~Description of systematic usage of area, operation, orderly development and completion of the sanitary landfill;~~
- (vi) ~~Earthwork calculations;~~
- (vii) ~~Seeding specifications and schedules;~~
- (viii) ~~Calculations for temporary and permanent erosion control measures;~~
- (ix) ~~Any narrative necessary to describe compliance with the Sedimentation Pollution Control Act of 1973 (15A NCAC 4);~~
- (x) ~~A discussion of compliance with design requirements in Rule .0503(2) of this Section.~~

Authority G.S. 130A 294.

15A NCAC 13B .0505 OPERATIONAL AND CLOSURE REQUIREMENTS FOR INDUSTRIAL SOLID WASTE LANDFILLS SANITARY LANDFILLS

(a) Any person who maintains or operates The owner or operator of an industrial solid waste landfill unit (site) a sanitary landfill site shall maintain and operate the site in conformance with the permit and the plans incorporated into the permit in accordance with Rule .0504(i) of this Section, and with Sections .0600 and .1800 of this Subchapter, and the following: following practices, unless otherwise specified in the permit:

- (1) ~~Plan and Permit Requirements~~
 - (a) ~~Construction plans shall be approved and followed.~~
 - (b) ~~Specified monitoring and reporting requirements shall be met.~~
- (2) ~~Spreading and Compacting Requirements~~
 - (a) ~~Solid waste shall be restricted into the smallest area feasible.~~
 - (b) ~~Solid waste shall be compacted as densely as practical into cells.~~
- (1)(3) Solid waste shall be managed within the disposal area throughout the life-of-site and post-closure care period to prevent the escape of waste and the attraction of vectors and scavenging, and to minimize fires and the generation of odors. The owner or operator shall comply with this requirement using either the following compaction and cover procedures, or other procedures that the owner or operator may include in the operations plan and the closure and post-closure plan required by Rule .0504 of this Section that shall be as effective as the compaction and cover procedures: Cover Requirements
 - (A)(a) Solid waste shall be compacted and covered at the end of after each day of operation, with a compacted layer of #

- least ~~no less than~~ six inches of ~~soil, suitable cover or as specified by the Division.~~
- (B)(b) Areas ~~which that~~ will not have additional wastes placed on them for ~~the next 12 months, months or more,~~ but where final termination of disposal operations has not occurred, shall be covered with a ~~minimum of no less than~~ one foot of ~~intermediate cover, compacted soil.~~
- (C)(e) After final termination of disposal operations at the site ~~or a major part thereof,~~ or upon revocation of a permit, the area shall be covered with ~~at least no less than~~ two feet of ~~suitable compacted earth, soil.~~
- (2)(4) Erosion Control ~~Requirements~~ Requirements:
 (A)(a) ~~Adequate erosion~~ Erosion control measures shall be practiced to prevent silt from leaving the site.
 (B)(b) ~~Adequate erosion~~ Erosion control measures shall be practiced to prevent ~~excessive~~ on-site erosion.
 (C) ~~The site shall comply with 15A NCAC 04, which is incorporated by reference including subsequent amendments and editions.~~
- (3)(5) Drainage Control ~~Requirements~~ Requirements:
 (A)(a) Surface water shall be diverted from the operational area.
 (B)(b) Surface water shall not be impounded over or in waste.
 (C)(e) ~~Completed areas~~ Areas that have been covered in accordance with Subparagraph (1) of this Paragraph shall be ~~adequately~~ sloped to allow surface water runoff in a controlled manner.
- (4)(6) Vegetation ~~Requirements~~ Requirements:
 (A)(a) ~~Within six months after~~ After final termination of disposal operations at the site ~~or a major part thereof~~ or upon revocation of a permit, the ~~site area~~ shall be stabilized with native ~~grasses;~~ ~~grasses~~ within the timeframe ~~established in the construction plan incorporated into the permit in accordance with Rule .0504(i) of this Section.~~
 (B)(b) Temporary seeding ~~will~~ shall be utilized ~~as if~~ it is necessary to stabilize the ~~site, site~~ or prevent erosion.
- (5)(7) Water Protection ~~Requirements~~ Requirements:
 (A)(a) The separation distance of four feet between waste and ~~the seasonal high groundwater water~~ table shall be ~~maintained, maintained—unless~~
- ~~otherwise specified by the Division in the permit.~~
- (B)(b) Solid waste shall not be disposed of in water.
- (C)(e) Leachate shall be contained on site or ~~properly~~ treated prior to discharge. ~~An A National Pollutant Discharge Elimination System (NPDES) NPDES permit issued by the Department of Environmental Quality, Division of Water Resources in accordance with 15A NCAC 02B may be required prior to the discharge of leachate to surface waters.~~
- (6)(8) Access and Security ~~Requirements~~ Requirements:
 (A)(a) The site shall be ~~adequately~~ secured to prevent unauthorized entry by means ~~of such as gates, chains, berms, or fences, fences, and other security measures approved by the Division, to prevent unauthorized entry.~~
 (B)(b) An ~~attendant~~ individual trained in ~~landfill operations~~ shall be on duty at the site ~~at all times~~ while ~~it~~ the site is open for public use ~~and during active waste management operations~~ to ensure compliance with operational requirements.
 (C)(e) The access road to the site shall be of all-weather construction and maintained ~~in good condition, to allow access by Division staff and fire-fighting vehicles.~~
 (D)(d) Dust control measures shall be ~~implemented, implemented—where necessary.~~
- (7)(9) Sign ~~Requirements~~ Requirements:
 (A)(a) Signs providing information on ~~disposal dumping~~ procedures, the hours during which the site is open for public use, the permit ~~number number,~~ emergency contact information, and ~~other pertinent other~~ information ~~specified in the permit conditions~~ shall be posted at the site entrance.
 (B)(b) Signs shall be posted stating ~~the types of waste that shall not be accepted at the site, such as that no hazardous waste, or liquid waste, construction and demolition waste, or municipal solid waste, waste can be received without written permission from the Division.~~
 (C)(e) Traffic signs or markers shall be provided ~~as necessary to promote an orderly traffic pattern to direct traffic to and from the discharge area to minimize traffic congestion, area and~~

- ~~to maintain efficient operating conditions.~~
- (8)(10) **Safety Requirements**
- (A)(a) ~~Open burning~~ burning, as defined in 15A NCAC 02D .1900, of solid waste is prohibited unless approval has been obtained from the Division, and from the Division of Air Quality in accordance with 15A NCAC 02D .1900, and from the local government prior to any burning activity.
- (B)(b) ~~Equipment shall be provided~~ The owner or operator of the site shall maintain equipment on-site to control accidental fires or and arrangements shall be made with the local fire protection agency to immediately provide fire-fighting services, services when needed.
- (C)(c) ~~Fires that occur at the site a sanitary landfill shall be reported to the Division by verbal notice within 24 hours and a written notification shall be submitted within 15 days.~~
- (D)(d) ~~The removal of solid waste from the site a sanitary landfill is prohibited unless the owner or operator owner/operator approves and the removal is not performed on the working face.~~
- (E)(e) ~~Containers such as tubes, barrels, drums, tanks, cans, and bottles Barrels and drums shall not be disposed of unless they are empty and perforated sufficiently to ensure that no liquid waste or hazardous waste is contained therein.~~
- (9)(11) **Waste Acceptance and Disposal Requirements**
- (A)(a) ~~A site shall only accept those solid wastes which that it is permitted to receive. The site landfill owner or operator shall notify the Division within 24 hours of attempted disposal of any waste the site landfill is not permitted to receive, including waste from outside the area the site landfill is permitted to serve.~~
- (B)(b) ~~No hazardous waste or liquid waste shall be accepted or disposed of at a site, in a sanitary landfill.~~
- (C)(c) ~~Spoiled foods, animal carcasses, abattoir waste, hatchery waste, and other animal waste delivered to the disposal site If the site has been permitted by the Division to receive putrescible waste, this waste shall be covered upon receipt immediately.~~

(D)(d) Asbestos waste shall be managed in accordance with 40 CFR 61(M). Asbestos waste shall be covered upon receipt, with soil or compacted waste, to prevent airborne conditions. Asbestos waste shall be disposed of using methods that prevent unintended exposure of asbestos by future land-disturbing activities, such as disposal in a marked area separate and apart from other solid wastes or recording the latitude and longitude coordinates of the asbestos area within the existing landfill footprint. The disposal methods shall be described in the operations plan required by Rule .0504(e) of this Section.

~~Asbestos waste that is packaged in accordance with 40 CFR 61, which is adopted by reference in accordance with G.S. 150B 14(c), may be disposed of separate and apart from other solid wastes at the bottom of the working face or in an area not contiguous with other disposal areas, in either case, in virgin soil. Separate areas shall be clearly marked so that asbestos is not exposed by future land disturbing activities. The waste shall be covered immediately with soil in a manner that will not cause airborne conditions. Copies of 40 CFR 61 may be obtained and inspected at the Division.~~

(E)(e) Wastewater treatment sludges shall not be accepted for disposal, unless otherwise specified in the site permit. may only be used as a soil conditioner and incorporated into the final two feet of cover. Sludges shall be examined for acceptance by Waste Determination procedures in Rule .0103(e) of this Subchapter.

(10)(12) **Miscellaneous Requirements** Other Requirements:

(A)(a) ~~Effective vector~~ Vector control measures shall be applied to control flies, rodents, and other insects or ~~vermin, vermin when necessary.~~

(B)(b) ~~Appropriate Barrier~~ Barrier methods such as fencing and diking shall be provided ~~at the site within the area~~ to confine solid waste subject to be blown by the wind. At the conclusion of each day of operation, all windblown material resulting from the operation shall be collected and ~~disposed of returned to the area~~ by the owner or operator.

- (C) The owner or operator of a site shall comply with the financial responsibility requirements set forth in G.S. 130A-295.2
- (D) A site that accepts scrap tires shall also comply with Section .1100 of this Subchapter.
- (E) The owner or operator shall submit to the Division upon request any information or records required to be kept under the conditions of the permit or the rules of this Section.

(b) When a site has ceased the acceptance of waste, closure of the site shall comply with the following requirements:

- (1) The owner or operator shall notify the Division in writing that the site has been closed in accordance with the rules of this Section and the construction plan required in accordance with Rule .0504(d) of this Section.
- (2) The owner or operator shall provide certification that final cover has been installed as described in the construction plan required in accordance with Rule .0504(d) of this Section.
- (3) The Division shall conduct an inspection to determine compliance with closure requirements. If the site has been closed in accordance with the rules of this Section and the construction plan required in accordance with Rule .0504(d) of this Section, the Division shall issue a closure letter to the owner or operator that confirms closure of the site, and provides post-closure conditions for the site as set forth in Paragraph (c) of this Rule.

(c) When a site has been closed in accordance with the requirements of this Rule, post-closure maintenance and water quality monitoring shall be the responsibility of the owner or operator, and shall be specified in the closure letter issued by the Division in accordance with Paragraph (b) of this Rule, and shall comply with Section .0600 of this Subchapter.

(d) When a site has been closed in accordance with this Rule, the permit is terminated. Any future solid waste management or disposal at the site shall require a new permit.

Authority G.S. 130A-294.

15A NCAC 13B .0508 SITING AND APPLICATION REQUIREMENTS FOR INCINERATORS

~~Five sets of plans shall be required for each application.~~

(a) An incinerator for the disposal of solid waste (site) shall meet the following siting requirements:

- (1) Floodplain Restrictions: Any portions of the site property containing the incinerator building and areas where storage or processing of solid waste occurs shall not be located in the 100-year floodplain.
- (2) Cultural Resources Restrictions: A site shall not damage or destroy a property of archaeological or historical significance that has been listed on the National Register of Historic Places or

included on the Study List for the Register pursuant to 07 NCAC 04R .0206 and .0300, which are incorporated by reference including subsequent amendments and editions.

- (3) State Nature and Historic Preserve Restrictions: The location, access, size, and operation of the site shall not have an adverse impact on any component included in the State Nature and Historic Preserve pursuant to G.S. 143-260.10.
- (4) Endangered and Threatened Species Restrictions: A site shall not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973, Public Law 93-205, as amended.

(5) Clean Water Act requirements: a site or its operations shall:

- (A) not cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including the National Pollutant Discharge Elimination System (NPDES) requirements pursuant to Section 402 of the Clean Water Act.
- (B) comply with Section 404 of the Clean Water Act.
- (C) not cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or Statewide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act.

(6) The permit issued by the Division for the site shall state the site-specific buffer requirements for the site. When determining the site-specific buffers, the Division shall include any buffers required by the incinerator permit issued by the Division of Air Quality for the site. [Note: Incinerators are also subject to the requirements of 15A NCAC 02D.]

(b) A permit applicant shall submit to the Division one electronic copy of a permit application, and the application shall contain the plans described in Paragraphs (c) and (d) of this Rule.

(c) Site Plan. An application for a permit for incinerator for the disposal of solid waste shall contain a site plan that includes the following information:

- (1) an aerial photograph, representative of existing conditions, at a scale of a least one inch equals 400 feet, showing the area within one quarter mile of the proposed site's boundaries with the following identified:
 - (A) property lines of the entire property where the site will be located;
 - (B) existing land use and zoning;

- (C) location of all private residences, commercial and industrial buildings, public or private utilities, roads, and schools;
- (D) on-site easements;
- (E) location of potable wells and public water supplies;
- (F) historic sites described in Subparagraph (a)(2) of this Rule;
- (G) state nature and historic preserves described in Subparagraph (a)(3) of this Rule;
- (H) the existing topography and features of the site including general surface water drainage patterns and watersheds, 100-year floodplains, perennial and intermittent streams, rivers, and lakes; and
- (I) the classification of the surface water drainage from the site in accordance with 15A NCAC 02B .0300;

(2) a letter from the unit of government having zoning jurisdiction over the site that states that the proposed use is allowed within the existing zoning, if any; that any necessary zoning approval or permit has been obtained, and that states the local zoning buffers that apply to the site;

(3) letters from both the State Historic Preservation Office and the Natural Heritage Program within the Department of Cultural and Natural Resources stating whether the proposed use of the property will impact the historic sites described in Subparagraph (a)(2) of this Rule; State nature and historic preserves described in Subparagraph (a)(3) of this Rule; or the endangered or threatened species described in Subparagraph (a)(4) of this Rule located at the site; and

(4) a copy of the valid air quality permit for the operation of the incinerator issued by the Department of Environmental Quality, Division of Air Quality in accordance with 15A NCAC 02D.

(d) Operations Plan. An application for a permit for incinerator for the disposal of solid waste shall contain an operations plan that shall include a discussion of each of the following items:

- (1) the type and quantity of wastes that will be accepted; including the anticipated sources of the wastes accepted, and the intended destination of materials and ash removed from the site;
- (2) the procedures for receiving, storing, incineration, and removal of waste and ash, including the anticipated storage and incineration times;
- (3) the hours of operation and staffing;
- (4) methods for daily cleanup;
- (5) record-keeping procedures;

(6) planned compliance with the operational and closure requirements of Rule .0509 of this Section;

(7) a contingency plan that shall address planned operations in the event of loss of power, loss of communications, storm surges, scale malfunctions, and scale software malfunctions; in the event that the disposal site, haul route, or transfer equipment is not available; or during conditions exceeding design parameters. The owner or operator of the site shall provide back-up equipment, and contact information to obtain the equipment, and plans to by-pass the site in case of equipment breakdown. The contingency plan shall be kept updated on-site and shall include site specific emergency procedures and contact information in case of emergencies;

(8) additional information that the Division may request pertaining to the site operations if it is necessary to determine compliance with the rules of this Subchapter; and

(9) in addition to the information required in this Paragraph, incinerators that are permitted by the Division to accept medical waste shall also include the information required by Rule .1204(b)(4) of this Subchapter in the operations plan.

(e) The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter.

(f) Plans and documents submitted in the permit application in accordance with this Rule shall be incorporated into the permit when the permit is issued by the Division, and the site shall comply with the permit in accordance with Rule .0203(d) of this Subchapter.

(g) Permits issued by the Division for incinerators are valid for five years, and are subject to the permit fees set forth in G.S. 130A-295.8.

(h) Sites that received a permit from the Division prior to the readopted effective date of this Rule shall comply with the rules of this Section with the following exceptions:

(1) buildings, structures, and waste handling areas constructed prior to the readopted effective date of this Rule shall not be required to comply with Paragraph (a) of this Rule for the footprint existing on the readopted effective date of this Rule, or any replacements or modifications within that existing footprint; and

(2) if a building, structure, or waste handling area was constructed prior to the readopted effective date of this Rule, and is expanded beyond its existing footprint after the readopted effective date of this Rule, the footprint that was existing on the readopted effective date of this Rule shall not be required to comply with Paragraph (a) of this Rule, but the expansion areas shall comply with these requirements.

(i) Site buildings, structures, and waste handling areas that are exempt from the requirements of Paragraph (a) of this Rule shall

continue to comply with the siting and buffer requirements stated in their permit issued prior to the readoption date of this Rule, if any.

- (1) ~~Site and operation plans of the proposed incinerator;~~
- (2) ~~A copy of the air quality permit application to the Division of Environmental Management, Department of Environment, Health and Natural Resources;~~
- (3) ~~An approval letter from the unit of local government having zoning authority over the area where the facility is to be located stating that the site meets all of the requirements of the local zoning ordinance, or that the site is not zoned; and~~
- (4) ~~The type, quantity and source of waste for disposal.~~

Authority G.S. 130A-294.

15A NCAC 13B .0509 OPERATIONAL AND CLOSURE REQUIREMENTS FOR INCINERATORS

(a) Any person who maintains or operates an An owner or operator of an incinerator for the disposal of solid waste (site) shall maintain and operate the site in conformance comply with the permit conditions, the plans incorporated into the permit in accordance with Rule .0508(f) of this Section, and the following requirements: following practices, unless otherwise specified in the permit:

- (1) All incinerators sites shall be sited, designed, operated, and maintained using safe and sanitary practices for the preservation of the public health and welfare and the environment by preventing the generation of leachate, the attraction of vectors, the release of odors, and the release of waste or leachate to the environment, designed and operated in a manner so as to prevent the creation of a nuisance or potential health hazard;
- (2) The incinerator plant shall be so situated, equipped, operated, and maintained as to minimize interference with other activities in the area;
- (3) All solid waste to be disposed of at the site shall be confined to the dumping area. Adequate storage facilities shall be provided;
- (2) The storage of solid waste at the site shall comply with Rule .0104 of this Subchapter and the conditions of the permit issued by the Division.
- (3) Sites that are permitted by the Division to accept medical waste shall also comply with Section .1200 of this Subchapter.
- (4) Effective vector Vector control measures shall be applied to prevent or control on-site populations of flies, rodents, and other insects or vermin; vermin.
- (5) The owner or operator shall provide equipment that is necessary to maintain the site in

compliance with Subparagraph (1) of this Paragraph. Equipment shall be provided in the storage and charging areas and elsewhere as needed or as may be required in order to maintain the plant in a sanitary condition;

- (6) All ash and waste residue from the site incinerator plant shall be promptly disposed of at an approved sanitary landfill a solid waste management facility permitted by the Division to receive such waste. site;
- (7) An air quality permit issued by the Department of Environmental Quality, Division of Air Quality Division of Environmental Management, Department of Environment, Health, and Natural Resources, shall be obtained prior to site operation. operation;
- (8) A site shall only accept those solid wastes which that it is permitted to receive. receive; and
- (9) Water that comes into contact with solid waste Leachate shall will be contained on-site or properly treated prior to discharge. A NPDES permit A National Pollutant Discharge Elimination System (NPDES) permit issued by the Department of Environmental Quality, Division of Water Resources in accordance with 15A NCAC 02B may be required prior to discharge to surface waters.
- (10) The owner or operator shall submit to the Division upon request any information or records required to be kept under the conditions of the permit or the rules of this Section.

(b) When a site ceases the acceptance of waste, closure of the site shall comply with the following requirements:

- (1) The owner or operator shall remove all waste, including ash, from the site property and dispose of the waste at a facility permitted by the Division to receive such waste no less than 120 days after the date the incinerator ceased the acceptance of waste.
- (2) The owner or operator shall comply with the closure requirements specified in the permits issued by the Division and the Division of Air Quality, if any.
- (3) For a site that accepts medical waste, the owner or operator shall also meet the requirements of Section .1200 of this Subchapter.
- (4) The owner or operator shall notify the Division in writing that the site has been closed in accordance with this Rule.
- (5) The Department shall conduct an inspection to determine compliance with Subparagraphs (1) through (3) of this Paragraph.
- (6) When a site has been closed in accordance with this Paragraph, the permit is terminated, and any future solid waste management at the site shall require a new permit.

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

*Eff. April 1, 1982;
Amended Eff. September 1, 1990- 1990;
Readopted Eff. January 1, 2021.*

15A NCAC 13B .0510 CLOSURE CONDITIONS POST-CLOSURE CARE REQUIREMENTS FOR CLOSED C&DLF AND MSWLF UNITS EXEMPTED FROM OTHER C&DLF AND MSWLF RULES

The owner or operator of a closed construction and demolition landfill unit or municipal solid waste landfill unit that is required to comply with this Rule in accordance with Rule .0531 of this Section or Rule .1601 of this Subchapter (site) shall comply with the post-closure care requirements specified in the permit conditions, the closure plan for the facility, and the closure letter or permit for closure issued by the Division to the site at or near the time of closure, such as maintenance, water quality monitoring, and explosive gas monitoring. The owner or operator shall also comply with Section .0600 of this Subchapter. The owner or operator shall submit to the Division upon request any information or records required to be kept under the permit conditions, the closure letter, or the rules of this Subchapter.

(a) ~~When the disposal site has been closed in accordance with Rule .0505 of this Subchapter, the operator shall:~~

- ~~(1) Notify the Division in writing in order that a site inspection may be made by the Division to determine compliance with closure procedures; and~~
- ~~(2) Provide test holes as specified by the Division, to determine compliance for final cover.~~

~~(b) An inspection shall be made by a representative of the Division and a written statement will be supplied to the operator concerning the closure of the site.~~

~~(c) When a solid waste disposal site has been closed in accordance with the requirements of the Division, future necessary maintenance and water quality monitoring shall be the responsibility of the owner and the operator and shall be specified in the closure letter.~~

~~(d) When a solid waste disposal site has been closed in accordance with the requirements of the Division, the permit is terminated. Any future disposal at the site shall require a new permit.~~

Authority G.S. 130A-294.

15A NCAC 13B .0562 BENEFICIAL FILL

A permit is not required for beneficial fill activity that meets all of the following conditions:

- ~~(1) The fill material consists only of inert debris strictly limited to concrete, brick, concrete block, uncontaminated soil, rock, and gravel.~~
- ~~(2) The fill activity involves no excavation.~~
- ~~(3) The purpose of the fill activity is to improve land use potential or other approved beneficial reuses.~~
- ~~(4) The fill activity is not exempt from, and must comply with, all other applicable Federal, State, and Local laws, ordinances, rules, and regulations, including but not limited to zoning restrictions, flood plain restrictions, wetland~~

~~restrictions, mining regulations, sedimentation and erosion control regulations. Fill activity shall not contravene groundwater standards.~~

(a) "Beneficial fill" means a fill activity to level or bring an area to grade for the beneficial purpose of stabilizing the land or improving the land use potential using only inert debris waste.

(b) A solid waste management permit is not required for beneficial fill that meets the following conditions:

- (1) any soils mixed with the beneficial fill or used for cover shall meet unrestricted use standards for soils as defined in 130A-310.65;
- (2) excavation shall not be conducted for the purpose of creating a beneficial fill area or expanding the footprint of the existing beneficial fill area;
- (3) in the absence of local ordinances pertaining to beneficial fill, the activity shall be limited in duration to one year from the initial placement of material and no larger than one acre in size;
- (4) the beneficial fill shall be setback from an adjacent property line a distance that allows for slope construction and maintenance in accordance with this Rule;
- (5) the beneficial fill shall be covered with a minimum of one foot of compacted soil and graded at a slope no greater than a three horizontal to one vertical;
- (6) the beneficial fill is not exempt from, and shall comply with, all other applicable federal, State, and local laws, ordinances, rules, and regulations, including local zoning restrictions, flood plain regulations, wetland regulations, mining regulations, and sedimentation and erosion control regulations;
- (7) the beneficial fill shall comply with the groundwater quality standards established in 15A NCAC 02L; and
- (8) beneficial fill shall not be placed in waters of the State, or at or below the seasonal high groundwater table.

(c) Soil generated from properties where there has been no known release of contaminants shall not be subject to regulation as a solid waste.

(d) This Rule does not apply to fill activities solely consisting of soil generated from properties where there has been a release of contaminants, if the soil meets unrestricted use standards for soils as defined in G.S. 130A-310.65.

(e) Fill activities using solid waste as the fill material that do not meet the requirements of this Rule are subject to permitting as a solid waste management facility in accordance with this Subchapter.

Authority G.S. 130A-294.

15A NCAC 13B .0563 APPLICABILITY REQ. FOR LAND-CLEARING/INERT DEBRIS (LCID) LANDFILLS GENERAL REQUIREMENTS FOR LCIDLFs

Management of land clearing and inert debris shall be in accordance with the State hierarchy for managing solid waste as

provided for under G.S. 130A-309.04(a). Disposal in a landfill is considered to be the least desirable method of managing land clearing and inert debris. Where landfilling is necessary, the requirements of this Rule apply. The owner or operator of a land clearing and inert debris landfill (site) shall obtain a permit from the Division, unless exempted from permitting pursuant to G.S. 130A-294(a)(4)a. A site shall comply with Rules .0564 through .0567 of this Section, and the following requirements:

- (1) The site shall accept only yard waste and inert debris waste for disposal. An individual permit from the Division of Solid Waste Management is not required for Land Clearing and Inert Debris (LCID) landfills that meet all of the following conditions:
 - (a) The facility is to be operated for the disposal of land clearing waste, inert debris, untreated wood, and yard trash. Operations must be consistent and in compliance with the local government solid waste management plan as approved by the Division of Solid Waste Management.
 - (b) The total disposal area is under two acres in size.
 - (c) The facility and practices comply with the siting criteria under Rule .0564, and operational requirements under Rule .0566.
- (2)(d) The fill activity site is not exempt from, and must shall comply with all other Federal, federal, State, and or Local local laws, ordinances, Rules, rules, regulations, and or orders, including but not limited to zoning regulations, restrictions, flood plain regulations, restrictions, wetland regulations, restrictions, sedimentation and erosion control regulations, requirements, and mining regulations.
- (2) Where an individual permit is not required, the following applies:
 - (a) The owner of the land where the landfill is located must notify the Division on a prescribed form, duly signed, notarized, and recorded as per Sub item (2)(b) of this Rule. The operator of the landfill, if different from the land owner, shall also sign the notification form.
 - (b) The owner must file the prescribed notification form for recordation in the Register of Deeds' Office. The Register of Deeds shall index the notification in the grantor index under the name of the owner of the land in the county or counties in which the land is located. A copy of the recorded notification, affixed with the Register's seal and the date, book and page number of recording shall be sent

- ~~to the Division of Solid Waste Management.~~
- (e) ~~When the land on which the Land Clearing and Inert Debris Landfill is sold, leased, conveyed, or transferred in any manner, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a Land Clearing and Inert Debris Landfill and a reference by book and page to the recordation of the notification.~~
- (3) ~~An individual permit is required, except for landfills subject to Item (5) of this Rule, for the construction and operation of a Land Clearing and Inert Debris (LCID) landfill when:~~
 - (a) ~~The facility is to be operated for the disposal of land clearing waste, inert debris, untreated wood, and yard trash. Operations must be consistent and in compliance with the local government solid waste management plan as approved by the Division of Solid Waste Management, and~~
 - (b) ~~The total disposal area is greater than two acres in size.~~
- (3)(4) ~~Individual permits~~ Permits issued by the Division for land clearing and inert debris landfills shall be valid issued for not more than five years; years; and are subject to the permit fees set forth in G.S. 130A-295.8.
- (4)(5) ~~A permit shall not be required for a site that meets the following conditions: Landfilling of land clearing and inert debris generated solely from, and within the right of way of, North Carolina Department of Transportation projects shall be subject to the following:~~
 - (a) ~~The site property shall be a project right-of-way owned by the State of North Carolina or the N.C. Department of Transportation, and the site shall be operated the N.C. Department of Transportation. Only waste types as described in Sub item (1)(a) of this Rule may be disposed of within the Department of Transportation right of way.~~
 - (b) ~~The site shall accept only land clearing waste and inert debris waste that was generated from within the same N.C. Department of Transportation project right-of-way that the site is located in. Waste is landfilled within the project right of way from which it was generated.~~
 - (c) ~~The site disposal area shall not exceed two contiguous acres in size.~~

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| <p>(d) Disposal sites shall comply <u>The site shall comply with the siting requirements of Rule .0564 of this Section, Section except for Item (10).</u></p> <p>(e) Disposal sites are not subject to the requirements of Item (2) of this Rule and Rule .0204 of this Subchapter.</p> <p>(5) <u>Owners or operators shall not construct or operate more than one site that is exempted from permitting in accordance with G.S. 130A-294(a)(4)a. on any single parcel of land.</u></p> <p>(6) <u>Within five years of the readopted effective date of this Rule, the owner or operator of a notified LCIDLF that was not closed prior to the readopted effective date of this Rule shall comply with the requirements of this Rule, or shall close the notified LCIDLF in accordance with Rule .0567(b) of this Section, except that closure does not need to be in accordance with any plans, and the required notification of closure is not required to be certified. For the purpose of this Rule, "notified LCIDLF" means a site that was not required to obtain a permit from the Division prior to the readopted effective date of this Rule because the site was designed and constructed to be two acres or less in size, and was required to record a notification for the site with the Register of Deeds' office and submit the notification to the Division.</u></p> <p>(6) Landfills that are currently permitted as demolition landfills are required to comply with the following:</p> <p style="padding-left: 20px;">(a) Only waste types as described in Sub-item (3)(a) of this Rule may be accepted for disposal, as of the effective date of this Rule unless otherwise specified in the existing permit.</p> <p style="padding-left: 20px;">(b) Operations must be in compliance with Rule .0566 of this Section as of the effective date of this Rule.</p> <p style="padding-left: 20px;">(c) Existing demolition landfills must comply with the siting criteria requirements of these Rules as of January 1, 1998 or cease operations and close in accordance with these Rules.</p> | <p>(2) Facilities or practices shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife.</p> <p>(3) Facilities or practices shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17 which is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, 401 Oberlin Road, Raleigh, North Carolina 27605 where copies can be obtained at no cost.</p> <p>(2)(4) Cultural Resources Restrictions. Facilities or practices <u>The site and site operations shall not damage or destroy an archaeological or historical site, a property of archaeological or historical significance that has been listed on the National Register of Historic Places or included on the Study List for the Register pursuant to 07 NCAC 04R .0206 and .0300, which are incorporated by reference including subsequent amendments and editions.</u></p> <p>(3)(5) State Nature and Historic Preserve Restrictions. Facilities or practices <u>The site and site operations shall not cause have an adverse impact on a state park, recreation or scenic area, or any other lands included in the state nature and historic preserve, any component included in the State Nature and Historic Preserve pursuant to G.S. 143-260.10.</u></p> <p>(4) <u>Endangered and Threatened Species Restrictions. The site and site operations shall jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973, Public Law 93-205, as amended.</u></p> <p>(5) <u>Clean Water Act requirements. The site and site operations shall:</u></p> <p style="padding-left: 20px;">(a) <u>not cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including the National Pollutant Discharge Elimination System (NPDES) requirements pursuant to Section 402 of the Clean Water Act.</u></p> <p style="padding-left: 20px;">(b) <u>comply with Section 404 of the Clean Water Act.</u></p> <p style="padding-left: 20px;">(c) <u>not cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or Statewide water quality management plan that has been</u></p> |
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Authority G.S. 130A-294; ~~130A-301~~; 130A-301.1.

15A NCAC 13B .0564 SITING CRITERIA FOR LCIDLFs LAND CLEARING AND INERT DEBRIS (LCID) LANDFILLS

The following siting criteria shall apply for Land Clearing and Inert Debris (LCID) landfills: A land clearing and inert debris landfill (site) shall meet the following siting criteria:

- (1) Floodplain Restrictions. Facilities or practices, The site shall not be located in the 100-year floodplain.

- approved under Section 208 or 319 of the Clean Water Act.
- (6) ~~Facilities shall not be located in any wetland as defined in the Clean Water Act, Section 404(b).~~
 - (7) ~~It must be shown that adequate suitable soils are available for cover, either on site or from on or off site.~~
 - (8) ~~Land Clearing and Inert Debris landfills shall meet the following surface and ground water requirements:~~
 - (a) ~~Facilities or practices shall not cause a discharge of pollutants into waters of the state that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES), under Section 402 of the Clean Water Act, as amended.~~
 - (b) ~~Facilities or practices shall not cause a discharge of dredged materials or fill material into waters of the state that is in violation of the requirements under Section 404 of the Clean Water Act, as amended.~~
 - (c) ~~Facilities or practices shall not cause non point source pollution of waters of the state that violates assigned water quality standards.~~
 - (d) ~~Waste in landfills with a disposal area greater than two acres shall be placed a minimum of four feet above the seasonal high water table, except where an alternative separation is approved by the Division.~~
 - (e) ~~Waste in landfills with a disposal area less than two acres shall be placed above the seasonal high water table.~~
 - (6)(9) Buffer Requirements. ~~The facility~~ The site shall maintain meet the following minimum buffer requirements:
 - (a) 50 feet from the waste boundary to all surface waters of the state State as defined in G.S. 143-212.
 - (b) 100 feet from the waste boundary disposal area to property lines, residential dwellings, commercial or public buildings, and potable wells.
 - (c) The Division may establish alternative buffers in the permit conditions if it is necessary for the preservation of public health and the environment. Buffer requirements may be adjusted as necessary to insure adequate protection of public health and the environment.
 - (7)(10) The site shall establish and maintain an access road around the waste boundary for access by emergency or fire-fighting vehicles and equipment. The facility shall meet all

- ~~requirements of any applicable zoning ordinance.~~
- (8) The site shall have soil available for cover either on site or from on or off site.
- (9) The site and site operations shall comply with 15A NCAC 02L for protection of groundwater quality. The bottom elevation of the waste shall be no less than four feet above the seasonal high groundwater table.

Authority G.S. 130A-294.

15A NCAC 13B .0565 APPLICATION REQUIREMENTS FOR LCIDLES LAND CLEARING/INERT DEBRIS (LCID) LANDFILLS

(a) Five sets of plans, maps, and reports shall be required with each application. A permit applicant for a proposed land clearing and inert debris landfill (site) permit shall submit one electronic copy of an application to the Division that shall contain the following information: The seal of a professional engineer is required when submitting plans for a Land Clearing and Inert Debris (LCID) landfill.

- (1) ~~The following information is required in order to review and approve the siting of a Land Clearing and Inert Debris (LCID) landfill: a copy of the deed for the site property including the property owner's name, the parcel identification number, and a legal description of the property;~~
- (2)(a) An approval letter from the unit of local government having zoning authority over the area where the facility site is to be located stating that the site meets all of the requirements of the local zoning ordinance, or that the site is not zoned; zoned;
- (3)(b) Location on a county road map; map showing the location of the site;
- (c) ~~Information showing that the bottom elevation of the waste shall be four feet above the seasonal high water table. Seasonal high water table elevations shall be obtained from on site test borings, test pits, or from other geological or water table investigations, studies, or reports from the immediate area of the proposed facility.~~
- (4) letters from both the State Historic Preservation Office and the Natural Heritage Program within the Department of Cultural and Natural Resources stating whether the proposed use of the property will impact the historic sites described in Rule .0564(a)(2) of this Section; State nature and historic preserves described in Rule .0564(a)(3) of this Section; or the endangered or threatened species described in Rule .0564(a)(4) of this Section located at the site;
- (5)(d) A written report indicating that the facility shall comply with all the requirements set forth under

- a description of how the site will comply with Rule .0564 of this Section. Section:
- (e) ~~A copy of the deed or other legal description of the site that would be sufficient as a description in an instrument of conveyance, showing property owner's name.~~
- (f) ~~Any other information pertinent to the suitability of the proposed facility.~~
- (6)(2) ~~The following shall be provided on a map or aerial photograph with a scale of at least no less than one inch equals four hundred 400 feet showing the following in an area within one-fourth mile of the site:~~
- (A)(a) ~~Entire the entire property or portion thereof owned or leased by the person providing the disposal site, where the site is proposed to be located;~~
- (B)(b) ~~Location the location of all homes, buildings, public or private utilities, roads, wells, watercourses, water or other impoundments, and any other applicable features or details, that the Division may request if it is necessary to determine compliance with this Subchapter;~~
- (C)(c) ~~the 100-year floodplain flood plain boundaries, if any; any;~~
- (D)(d) ~~Wetland boundaries, if any; boundaries of wetlands as defined in Section 404(b) of the Clean Water Act, if any; and~~
- (E)(e) ~~Historical or archaeological sites, if any; the boundaries of sites described in Rule .0564(2) and (3) of this Section, if any;~~
- (f) ~~Park, scenic, or recreation area boundaries, if any.~~
- (7)(3) ~~Development development and design plans and details, drawings for the site, at a scale of at least no less than one inch equals one hundred 100 feet, feet with one inch equals forty feet preferred, and with specifications containing the following information: information shall be submitted with the application for a proposed Land Clearing and Inert Debris (LCID) landfill:~~
- (A)(a) ~~Property or site property boundaries, boundary, fully dimensioned with bearings and distances, tied to North Carolina grid coordinates where available; reasonably feasible.~~
- (B)(b) ~~Easements and rights-of-way; easements and rights-of-way;~~
- (C)(c) ~~Existing pertinent existing on site and adjacent structures such as houses, buildings, wells, roads and bridges, water and sewer utilities, septic fields, and storm drainage features; features;~~
- (D)(d) ~~Proposed proposed and existing roads, points of ingress and egress, and~~
- ~~egress along with access control controls such as gates, fences, or berms; berms;~~
- (E)(e) ~~Buffer buffer and set back lines along with the and buffered boundaries or features; boundary or feature.~~
- (F)(f) ~~springs, Springs, streams, creeks, rivers, ponds, and other surface waters and impoundments; impoundments;~~
- (G)(g) ~~Wetlands, if any; wetlands, if any;~~
- (H)(h) ~~Boundary boundary of the proposed waste area; area;~~
- (I) ~~the proposed bottom elevation of the waste in relation to the seasonal high groundwater table;~~
- (J)(j) ~~Existing existing topography with contours at a minimum of five-foot five-foot intervals. Where necessary, a A smaller interval shall be utilized if it is necessary to clarify existing topographic conditions; conditions;~~
- (K)(k) ~~Proposed proposed excavation, grading, and final contours at a minimum of five-foot five-foot intervals. Where necessary, a A smaller interval shall be utilized if it is necessary to clarify proposed grading. Excavation, grading, and fill material side slopes shall not exceed a ratio of three horizontal to one vertical; one (3:1).~~
- (L)(l) ~~Where where an on site borrow pit for operational and final cover is proposed, indicate the borrow pit excavation and grading plan with contours at a minimum of five-foot five-foot intervals. Where necessary, a A smaller interval shall be utilized if it is necessary to clarify proposed grading; grading;~~
- (M)(m) ~~Proposed proposed surface water control features and devices such as slope drains, storm water pipes, inlets, culverts, and channels; channels;~~
- (N)(n) ~~Information information showing that the project meets the requirements of 15A NCAC 04 for sedimentation and erosion control, which is incorporated by reference including subsequent amendments and editions; 15A NCAC 4, Sedimentation Control Rules.~~
- (O)(o) ~~Location location of test borings or test pits, if used to determine the seasonal high groundwater water table elevation; and elevation, shall be shown on the plans.~~
- (P)(p) ~~A minimum of no less than two cross-sections, one each along each major axis, per operational area showing~~

original elevations, proposed excavation, and proposed final elevations; showing:

- (i) Original elevations.
- (ii) Proposed excavation.
- (iii) Proposed final elevations.

~~(8)(4) An operational an operations plan addressing the requirements under in Rule .0566 of this Section that shall contain and containing the following information: information shall be submitted with the application for a proposed Land Clearing and Inert Debris (LCID) landfill:~~

~~(A)(a) Name, the name, address, and phone number number, and e-mail address of the site owner and operator; individual responsible for operation and maintenance of the facility.~~

~~(b) Projected use of the land after completion.~~

~~(B)(e) Description a description of systematic usage of disposal area, operation, and development of the site; orderly development and closure of the landfill.~~

~~(C)(d) Type, type, source, and quantity of waste to be accepted. accepted; and~~

~~(D)(e) An an emergency contingency plan, including fire-fighting procedures; fire fighting procedures.~~

~~(9) a closure and post-closure plan addressing the requirements in Rule .0567 of this Section that shall contain the following information:~~

~~(A) the procedures and schedule for closure of the site;~~

~~(B) the projected use of the property after closure of the site; and~~

~~(C) the procedures and schedule for post-closure care maintenance, and for post-closure groundwater, surface water, or explosive gas monitoring if it is required by the Division to determine compliance with Rule .0566(11) or (13) of this Section; and~~

~~(10) other information that the Division may request if it is necessary to determine compliance with the rules of this Subchapter.~~

(b) If required by G.S. 89C or 89E and not under the purview of another licensed profession, a licensed professional engineer or licensed geologist shall certify the information submitted in accordance with Subparagraphs (a)(6) through (a)(10) of this Rule.

(c) The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter.

(d) Plans and documents submitted in the permit application in accordance with this Rule shall be incorporated into the permit when the permit is issued by the Division, and the site shall comply with the permit in accordance with Rule .0203(d) of this Subchapter.

(e) Modifications to the plans. The owner or operator may request to modify plans that were incorporated into the permit by the Division in accordance with the Paragraph (d) of this Rule by submitting the request to the Division, including the modified plan and a demonstration showing how the proposed modifications comply with the rules of this Section. The Division shall respond to the request in writing within the timeline provided in G.S. 130A-295.8(e), and the response shall either approve or deny the request as submitted or request that additional information be submitted for the Division to consider the request. The Division's approval shall be based on whether the modification complies with the rules of this Subchapter. If the Division approves the request as submitted or upon receiving the additional information requested, the Division's written approval and the revised pages of the plan shall be added to the site's operating record. The owner or operator shall not implement the modification until the Division has issued an approval.

(f) The permit issued by the Division shall be recorded with the Register of Deeds in the same manner as sanitary landfills in accordance with G.S. 130A-301.

Authority G.S. 130A-294.

15A NCAC 13B .0566 OPERATIONAL REQUIREMENTS FOR LCIDLES REQ. FOR LAND CLEARING/INERT DEBRIS (LCID) LANDFILLS

Land Clearing and Inert Debris (LCID) landfills The owner or operator of a land clearing and inert debris landfill (site) shall comply with the permit conditions, the plans incorporated into the permit in accordance with Rule .0565(d) of this Section, and meet the following operational requirements:

~~(1) Operational plans shall be approved and followed as specified for the facility.~~

~~(1)(2) The facility site shall only accept those solid wastes that which it is permitted to receive.~~

~~(2)(3) Solid waste in the landfill shall be compacted, restricted to the smallest area feasible and compacted as densely as practical into cells. Slopes shall not exceed a three horizontal to one vertical ratio at any time.~~

~~(3)(4) All waste shall be covered with no less than six inches of soil monthly. Adequate soil cover shall be applied monthly, or when the active area reaches one acre in size, whichever occurs first. Any soils used for cover at a site shall meet unrestricted use standards for soils as defined in 130A-310.65.~~

~~(4)(5) 120 calendar days after completion of any phase of disposal operations, or upon revocation of a permit, the disposal area Areas that will not have additional wastes placed on them for three months or more, but where final termination of disposal operations has not occurred, shall be covered with a minimum of no less than one foot of suitable soil cover sloped to allow direct the flow of surface water from the landfill, and stabilized with vegetative ground cover or other stabilizing material. runoff in a controlled manner. The Division~~

- may require further action ~~in order~~ to correct any condition which the Division determines is or may become ~~be~~ injurious to the public health, or a nuisance to the community.
- (5)(6) ~~Adequate~~ erosion control measures, structures, or devices shall be utilized to prevent silt from leaving the site and to prevent ~~excessive~~ erosion, and shall comply with 15A NCAC 04, which is incorporated by reference including subsequent amendments and editions.
- (7) ~~Provisions for a ground cover sufficient to restrain erosion must shall be accomplished within 30 working days or 120 calendar days upon completion of any phase of landfill development.~~
- (6)(8) The facility site shall be adequately secured by means of barriers such as gates, chains, berms, and fences ~~fences, etc.~~ to prevent unauthorized access. ~~access except when an operator is on duty.~~ An attendant operator shall be on duty at all times while the site landfill is open for public use to assure compliance with operational requirements and to prevent acceptance of unauthorized wastes.
- (7)(9) Access roads shall be of all-weather construction and shall be maintained to allow access by vehicles transporting waste, Department staff, and fire-fighting vehicles, properly maintained.
- (8)(10) Surface water shall be diverted from the working face and shall not be impounded over waste.
- (9)(11) Solid waste shall not be disposed of in water.
- (10)(12) Fire Protection and Control.
- (a) ~~Open burning of solid waste is prohibited.~~ prohibited, unless approval has been obtained from the Division, the local government, and the Division of Air Quality in accordance with 15A NCAC 02D .1900 prior to any burning activity.
- (b) Hot ashes, hot loads, or cinders shall not be disposed of in the landfill. The waste screening procedures described in the operations plan in accordance with this Rule shall address identification and rejection of loads containing hot ashes and cinders.
- (c) The owner or operator shall provide equipment on-site to control fires and make documented arrangements with a local fire protection agency to provide fire-fighting services.
- (d) The owner or operator shall provide verbal notification to the Division of fires that occur at site within 24 hours of the fire and shall submit written notification to the Division within 15 days of the fire. The notification shall include the site name and permit number; the date and time of the fire; actions taken by the owner or operator in response to the fire; the cause of the fire; the area, type, and amount of waste that caught fire; and a plan of action to prevent fires in the future; the name and title of the person submitting this information, and the date the information is submitted.
- (11)(13) The concentration of explosive gases generated by the site facility shall not ~~exceed~~ exceed
- (a) 25 Twenty five percent of the lower explosive limit for the gases in ~~facility structures; site structures; or~~
- (b) ~~The~~ the lower explosive limit for the gases at the property boundary. The Division may require quarterly monitoring of explosive gases if it is necessary to determine compliance with this Item. If the Division requires monitoring, the Division shall provide written notice of the requirement to the owner or operator.
- (12)(14) Leachate shall be contained and managed onsite. Leachate shall be properly managed on site through the use of current best management practices.
- (13)(15) A site shall comply with 15A NCAC 02L for the protection of groundwater quality, and the surface water quality standards established in 15A NCAC 02B. Should the Division deem it necessary, ground water or surface water monitoring, or both, may be required as provided for under Rules .0601 and .0602 of this Subchapter.
- (14)(16) A sign shall be posted at the facility site entrance showing the site contact name and number, number in case of an emergency and the permit number. the permit number, emergency contact information, and the waste types accepted for disposal at the site. The permit number requirement is not applicable for facilities not requiring an individual permit.
- (15) Inert debris waste accepted at the site shall be placed within the permitted landfill footprint unless it is being processed for recycling or beneficial reuse. Inert debris waste shall not be placed as beneficial fill as defined in Rule .0562 within the site buffer areas or elsewhere on the property unless stated in the site permit.
- (16) The owner or operator shall submit to the Division upon request any information or records required to be kept under the conditions of the permit or the rules of this Section.

Authority G.S. 130A-294.

15A NCAC 13B .0567 CLOSURE AND POST-CLOSURE CARE REQUIREMENTS FOR LCIDLES

(a) The owner or operator of a land clearing and inert debris landfill (site) shall implement the closure of the site in accordance with this Rule and the plans incorporated into the permit in accordance with Rule .0565(d) of this Section. The owner or operator shall notify the Division no less than 90 days prior to the expected closure of the site.

(b) Closure Requirements.

- (1) The owner or operator of a site shall begin closure activities no later than 30 days after the final receipt of wastes. The disposal area shall be covered with no less than one foot of soil cover sloped to direct the flow of surface water from the landfill and stabilized with vegetative ground cover or other stabilizing material.
- (2) The owner or operator of a site shall complete closure activities in accordance with the closure and post-closure care plan incorporated into the permit in accordance with Rule .0565(d) of this Section within 120 days following the beginning of closure.
- (3) Within 30 days of completion of closure of the site, the owner or operator shall submit to the Division a certification verifying that closure has been completed in accordance with the closure plan. If required by G.S. 89C, the certification shall be completed by a licensed professional engineer.
- (4) When a site has been closed in accordance with this Rule, the permit is terminated. Any future solid waste management or disposal at the site shall require a new permit.

(c) Post-Closure Care Requirements.

- (1) Following closure of the site, the owner or operator shall conduct post-closure care in accordance with the closure and post-closure care plan incorporated into the permit in accordance with Rule .0565(d) of this Section, and the following requirements:
 - (A) maintenance of the integrity and effectiveness of any cap system, including making repairs to the cover to correct the effects of settlement, subsidence, erosion, or other events, and preventing surface water run-on and run-off from eroding or otherwise damaging the cap system;
 - (B) maintenance of the vegetative cover of the cap, and ensuring that trees and other woody vegetation do not become established on the cap;
 - (C) maintenance of vehicle and fire-fighting lanes to allow access to the entire waste boundary of the site;
 - (D) groundwater, surface water, and explosive gas monitoring in accordance with the closure and post closure care plan, if it is required by

the Division to determine compliance with Rule .0566(11) or (13) of this Section;

- (E) maintenance of the operating record by the owner or operator. The operating record shall be made available to the Division for inspection upon request during the post-closure care period; and
- (F) any additional actions that the Division may require to correct any condition that the Division determines may be injurious to the public health or a nuisance to the community.

- (2) Property lines shall not be altered to result in reduction of the buffer areas set forth in Rule .0564(6) of this Section or stated in the site permit.
- (3) The buffer areas set forth in Rule .0564(6) of this Section or stated in the site permit shall not be developed or utilized for residential, commercial, industrial, or institutional purposes, including above-ground or below-ground construction or improvements such as utilities, roads, parking lots, and sidewalks.
- (4) Post-closure care shall be conducted for 10 years.

Authority G.S. 130A-294.

SECTION .0600 - MONITORING REQUIREMENTS

15A NCAC 13B .0601 GROUND-WATER GROUNDWATER MONITORING

(a) This Rule shall apply to a sanitary landfill that is not subject to Rules .0531 through .0546 or Section .1600 of this Subchapter (hereinafter "site"). This Rule shall apply for the life of the site and the post-closure care period of the site.

(b) A site shall be subject to the groundwater requirements and standards in 15A NCAC 02L .0101 through .0114 and 15A NCAC 02L .0201 through .0202.

(c)(a) ~~The Division shall require a solid waste management facility to~~ A site shall provide such ~~ground-water~~ groundwater monitoring capability as the Division determines to be necessary to detect the effects of the ~~site facility~~ on ~~ground-water~~ groundwater in the area. In making such a determination, the Division shall consider the following factors:

- (1) the design of the ~~site facility~~, the nature of the processes it will use, and the type of waste it will handle;
- (2) soil and other geological conditions in the area;
- (3) nearness of ~~ground-water~~ groundwater to the ~~site; facility~~;
- (4) uses that are being or may be made of any ~~ground-water~~ groundwater that may be affected by the ~~site; facility~~; and
- (5) any other factors that ~~reasonably~~ relate to the potential for ~~ground-water~~ groundwater effects from the ~~site; facility~~.

~~(b) Responsibility for sample collection and analysis will be defined as a part of the permit condition.~~

~~(c) Any other information that the Division deems pertinent to the development of a ground water monitoring system will be required.~~

(d) All monitoring wells required pursuant to this Rule shall comply with monitoring well construction standards of 15A NCAC 2C .0105, 02C .0108. ~~Copies of 15A NCAC 2C may be obtained from and inspected at the Division.~~

~~(e) The owner or operator of a site shall submit a record of the monitoring well installation shall be filed with to the Division upon completion of the installation, monitoring wells.~~

~~(f) Groundwater quality monitoring wells shall be constructed of materials, and by procedures, approved by the Division.~~

(f) The site shall not cause an exceedance of the groundwater quality standards and interim maximum allowable concentrations established under 15A NCAC 02L .0202 in the uppermost aquifer at the review boundary or compliance boundary as established in 15A NCAC 02L .0107 and .0108.

Authority G.S. 130A-294.

15A NCAC 13B .0602 SURFACE WATER MONITORING

~~(a) The Division shall require a solid waste management facility to This Rule shall apply to a sanitary landfill that is not subject to Rules .0531 through .0546 or Section .1600 of this Subchapter (hereinafter "site"). This Rule shall apply for the life of the site and the post-closure care period of the site.~~

(b) The owner or operator of a site shall provide such surface water monitoring capability as the Division determines to be necessary to detect the effects of the site facility on surface water ~~in the area~~. waters contained on or bordering the site property. In making ~~such a this~~ determination, the Division shall consider the following factors:

- (1) the design of the site, facility, the nature of the process it will use, and the type of waste it will handle;
- (2) drainage patterns and other hydrological conditions in the area;
- (3) nearness of surface water to the site, facility;
- (4) uses that are being or may be made of any surface water that may be affected by the site, facility; and
- (5) any other factors that ~~reasonably~~ relate to the potential for surface water effects from the site, facility.

~~(b) Responsibility for sample collection and analysis will be defined as a part of the permit conditions.~~

~~(c) Any other information that the Division deems pertinent to the development of a surface water monitoring system will be required.~~

(c) The site shall not cause an exceedance of the surface water standards established under 15A NCAC 02B .0200. If a surface water quality standard is not established in 15A NCAC 02B .0200 for any detected constituent or parameter, the owner or operator shall obtain a determination from the Division on establishing a surface water standard using EPA Nationally Recommended Water Quality Criteria which can be viewed on the Department's

website at <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/surface-water-standards>.

Authority G.S. 130A-294.

SECTION .0700 - ADMINISTRATIVE PENALTY PROCEDURES

- 15A NCAC 13B .0701 ADMINISTRATIVE PENALTIES
- 15A NCAC 13B .0702 STANDARDS
- 15A NCAC 13B .0703 PROCEDURE FOR ASSESSMENT: REVOCATION OF PERMIT
- 15A NCAC 13B .0704 PAYMENTS: HEARING
- 15A NCAC 13B .0705 STAY OF PENALTY ASSESSMENT
- 15A NCAC 13B .0706 WAIVER OF ADMINISTRATIVE HEARING

Authority G.S. 130A-22(f).

SECTION .1300 - DISPOSITION OF FETAL REMAINS

- 15A NCAC 13B .1301 MANNER OF DISPOSITION OF FETAL REMAINS

Authority G.S. 130A-309.26.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 – BOARD OF BARBER EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Barber Examiners intends to adopt the rule cited as 21 NCAC 06F .0128 and amend the rules cited as 21 NCAC 06F .0124; 06N .0102 and .0111.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncbarbers.com/news.html>

Proposed Effective Date: December 1, 2020

Public Hearing:

Date: September 3, 2020

Time: 10:00 a.m.

Location: By videoconference at shorturl.at/rDPR6 or by teleconference at (984) 204-1487, conference ID 558 944 222#

Reason for Proposed Action:

The adoption of 21 NCAC 06F .0128 would establish certain exceptions to requirements that normally apply to barber schools and students. The exceptions would apply during a state of emergency declared by the Governor. These exceptions are currently in place as a temporary rule.

The amendment to 21 NCAC 06F .0124 would exclude hours received through online classes from counting toward the limit for

field trips. This exclusion is currently in place as a temporary rule.

The amendment to 21 NCAC 06N .0102 would eliminate the requirement for new or renovated barber shops to submit copies of the certificates of occupancy.

The amendment to 21 NCAC 06N .0111 would lengthen the amount of time for barber schools to submit the form BAR-10 when a state of emergency has been declared by the Governor. This extension of time is currently in place as a temporary rule.

Comments may be submitted to: Dennis Seavers, 7001 Mail Service Center, Raleigh, NC 27699-7000; phone (919) 814-0641; fax (919) 981-5068; email dennis.seavers@nc.gov

Comment period ends: October 16, 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

SUBCHAPTER 06F – BARBER SCHOOL

21 NCAC 06F .0124 STUDENT HOURS

- (a) No student shall be given credit for more than eight total hours during any instruction day.
(b) Students shall record their start time by electronic means upon entering the school for practical or theory hours. Students shall not record any period of break from instruction, even if remaining on school premises.
(c) In meeting the minimum course work and designated barber school curricula required by Rule .0120 of this Section, no student shall be given credit for more than eight hours per month and 40 hours for the duration of enrollment in the school that were obtained by instruction or demonstration off school premises or from a field trip, except for hours received through online classes.

Authority G.S. 86A-22.

21 NCAC 06F .0128 WAIVER OF REQUIREMENTS DURING DISASTER OR EMERGENCY

(a) If the Governor declares a state of emergency, the following exceptions shall apply to barber schools and students:

- (1) Schools shall maintain a monthly record of the subject matter taught to the student in theory classes, the requirement in Rule .0110(4) of this Subchapter for a weekly record notwithstanding.
(2) Schools shall provide to the Board the list of students required by G.S. 86A-22(5) by the last day of each month, the requirement in Rule .0110(6) of this Subchapter for schools to submit the list by the 15th of each month notwithstanding.
(3) Within 60 days of the date on which any student completes his or her course of study, drops out of school, or transfers to another school, the barber school shall return the student permit to the Board, the requirement in Rule .0113(d) of this Subchapter to return the student permit within five business days notwithstanding.
(4) Students shall not be required to meet the requirements in Rule .0122 of this Subchapter if the students are attending online classes.
(5) No student shall be given credit for more than 10 total hours during any instruction day, the restriction to eight hours in Rule .0124(a) of this Subchapter notwithstanding.
(6) The restrictions on off-campus hours in Rule .0124(c) of this Subchapter shall not apply to hours that students receive during a state of emergency.
(7) Schools shall not be required to revise the handbooks required by Rule .0125 of this Subchapter to reflect the exceptions listed in this Rule.

(b) The exceptions in this Rule shall only apply through the duration of the state of emergency.

Authority G.S. 86A-22.

SUBCHAPTER 06N – FEES AND FORMS

21 NCAC 06N .0102 FORM BAR-1

- (a) The Form BAR-1 shall be filed when one applies to open or manage a new barber shop. It requests the following:
(1) the name and address of the shop;
(2) the name, address, and certificate number of the manager;
(3) the name and address of the shop owner;
(4) the physical dimensions of the shop;
(5) for a new or renovated shop, a copy of the certificate of occupancy;
(6)(5) the shop business hours;
(7)(6) the type of fixtures installed; and
(8)(7) the date the shop will be ready for inspection.

- (b) The fee required by Rule .0101(a)(19) of this Section shall accompany this form.
- (c) The Form BAR-1 shall be notarized.

Authority G.S. 86A-1; 86A-13; 86A-15; 86A-25; 150B-11.

21 NCAC 06N .0111 FORM BAR-10

(a) The Form BAR-10 is a report that shall be filed monthly by the manager of the school for each student enrolled in barber school. It requires the following:

- (1) the name of the school submitting the report;
- (2) the name and date of enrollment of the student;
- (3) the month and year for which the report is filed;
- (4) the dates and hours of the student's absences;
- (5) the dates and hours of the student's attendance;
- (6) the number of patrons served for clinical services; and
- (7) the subject matter covered in practical and theory courses.

(b) The Form BAR-10 shall be submitted to the Board over the signature of the manager of the school and co-signed by the student.

(c) ~~The Form BAR-10 shall be returned to the Board within five business days of the date on which~~ If a student completes his or her course of study, drops out of school, or transfers to another school, the barber school shall return the Form BAR-10 to the Board:

- (1) within five business days; or
- (2) within 30 days if the student's enrollment ends during the effective period of a state of emergency declared by the Governor.

Authority G.S. 86A-22.

CHAPTER 32 - MEDICAL BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Board intends to amend the rule cited as 21 NCAC 32S .0212.

Link to agency website pursuant to G.S. 150B-19.1(c):
www.ncmedboard.org/about_the_board/rule_changes

Proposed Effective Date: February 1, 2021

Public Hearing:

Date: October 16, 2020

Time: 10:00 a.m.

Location: Public Hearing will be held via teleconference: 1-919-518-9840; Conference ID: 208-299-494#

Reason for Proposed Action: *The Medical Board's amendments remove the physician assistant's license number and the authorized primary or back-up physician's name and telephone number from the physician assistant's prescription in accordance with G.S. 90-18.1.*

Comments may be submitted to: Lynne Taylor, 1203 Front Street, Raleigh, NC 27609; phone (919) 326-1109; email rules@ncmedboard.org

Comment period ends: October 16, 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

SUBCHAPTER 32S - PHYSICIAN ASSISTANTS

SECTION .0200 – PHYSICIAN ASSISTANT REGISTRATION

21 NCAC 32S .0212 PRESCRIPTIVE AUTHORITY

A physician assistant may prescribe, order, procure, dispense, and administer drugs and medical devices subject to the following conditions:

- (1) The physician assistant complies with all State and federal laws regarding prescribing, including G.S. 90-18.1(b);
- (2) Each supervising physician and physician assistant incorporates within his or her written supervisory arrangements, as defined in Rule .0201(9) of this Section, instructions for prescribing, ordering, and administering drugs and medical devices and a policy for periodic review by the physician of these instructions and policy;
- (3) In order to compound and dispense drugs, the physician assistant complies with G.S. 90-18.1(c);
- (4) In order to prescribe controlled substances,
 - (a) the physician assistant must have a valid Drug Enforcement Administration (DEA) registration

- and prescribe in accordance with DEA rules;
- (b) refills shall be issued consistent with Controlled Substance Law and regulations; and
- (c) the supervising physician shall possess at least the same schedule(s) of controlled substances as the physician assistant's DEA registration;
- (5) Each prescription issued by the physician assistant contains, in addition to other information required by law, the following:
 - (a) the physician assistant's name, practice address, and telephone number; and
 - (b) ~~the physician assistant's license number and,~~ if applicable, the physician assistant's DEA number for controlled substances ~~prescriptions;~~ prescriptions. and
 - (c) ~~the authorizing supervising physician's, either primary or back up, name and telephone number;~~
- (6) The physician assistant documents prescriptions in writing on the patient's record, including the medication name and dosage, amount prescribed, directions for use, and number of refills;
- (7) A physician assistant who requests, receives, and dispenses medication samples to patients complies with all applicable State and federal regulations; and
- (8) A physician assistant shall not prescribe controlled substances, as defined by the State and federal controlled substances acts, for:
 - (a) the physician assistant's own use;
 - (b) the use of the physician assistant's supervising physician;
 - (c) the use of the physician assistant's immediate family;
 - (d) the use of any person living in the same residence as the physician assistant; or
 - (e) the use of any anyone with whom the physician assistant is having a sexual relationship.

As used in this Item, "immediate family" means a spouse, parent, child, sibling, parent-in-law, son-in-law or daughter-in-law, brother-in-law or sister-in-law, step-parent, step-child, or step-sibling.

Authority G.S. 90-5.1(a)(3); 90-18.1.

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to amend the rules cited as 25 NCAC 01C .0405; and 01E .0908.

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

Proposed Effective Date: December 1, 2020

Public Hearing:

Date: September 1, 2020

Time: 2:00 p.m.

Location: Teleconference: Call into STATEOP_MEETME_150 919-662-4658

Reason for Proposed Action:

25 NCAC 01C .0405 - This Rule is being updated to include inmates, interns, and externs as exceptions to the mandatory break-in-service requirement for temporary employment. These three categories of temporary employees are already exempted in the Temporary Employment Policy and in practice. The updated Rule also more clearly defines each of the exception categories. It also clarifies that the Rule applies to all temporaries employed by the state.

25 NCAC 01E .0908 - Changes were made to the text of the Rule to clarify that the policy applies to part-time employees (half-time or more) and does not apply to part-time employees (less than half-time) and to remove reference to trainee appointment.

Comments may be submitted to: Christine Ryan, OSHR, 1331 Mail Service Center, Raleigh, NC 27699-1331; phone (984) 236-0824; email christine.ryan@nc.gov

Comment period ends: October 16, 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 01 - OFFICE OF STATE HUMAN RESOURCES

SUBCHAPTER 01C – PERSONNEL ADMINISTRATION

SECTION .0400 - APPOINTMENT

25 NCAC 01C .0405 TEMPORARY APPOINTMENT

(a) A temporary appointment is an appointment ~~for a limited term to a permanent or temporary position,~~ to fill a workforce need for a limited period of time. Temporary employees may not be used to permanently expand the workforce beyond authorized levels. Temporary appointments shall not to exceed 12-11 consecutive months, subject to the following exemptions:

- (1) ~~Full-time Students, students shall be exempt from the 12-months maximum limit. "Students" include those defined as those~~ undergraduate students taking at least 12 semester credit hours or graduate students taking at least nine semester 9 credit hours.
- (2) ~~Retired employees, employees defined as those individuals drawing a retirement income or Social Security benefits may have temporary appointments for more than 12 months if and he or she signs having signed a statement that he or she is they are not available for, nor seeking permanent employment. "Retired employees" include those drawing a retirement income or social security benefits.~~
- (3) Inmates that are on a work-release program.
- (4) Interns defined as those students who regardless of the number of credit hours enrolled work to

gain occupational experience for a short period of time, not to exceed three months.

(5) Externs defined as those students who regardless of the number of credit hours enrolled are employed as part of a written agreement between the state and an academic institution by which the student is paid and earns course credit.

(b) Employees with a temporary appointment shall not earn or accrue ~~leave, leave~~ or receive total state service credit, retirement credit, severance pay, or priority reemployment consideration.

(c) This Rule applies to all temporaries employed by the state.

Authority G.S. 126-4.

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .0900 – HOLIDAYS

25 NCAC 01E .0908 ELIGIBILITY

Full-time and part-time (half-time or more) employees with a permanent, ~~probationary, trainee~~ probationary or time-limited appointment, are eligible for the paid holidays. Part-time (half-time or more) employees receive holidays on a pro rata basis. Temporary and part-time (less than half-time) employees are not eligible for paid holidays.

Authority G.S. 126-4.

Note from the Codifier: The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website (www.ncoah.com/rules) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60th day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

Rule-making Agency: *Division of Motor Vehicles*

Rule Citation: *19A NCAC 03B .0201*

Effective Date: *July 22, 2020*

Findings Reviewed and Approved by the Codifier: *July 14, 2020*

Reason for Action: *19A NCAC 03B .0201(A)(4) ROAD TEST as currently written, requires the Driver's License Examiner and the applicant to ride in the applicant's vehicle together to perform the road test and rate the required maneuvers. To conduct a road test requires driver license examiners to be in close proximity with the driver in a confined vehicle cabin where social distancing is not possible, exposing the examiner to potentially health compromising or life-threatening positions. In order to promote social distancing and hygiene during the COVID-19 pandemic and ensure driver's license employees and customer safety, on June 19, 2020 House Bill 158 was ratified, temporarily waiving the road test requirement for level II limited provisional licenses for young drivers under the age of 18. The division has consulted with DHHS and has determined that road tests should not be reinitiated until the Governor institutes Phase III of his reopening plan. DMV is seeking to waive road tests for a select group of adult drivers where training and/or safe driving records have been established. These drivers are either new drivers who need a license for livelihood or household purposes and have some indicia of driving proficiency satisfactory to the Division of Motor Vehicles. Drivers will still be required to pass a knowledge test, sign test and visual examination.*

Eighty percent of the questions shall be answered correctly in order to pass the knowledge examination. For the issuance of a remote renewal, the requirement of a knowledge examination shall be waived.

(2) Road Signs. This is a test on knowledge of highway signs and their meanings. Applicants for a regular Class "C" license shall correctly identify nine of twelve road signs. Applicants for "A" or "B" licenses shall correctly identify all road signs. For the issuance of a remote renewal, the requirement of the road signs test shall be waived.

(3) Visual Acuity Test. The applicant's visual acuity shall be 20/40 or better in either eye or both eyes together to receive an unrestricted license. A license is restricted to require corrective lenses if acuity is less than 20/40 in either eye or both eyes together.

(4) Road Test. The road test measures the applicant's ability to operate a motor vehicle safely in actual traffic situations. The required maneuvers are: quick stop, turnabout, backing, approach corner, right turns, left turns, traffic lights, use of vehicle operating equipment, starts, use of lanes, use of brakes, following, and paying attention. Approval or disapproval is determined by the driver license examiner based upon the applicant's ability to execute the required maneuvers. For the issuance of a remote ~~renewal~~, renewal or during a pandemic where an executive order is in place, the requirement of a road test ~~shall be waived~~. may be waived if previous driver training and/or safe driving records can be established.

(5) Remote Renewal. The renewal of a driver's license by mail, telephone, or electronic device. Applicants will find instructions for remote renewal on the Division of Motor Vehicles' Website at <http://www.ncdot.gov/dmv>. A driver's license issued by remote renewal expires in accordance with G.S. 20-7(f)(6)c.

(6) Attestation. An applicant eligible to make application for a remote renewal shall truthfully attest to the following as part of the application for a remote renewal:

(A) The applicant is a resident of North Carolina and currently resides at the address listed on the license to be renewed;

CHAPTER 03 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 03B - DRIVER LICENSE SECTION

SECTION .0200 - DRIVER'S LICENSE ISSUANCE

19A NCAC 03B .0201 DRIVER'S LICENSE EXAMINATION AND ONLINE RENEWAL

(a) The Division shall issue a driver's license to any person who passes the tests and meets the requirements listed below and is otherwise eligible under G.S. 20 to hold a license. Applicants for a driver's license are subject to the following tests and requirements:

- (1) Knowledge Examination. This is an automated computer test on knowledge of rules of the road. An audio component allows applicants with reading comprehension difficulties to listen to the test questions by use of earphones.

- (B) The license holder's name as it appears on the license to be renewed has not changed;
- (C) All information provided during the application for a remote renewal has been provided truthfully;
- (D) That the applicant knows of no change in his or her vision since the last time the applicant passed the visual acuity test in Subparagraph (a)(3) of this Rule that would impair the applicant's ability to safely drive a motor vehicle; and
- (E) That no change in physical or mental abilities has occurred since the last issuance.
- (7) Photo Requirement. The requirement of a newly captured photo in G.S. 20-7(n)(4) shall be waived for an applicant eligible to make application for a remote renewal, providing the applicant has an existing DMV photo on file.
- (8) Upon completion of the remote renewal process, the license shall be renewed if all criteria in G.S. 20-7 are met. The applicant may use the current license for all legitimate driver license purposes until the license becomes invalid for some other reason, or receipt of the new license card.
- (b) The tests contained in Paragraph (a) shall be administered as follows:
- (1) First time applicants. Applicants applying for a driver's license for the first time shall complete the full examination, to include the knowledge examination, road signs test, visual acuity test, and road test. Applicants in this Subparagraph are not eligible to apply for remote renewal.
- (2) Renewals and licenses expired less than two years. Applicants seeking to renew a valid, unexpired North Carolina driver's license shall complete the road signs test and visual acuity test, unless the applicant is renewing remotely. Applicants possessing a previously issued North Carolina driver's license, expired less than two years, shall complete the road signs test and visual acuity test. An applicant shall attest during the application for a remote driver license renewal that the applicant knows of no change in his or her vision as set out in Part (a)(6)(D) of this Rule.
- (3) Applicants possessing a previously issued North Carolina driver's license expired greater than two years. Applicants shall complete the full examination, to include the knowledge examination, road signs test, visual acuity test, and road test. Applicants in this Subparagraph are not eligible to apply for remote renewal.
- (4) Applicants with a driver's license issued by another State, which is valid and current, or expired less than two years. Applicants seeking to transfer their current driver's license from another state or applicants possessing a driver's license issued by another state that is expired less than two years shall complete the road signs test and visual acuity test. Applicants in this Subparagraph are not eligible to apply for remote renewal.
- (5) Applicants with a driver's license issued by another state, expired more than two years. Applicants shall complete the full examination, to include the knowledge examination, road signs test, visual acuity test, and road test. Applicants in this Subparagraph are not eligible to apply for remote renewal.
- History Note: Authority G.S. 20-2; 20-7(a),(c),(f); 20-39; S.L. 2014-100, s. 34.8(a), 34.8(b); Eff. July 1, 1978; Amended Eff. May 4, 2015; May 1, 2014; December 1, 1993; July 1, 1982; June 5, ~~1981~~ 1981; Emergency Amendment Eff. July 22, 2020.*

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

TITLE 04 – DEPARTMENT OF COMMERCE

**SUBCHAPTER 24G - UNEMPLOYMENT
COMPENSATION DUE TO PUBLIC HEALTH
EMERGENCY OR DISASTER DECLARATION**

Rule-making Agency: Department of Commerce/Division of Employment Security

**SECTION .0100 - UNEMPLOYMENT COMPENSATION
DUE TO CORONAVIRUS AND COVID-19**

Rule Citation: 04 NCAC 24G .0102 and .0103

Effective Date: July 24, 2020

**04 NCAC 24G .0102 NOTICE THAT EMPLOYERS
MUST GIVE TO EMPLOYEES AS
A RESULT OF CORONAVIRUS**

Date Approved by the Rules Review Commission: July 16, 2020

Employers shall provide employees with notice of the availability of unemployment compensation at the time of separation from employment. The notice shall inform employees of the following:

Reason for Action: A serious and unforeseen threat to the public health, safety or welfare. The effective date of a recent act of the General Assembly or of the U.S. Congress Cite Families First Coronavirus Response Act Pub 1 No. 116-127, Division D 1402 (2020). A recent change in federal or state budgetary policy Eff. date of change March 17, 2020. Executive Order No. 118, Governor Roy Cooper, 2020. On March 10, 2020 the Governor of North Carolina issued Executive Order No. 116 and declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of Coronavirus Disease 2019 (COVID-19), a respiratory disease that results from the coronavirus. COVID-19 can result in serious illness or death. On March 11, 2020, the World Health Organization declared the coronavirus an international pandemic. The World Health Organization, the Centers for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 17, 2020, the Governor of North Carolina issued Executive Order No. 118 and directed the Secretary of Commerce and Assistant Secretary for the Division of Employment Security to ensure that individuals who are separated from employment, had hours reduced or are prevented from working due to a medical condition caused by COVID-19 or due to the communicable disease control measures are eligible for unemployment benefits to the maximum amount permitted by law. On March 18, 2020, the President of the United States signed the Families First Coronavirus Response Act (Pub. 1 116-127). The legislation makes emergency supplemental appropriations in response to the spread of COVID-19 and includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020(EUISAA) at Division D. EUISAA sets forth the requirements for emergency administrative grants to states and authorize emergency flexibility allowing states to temporarily modify certain aspects of their unemployment compensation laws, a short-term waiver of interest on state trust fund advances, and full federal funding during extended benefit periods through December 31, 2020.

- (1) Unemployment insurance benefits are available to workers who are unemployed and who meet the State's eligibility requirements;
- (2) Employees may file a claim in the first week that employment stops or work hours are reduced;
- (3) Employees may file claims online at des.nc.gov or by telephone to (888) 737-0259.
- (4) Employees must provide DES with the following personal information for DES to process the claim:
 - (a) their full legal name;
 - (b) their social security number; and
 - (c) proof of authorization to work (if the employee is not a U.S. citizen or resident).
- (5) Employees may contact DES at (888) 737-0259 and select the appropriate menu option for assistance.

History Note: Authority G.S. 96-4; 166A-19.30; Families First Coronavirus Response Act, Pub. L. No. 116-127, Division D, 1402 (2020); E.O. 118, Governor Roy Cooper, 2020; Emergency Adoption Eff. April 14, 2020; Temporary Adoption Eff. July 24, 2020.

**04 NCAC 24G .0103 TEMPORARY WAIVER OF
BENEFIT CHARGES TO
EMPLOYER ACCOUNTS**

- (a) DES shall temporarily waive the charging of benefit payments to employer accounts as required by State or Federal law.
- (b) The temporary waiver of these benefit charges shall apply only to claims filed for the period of and pertaining to the declared coronavirus and COVID-19 public health emergency as set forth in Executive Order No. 118 issued on March 17, 2020.
- (c) DES shall temporarily suspend the requirements of 04 NCAC 24D .0102(9) and (10).
- (d) DES shall temporarily suspend the requirements of 04 NCAC 24D .0103.

CHAPTER 24 – EMPLOYMENT SECURITY

(e) DES shall temporarily suspend the requirements of 04 NCAC 24D .0105.

History Note: Authority G.S. 96-4; 166A-19.30; Families First Coronavirus Response Act, Pub. L. No. 116-127, Division D, 1402 (2020); E.O. 118, Governor Roy Cooper, 2020; Emergency Adoption Eff. April 14, 2020; Temporary Adoption Eff. July 24, 2020.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Rule-making Agency: *Private Protective Services Board*

Rule Citation: *14B NCAC 16 .0201, .0806, .0904, .1202, and .1203*

Effective Date: *July 24, 2020*

Date Approved by the Rules Review Commission: *July 16, 2020*

Reason for Action: *On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North Carolina issued Executive Order No. 117 that prohibited mass gatherings, closed schools, and urged social distancing. These various Orders closed the North Carolina Justice Academy - the only source for firearms instructor training - have limited in-class offerings for continuing education, which would not be in compliance with the Governor's Executive Order and have limited travel.*

CHAPTER 16 - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0200 - LICENSES: TRAINEE PERMITS

14B NCAC 16 .0201 APPLICATION FOR LICENSES AND TRAINEE PERMITS

(a) Each applicant for a license or trainee permit shall submit an online application on the website provided by the Board. The online application shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
- (2) one head and shoulders digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;

- (3) upload online a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
- (4) the applicant's non-refundable application fee, along with a four dollar (\$4.00) convenience fee and credit card transaction fee;
- (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board; and
- (6) an Equifax credit check run within 30 days of the license application submission date, which will be submitted to the Board's investigator during the application process.

(b) Applications for trainee permits shall be accompanied by a notarized statement on a form provided by the Board and signed by the applicant and his or her prospective supervisor, stating that the trainee applicant shall at all times work with and under the direct supervision of that supervisor and the form shall be uploaded as part of the online application process.

(c) Private investigator trainees applying for a license shall make available for inspection a log of experience on a form provided by the Board.

(d) Each applicant must upload evidence of high school graduation either by diploma, G.E.D. certificate, or other proof.

(e) Each applicant for a license shall meet personally with a Board investigator, the Screening Committee, the Director, or another Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74C and the administrative rules in this Chapter during the personal meeting. The applicant shall sign a form provided by the Board indicating that he or she has reviewed G.S. 74C and the administrative rules in this Chapter with the Board's representative. During a national or State declared state of emergency that restricts or prohibits travel, the personal meeting requirement may be waived if requested by the applicant in lieu of alternative means of communication.

History Note: Authority G.S. 74C-2; 74C-5; 74C-8; 74C-8.1; 74C-12;

Eff. June 1, 1984;

Amended Eff. May 1, 2012; July 1, 2011; August 1, 1998; December 1, 1995; July 1, 1987;

December 1, 1985;

Transferred and Recodified from 12 NCAC 07D .0201 Eff. July 1, 2015;

Amended Eff. November 1, 2017;

Readopted Eff. March 1, 2020;

Emergency Amendment Eff. May 6, 2020;

Temporary Amendment Eff. July 24, 2020.

SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

14B NCAC 16 .0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

(a) Each applicant for renewal of an armed security guard firearm registration permit identification card or his or her employer shall complete an online form on the website provided by the Board. This online form shall be submitted not more than 90 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;
- (2) upload online a statement of the results of a statewide criminal history search obtained by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 12 months;
- (3) the applicant's renewal fee, along with the four dollar (\$4.00) convenience fee and credit card transaction fee;
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of this Section; and
- (6) a completed affidavit form and public notice statement form.

(b) The employer of each applicant for a registration renewal shall give the applicant a copy of the online application and a copy of the completed affidavit form to serve as a record of application for renewal and shall retain a copy of the application, including affidavit in the guard's personnel file in the employer's office.

(c) Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

(d) A registered armed security guard may utilize a dedicated light system or gun-mounted light for requalification.

(e) During a national or State declared state of emergency that restricts or prohibits a registered armed security guard from requalifying, the Board may extend the deadline for requalification up to 60 days beyond the effective period of the state of emergency. Any registration renewed pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the 60th day if requalification requirements have not been met.

History Note: Authority G.S. 74C-5; 74C-13; Eff. June 1, 1984; Amended Eff. May 1, 2012; October 1, 2010; December 1, 1995; February 1, 1990; December 1, 1985; Transferred and Recodified from 12 NCAC 07D .0806 Eff. July 1, 2015; Amended Eff. January 1, 2018; November 1, 2017; Readopted Eff. November 1, 2019; Amended Eff. March 1, 2020; Emergency Amendment Eff. May 6, 2020; Temporary Amendment Eff. July 24, 2020.

SECTION .0900 – TRAINER CERTIFICATE

14B NCAC 16 .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE

(a) Each applicant for renewal of a firearms trainer certificate shall complete an online renewal form on the website provided by the Board. This form shall be submitted online not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

- (1) uploaded online a certificate of successful completion of a firearms trainer refresher course approved by the Board and the Secretary of Public Safety consisting of a minimum of eight hours of classroom and practical range training in safety and maintenance of the applicable firearm (i.e. handgun, shotgun, or rifle), range operations, control and safety procedures, and methods of firing. This training shall be completed within 180 days of the submission of the renewal application;
- (2) uploaded online a statement of the results of a criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 48 months;
- (3) the applicant's renewal fee, along with the four dollar (\$4.00) convenience fee and credit card transaction fee; and
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board.

(b) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

(c) Any firearms trainer who fails to qualify with the minimum score during the refresher course shall not continue to instruct

during the period between the failure to qualify and the expiration of his or her permit.

(d) The holder of a firearms trainer certificate may utilize a dedicated light system or gun mounted light for personal requalification.

(e) During a national or State declared state of emergency that restricts or prohibits a certified firearms trainer from requalifying, the Board may extend the deadline for requalification up to 60 days beyond the effective period of the state of emergency. Any certificate renewed pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the 60th day if requalification requirements have not been met.

History Note: Authority G.S. 74C-5; 74C-8.1(a); 74C-13; Eff. June 1, 1984; Amended Eff. January 1, 2013; October 1, 2010; June 1, 2009; December 1, 1995; December 1, 1985; Transferred and Recodified from 12 NCAC 07D .0904 Eff. July 1, 2015; Amended Eff. November 1, 2017; February 1, 2016; October 1, 2015; Readopted Eff. November 1, 2019; Amended Eff. March 1, 2020; Emergency Amendment Eff. May 6, 2020; Temporary Amendment Eff. July 24, 2020.

SECTION .1200 – CONTINUING EDUCATION

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 than six hours of CEU credit shall be given during a renewal period for online courses. However, during a national or State declared state of emergency that restricts or prohibits a licensee from attending live continuing education courses or a meeting of the Board, all required hours may be obtained online 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 May 6, 2020; Readopted Eff. July 1, 2020; Temporary Amendment Eff. July 24, 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. ~~No more than six hours of CEU credit shall be given during a renewal period for online courses.~~

~~(h) No course offering CEU credits may be taken for credit more than one time during a renewal period.~~

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; Temporary Amendment Eff. July 24, 2020.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS

Rule-making Agency: *Board of Chiropractic Examiners*

Rule Citation: *21 NCAC 10 .0216*

Effective Date: *July 24, 2020*

Date Approved by the Rules Review Commission: *July 16, 2020*

Reason for Action: *On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North Carolina issued Executive Order No. 117 that prohibited mass gatherings, closed schools, and urged social distancing.*

SECTION .0200 - PRACTICE OF CHIROPRACTIC

21 NCAC 10 .0216 WAIVER

(a) The Board may waive any rule in this Chapter that is not statutorily required if a licensee, or applicant for license or certification, submits a written request. ~~The Board may also waive any rule in 21 NCAC 10 that is not statutorily required upon its own initiative.~~ Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;

- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver;
- (5) notice to and opposition by the public;
- (6) need for the waiver; and
- (7) previous requests for waivers submitted from the requesting party.

(b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during a disaster declaration by the President of the United States or the Governor, a national emergency declaration by the President of the United States, or a state of emergency declaration issued under G.S. 166A-19.3(19), based on the factors set forth in Paragraph (a)(1), (2), (3), (5) and (6) of this Rule. If the Board wishes to waive a rule, it shall provide notice by posting a link on their website and sending out information to their interested persons mailing list.

(c) Any waiver granted by the Board in accordance with this Rule based upon a declared state of emergency shall include a date certain upon which the waiver will expire, not to exceed 12 months from the date that the waiver is granted.

History Note: Authority G.S. 90-142; 150B-19(6); Emergency Adoption Eff. April 28, 2020. 2020; Temporary Adoption Eff. July 24, 2020.

CHAPTER 12 – LICENSING BOARD FOR GENERAL CONTRACTORS

Rule-making Agency: *Licensing Board for General Contractors*

Rule Citation: *21 NCAC 12A .0607*

Effective Date: *July 24, 2020*

Date Approved by the Rules Review Commission: *July 16, 2020*

Reason for Action: *On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North*

Carolina issued Executive Order No. 117 that prohibited mass gatherings, closed schools, and urged social distancing.

SUBCHAPTER 12A – GENERAL PROVISIONS

SECTION .0600 - RULE-MAKING PROCEDURES

21 NCAC 12A .0607 WAIVER

(a) The Board may waive any rule in this Chapter that is not statutorily required if a licensee, qualifier, continuing education course provider, or continuing education course instructor submits a written request. ~~The Board may also waive any rule in 21 NCAC 12 that is not statutorily required upon its own initiative.~~ Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;
(2) cost to the Board;
(3) degree of benefit to the public;
(4) whether the requesting party had control over the circumstances that required the requested waiver;
(5) notice to and opposition by the public;
(6) need for the waiver; and
(7) previous requests for waivers submitted from the requesting party.

(b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during a disaster declaration by the President of the United States or the Governor, a national emergency declaration by the President of the United States, or a state of emergency declaration issued under G.S. 166A-19.3(19), based on the factors set forth in Paragraph (a)(1), (2), (3), (5) and (6) of this Rule. If the Board wishes to waive a rule, it shall provide notice by posting a link on their website and sending out information to their interested persons mailing list.

(c) Any waiver granted by the Board in accordance with this Rule based upon a declared state of emergency shall include a date certain upon which the waiver will expire, not to exceed 12 months from the date that the waiver is granted.

History Note: Authority G.S. 87-10.2(j); 150B-19; Emergency Adoption Eff. April 24, 2020; 2020; Temporary Adoption Eff. July 24, 2020.

CHAPTER 30 – BOARD OF MASSAGE AND BODYWORK THERAPY

Rule-making Agency: Board of Massage and Bodywork Therapy

Rule Citation: 21 NCAC 30 .0636

Effective Date: July 24, 2020

Date Approved by the Rules Review Commission: July 16, 2020

Reason for Action: A serious and unforeseen threat to the public health, safety or welfare has arisen with the coronavirus outbreak in North Carolina. The Governor declared a state of emergency on March 10, 2020. All massage and bodywork therapy schools and programs were required to close their facilities due to the outbreak. To allow students to continue to receive education, the Board proposed to eliminate rules that would prevent schools from being able to offer online classes.

SECTION .0600 - MASSAGE AND BODYWORK THERAPY SCHOOLS

21 NCAC 30 .0636 WAIVER OF REQUIREMENTS DURING DISASTER OR EMERGENCY

(a) If the ~~governor~~ Governor declares a state of emergency, the following exceptions shall apply to massage and bodywork therapy schools, programs and students, the requirements in this Subchapter notwithstanding:

- (1) Classroom hours of supervised instruction that are not hands-on may be provided online, despite the requirement in Rule ~~.0602(8)~~ .0602(10) of this Subchapter.
(2) Total number of supervised classroom hours of instruction that are not hands-on may include online hours, despite the requirement in Rule .0603(b)(4) of this Subchapter.
(3) For a student to receive credit in a course that is not hands-on, the student shall attend, in-class or online, 75 percent of the instructional hours of the course and shall also make up missed instructional hours to equal no less than 98 percent of the instructional hours in the course, pursuant to Rule .0620(11) of this Subchapter.
(4) Schools shall not be required to revise the Student Enrollment Agreement required by Rule .0629 or School Catalog required by Rule .0630 to reflect the exceptions listed in this Rule.

(b) The exceptions in this Rule shall only apply during the effective period of the state of emergency.

History Note: Authority G.S. ~~86A-22;~~ 90-626; Emergency Adoption Eff. April 17, 2020; Temporary Adoption Eff. July 24, 2020.

CHAPTER 34 – BOARD OF FUNERAL SERVICE

Rule-making Agency: Board of Funeral Service

Rule Citation: 21 NCAC 34A .0128

Effective Date: July 24, 2020

Date Approved by the Rules Review Commission: July 16, 2020

CHAPTER 39 - ON-SITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

Rule-making Agency: Onsite Wastewater Contractors and Inspectors Certification Board

Rule Citation: 21 NCAC 39 .0904

Effective Date: July 24, 2020

Date Approved by the Rules Review Commission: July 16, 2020

Reason for Action: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North Carolina issued Executive Order No. 117 that prohibited mass gatherings, closed schools, and urged social distancing.

Reason for Action: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North Carolina issued Executive Order No. 117 that prohibited mass gatherings, closed schools, and urged social distancing.

SUBCHAPTER 34A - BOARD FUNCTIONS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 34A .0128 WAIVER

(a) The Board may waive any rule in this Chapter that is not statutorily required if a licensee, trainee, or continuing education course provider submits a written request. ~~The Board may also waive any rule in Chapter 34 of the Administrative Code that is not statutorily required upon its own initiative.~~ Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;
(2) cost to the Board;
(3) degree of benefit to the public;
(4) whether the requesting party had control over the circumstances that required the requested waiver;
(5) notice to and opposition by the public;
(6) need for the waiver; and
(7) previous requests for waivers submitted from the requesting party.

(b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during a disaster declaration by the President of the United States or the Governor, a national emergency declaration by the President of the United States, or a state of emergency declaration issued under G.S. 166A-19.3(19), based on the factors set forth in Paragraph (a)(1), (2), (3), (5) and (6) of this Rule. If the Board wishes to waive a rule, it shall provide notice by posting a link on their website and sending out information to their interested persons mailing list.

(c) Any waiver granted by the Board in accordance with this Rule based upon a declared state of emergency shall include a date certain upon which the waiver will expire, not to exceed 12 months from the date that the waiver is granted.

History Note: Authority G.S. 90-210.23(a); 150B-19(6); Emergency Adoption Eff. April 14, 2020; 2020; Temporary Adoption Eff. July 24, 2020.

SECTION .0900 - RULEMAKING PROCEDURES

21 NCAC 39 .0904 WAIVER OR EXTENSION

(a) The Board may waive or extend any rule in this Chapter that is not statutorily required if a certificate holder submits a written request. ~~The Board may also waive or extend any rule in 21 NCAC 39 that is not statutorily required upon its own initiative.~~ Factors the Board shall use in determining whether to grant the waiver or extension are:

- (1) degree of disruption to the Board;
(2) cost to the Board;
(3) degree of benefit to the public;
(4) whether the requesting party had control over the circumstances that required the requested waiver or extension;
(5) notice to and opposition by the public;
(6) need for the waiver or extension; and
(7) previous requests for waivers or extensions submitted from the requesting party.

(b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during a disaster declaration by the President of the United States or the Governor,

TEMPORARY RULES

a national emergency declaration by the President of the United States, or a state of emergency declaration issued under G.S. 166A-19.3(19), based on the factors set forth in Paragraph (a)(1), (2), (3), (5) and (6) of this Rule. If the Board wishes to waive a rule, it shall provide notice by posting a link on their website and sending out information to their interested persons mailing list.
(c) Any waiver granted by the Board in accordance with this Rule based upon a declared state of emergency shall include a date

certain upon which the waiver will expire, not to exceed 12 months from the date that the waiver is granted.

*History Note: Authority G.S. 90A-74; 150B-19(6);
Emergency Adoption Eff. May 20, ~~2020~~, 2020;
Temporary Adoption Eff. July 24, 2020.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission July 16, 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

RULES REVIEW COMMISSION MEETING

MINUTES

July 16, 2020

The Rules Review Commission met on Thursday, July 16, 2020 in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx. The Commissioners held a WebEx meeting to ensure compliance with Executive Order 121, other orders limiting mass gatherings, and to encourage social distancing. The meeting was conducted in accordance with the provisions of G.S. 166A-19.24.

Commissioner Tucker was present in the Commission room, and Commissioners present via teleconference were Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, and Paul Powell.

Staff members present were Commission Counsel Ashley Snyder and Amanda Reeder; and Alex Burgos. Commission Counsel Amber Cronk May and Karlene Turrentine were present via WebEx.

The meeting was called to order at 9:08 a.m. with Second Vice Chair Choi presiding.

The Second Vice Chair read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearance of conflicts of interest.

APPROVAL OF MINUTES

The Second Vice Chair asked for any discussion, comments, or corrections concerning the minutes of the June 18, 2020 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Second Vice Chair, the minutes were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

FOLLOW UP MATTERS

Pesticide Board

02 NCAC 09L .0102, .0103, .0308, .0310, .0317,.0318, .0402 , .0502, .0503, .0504, .0505, .0509, .0516, .0519, .0520, .0522, .0523, .0524, .0525, .0526, .0527, .0602, .0603, .0701, .0702, .0703, .0705, .0707, .0810, .1001, .1002, .1003, .1005,

.1006, .1009, .1102, .1103, .1104, .1105, .1107, .1108, .1109, .1111, .1201, .1202, .1302, .1303, .1305, .1306, .1401, .1402, .1404, .1805, .1806, .1901, .1902, .1905, .1906, .1907, .1908, .1909, .1914, .2001, .2002, .2003, .2004, .2201, .2202, and .2203 - Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Upon the call of the Second Vice Chair, the Commission objected to 02 NCAC 09L .0101, .0515, .0529 by roll-call vote, ayes 8, noes 0 as follows: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

The Commission objected to 02 NCAC 09L .0101, .0515, and .0529 in accordance with G.S. 150B-21.10.

The Commission objected to Rule 02 NCAC 09L .0101 for lack of necessity. The language does not meet the definition of a “rule” because it does not set a standard of general applicability. Instead, it concerns internal agency management.

The Commission objected to Rule 02 NCAC 09L .0515 for ambiguity because the Rule does not specify which “applicants” or types of licensure it was regulating. It is also unclear whether an applicant can take the exam a total of three times or whether an applicant can take up to three exams each year until passage.

The Commission also objected to Rule 02 NCAC 09L .0529 for lack of necessity. The Rule states it applies “prior to January 1, 2017.” Since the contents of the Rule are no longer in effect, the Commission objected due to lack of necessity.

Commission for the Blind

10A NCAC 63C .0203, .0204, .0403, and .0601 - Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 7, noes 1 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, and Powell – 7. Voting in the negative: Tucker - 1.

Crime Victims Compensation Commission

14B NCAC 09 .0301, .0302, and .0305 – The agency is addressing the technical change requests from the June meeting. No action was required by the Commission.

14B NCAC 09 .0303 and .0304 - The agency is addressing the objections from the June meeting. No action was required by the Commission.

Private Protective Services Board

14B NCAC 16 .1001, .1002, .1003, .1207, .1304, and .1404 - The agency is addressing the objections from the June meeting. No action was required by the Commission.

Building Code Council

Residential Code, N1106.2 (R406.2); Energy Conservation Code, R202; and Energy Conservation Code R406.2. – The rules were withdrawn and returned to the agency at the request of the agency. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

Department of Commerce/ Division of Employment Security

Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes - 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

State Board of Elections

Upon the call of the Second Vice Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Code Officials Qualification Board

Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Alarm Systems Licensing Board

Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

State Board of Education 16 NCAC 06B

Upon the call of the Second Vice Chair, the period of review was extended for the rules by roll-call vote, ayes 6, noes 2 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Dunklin, and Powell – 6. Voting in the negative: Doran and Tucker - 2.

Tom Ziko, Interim General Counsel with the agency, addressed the Commission.

State Board of Education 16 NCAC 06C

Upon the call of the Second Vice Chair, the period of review was extended for the rules by roll-call vote, ayes 6, noes 2 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Dunklin, and Powell – 6. Voting in the negative: Doran and Tucker - 2.

State Board of Education 16 NCAC 06D,E,G

Upon the call of the Second Vice Chair, the period of review was extended for the rules by roll-call vote, ayes 6, noes 2 as follows:

g in the affirmative: Atkins, Bryan, Choi, Currin, Dunklin, and Powell – 6. Voting in the negative: Doran and Tucker - 2.

State Board of Education 16 NCAC 06H,K

Upon the call of the Second Vice Chair, the period of review was extended for the rules by roll-call vote, ayes 6, noes 2 as follows:

Voting in the affirmative: Atkins, Bryan, Choi, Currin, Dunklin, and Powell – 6. Voting in the negative: Doran and Tucker - 2.

Medical Board/Perfusion Advisory Committee

Upon the call of the Second Vice Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Board of Funeral Service

First Vice Chair Doran presided over the discussion and vote on the Board of Funeral Service rules.

Upon the call of the First Vice Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, Tucker, and Powell – 7. Voting in the negative: None.

Prior to the review of the rules from the Board of Funeral Service, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal representation to the Board.

The Commission received over 10 letters of objection to Rules 21 NCAC 34B .0313 and .0502. Pursuant to G.S. 150B-21.3, these rules are now subject to legislative review and a delayed effective date.

Board of Pharmacy

Second Vice Chair Choi resumed presiding over the meeting.

Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)

Department of Commerce/ Division of Employment Security

04 NCAC 24G .0102 and .0103 - Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Department of Public Safety

14B NCAC 05B .0401 - The Rule was withdrawn at the request of the agency. No action was required by the Commission.

Private Protective Services Board

14B NCAC 16 .0201, .0806, .0904, .1202, .1203 - Upon the call of the Second Vice Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Board of Chiropractic Examiners

First Vice Chair Doran presided over the remainder of the meeting.

21 NCAC 10 .0216 - Upon the call of the First Vice Chair, the rule was approved by roll call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, Tucker, and Powell. Voting in the negative: None.

Prior to the review of the rule from the Board of Chiropractic Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal representation to the Board.

Licensing Board for General Contractors

21 NCAC 12A .0607 - Upon the call of the Vice Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, Tucker, and Powell – 7. Voting in the negative: None.

Prior to the review of the rule from the Licensing Board for General Contractors, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal representation to the Board. Additionally, she is the rulemaking coordinator for the Board.

Board of Massage and Bodywork Therapy

21 NCAC 30 .0636 - Upon the call of the Vice Chair, the rule was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Tucker, and Powell – 8. Voting in the negative: None.

Board of Funeral Service

21 NCAC 34A .0128 - Upon the call of the Vice Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, Tucker, and Powell – 7. Voting in the negative: None.

Prior to the review of the rule from the North Carolina Board of Funeral Service, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal representation to the Board.

Onsite Wastewater Contractors and Inspectors Certification Board

21 NCAC 39 .0904 - Upon the call of the Vice Chair, the rule was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, Tucker, and Powell – 7. Voting in the negative: None.

Prior to the review of the rule from the Onsite Wastewater Contractors and Inspectors Certification Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides legal representation to the Board.

COMMISSION BUSINESS

The meeting adjourned at 9:59 a.m.

The next regularly scheduled meeting of the Commission is Thursday, August 20, 2020 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeff Hyde, Chair

RULES REVIEW COMMISSION

**Rules Review Commission Meeting July 16, 2020
Held Via WebEx**

Name	Agency
Catherine Lee	General Contractors
Charles Wilkins	Massage and Bodywork Therapy
Christina Waggett	Pesticide Board
Clint Pinyan	Pharmacy Board
Loretta Peace Bunch	Insurance
Lou Martin	State Board of Education
Cynthia Speight	DHHS
Denice Henderson	DHHS
Deanna Townsend	
Elizabeth Kirk	Occupational Therapy
Frank Weisner	
Jessica Macari	
Laura R	
Lindsey Wakely	Elections
Patrick Jones	Agriculture
Regina Adams	Commerce
Shelia Stephens	
Tom Ziko	State Board of Education
Tom Felling	NC DOJ
Jim Burnette	Pesticide Board
Pat Jones	Pesticide Board
Deanna Townsend-Smith	State Board of Education

**LIST OF APPROVED TEMPORARY RULES
July 16, 2020 Meeting**

COMMERCE - EMPLOYMENT SECURITY, DIVISION OF

<u>Notice that Employers Must Give to Employees as a Result ...</u>	04 NCAC 24G .0102
<u>Notice that Employers Must Give to Employees as a Result ...</u>	04 NCAC 24G .0102
<u>Temporary Waiver of Benefit Charges to Employer Accounts</u>	04 NCAC 24G .0103
<u>Temporary Waiver of Benefit Charges to Employer Accounts</u>	04 NCAC 24G .0103

PRIVATE PROTECTIVE SERVICES BOARD

<u>Application for Licenses and Trainee Permits</u>	14B NCAC 16 .0201
<u>Renewal of Armed Security Guard Firearm Registration Permit</u>	14B NCAC 16 .0806
<u>Renewal of a Firearms Trainer Certificate</u>	14B NCAC 16 .0904
<u>Required Continuing Education Hours</u>	14B NCAC 16 .1202
<u>Accreditation Standards</u>	14B NCAC 16 .1203

CHIROPRACTIC EXAMINERS, BOARD OF

<u>Waiver</u>	21 NCAC 10 .0216
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GENERAL CONTRACTORS, LICENSING BOARD FOR

<u>Waiver</u>	21 NCAC 12A .0607
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MESSAGE AND BODYWORK THERAPY, BOARD OF

<u>Waiver of Requirements During Disaster or Emergency</u>	21 NCAC 30 .0636
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FUNERAL SERVICE, BOARD OF

Waiver 21 NCAC 34A .0128

ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

Waiver 21 NCAC 39 .0904

LIST OF APPROVED PERMANENT RULES
July 16, 2020 Meeting

PESTICIDE BOARD

Duties (Continued) 02 NCAC 09L .0102
Assignment of Duties 02 NCAC 09L .0103
Registration for the Following Year 02 NCAC 09L .0308
ReRegistration 02 NCAC 09L .0310
Registration of Pesticides to Meet Special Local Needs 02 NCAC 09L .0317
Exemption of Agencies for Use of Pesticides in Emergencies 02 NCAC 09L .0318
Tolerances 02 NCAC 09L .0402
List of Restricted Use Pesticides 02 NCAC 09L .0502
Pesticide Applicators 02 NCAC 09L .0503
Definitions 02 NCAC 09L .0504
Classifications 02 NCAC 09L .0505
Consultant Education Requirements 02 NCAC 09L .0509
Continuances 02 NCAC 09L .0516
Certification 02 NCAC 09L .0519
Recertification Requirements 02 NCAC 09L .0520
Recertification Options 02 NCAC 09L .0522
Recertification in Additional Categories 02 NCAC 09L .0523
Expiration of Certification 02 NCAC 09L .0524
Recertification of Pesticide Dealers 02 NCAC 09L .0525
Pesticide Dealer Recertification Options 02 NCAC 09L .0526
Expiration of Pesticide Dealer Certification 02 NCAC 09L .0527
Disposal of Pesticides 02 NCAC 09L .0602
Disposal of Pesticide Containers 02 NCAC 09L .0603
Orchard Rats 02 NCAC 09L .0701
Restrictions Concerning Control of Orchard Rats 02 NCAC 09L .0702
Gulls 02 NCAC 09L .0703
Restrictions Concerning Control of Pigeons 02 NCAC 09L .0705
Eastern and Hairy-Tailed Moles 02 NCAC 09L .0707
Adoption by Reference 02 NCAC 09L .0810
Definitions 02 NCAC 09L .1001
General Requirements 02 NCAC 09L .1002
Drift Control 02 NCAC 09L .1003
Restricted Areas 02 NCAC 09L .1005
Exemptions 02 NCAC 09L .1006
Notification of Apiaries 02 NCAC 09L .1009
Definitions 02 NCAC 09L .1102
Certification Examination 02 NCAC 09L .1103
Single Purchase Emergency Certification Permit 02 NCAC 09L .1104

<u>Applications Under Supervision Of Certified Applicator</u>	02 NCAC 09L .1105
<u>Age Limitations</u>	02 NCAC 09L .1107
<u>Term of Certification; Recertification</u>	02 NCAC 09L .1108
<u>Certification of Private Applicators</u>	02 NCAC 09L .1109
<u>Certification/Recertification Fee</u>	02 NCAC 09L .1111
<u>Restrictions on Use and Storage</u>	02 NCAC 09L .1201
<u>Pesticide Dealer and Purchaser Responsibility</u>	02 NCAC 09L .1202
<u>General Requirements</u>	02 NCAC 09L .1302
<u>Exemptions</u>	02 NCAC 09L .1303
<u>Record Keeping Requirements</u>	02 NCAC 09L .1305
<u>Recipient Identification</u>	02 NCAC 09L .1306
<u>Definitions</u>	02 NCAC 09L .1401
<u>Record Keeping Requirements</u>	02 NCAC 09L .1402
<u>Drift Control</u>	02 NCAC 09L .1404
<u>Adoption by Reference</u>	02 NCAC 09L .1805
<u>Crop Advisor Exemption</u>	02 NCAC 09L .1806
<u>Definitions</u>	02 NCAC 09L .1901
<u>Storage Requirements for All Pesticides</u>	02 NCAC 09L .1902
<u>Storage Facility Requirements: RUP</u>	02 NCAC 09L .1905
<u>Large Storage Facility Requirements: RUP</u>	02 NCAC 09L .1906
<u>Purpose and Implementation of Contingency Plan</u>	02 NCAC 09L .1907
<u>Content of Contingency Plan</u>	02 NCAC 09L .1908
<u>Copies of Contingency Plan</u>	02 NCAC 09L .1909
<u>Effective Date of Storage Regulation</u>	02 NCAC 09L .1913
<u>Bulk Storage Requirements</u>	02 NCAC 09L .1914
<u>Definitions</u>	02 NCAC 09L .2001
<u>Application of Pesticides Through Irrigation Systems</u>	02 NCAC 09L .2002
<u>Prohibition of Connection to a Public Water System</u>	02 NCAC 09L .2003
<u>Inspection: Maintenance and Modification</u>	02 NCAC 09L .2004
<u>Definitions</u>	02 NCAC 09L .2201
<u>Pesticide Use Limitation Areas</u>	02 NCAC 09L .2202
<u>Pesticides with Additional Use Limitations</u>	02 NCAC 09L .2203

COMMERCE - EMPLOYMENT SECURITY, DIVISION OF

<u>Addresses for Filing Claims, Appeals, Exceptions, Request...</u>	04 NCAC 24A .0104
<u>Method of Payment</u>	04 NCAC 24A .0206
<u>Written Request Required</u>	04 NCAC 24A .0501
<u>Content of Request for Documents, Hearing Recordings and ...</u>	04 NCAC 24A .0502
<u>Indigency</u>	04 NCAC 24A .0503
<u>Invoice and Fees</u>	04 NCAC 24A .0504
<u>Official Forms</u>	04 NCAC 24A .0601
<u>Notice Requirement for Overpayment</u>	04 NCAC 24B .0601
<u>Administrative Proceedings</u>	04 NCAC 24C .0301
<u>General Format of Reports and Forms and Methods of Submis...</u>	04 NCAC 24D .0601
<u>Requirements for Transfer of Experience</u>	04 NCAC 24D .0702
<u>Late Notice of Transfer</u>	04 NCAC 24D .0703
<u>Special Tax Investigations</u>	04 NCAC 24D .0901
<u>Division's Obligations</u>	04 NCAC 24D .1002

ELECTIONS, STATE BOARD OF

Expenditures for Residential Real Property 08 NCAC 21 .0301

BLIND, COMMISSION FOR THE

Suspension of Termination of License and Removal from Bus... 10A NCAC 63C .0203

Filling of Vacancies 10A NCAC 63C .0204

Procedure 10A NCAC 63C .0403

General Responsibilities 10A NCAC 63C .0601

CODE OFFICIALS QUALIFICATION BOARD

Nature of Probationary Certificate 11 NCAC 08 .0602

Nature of Standard Certificate 11 NCAC 08 .0702

Residential Changeout Inspector 11 NCAC 08 .0734

ALARM SYSTEMS LICENSING BOARD

Application for License 14B NCAC 17 .0201

Renewal or Reinstatement of License 14B NCAC 17 .0204

Application for Registration 14B NCAC 17 .0301

MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE

Practice During a Disaster 21 NCAC 32V .0111

FUNERAL SERVICE, BOARD OF

Petition for Predetermination 21 NCAC 34A .0204

Procedures for Provisional Licensure 21 NCAC 34B .0313

Application Form and Equivalent Examinations for Reciproc... 21 NCAC 34B .0502

PHARMACY, BOARD OF

Right To Hearing 21 NCAC 46 .2001

Request for Hearing 21 NCAC 46 .2004

Granting or Denying Hearing Request 21 NCAC 46 .2005

Notice of Hearing 21 NCAC 46 .2006

Who Shall Hear Contested Cases 21 NCAC 46 .2007

Informal Procedures 21 NCAC 46 .2008

Petition for Intervention 21 NCAC 46 .2009

Types of Intervention 21 NCAC 46 .2010

Disqualification of Board Members 21 NCAC 46 .2011

Subpoenas 21 NCAC 46 .2013

Witnesses 21 NCAC 46 .2014

Final Decision 21 NCAC 46 .2015

Proposals for Decisions 21 NCAC 46 .2016

Reapplications, Reinstatement, Rehearing and Reconsideration 21 NCAC 46 .2017

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
20	BOE	01394	6/19/2020	Citizens to Elect Rena Turner	v.	NC State Board of Elections	Sutton

CONTESTED CASE DECISIONS

				Committee Rena W Turner			
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

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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