

NORTH CAROLINA REGISTER

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September 1, 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
35:03	08/03/20	07/13/20	08/18/20	10/02/20	10/20/20	11/19/20	12/01/20	04/30/21
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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
35:06	09/15/20	08/24/20	09/30/20	11/16/20	11/20/20	12/17/20	01/01/21	06/12/21
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

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

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.



State of North Carolina

ROY COOPER
GOVERNOR

July 28, 2020

EXECUTIVE ORDER NO. 153

RESTRICTING LATE NIGHT SERVICE OF ALCOHOLIC BEVERAGES

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 146-152; and

WHEREAS, more than 116,000 people in North Carolina have had laboratory-confirmed cases of COVID-19, and over 1,800 people in North Carolina have died from COVID-19; and

The Need to Take Additional COVID-19 Measures

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 Nos. 147 and 151 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 elevated 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, Executive Order No. 151 continued the measures of Executive Order Nos. 141 and 147 in place until August 7, 2020 at 5:00 pm; and

WHEREAS, while taking a phased approach to re-opening restaurants and other businesses, the undersigned cautioned that with an increase in the spread of COVID-19, it could be necessary to reinstate certain restrictions eased by Executive Order No. 141 so as to protect the health, safety, and welfare of North Carolinians; and

WHEREAS, North Carolina's daily case counts of COVID-19 have been increasing and remain at a high level, the percentage of COVID-19 tests that are positive remains elevated, emergency department visits for COVID-19-like illnesses are increasing, and hospitalizations for COVID-19 have increased; and

WHEREAS, these trends, and the continued high rates of COVID-19 across North Carolina, require the undersigned to take additional measures to slow the spread of the virus during the pandemic; and

Risk Factors for COVID-19 Infection

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings that are indoors, where air does not circulate freely and 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, the risk of contracting and transmitting COVID-19 is higher in settings where consistently wearing face coverings is difficult; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings where people have higher respiratory effort from actions like talking loudly, yelling, singing, and laughing, all of which cause more propulsion of respiratory droplets; and

WHEREAS, certain types of businesses 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 that patrons stay in the establishment; and

WHEREAS, to lower the risk of contracting and transmitting COVID-19, the undersigned has imposed restrictions on businesses that limit the number of contacts between people,

particularly in settings that are indoors or, involve people being in close physical proximity for an extended period of time; and

COVID-19 Transmission Risks Arising from Alcohol Consumption

WHEREAS, some restaurants stay open until early morning hours with limited food service but with continued consumption of alcohol, and patrons frequenting those businesses during late hours often do not maintain social distancing; and

WHEREAS, the Center for Disease Control and Prevention (“CDC”) and the North Carolina Department of Health and Human Services (“DHHS”) have stated that the consumption of alcohol lowers inhibitions and makes people more likely to engage in behaviors that increase the risk of spread of COVID-19; and

WHEREAS, the consumption of alcohol makes people less likely to practice social distancing or wear face coverings as required by Executive Order No. 147 and other Orders designed to stop the spread of COVID-19; and

WHEREAS, people who are drinking beverages cannot consistently wear face coverings; and

WHEREAS, when people gather to consume alcohol in public, they often speak loudly, laugh, yell, or sing, spreading respiratory droplets that contain the COVID-19 virus; and

WHEREAS, national and international outbreaks of COVID-19 have been linked to places like bars, clubs, and restaurants where people consume alcohol in close proximity to one another, and to super-spreading events in which a single person infects a large number of people; and

WHEREAS, data reveals that there is an increase in the number of younger individuals who are being infected by COVID-19; and

WHEREAS, though bars in North Carolina remain closed, the undersigned is concerned about the role that alcohol consumption in other businesses serving food and drink late at night plays in promoting the spread of COVID-19 for the reasons mentioned above; and

WHEREAS, some, but not all, county and municipal governments have imposed restrictions on the sale of alcohol as part of their efforts to prevent the spread of COVID-19; and

WHEREAS, the undersigned, in consultation with the Secretary of Health and Human Services, the Secretary of the Department of Public Safety, and the Director of the Division of Emergency Management, has determined that limitations on the sale of alcohol in businesses and other establishments that serve alcohol to the public for on-premises consumption is necessary to counter the spread of COVID-19; 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, 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-19.30(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 regarding sale of alcoholic beverages for on-premises consumption 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)(3) authorizes the undersigned to restrict the possession, transportation, sale, purchase, and consumption of alcoholic beverages; 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, **IT IS ORDERED**:

Section 1. Definitions

- A. “Bars” means establishments that are not eating establishments or restaurants as defined in N.C. Gen. Stat. §§ 18B-1000(2) and 18B-1000(6), that have a permit to sell alcoholic beverages for onsite consumption under N.C. Gen. Stat. § 18B-1001, and that are principally engaged in the business of selling alcoholic beverages for onsite consumption.
- B. “Breweries, Wineries and Distilleries” are those establishments which produce alcoholic beverages pursuant to a commercial permit issued by the Alcoholic Beverage Commission (N.C. Gen. Stat. §§ 18B-1101 to 18B-1105) and are authorized by such permit to also have retail sales to consumers.
- C. “Restaurants” means permitted food establishments, under N.C. Gen. Stat. § 130A-248, and other establishments that both prepare and serve food. This includes, but is not limited to, restaurants, cafeterias, food halls, dining halls, food courts, and food kiosks. This includes not only free-standing locations but also locations within other businesses or facilities, including, but not limited to airports, shopping centers, educational institutions, or private or members-only clubs where food and beverages are permitted to be consumed on premises.

Section 2. Temporary Restrictions Regarding Alcoholic Beverage Sales for Onsite Consumption

For the reasons and pursuant to the authority as set forth above:

- A. To control the spread of COVID-19 and protect lives during the State of Emergency, this Section lists restrictions upon the sale, purchase, and service of alcoholic beverages, along with restrictions on business establishments and other places to or from which people may travel or at which they may congregate. Restaurants, breweries, wineries, distilleries, and any other businesses or organizations that (1) are not currently required to close under existing Executive Orders issued to address this State of Emergency and that (2) sell or serve alcoholic beverages for onsite consumption are prohibited from operating unless they follow the restrictions stated in this Section.
- B. Restaurants, breweries, wineries, distilleries, and any other businesses or organizations that (1) are not currently required to close under existing Executive Orders issued to address this State of Emergency and that (2) sell or serve alcoholic beverages for onsite consumption shall cease the sale and service of alcoholic beverages for onsite consumption between 11:00 pm and 7:00 am. The agents or employees of establishments that are permitted to sell or serve alcoholic beverages for onsite consumption shall likewise not sell or serve alcoholic beverages for onsite consumption between 11:00 pm and 7:00 am.
- C. Restaurants, breweries, wineries, distilleries, and any other businesses or organizations may not provide off-site table service, catering service or bartending service for the sale and consumption of alcoholic beverages between 11:00 pm and 7:00 am for the purposes of consumption at the premises where the alcoholic beverage is being served.
- D. Restaurants, breweries, wineries, distilleries, and any other businesses or organizations otherwise authorized to remain open after 11:00 pm under existing law may continue to do so under this Executive Order so long as there is no sale or service of alcohol for onsite consumption.

- E. Nothing in this Executive Order shall be interpreted to change the laws regarding the hours of sales for alcoholic beverages for off-premises consumption or authorize sale, service, possession, transportation, or consumption of alcoholic beverages at times or places where not previously allowed before this Executive Order was issued. Nothing in this Executive Order shall be interpreted to impact the operations of bars, which remain closed.
- F. Restaurants, breweries, wineries, distilleries, and any other businesses or organizations that serve food and beverages remain subject to all requirements and guidance set forth in Executive Order Nos. 141, 147, and 151, including but not limited to the requirements to ensure social distancing and ensure sanitation in Executive Order No. 141 Section 6(C).

Section 3. No Private Right of Action.

This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any emergency management worker (as defined in N.C. Gen. Stat. § 166A-19.60) or any other person.

Section 4. Effect on local emergency management orders.

- A. The restrictions imposed in this Executive Order are minimum requirements, and local governments can impose greater restrictions. The undersigned recognizes that although COVID-19 has had a heavy impact upon all parts of North Carolina, the impact of COVID-19 has been and will likely continue to be different in different parts of North Carolina. There will also be differences in different parts of North Carolina in the number and nature of restaurants and how restaurants may serve alcohol, the subject-matter of this Executive Order. As such, the undersigned acknowledges that counties and cities may deem it necessary to adopt ordinances and issue state of emergency declarations which impose restrictions or prohibitions on the sale of alcoholic beverages to a greater degree than in this Executive Order, to the extent authorized under North Carolina law. To that end, nothing herein, except where specifically stated below in Subsections B of this Section, is intended to limit or prohibit counties and cities in North Carolina from enacting ordinances and issuing state of emergency declarations which impose greater restrictions or prohibitions on the sale or consumption of alcoholic beverages to the extent authorized under North Carolina law.
- B. Local governments cannot set more permissive policies concerning the sale of alcoholic beverages for onsite consumption during the hours specified herein. Notwithstanding Subsection A above, the undersigned amends all local prohibitions and restrictions imposed under any local state of emergency declarations to remove any language that permits the sale of alcoholic beverages for onsite consumption after 11:00 pm or before 7:00 am or otherwise directly conflicts with this Executive Order. The undersigned also hereby prohibits during the pendency of this Executive Order the adoption of any prohibitions and restrictions under any local state of emergency declarations that permit the sale of alcoholic beverages for onsite consumption after 11:00 pm or before 7:00 am or otherwise directly conflicts with this Executive Order.

Section 5. Savings Clause.

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

Section 6. 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 7. Enforcement.

- A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.
- B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.
- C. In addition to being enforced by state and local law enforcement officers, this Executive Order is enforceable by the Division of Alcohol Law Enforcement of the North Carolina Department of Public Safety as set forth under N.C. Gen. Stat. § 18B-500. Pursuant to N.C. Gen. Stat. § 18B-500(b1) and for the reasons set forth above, the undersigned determines that enforcement of this Executive Order is needed to protect people because of the disaster and State of Emergency from the spread of COVID-19, and the undersigned directs the Division of Alcohol Law Enforcement to take enforcement action as necessary against entities acting in violation of this Executive Order.
- D. Establishments under the jurisdiction of the Alcoholic Beverage Control Commission that are determined to have violated this Executive Order may be subject to sanction pursuant to N.C. Gen. Stat. § 18B-203(a)(12).

Section 8. Effective Date.

This Executive Order is effective at 11:00 pm on July 31, 2020. This Executive Order shall remain in effect through 11:00 pm on August 31, 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.

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 28th 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 31, 2020

EXECUTIVE ORDER NO. 154

**DECLARATION OF A STATE OF EMERGENCY BY THE GOVERNOR OF THE
STATE OF NORTH CAROLINA FOR HURRICANE ISAIAS**

WHEREAS, the National Hurricane Center (NHC) anticipates Hurricane Isaias (“Hurricane”) may make landfall near or in the State of North Carolina; and

WHEREAS, the Hurricane will bring significant impacts to public and private property and may seriously disrupt essential utility services and systems; and

WHEREAS, the impact from Hurricane Isaias constitutes a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

WHEREAS, certain measures are necessary to ensure the protection and safety of North Carolina residents and coordinate the emergency response among state and local entities and officials; and

WHEREAS, the need to prepare for and respond to a potential weather event like Hurricane Isaias in the midst of the COVID-19 pandemic requires increased planning and preparation in order to protect public health and public safety of people in North Carolina; and

WHEREAS, N.C. Gen. Stat. § 166A-19.1(4) provides that it is the responsibility of the undersigned, state agencies, and local governments to provide for “cooperation and coordination of activities relating to emergency mitigation preparedness, response, and recovery among agencies and officials of this State and with similar agencies and officials of other states and with other private and quasi-official organizations”; and

WHEREAS, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the Governor to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, the impacts from the Hurricane may result in extensive damage to include widespread power outages throughout the State which will require the transportation of vehicles bearing equipment and supplies for utility restoration and debris removal to be moved through North Carolina on the interstate and intrastate highways; and

WHEREAS, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, and medical supplies to residential and commercial establishments is essential before, during, and after the Hurricane and any interruption in the delivery of those commodities threatens the public welfare; and

WHEREAS, the prompt restoration of utility services is essential to the safety and well-being of the State’s residents; and

WHEREAS, under N.C. Gen. Stat. § 166A-19.30(b)(3) the undersigned, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, under 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 which restricts the immediate relief of human suffering; and

WHEREAS, the undersigned has found that residents may suffer losses and further widespread damage within the meaning of N.C. Gen. Stat. § 166A-19.3(3) and N.C. Gen. Stat. § 166A-19.21(b); and

WHEREAS, with the concurrence of the Council of State, the undersigned hereby waives the registration requirements of N.C. Gen. Stat. §§ 20-86.1 and 20-382, the fuel tax requirements of N.C. Gen. Stat. § 105-449.47, and the size and weight requirements of N.C. Gen. Stat. §§ 20-116, 20-118 and 20-119 that would apply to vehicles carrying emergency relief supplies or services or to assist with the restoration of utility services; and

WHEREAS, 49 C.F.R. § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 C.F.R. Parts 390-399 for up to thirty (30) days if the Governor determines that an emergency condition exists; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70(g), upon the recommendation of the North Carolina Commissioner of Agriculture and the existence of an imminent threat of severe economic loss of livestock, poultry or crops ready to be harvested, the Governor shall direct the North Carolina Department of Public Safety ("DPS") to temporarily suspend weighing vehicles used to transport livestock, poultry or crops including timber ready to be harvested; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C. Gen. Stat. § 20-381 should be waived for (1) persons transporting essential fuels, food, water, medical supplies, feed for livestock and poultry, (2) persons transporting livestock, poultry, and crops including timber ready to be harvested and (3) vehicles used in the restoration of utility services; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C. Gen. Stat. § 20-381 should be waived for (1) persons transporting essential fuels, food, water, medical supplies, feed for livestock and poultry, (2) persons transporting livestock, poultry, and crops ready to be harvested and (3) vehicles used in the restoration of utility services.

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.

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in the State of North Carolina.

The emergency area, as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b), is the State of North Carolina ("the Emergency Area").

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan ("the Plan").

Section 3.

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety, or his designee, all power and authority granted to and required of me by Article 1A of

Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Hooks, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

Section 5.

I further direct Secretary Hooks or his designee to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

Section 6.

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.

Section 7.

DPS, in conjunction with DOT, shall waive certain size and weight restrictions and penalties arising under N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119, certain registration requirements and penalties arising under N.C. Gen. Stat. §§ 20-86.1 and 20-382, and certain registration and filing requirements and penalties arising under N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49 for vehicles used for or transporting equipment and supplies for the restoration of utility services, and vehicles carrying essentials and equipment for any debris removal in support of emergency relief efforts or services pursuant to N.C. Gen. Stat. § 20-118.1 in the Emergency Area. Furthermore, pursuant to N.C. Gen. Stat. § 20-118.1, DPS shall temporarily suspend weighing vehicles used to transport livestock, poultry, or crops including timber ready to be harvested and feed to livestock and poultry in the Emergency Area.

Section 8.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceed twelve (12) feet in width and the total overall vehicle combination's length exceeds seventy-five (75) feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having (i) a yellow banner on the front and rear that is seven (7) feet long and eighteen (18) inches wide and bears the legend "Oversized Load" in ten (10) inch black letters, 1.5 inches wide and (ii) red flags measuring eighteen (18) inches square on all sides at the widest point of the load. When operating between sunset and sunrise, a certified escort shall be required for loads exceeding eight (8) feet six (6) inches in width.

Section 9.

Vehicles referenced under Sections 7 and 8 of this Executive Order shall be exempt from the following registration requirements:

- a. The requirement to obtain a temporary trip permit and payment of the associated \$50.00 fee listed in N.C. Gen. Stat. § 105-449.49.
- b. The requirement of filing a quarterly fuel tax return as the exemption in N.C. Gen. Stat. § 105-449.45(b)(1) applies.
- c. The registration requirements under N.C. Gen. Stat. §§ 20-382.1 and 20-382 concerning interstate for-hire authority; however, vehicles shall maintain the required limits of insurance as required.
- d. Non-participants in North Carolina's International Registration Plan and International Fuel Tax Agreement will be permitted to enter North Carolina in accordance with the exemptions identified by this Executive Order.

Section 10.

- a. The size and weight exemption for vehicles will be allowed on all DOT designated routes, except those routes designated as light traffic roads under N.C. Gen. Stat. § 20-118.
- b. This order shall not be in effect on bridges posted pursuant to N.C. Gen. Stat. § 136-72.

Section 11.

The waiver of regulations under Title 49 of the Code of Federal Regulations does not apply to the Commercial Drivers' License and Insurance Requirements. This waiver shall be in effect for thirty (30) days or the duration of the emergency, whichever is less.

Section 12.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 6 through 11 of this Executive Order in a manner that does not endanger North Carolina motorists.

Section 13.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are being used for bearing equipment and supplies for utility restoration, debris removal, carrying essentials in commerce, in the State of North Carolina.

Section 14.

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any additional limitations on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C. Gen. Stat. § 166A-19.30(c) beyond the restrictions in Executive Order No. 153 issued on July 28, 2020 and effective July 31, 2020.

Section 15.

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38 in the Emergency Area.

Section 16.

The gasoline truck tank and vapor system requirements of 15A N.C. Admin. Code 02D.0932(c) shall be waived during this time if Method 27 is followed.

Section 17.

Sections 1 through 5 and Sections 14 through 16 is effective immediately and shall remain in effect until rescinded. Sections 6 through 13 are effective for thirty (30) days unless extended by another 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 31st 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

August 5, 2020

EXECUTIVE ORDER NO. 155

EXTENSION OF PHASE 2 MEASURES
TO CONTROL PUBLIC HEALTH RISKS AND
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 146-153; and

WHEREAS, more than one hundred twenty-nine thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and over two thousand 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 continue to express concerns that unless the spread of COVID-19 is limited, existing health care facilities and resources may be insufficient to care for those who become sick; and

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

WHEREAS, the undersigned has taken a series of measures to limit the spread of COVID-19, including requiring safety measures in certain business settings, limiting mass gatherings, closing certain types of businesses and operations, requiring face coverings in many places where people may travel or congregate, and limiting alcoholic beverage sales for onsite consumption; and

WHEREAS, the undersigned has also urged that all people in North Carolina follow social distancing recommendations, including that people should: (i) wear a cloth covering over the nose and mouth, (ii) wait six (6) feet apart and avoid close contact, and (iii) wash hands often or use hand sanitizer; and

WHEREAS, the undersigned and the Secretary of Health and Human Services have also directed hospitals, physicians’ practices, and other health care entities to undertake significant actions as part of North Carolina’s emergency response to address the COVID-19 pandemic; and

WHEREAS, North Carolina’s daily case counts of COVID-19, the percentage of COVID-19 tests that are positive, emergency department visits for COVID-19-like illnesses, and hospitalizations for COVID-19 are no longer increasing, but remain at a high level; and

WHEREAS, to slow the spread of COVID-19 and reduce COVID-19 morbidity and mortality, it remains necessary to use a phased approach to reduce restrictions on businesses and activities, with some businesses and activities that pose an increased risk for COVID-19 spread remaining closed, since the loosening of each restriction on businesses and activities adds incremental risk and thereby increases the aggregate risk of spread of COVID-19; and

WHEREAS, in this phased approach, the undersigned must factor into the analysis the risk from all activities in and affecting North Carolina, not only activities covered by the Executive Orders; and

WHEREAS, in August 2020, many colleges, universities and K-12 schools, both public and private, will reopen for in-person instruction; and

WHEREAS, the North Carolina Department of Health and Human Services (“NCDHHS”) has issued required COVID-19 guidance for K-12 public schools that includes mandatory safety measures that are intended to prioritize the health and safety of students while also recognizing the essential role that schools play for children, parents, and teachers; and

WHEREAS, the required COVID-19 guidance, which has also been approved by the North Carolina State Board of Education, contains various measures intended to protect the health and safety of students, parents, and teachers, including but not limited to requiring face coverings in most contexts, limiting density in classrooms, and enabling public school units to elect full remote learning at their option; and

WHEREAS, NCDHHS has also issued guidance for institutions of higher education that includes measures to protect the health and safety of students, staff, and professors, along with measures to promote behaviors that will reduce the spread of COVID-19 and create a safer environment in residential housing and classrooms; and

WHEREAS, there are many public health benefits, economic benefits, and societal benefits to reopening K-12 schools, colleges, and universities for in-person instruction, but these in-person gatherings of students, staff, teachers, and professors will increase the risk of COVID-19 spread, even after all health and safety measures are put in place; and

WHEREAS, to balance out this additional risk, it is necessary to continue to restrict certain kinds of businesses and operations, so that North Carolina can continue to have a safe margin for

North Carolina's health care facilities to have sufficient capacity and resources to care for those who become sick; and

WHEREAS, these trends and considerations require the undersigned to continue the measures of Executive Order No. 141, as amended by Executive Order Nos. 147, 151, and 152, to slow the spread of this virus during the pandemic; and

WHEREAS, should there be an increase in the percentage of emergency department visits that are due to COVID-19 like illness, an increase in the daily number of laboratory-confirmed cases, an increase in the positive tests as a percent of total tests, or an increase in COVID-19-related hospitalizations that threaten the ability of the health care system to properly respond, or should the State's ability to conduct testing and tracing be compromised, it may be necessary to reinstate certain restrictions so as to protect the health, safety, and welfare of North Carolinians; 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-19.23 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

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, 147, and 151, **IT IS ORDERED**:

Section I. Extension and Amendment of Phase 2 Order.

Executive Order No. 141 shall remain in effect, as amended, until 5:00 pm on September 11, 2020. The effective date provisions of Executive Order Nos. 141, 147, and 151 are amended to have those orders continue in effect through the above-listed time and date.

Section II. Technical Amendment to Remove Reference to a Previous Expiration Date.

Section 6(F)(3) of Executive Order No. 141 is amended to read as follows:

3. **Relationship to Other Executive Orders.** Subdivisions 1 and 2(a) of this Subsection completely replace Subsections (C) and (D) of Section 2 of Executive Order No. 130. Subsections 2(A)-2(B) and 2(E)-(H) of Executive Order No. 130 and Section 3 of Executive Order No. 139 shall continue in effect as specified in Executive Order No. 152 and any subsequent executive orders.

Section III. Update to Provision on Student Nutrition.

Section 10(A) of Executive Order No. 141 is amended to read as follows:

- A. **School and Health Officials to Continue Efforts.** NCDHHS, the North Carolina Department of Public Instruction, and the North Carolina State Board of Education are directed to continue to work together during this State of Emergency to maintain and implement measures to provide for the health, nutrition, safety, educational needs, and well-being of children being taught by remote learning.

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 September 11, 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. 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 VI. Effective Date.

This Executive Order is effective at 5:00 pm on August 7, 2020. This Executive Order shall remain in effect through 5:00 pm on September 11, 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.

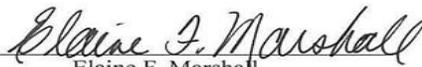
Notwithstanding any provision of this Section and Section 16 of Executive Order No. 141, any statewide standing order for COVID-19 testing issued by the State Health Director under Section 9.5 of Executive Order No. 141 (as added by Section III of Executive Order No. 147) shall remain in effect for the 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 5th day of August in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER RESOURCES

NPDES GENERAL PERMIT NO. NCG510000
Groundwater Remediation

TO DISCHARGE REMEDIATED GROUNDWATER AND SIMILAR WASTEWATERS CONTAMINATED WITH
PETROLEUM PRODUCTS UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of North Carolina General Statute 143-215.1, other lawful standards and regulations promulgated and adopted by the North Carolina Environmental Management Commission, and the Federal Water Pollution Control Act, as amended, this permit is hereby issued to all owners or operators, hereafter permittees, which are covered by this permit as evidenced by receipt of a Certificate of Coverage from the Environmental Management Commission to allow the discharge of treated wastewater from the remediation of groundwater contamination resulting from gasoline, kerosene, diesel, fuel oil or jet fuel in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof.

This permit shall become effective **October 1, 2020**.

This permit shall expire at midnight on **September 30, 2025**.

Signed this day

S. Daniel Smith, Director
Division of Water Resources
By Authority of the Environmental Management Commission

PART I. MONITORING, CONTROLS, AND LIMITATIONS FOR PERMITTED DISCHARGES

A. (1). EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS [15A NCAC 02B .0400 et seq., 02B .0500 et seq.]

During the period beginning on the effective date of the permit and lasting until expiration, the Permittee is authorized to discharge **less than (<)** **0.05 MGD** treated wastewater from a **gasoline contaminated groundwater** remediation system to the receiving waters. Such discharges shall be limited, monitored and reported¹ by the permittee as specified below:

EFFLUENT CHARACTERISTICS [PARAMETER CODES]		EFFLUENT LIMITS	MONITORING REQUIREMENTS ¹		
			Measurement Frequency	Sample Type	Sample Location
Flow ^{3,4} (MGD)	50050	0.05 MGD ^{3,4}	Monthly	Meter	Effluent
Total Suspended Solids (TSS) (mg/L)	CO530	30.0 mg/L (Exception: 10.0 mg/L Trout Class)	Quarterly	Grab	Effluent
pH (su)	00400	6.0 ≤ pH ≤ 9.0	Quarterly	Grab	Effluent
Benzene (µg/L)	34030	51 µg/L (Exception: 1.19 µg/L WS Class)	Quarterly	Grab	Effluent
Toluene (µg/L)	34010	11 µg/L (Exception: 0.36 µg/L Trout, 370 µg/L SB/SC Class)	Quarterly	Grab	Effluent
Ethylbenzene (µg/L)	34371	97 µg/L (Exception: 25 µg/L SB/SC Class)	Quarterly	Grab	Effluent
Total Xylenes (µg/L)	81551	670 µg/L (Exception: 450 µg/L Trout Class)	Quarterly	Grab	Effluent
Methyl Tert-Butyl Ether (MTBE) (µg/L)	22417	1500 µg/L (Exception: 19 µg/L WS Class)	Quarterly	Grab	Effluent
Total Lead (µg/L)	01051	3 µg/L (Exception: 8.1 µg/L SB/SC Class)	Quarterly	Grab	Effluent
Total Hardness ⁵ (as CaCO ₃)	00900	Monitor & Report ⁵	Quarterly	Grab	Effluent
1,2 Dichloroethane (1,2 DCA) (µg/L)	32103	37 µg/L (Exception: 0.38 µg/L WS Class)	Quarterly	Grab	Effluent

Footnotes:

- 1 Submittal of monthly Discharge Monitoring Reports (DMRs) shall not be required except upon demand by the Division. Even though the submittal of the monthly monitoring reports to the Division is not required, all monitoring requirements must be met. All violations must be reported to the appropriate regional office. This section supersedes the requirement for submitting monthly Discharge Monitoring Reports (DMRs) specified in Part II, Section D (2) of this permit. The data will be maintained on site for a period of three years.
- 2 The Daily Maximum limits apply to all waters with stream class/parameter exceptions noted above. Refer to the Cover Letter for receiving stream class. Waters classified as HQW/ORW are excluded from coverage under this General Permit.
- 3 Flow may be monitored by a flow meter on the effluent side of the system.
- 4 See Part I, Section A. (4.) for monitoring of gasoline contaminated groundwater remediation systems with a flow greater than or equal to (≥) 0.05 MGD and less than (<) 0.25 MGD. Flows greater than or equal to (≥) 0.25 MGD are excluded from coverage under this General Permit.
- 5 For freshwater discharges, hardness sampling must be performed in conjunction with lead sampling.

Conditions:

- THERE SHALL BE NO DISCHARGE OF FLOATING SOLIDS OR FOAM IN OTHER THAN TRACE AMOUNTS.

PART 1. MONITORING, CONTROLS, AND LIMITATIONS FOR PERMITTED DISCHARGES

A. (2). EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS [15A NCAC 02B .0400 et seq., 02B .0500 et seq.]

During the period beginning on the effective date of the permit and lasting until expiration, the Permittee is authorized to discharge **less than (<) 0.05 MGD** treated wastewater from a **diesel fuel, aviation fuel, kerosene, or fuel oil contaminated groundwater** remediation system to the receiving waters. Such discharges shall be limited, monitored and reported¹ by the permittee as specified below:

EFFLUENT CHARACTERISTICS [PARAMETER CODES]		EFFLUENT LIMITS	MONITORING REQUIREMENT ¹		
			Measurement Frequency	Sample Type	Sample Location
Flow ^{3,4} (MGD)	50050	0.05 MGD ^{3,4}	Monthly	Meter	Effluent
Total Suspended Solids (TSS) (mg/L)	00530	30.0 mg/L (Exception: 10.0 mg/L Trout Class)	Quarterly	Grab	Effluent
pH (su)	00400	6.0 ≤ pH ≤ 9.0	Quarterly	Grab	Effluent
Oil and Grease ⁵ (mg/L) [EPA Method 1664 SGT-HEM]	00556	Monitor & Report ⁵	Quarterly	Grab	Effluent
Naphthalene (µg/L)	34696	12 µg/L (Exception: 52 µg/L SB/SC Class)	Quarterly	Grab	Effluent
Total Recoverable Phenolics (µg/L)	32730	300 µg/L	Quarterly	Grab	Effluent

Footnotes:

- 1 Submittal of monthly Discharge Monitoring Reports (DMRs) shall not be required except upon demand by the Division. Even though the submittal of the monthly monitoring reports to the Division is not required, all monitoring requirements must be met. All violations must be reported to the appropriate regional office. This section supersedes the requirement for submitting monthly Discharge Monitoring Reports (DMRs) specified in Part II, Section D (2) of this permit. The data will be maintained on site for a period of three years.
- 2 The Daily Maximum limits apply to all waters with stream class/parameter exceptions noted above. Refer to the Cover Letter for receiving stream class. Waters classified as HQW/ORW are excluded from coverage under this General Permit.
- 3 Flow may be monitored by a flow meter on the effluent side of the system.
- 4 See Part I, Section A. (5.) for monitoring of diesel fuel, aviation fuel, kerosene, or fuel oil contaminated groundwater remediation systems with a flow greater than or equal to (≥) 0.05 MGD and less than (<) 0.25 MGD. Flows greater than or equal to (≥) 0.25 MGD are excluded from coverage under this General Permit.
- 5 Monitoring for Oil and Grease is only required if free product is present at the site. The grab sample for oil and grease uses test EPA method 1664 (SGT-HEM) [*silica gel transfer-hexane extraction method*] with results in mg/L.

Conditions:

- THERE SHALL BE NO DISCHARGE OF FLOATING SOLIDS OR FOAM IN OTHER THAN TRACE AMOUNTS.

PART 1. MONITORING, CONTROLS, AND LIMITATIONS FOR PERMITTED DISCHARGES

A. (3). EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS [15A NCAC 02B .0400 et seq., 02B .0500 et seq.]

During the period beginning on the effective date of the permit and lasting until expiration, the Permittee is authorized to discharge **less than (<) 0.05 MGD** treated wastewater from a **combined gasoline and diesel fuel, aviation fuel, kerosene, or fuel oil contaminated groundwater** remediation system to the receiving waters. Such discharges shall be limited, monitored and reported¹ by the permittee as specified below:

EFFLUENT CHARACTERISTICS [PARAMETER CODES]		EFFLUENT LIMITS		MONITORING REQUIREMENTS ¹		
		Daily Maximum ²		Measurement Frequency	Sample Type	Sample Location
Flow ^{3,4} (MGD)	50050	0.05 MGD ^{3,4}		Monthly	Meter	Effluent
Total Suspended Solids (TSS) (mg/L)	CO530	30.0 mg/L (Exception: 10.0 mg/L Trout Class)		Quarterly	Grab	Effluent
pH (su)	00400	6.0 ≤ pH ≤ 9.0		Quarterly	Grab	Effluent
Benzene (µg/L)	34030	51 µg/L (Exception: 1.19 µg/L WS Class)		Quarterly	Grab	Effluent
Toluene (µg/L)	34010	11 µg/L (Exception: 0.36 µg/L Trout, 370 µg/L SB/SC Class)		Quarterly	Grab	Effluent
Ethylbenzene (µg/L)	34371	97 µg/L (Exception: 25 µg/L SB/SC Class)		Quarterly	Grab	Effluent
Total Xylenes (µg/L)	81551	670 µg/L (Exception: 450 µg/L Trout Class)		Quarterly	Grab	Effluent
Methyl Tert-Butyl Ether (MTBE) (µg/L)	22417	1500 µg/L (Exception: 19 µg/L WS Class)		Quarterly	Grab	Effluent
Total Lead (µg/L)	01051	3 µg/L (Exception: 8.1 µg/L SB/SC Class)		Quarterly	Grab	Effluent
Total Hardness ⁵ (as CaCO ₃)	00900	Monitor & Report ⁵		Quarterly	Grab	Effluent
1,2-Dichloroethane (1,2-DCA) (µg/L)	32103	37 µg/L (Exception: 0.38 µg/L WS Class)		Quarterly	Grab	Effluent
Oil and Grease ⁶ (mg/L) [EPA Method 1664 SGT-HEM]	00556	Monitor & Report ⁶		Quarterly	Grab	Effluent
Naphthalene (µg/L)	34696	12 µg/L (Exception: 52 µg/L SB/SC Class)		Quarterly	Grab	Effluent
Total Recoverable Phenolics (µg/L)	32730	300 µg/L		Quarterly	Grab	Effluent

Footnotes:

- 1 Submittal of monthly Discharge Monitoring Reports (DMRs) shall not be required except upon demand by the Division. Even though the **submittal** of the monthly monitoring reports to the Division is not required, all monitoring requirements must be met. **All violations must be reported to the appropriate regional office.** This section supersedes the requirement for submitting monthly Discharge Monitoring Reports (DMRs) specified in Part II, Section D (2) of this permit. The data will be maintained on site for a period of three years.
- 2 The Daily Maximum limits apply to all waters with stream class/parameter exceptions noted above. Refer to the Cover Letter for receiving stream class. Waters classified as HQW/ORW are excluded from coverage under this General Permit.
- 3 Flow may be monitored by a flow meter on the effluent side of the system.
- 4 See Part I, Section A. (6.) for monitoring of combined gasoline and diesel fuel, aviation fuel, kerosene, or fuel oil contaminated groundwater remediation systems with a flow greater than or equal to (≥) 0.05 MGD and less than (<) 0.25 MGD. Flows greater than or equal to (≥) 0.25 MGD are excluded from coverage under this General Permit.
- 5 For freshwater discharges hardness sampling must be performed in conjunction with lead sampling.
- 6 Monitoring for Oil and Grease is only required if free product is present at the site. The grab sample for oil and grease uses test EPA method 1664 (SGT-HEM) [*silica gel transfer-hexane extraction method*] with results in mg/L.

Conditions:

- THERE SHALL BE NO DISCHARGE OF FLOATING SOLIDS OR FOAM IN OTHER THAN TRACE AMOUNTS.

PART I. MONITORING, CONTROLS, AND LIMITATIONS FOR PERMITTED DISCHARGES

A. (4). EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS [15A NCAC 02B .0400 et seq., 02B .0500 et seq.]

During the period beginning on the effective date of the permit and lasting until expiration, the Permittee is authorized to discharge **greater than or equal to (≥) 0.05 MGD and less than (<) 0.25 MGD** treated wastewater from a **gasoline contaminated groundwater** remediation system to the receiving waters. Such discharges shall be limited, monitored and reported¹ by the permittee as specified below:

EFFLUENT CHARACTERISTICS [PARAMETER CODES]		EFFLUENT LIMITS	MONITORING REQUIREMENTS ¹		
			Measurement Frequency	Sample Type	Sample Location
Flow ^{3,4} (MGD)	50050	0.25 MGD ^{3,4}	Weekly	Meter	Effluent
Total Suspended Solids (TSS) (mg/L)	00530	30.0 mg/L (Exception: 10.0 mg/L Trout Class)	Monthly	Grab	Effluent
pH (su)	00400	6.0 ≤ pH ≤ 9.0	Monthly	Grab	Effluent
Benzene (µg/L)	34030	51 µg/L (Exception: 1.19 µg/L WS Class)	Monthly	Grab	Effluent
Toluene (µg/L)	34010	11 µg/L (Exception: 0.36 µg/L Trout, 370 µg/L SB/SC Class)	Monthly	Grab	Effluent
Ethylbenzene (µg/L)	34371	97 µg/L (Exception: 25 µg/L SB/SC Class)	Monthly	Grab	Effluent
Total Xylenes (µg/L)	81551	670 µg/L (Exception: 450 µg/L Trout Class)	Monthly	Grab	Effluent
Methyl Tert-Butyl Ether (MTBE) (µg/L)	22417	1500 µg/L (Exception: 19 µg/L WS Class)	Monthly	Grab	Effluent
Total Lead (µg/L)	01051	3 µg/L (Exception: 8.1 µg/L SB/SC Class)	Monthly	Grab	Effluent
Total Hardness (as CaCO ₃) ⁵	00900	Monitor & Report ⁵	Monthly	Grab	Effluent
1,2 Dichloroethane (1,2 DCA) (µg/L)	32103	37 µg/L (Exception: 0.38 µg/L WS Class)	Monthly	Grab	Effluent

Footnotes:

- 1 Submittal of monthly Discharge Monitoring Reports (DMRs) shall not be required except upon demand by the Division. Even though the **submittal** of the monthly monitoring reports to the Division is not required, all monitoring requirements must be met. **All violations must be reported to the appropriate regional office.** This section supersedes the requirement for submitting monthly Discharge Monitoring Reports (DMRs) specified in Part II, Section D (2) of this permit. The data will be maintained on site for a period of three years.
- 2 The Daily Maximum limits apply to all waters with stream class/parameter exceptions noted above. Refer to the Cover Letter for receiving stream class. Waters classified as HQW/ORW are excluded from coverage under this General Permit.
- 3 Flow may be monitored by a flow meter on the effluent side of the system.
- 4 See Part I, Section A. (1.) for monitoring of gasoline contaminated groundwater remediation systems with a flow less than (<) 0.05 MGD. Flows greater than or equal to (≥) 0.25 MGD are excluded from coverage under this General Permit.
- 5 For freshwater discharges hardness sampling must be performed in conjunction with lead sampling.

Conditions:

- THERE SHALL BE NO DISCHARGE OF FLOATING SOLIDS OR FOAM IN OTHER THAN TRACE AMOUNTS.

PART 1. MONITORING, CONTROLS, AND LIMITATIONS FOR PERMITTED DISCHARGES

A. (5). EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS [15A NCAC 02B .0400 et seq., 02B .0500 et seq.]

During the period beginning on the effective date of the permit and lasting until expiration, the Permittee is authorized to discharge **greater than or equal to (\geq) 0.05 MGD and less than ($<$) 0.25 MGD** treated wastewater from a **diesel fuel, aviation fuel, kerosene, or fuel oil contaminated groundwater** remediation system to the receiving waters. Such discharges shall be limited, monitored and reported¹ by the permittee as specified below:

EFFLUENT CHARACTERISTICS [PARAMETER CODES]		EFFLUENT LIMITS	MONITORING REQUIREMENTS ¹		
		Daily Maximum ²	Measurement Frequency	Sample Type	Sample Location
Flow ^{3,4} (MGD)	50050	0.25 MGD ^{3,4}	Weekly	Meter	Effluent
Total Suspended Solids (TSS) (mg/L)	CO530	30.0 mg/L (Exception: 10.0 mg/L Trout Class)	Monthly	Grab	Effluent
pH (su)	00400	6.0 \leq pH \leq 9.0	Monthly	Grab	Effluent
Oil and Grease ⁵ (mg/L) [EPA Method 1664 SGT-HEM]	00556	Monitor & Report ⁵	Monthly	Grab	Effluent
Naphthalene (μ g/L)	34696	12 μ g/L (Exception: 52 μ g/L SB/SC Class)	Monthly	Grab	Effluent
Total Recoverable Phenolics (μ g/L)	32730	300 μ g/L	Monthly	Grab	Effluent

Footnotes:

- 1 Submittal of monthly Discharge Monitoring Reports (DMRs) shall not be required except upon demand by the Division. Even though the submittal of the monthly monitoring reports to the Division is not required, all monitoring requirements must be met. All violations must be reported to the appropriate regional office. This section supersedes the requirement for submitting monthly Discharge Monitoring Reports (DMRs) specified in Part II, Section D (2) of this permit. The data will be maintained on site for a period of three years.
- 2 The Daily Maximum limits apply to all waters with stream class/parameter exceptions noted above. Refer to the Cover Letter for receiving stream class. Waters classified as HQW/ORW are excluded from coverage under this General Permit.
- 3 Flow may be monitored by a flow meter on the effluent side of the system.
- 4 See Part I, Section A. (2.) for monitoring of diesel fuel, aviation fuel, kerosene, or fuel oil contaminated groundwater remediation systems with a flow less than ($<$) 0.05 MGD. Flows greater than or equal to (\geq) 0.25 MGD are excluded from coverage under this General Permit.
- 5 Monitoring for Oil and Grease is only required if free product is present at the site. The grab sample for oil and grease uses test EPA method 1664 (SGT-HEM) [*silica gel transfer-hexane extraction method*] with results in mg/L.

Conditions:

- THERE SHALL BE NO DISCHARGE OF FLOATING SOLIDS OR FOAM IN OTHER THAN TRACE AMOUNTS.

PART 1. MONITORING, CONTROLS, AND LIMITATIONS FOR PERMITTED DISCHARGES

A. (6). EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS [15A NCAC 02B .0400 et seq., 02B .0500 et seq.]

During the period beginning on the effective date of the permit and lasting until expiration, the Permittee is authorized to discharge **greater than or equal to (\geq) 0.05 MGD and less than ($<$) 0.25 MGD** treated wastewater from a **combined gasoline and diesel fuel, aviation fuel, kerosene, or fuel oil contaminated groundwater** remediation system to the receiving waters. Such discharges shall be limited, monitored and reported¹ by the permittee as specified below:

EFFLUENT CHARACTERISTICS [PARAMETER CODES]		EFFLUENT LIMITS	MONITORING REQUIREMENTS ¹		
			Daily Maximum ²	Measurement Frequency	Sample Type
Flow ^{3,4} (MGD)	50050	0.25 MGD ^{3,4}	Weekly	Meter	Effluent
Total Suspended Solids (TSS) (mg/L)	CO530	30.0 mg/L (Exception: 10.0 mg/L Trout Class)	Monthly	Grab	Effluent
pH (su)	00400	6.0 \leq pH \leq 9.0	Monthly	Grab	Effluent
Benzene (μ g/L)	34030	51 μ g/L (Exception: 1.19 μ g/L WS Class)	Monthly	Grab	Effluent
Toluene (μ g/L)	34010	11 μ g/L (Exception: 0.36 μ g/L Trout, 370 μ g/L SB/SC Class)	Monthly	Grab	Effluent
Ethylbenzene (μ g/L)	34371	97 μ g/L (Exception: 25 μ g/L SB/SC Class)	Monthly	Grab	Effluent
Total Xylenes (μ g/L)	81551	670 μ g/L (Exception: 450 μ g/L Trout Class)	Monthly	Grab	Effluent
Methyl Tert-Butyl Ether (MTBE) (μ g/L)	22417	1500 μ g/L (Exception: 19 μ g/L WS Class)	Monthly	Grab	Effluent
Total Lead (μ g/L)	01051	3 μ g/L (Exception: 8.1 μ g/L SB/SC Class)	Monthly	Grab	Effluent
Total Hardness (as CaCO ₃) ⁵	00900	Monitor & Report ⁵	Monthly	Grab	Effluent
1,2 Dichloroethane (1,2 DCA) (μ g/L)	32103	37 μ g/L (Exception: 0.38 μ g/L WS Class)	Monthly	Grab	Effluent
Oil and Grease ⁶ (mg/L) [EPA Method 1664 SGT-HEM]	00556	Monitor & Report ⁶	Monthly	Grab	Effluent
Naphthalene (μ g/L)	34696	12 μ g/L (Exception: 52 μ g/L SB/SC Class)	Monthly	Grab	Effluent
Total Recoverable Phenolics (μ g/L)	32730	300 μ g/L	Monthly	Grab	Effluent

Footnotes:

- 1 Submittal of monthly Discharge Monitoring Reports (DMRs) shall not be required except upon demand by the Division. Even though the **submittal** of the monthly monitoring reports to the Division is not required, all monitoring requirements must be met. **All violations must be reported to the appropriate regional office.** This section supersedes the requirement for submitting monthly Discharge Monitoring Reports (DMRs) specified in Part II, Section D (2) of this permit. The data will be maintained on site for a period of three years.
- 2 The Daily Maximum limits apply to all waters with stream class/parameter exceptions noted above. Refer to the Cover Letter for receiving stream class. Waters classified as HQW/ORW are excluded from coverage under this General Permit.
- 3 Flow may be monitored by a flow meter on the effluent side of the system.
- 4 See Part I, Section A. (3.) for monitoring of combined gasoline and diesel fuel, aviation fuel, kerosene, or fuel oil contaminated groundwater remediation systems with a flow less than ($<$) 0.05 MGD. Flows greater than or equal to (\geq) 0.25 MGD are excluded from coverage under this General Permit.
- 5 For freshwater discharges hardness sampling must be performed in conjunction with lead sampling.
- 6 Monitoring for Oil and Grease is only required if free product is present at the site. The grab sample for oil and grease uses test EPA method 1664 (SGT-HEM) [silica gel transfer-hexane extraction method] with results in mg/L.

Conditions:

- THERE SHALL BE NO DISCHARGE OF FLOATING SOLIDS OR FOAM IN OTHER THAN TRACE AMOUNTS.

**PART II
STANDARD CONDITIONS FOR NPDES PERMITS**

Section A. Definitions

2/Month

Samples are collected twice per month with at least ten calendar days between sampling events. These samples shall be representative of the wastewater discharged during the sample period.

3/Week

Samples are collected three times per week on three separate calendar days. These samples shall be representative of the wastewater discharged during the sample period.

Act or "the Act"

The Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), as amended, 33 USC 1251, et. seq.

Annual Average

The arithmetic mean of all "daily discharges" of a pollutant measured during the calendar year. In the case of fecal coliform, the geometric mean of such discharges.

Arithmetic Mean

The summation of the individual values divided by the number of individual values.

Bypass

The known diversion of waste streams from any portion of a treatment facility including the collection system, which is not a designed or established or operating mode for the facility.

Calendar Day

The period from midnight of one day until midnight of the next day. However, for purposes of this permit, any consecutive 24-hour period that reasonably represents the calendar day may be used for sampling.

Calendar Week

The period from Sunday through the following Saturday.

Calendar Quarter

One of the following distinct periods: January through March, April through June, July through September, and October through December.

Composite Sample

A sample collected over a 24-hour period by continuous sampling or combining grab samples of at least 100 mL in such a manner as to result in a total sample representative of the wastewater discharge during the sample period. The Director may designate the most appropriate method (specific number and size of aliquots necessary, the time interval between grab samples, etc.) on a case-by-case basis. Samples may be collected manually or automatically. Composite samples may be obtained by the following methods:

- (1) Continuous: a single, continuous sample collected over a 24-hour period proportional to the rate of flow.
- (2) Constant time/variable volume: a series of grab samples collected at equal time intervals over a 24 hour period of discharge and combined proportional to the rate of flow measured at the time of individual sample collection, or
- (3) Variable time/constant volume: a series of grab samples of equal volume collected over a 24 hour period with the time intervals between samples determined by a preset number of gallons passing the sampling point. Flow measurement between sample intervals shall be determined by use of a flow recorder and totalizer, and the preset gallon interval between sample collection fixed at no greater than 1/24 of the expected total daily flow at the treatment system, or
- (4) Constant time/constant volume: a series of grab samples of equal volume collected over a 24-hour period at a constant time interval. Use of this method requires prior approval by the Director. This method may only be used in situations where effluent flow rates vary less than 15 percent. The following restrictions also apply:
Influent and effluent grab samples shall be of equal size and of no less than 100 milliliters
Influent samples shall not be collected more than once per hour.

Permittees with wastewater treatment systems whose detention time < 24 hours shall collect effluent grab samples at intervals of no greater than 20 minutes apart during any 24-hour period.

Permittees with wastewater treatment systems whose detention time exceeds 24 hours shall collect effluent grab samples at least every six hours; there must be a minimum of four samples during a 24-hour sampling period.

Continuous flow measurement

Flow monitoring that occurs without interruption throughout the operating hours of the facility. Flow shall be monitored continually except for the infrequent times when there may be no flow or for infrequent maintenance activities on the flow device.

Daily Discharge

The discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants measured in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day. (40 CFR 122.2; see also "Composite Sample," above.)

Daily Maximum

The highest "daily discharge" during the calendar month.

Daily Sampling

Parameters requiring daily sampling shall be sampled 5 out of every 7 days per week unless otherwise specified in the permit. Sampling shall be conducted on weekdays except where holidays or other disruptions of normal operations prevent weekday sampling. If sampling is required for all seven days of the week for any permit parameter(s), that requirement will be so noted on the Effluent Limitations and Monitoring Page(s).

DWR or "the Division"

The Division of Water Resources, Department of Environment and Natural Resources.

Effluent

Wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.

EMC

The North Carolina Environmental Management Commission

EPA

The United States Environmental Protection Agency

Facility Closure

Cessation of all activities that require coverage under this NPDES permit. Completion of facility closure will allow this permit to be rescinded.

Geometric Mean

The Nth root of the product of the individual values where N = the number of individual values. For purposes of calculating the geometric mean, values of "0" (or "< [detection level]") shall be considered = 1.

Grab Sample

Individual samples of at least 100 mL collected over a period of time not exceeding 15 minutes. Grab samples can be collected manually. Grab samples must be representative of the discharge (or the receiving stream, for instream samples).

Hazardous Substance

Any substance designated under 40 CFR Part 116 pursuant to Section 311 of the CWA.

Instantaneous flow measurement

The flow measured during the minimum time required for the flow measuring device or method to produce a result in that instance. To the extent practical, instantaneous flow measurements coincide with the collection of any grab samples required for the same sampling period so that together the samples and flow are representative of the discharge during that sampling period.

Monthly Average (concentration limit)

The arithmetic mean of all "daily discharges" of a pollutant measured during the calendar month. In the case of fecal coliform or other bacterial parameters or indicators, the geometric mean of such discharges.

Permit Issuing Authority

The Director of the Division of Water Resources.

Quarterly Average (concentration limit)

The arithmetic mean of all samples taken over a calendar quarter.

Severe property damage

Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage excludes economic loss caused by delays in production.

Toxic Pollutant:

Any pollutant listed as toxic under Section 307(a)(1) of the CWA.

Upset

An incident beyond the reasonable control of the Permittee causing unintentional and temporary noncompliance with permit effluent limitations and/or monitoring requirements. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Weekly Average (concentration limit)

The arithmetic mean of all "daily discharges" of a pollutant measured during the calendar week. In the case of fecal coliform or other bacterial parameters or indicators, the geometric mean of such discharges.

Section B. General Conditions

I. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is ground for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application [40 CFR 122.41].

- a. The Permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
- b. The CWA provides that any person who violates section[s] 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$37,500 per day for each violation. [33 USC 1319(d) and 40 CFR 122.41(a)(2)]
- c. The CWA provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. [33 USC 1319(c)(1) and 40 CFR 122.41(a)(2)]
- d. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. [33 USC 1319(c)(2) and 40 CFR 122.41(a)(2)]
- e. Any person who *knowingly* violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating

- the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions. [40 CFR 122.41(a)(2)]
- f. Under state law, a civil penalty of not more than \$25,000 per violation may be assessed against any person who violates or fails to act in accordance with the terms, conditions, or requirements of a permit. [North Carolina General Statutes § 143-215.6A]
- g. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed \$16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$37,500. Penalties for Class II violations are not to exceed \$16,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$177,500. [33 USC 1319(g)(2) and 40 CFR 122.41(a)(3)]
2. Duty to Mitigate
The Permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit with a reasonable likelihood of adversely affecting human health or the environment [40 CFR 122.41(d)].
3. Civil and Criminal Liability
Except as provided in permit conditions on "Bypassing" (Part II.C.4), "Upsets" (Part II.C.5) and "Power Failures" (Part II.C.7), nothing in this permit shall be construed to relieve the Permittee from any responsibilities, liabilities, or penalties for noncompliance pursuant to NCGS 143-215.3, 143-215.6 or Section 309 of the Federal Act, 33 USC 1319. Furthermore, the Permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.
4. Oil and Hazardous Substance Liability
Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject to under NCGS 143-215.75 et seq. or Section 311 of the Federal Act, 33 USC 1321. Furthermore, the Permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.
5. Property Rights
The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations [40 CFR 122.41(g)].
6. Onshore or Offshore Construction
This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.
7. Severability
The provisions of this permit are severable. If any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby [NCGS 150B-23].
8. Duty to Provide Information
The Permittee shall furnish to the Permit Issuing Authority, within a reasonable time, any information which the Permit Issuing Authority may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Permittee shall also furnish to the Permit Issuing Authority upon request, copies of records required by this permit [40 CFR 122.41(h)].
9. Duty to Reapply
If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit [40 CFR 122.41(b)].
10. Expiration of Permit
The Permittee is not authorized to discharge after the expiration date. In order to receive automatic authorization to discharge beyond the expiration date, the Permittee shall submit such information, forms, and fees as are required by the agency authorized to issue permits no later than 180 days prior to the expiration date unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.) [40 CFR 122.21(d)] Any Permittee that has not

requested renewal at least 180 days prior to expiration, or any Permittee that does not have a permit after the expiration and has not requested renewal at least 180 days prior to expiration, will subject the Permittee to enforcement procedures as provided in NCGS 143-215.6 and 33 USC 1251 et. seq.

11. Signatory Requirements

All applications, reports, or information submitted to the Permit Issuing Authority shall be signed and certified [40 CFR 122.41(k)].

a. All permit applications shall be signed as follows:

- (1) For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (a) a president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures .
- (2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- (3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official [40 CFR 122.22].

b. All reports required by the permit and other information requested by the Permit Issuing Authority shall be signed by a person described in paragraph a. above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described above;
- (2) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
- (3) The written authorization is submitted to the Permit Issuing Authority [40 CFR 122.22]

c. Changes to authorization: If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative [40 CFR 122.22]

d. Certification. Any person signing a document under paragraphs a. or b. of this section shall make the following certification [40 CFR 122.22]. NO OTHER STATEMENTS OF CERTIFICATION WILL BE ACCEPTED:

"I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

12. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition [40 CFR 122.41(f)].

13. Permit Modification, Revocation and Reissuance, or Termination

The issuance of this permit does not prohibit the permit issuing authority from reopening and modifying the permit, revoking and reissuing the permit, or terminating the permit as allowed by the laws, rules, and regulations contained in Title 40, Code of Federal Regulations, Parts 122 and 123; Title 15A of the North Carolina Administrative Code, Subchapter 02H .0100; and North Carolina General Statute 143.215.1 et. al.

14. Annual Administering and Compliance Monitoring Fee Requirements

The Permittee must pay the annual administering and compliance monitoring fee within thirty days after being billed by the Division. Failure to pay the fee in a timely manner in accordance with 15A NCAC 02H .0105(b)(2) may cause this Division to initiate action to revoke the permit.

Section C. Operation and Maintenance of Pollution Controls

1. Certified Operator

Owners of classified water pollution control systems must designate operators, certified by the Water Pollution Control System Operators Certification Commission (WPCSOCC), of the appropriate type and grade for the system, and, for each classification must [T15A NCAC 08G .0201]:

- a. designate one Operator In Responsible Charge (ORC) who possesses a valid certificate of the type and grade at least equivalent to the type and grade of the system;
- b. designate one or more Back-up Operator(s) in Responsible Charge (Back-up ORCs) who possesses a valid certificate of the type of the system and no more than one grade less than the grade of the system, with the exception of no backup operator in responsible charge is required for systems whose minimum visitation requirements are twice per year; and
- c. submit a signed completed "Water Pollution Control System Operator Designation Form" to the Commission (or to the local health department for owners of subsurface systems) countersigned by the designated certified operators, designating the Operator in Responsible Charge (ORC) and the Back-up Operator in Responsible Charge (Back-up ORC):
 - (1) 60 calendar days prior to wastewater or residuals being introduced into a new system; or
 - (2) within 120 calendar days following:
 - receiving notification of a change in the classification of the system requiring the designation of a new Operator in Responsible Charge (ORC) and Back-up Operator in Responsible Charge (Back-up ORC) of the proper type and grade; or
 - a vacancy in the position of Operator in Responsible Charge (ORC) or Back-up Operator in Responsible Charge (Back-up ORC).
 - (3) within seven calendar days of vacancies in both ORC and Back-up ORC positions replacing or designating at least one of the responsibilities.

The ORC of each Class I facility (or the Back-up ORC, when acting as surrogate for the ORC) must:

Visit the facility as often as is necessary to insure proper operation of the treatment system; the treatment facility must be visited at least weekly

Comply with all other conditions of 15A NCAC 08G .0204.

The ORC of each Class II, III and IV facility (or the Back-up ORC, when acting as surrogate for the ORC) must:

Visit the facility as often as is necessary to insure proper operation of the treatment system; the treatment facility must be visited at least five days per week, excluding holidays

Properly manage and document daily operation and maintenance of the facility

Comply with all other conditions of 15A NCAC 08G .0204.

2. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the Permittee to install and operate backup or auxiliary facilities only when necessary to achieve compliance with the conditions of the permit [40 CFR 122.41(e)].

NOTE: Properly and officially designated operators are fully responsible for all proper operation and maintenance of the facility, and all documentation required thereof, whether acting as a contract operator [subcontractor] or a member of the Permittee's staff.

3. Need to Halt or Reduce not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this permit [40 CFR 122.41(c)].

4. Bypassing of Treatment Facilities

a. Bypass not exceeding limitations [40 CFR 122.41(m)(2)]

The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs b. and c. of this section.

b. Notice [40 CFR 122.41(m)(3)]

- (1) Anticipated bypass. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.
- (2) Unanticipated bypass. The Permittee shall submit notice of an unanticipated bypass as required in Part II.E.6. (24-hour notice).

c. Prohibition of Bypass

- (1) Bypass from the treatment facility is prohibited and the Permit Issuing Authority may take enforcement action against a Permittee for bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) The Permittee submitted notices as required under Paragraph b. of this section.
- (2) Bypass from the collection system is prohibited and the Permit Issuing Authority may take enforcement action against a Permittee for a bypass as provided in any current or future system-wide collection system permit associated with the treatment facility.
- (3) The Permit Issuing Authority may approve an anticipated bypass, after considering its adverse effects, if the Permit Issuing Authority determines that it will meet the three conditions listed above in Paragraph c. (1) of this section.

5. Upsets

- a. Effect of an upset [40 CFR 122.41(n)(2)]: An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph b. of this condition are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- b. Conditions necessary for a demonstration of upset: Any Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and that the Permittee can identify the cause(s) of the upset;
 - (2) The Permittee facility was at the time being properly operated; and
 - (3) The Permittee submitted notice of the upset as required in Part II.E.6.(b) of this permit.
 - (4) The Permittee complied with any remedial measures required under Part II.B.2. of this permit.
- c. Burden of proof [40 CFR 122.41(n)(4)]: The Permittee seeking to establish the occurrence of an upset has the burden of proof in any enforcement proceeding.

6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be utilized/disposed of in accordance with NCGS 143-215.1 and in a manner such as to prevent any pollutant from such materials from entering waters of the State or navigable waters of the United States except as permitted by the Commission. The Permittee shall comply with all applicable state and Federal regulations governing the disposal of sewage sludge, including 40 CFR 503, Standards for the Use and Disposal of Sewage Sludge; 40 CFR Part 258, Criteria For Municipal Solid Waste Landfills; and 15A NCAC Subchapter 2T, Waste Not Discharged To Surface Waters. The Permittee shall notify the Permit Issuing Authority of any significant change in its sludge use or disposal practices.

7. Power Failures
The Permittee is responsible for maintaining adequate safeguards (as required by 15A NCAC 02H .0124) to prevent the discharge of untreated or inadequately treated wastes during electrical power failures either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

Section D. Monitoring and Records

1. Representative Sampling
Samples collected and measurements taken, as required herein, shall be representative of the permitted discharge. Samples collected at a frequency less than daily shall be taken on a day and time that is representative of the discharge for the period the sample represents. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and the approval of the Permit Issuing Authority [40 CFR 122.41(j)].

2. Reporting
Monitoring results obtained during the previous month(s) shall be summarized for each month and reported on a monthly Discharge Monitoring Report (DMR) Form (MR 1, 1.1, 2, 3) or alternative forms approved by the Director, postmarked no later than the last calendar day of the month following the completed reporting period.

The first DMR is due on the last day of the month following the issuance of the permit or in the case of a new facility, on the last day of the month following the commencement of discharge. Duplicate signed copies of these, and all other reports required herein, shall be submitted to the following address:

NC DENR / Division of Water Resources / Water Quality Permitting Section
ATTENTION: Central Files
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

3. Flow Measurements
Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10% from the true discharge rates throughout the range of expected discharge volumes. Flow measurement devices shall be accurately calibrated at a minimum of once per year and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. The Director shall approve the flow measurement device and monitoring location prior to installation.

Once-through condenser cooling water flow monitored by pump logs, or pump hour meters as specified in Part I of this permit and based on the manufacturer's pump curves shall not be subject to this requirement.

4. Test Procedures
Laboratories used for sample analysis must be certified by the Division. Permittees should contact the Division's Laboratory Certification Section (919 733-3908 or <http://portal.ncdenr.org/web/wq/lab/cert>) for information regarding laboratory certifications.

Facilities whose personnel are conducting testing of field-certified parameters only must hold the appropriate field parameter laboratory certifications.

Test procedures for the analysis of pollutants shall conform to the EMC regulations (published pursuant to NCGS 143-215.63 et. seq.), the Water and Air Quality Reporting Acts, and to regulations published pursuant to Section 304(g), 33 USC 1314, of the CWA (as amended), and 40 CFR 136; or in the case of sludge use or disposal, approved under 40 CFR 136, unless otherwise specified in 40 CFR 503, unless other test procedures have been specified in this permit [40 CFR 122.41].

To meet the intent of the monitoring required by this permit, all test procedures must produce minimum detection and reporting levels that are below the permit discharge requirements and all data generated must be reported down to the minimum detection or lower reporting level of the procedure. If no approved methods are determined capable of achieving minimum detection and reporting levels below permit discharge requirements, then the most sensitive (method with the lowest possible detection and reporting level) approved method must be used.

5. Penalties for Tampering
The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both [40 CFR 122.41].

6. Records Retention
Except for records of monitoring information required by this permit related to the Permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR 503), the Permittee shall retain records of all monitoring information, including:
 - all calibration and maintenance records
 - all original strip chart recordings for continuous monitoring instrumentation
 - copies of all reports required by this permit
 - copies of all data used to complete the application for this permitThese records or copies shall be maintained for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time [40 CFR 122.41].

7. Recording Results
For each measurement or sample taken pursuant to the requirements of this permit, the Permittee shall record the following information [40 CFR 122.41]:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.

8. Inspection and Entry
The Permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Director), upon the presentation of credentials and other documents as may be required by law, to:
 - a. Enter, at reasonable times, upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 - d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location [40 CFR 122.41(i)].

Section E Reporting Requirements

1. Change in Discharge
All discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant identified in this permit more frequently than or at a level in excess of that authorized shall constitute a violation of the permit.

2. Planned Changes
The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility [40 CFR 122.41(l)]. Notice is required only when:
 - a. The alteration or addition to a permitted facility may meet one of the criteria for new sources at 40 CFR 122.29(b); or

- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1); or
 - c. The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices, and such alteration, addition or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
3. Anticipated Noncompliance
The Permittee shall give advance notice to the Director of any planned changes to the permitted facility or other activities that might result in noncompliance with the permit [40 CFR 122.41(1)(2)].
4. Transfers
This permit is not transferable to any person without prior written notice to and approval from the Director in accordance with 40 CFR 122.61. The Director may condition approval in accordance with NCGS 143-215.1, in particular NCGS 143-215.1(b)(4)b.2., and may require modification or revocation and reissuance of the permit, or a minor modification, to identify the new permittee and incorporate such other requirements as may be necessary under the CWA [40 CFR 122.41(1)(3), 122.61] or state statute.
5. Monitoring Reports
Monitoring results shall be reported at the intervals specified elsewhere in this permit [40 CFR 122.41(1)(4)].
- a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) (See Part II.D.2) or forms provided by the Director for reporting results of monitoring of sludge use or disposal practices.
 - b. If the Permittee monitors any pollutant more frequently than required by this permit using test procedures approved under 40 CFR Part 136 and at a sampling location specified in this permit or other appropriate instrument governing the discharge, the results of such monitoring shall be included in the calculation and reporting of the data submitted on the DMR.
6. Twenty-four Hour Reporting
- a. The Permittee shall report to the Director or the appropriate Regional Office any noncompliance that potentially threatens public health or the environment. Any information shall be provided orally within 24 hours from the time the Permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance, and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance [40 CFR 122.41(1)(6)].
 - b. The Director may waive the written report on a case-by-case basis for reports under this section if the oral report has been received within 24 hours.
 - c. Occurrences outside normal business hours may also be reported to the Division's Emergency Response personnel at (800) 662-7956, (800) 858-0368 or (919) 733-3300.
7. Other Noncompliance
The Permittee shall report all instances of noncompliance not reported under Part II.E.5 and 6. of this permit at the time monitoring reports are submitted. The reports shall contain the information listed in Part II.E.6. of this permit [40 CFR 122.41(1)(7)].
8. Other Information
Where the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information [40 CFR 122.41(1)(8)].
9. Noncompliance Notification
The Permittee shall report by telephone to either the central office or the appropriate regional office of the Division as soon as possible, but in no case more than 24 hours or on the next working day following the occurrence or first knowledge of the occurrence of any of the following:
- a. Any occurrence at the water pollution control facility which results in the discharge of significant amounts of wastes which are abnormal in quantity or characteristic, such as the dumping of the contents of a sludge digester; the known passage of a slug of hazardous substance through the facility; or any other unusual circumstances.

- b. Any process unit failure, due to known or unknown reasons, that render the facility incapable of adequate wastewater treatment such as mechanical or electrical failures of pumps, aerators, compressors, etc.
- c. Any failure of a pumping station, sewer line, or treatment facility resulting in a by-pass without treatment of all or any portion of the influent to such station or facility.

Persons reporting such occurrences by telephone shall also file a written report within 5 days following first knowledge of the occurrence. Also see reporting requirements for municipalities in Part IV.C.2.c. of this permit.

10. Availability of Reports

Except for data determined to be confidential under NCGS 143-215.3 (a)(2) or Section 308 of the Federal Act, 33 USC 1318, all reports prepared in accordance with the terms shall be available for public inspection at the offices of the Division. As required by the Act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in NCGS 143-215.1(b)(2) or in Section 309 of the Federal Act.

11. Penalties for Falsification of Reports

The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$25,000 per violation, or by imprisonment for not more than two years per violation, or by both [40 CFR 122.41].

12. Annual Performance Reports

Permittees who own or operate facilities that primarily collect or treat municipal or domestic wastewater and have an average annual flow greater than 200,000 gallons per day shall provide an annual report to the Permit Issuing Authority and to the users/customers served by the Permittee (NCGS 143-215.1C). The report shall summarize the performance of the collection or treatment system, as well as the extent to which the facility was compliant with applicable Federal or State laws, regulations and rules pertaining to water quality. The report shall be provided no later than sixty days after the end of the calendar or fiscal year, depending upon which annual period is used for evaluation.

The report shall be sent to:

NC DENR / Division of Water Resources / Water Quality Permitting Section
ATTENTION: Central Files
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

**PART III
OTHER REQUIREMENTS**

Section A. Construction

- a. The Permittee shall not commence construction of wastewater treatment facilities, nor add to the plant's treatment capacity, nor change the treatment process(es) utilized at the treatment plant unless (1) the Division has issued an Authorization to Construct (AtC) permit or (2) the Permittee is exempted from such AtC permit requirements under Item b. of this Section.
- b. In accordance with NCGS 143-215.1(a5) [SL 2011-394], no permit shall be required to enter into a contract for the construction, installation, or alteration of any treatment work or disposal system or to construct, install, or alter any treatment works or disposal system within the State when the system's or work's principle function is to conduct, treat, equalize, neutralize, stabilize, recycle, or dispose of industrial waste or sewage from an industrial facility and the discharge of the industrial waste or sewage is authorized under a permit issued for the discharge of the industrial waste or sewage into the waters of the State. Notwithstanding the above, the permit issued for the discharge may be modified if required by federal regulation.
- c. Issuance of an AtC will not occur until Final Plans and Specifications for the proposed construction have been submitted by the Permittee and approved by the Division.

Section B. Groundwater Monitoring

The Permittee shall, upon written notice from the Director, conduct groundwater monitoring as may be required to determine the compliance of this NPDES permitted facility with the current groundwater standards.

Section C. Changes in Discharges of Toxic Substances

The Permittee shall notify the Permit Issuing Authority as soon as it knows or has reason to believe (40 CFR 122.42):

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels";
 - (1) One hundred micrograms per liter (100 µg/L);
 - (2) Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - (3) Five times the maximum concentration value reported for that pollutant in the permit application.
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels";
 - (1) Five hundred micrograms per liter (500 µg/L);
 - (2) One milligram per liter (1 mg/L) for antimony;
 - (3) Ten times the maximum concentration value reported for that pollutant in the permit application.

Section D. Facility Closure Requirements

The Permittee must notify the Division at least 90 days prior to the closure of any wastewater treatment system covered by this permit. The Division may require specific measures during deactivation of the system to prevent adverse impacts to waters of the State. This permit cannot be rescinded while any activities requiring this permit continue at the permitted facility.

Public Notice
North Carolina Environmental Management Commission
Division of Water Resources/Water Quality Permitting Section
1617 Mail Service Center
Raleigh, NC 27699-1617
Notice of Intent to Reissue a NPDES General Wastewater Permit

The North Carolina Environmental Management Commission proposes to reissue the following NPDES wastewater general permit:

NPDES General Permit No. NCG550000 for the discharge of domestic wastewater from single family residences and other 100% domestic discharges with similar characteristics.

Written comments regarding the proposed general permit will be accepted until 30 days after the publish date of this notice. The Director of the NC Division of Water Resources (DWR) may hold a public hearing should there be a significant degree of public interest. Please mail comments and/or information requests to DWR at the above address. Interested persons may visit the DWR at 512 N. Salisbury Street, Raleigh, NC to review information on file. Additional information on this notice may be found on our website:
<http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/npdes-wastewater/public-notices>

For questions or comments about NPDES General Permit No. NCG550000 for the discharge of domestic wastewater from single family residences and other 100% domestic discharges with similar characteristics, please contact Derek Denard at phone # (919) 707-3618 or via e-mail: derek.denard@ncdenr.gov

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 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Commission, please call a Commission staff attorney at 919-431-3000.

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Board of Agriculture intends to readopt without substantive changes the rules cited as 02 NCAC 48A .0401, .0402, .0612; and 61 .0101-.0112.

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

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.

CHAPTER 48 - PLANT INDUSTRY

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm

SUBCHAPTER 48A - PLANT PROTECTION

Proposed Effective Date: January 1, 2021

SECTION .0400 - WHITE PINE BLISTER RUST

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than 9/16/2020, to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

02 NCAC 48A .0401 CURRANT AND GOOSEBERRY PLANTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

02 NCAC 48A .0402 INFECTED PINES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

Reason for Proposed Action: All of these rules were classified as "necessary with substantive public interest" and are now being readopted. Each rule is necessary but is not being changed from how it is currently in the Administrative Code.

SECTION .0600 - BOLL WEEVIL

02 NCAC 48A .0612 COTTON STALK DESTRUCTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

Comments may be submitted to: Tina Hlabse, 1001 Mail Service Center, Raleigh, NC 27699-1001; email tina.hlabse@ncagr.gov

CHAPTER 61 - SANITATION OF BEDDING

02 NCAC 61 .0101 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

02 NCAC 61 .0102 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

02 NCAC 61 .0103 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

02 NCAC 61 .0104 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

02 NCAC 61 .0105 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

02 NCAC 61 .0106 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

02 NCAC 61 .0107 (READOPTION WITHOUT SUBSTANTIVE CHANGES)

Comment period ends: November 2, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the

02 NCAC 61 .0108 (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

02 NCAC 61 .0109 (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

02 NCAC 61 .0110 (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

02 NCAC 61 .0111 (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

02 NCAC 61 .0112 (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

Notice is hereby given in accordance with G.S. 150B-21.2 that the Soil and Water Conservation Commission intends to adopt the rule cited as 02 NCAC 59D .0201.

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm

Proposed Effective Date: January 1, 2021

Public Hearing:

Date: September 17, 2020

Time: 1:00 p.m.

Location:

https://ncagr.webex.com/ncagr/j.php?MTID=mcd1c926e2118ab0e5c71c5b64a5cb88c Meeting number (access code): 171 780 3338; Meeting password: JAA4me Phone Access: (415) 655-003

Reason for Proposed Action: Session Law 2020-18 expands the powers and duties of the Soil and Water Conservation Commission to develop and implement a program for granting job approval authority to Soil and Water Conservation District staff and employees of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services to plan, design, and certify the installation of best management practices approved for cost-share funding pursuant to programs identified in G.S. 139-4(d)(9).

Comments may be submitted to: Vernon Cox, 1614 Mail Service Center, Raleigh, NC 27699-1614; phone (919) 707-3771; email vernon.cox@ncagr.gov

Comment period ends: November 2, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule,

the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

CHAPTER 59 - SOIL AND WATER CONSERVATION COMMISSION

SUBCHAPTER 59D - AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL

SECTION .0200 – JOB APPROVAL AUTHORITY

02 NCAC 59D .0201 CRITERIA AND PROCEDURES FOR GRANTING JOB APPROVAL AUTHORITY

(a) "Eligible individuals" means Soil and Water Conservation District employees, county employees working as staff for a Soil and Water Conservation District and employees of the North Carolina Department of Agriculture and Consumer Services Division of Soil and Water Conservation.

(b) Eligible individuals seeking Job Approval Authority (JAA) from the Commission shall receive agreement from their immediate supervisor. District staff shall also receive agreement from the chair of the Soil and Water Conservation District for whom they are employed.

(c) Eligible individuals seeking JAA for a best management practice as defined by 02 NCAC 59D .0102(6) shall submit application to the Division for evaluation of technical competency. The minimum technical competency requirements for each practice shall be listed in the applicable program's Detailed Implementation Plan (DIP) as defined in 02 NCAC 59D .0102(14).

(d) Eligible individuals who submit documentation of JAA issued by the USDA Natural Resources Conservation Service as part of the application described in Paragraph (c) of this Rule shall be granted equivalent JAA by the Commission, unless JAA has subsequently been rescinded due to factors identified in Paragraph (f) of this Rule.

(e) The Commission shall consider an eligible individual who is duly licensed as a professional engineer by the North Carolina Board of Examiners for Engineers and Surveyors as having JAA for any best management practice to which they affix their seal and signature to all designs and technical documents.

(f) The Commission may rescind an individual's JAA for any or all best management practices if the individual fails to comply with the associated technical standards, submits false data or is

dishonest in the use of their JAA, taking into consideration the severity of the non-compliance, the extent and significance of any false data submitted, and the individual's history of non-compliance.

(g) Individuals no longer employed by the County, District, or Division shall have previously issued JAA reinstated if they are re-employed as an eligible individual and have subsequently complied with the requirements described in Paragraphs (b) and (c) of this Rule.

Authority G.S. 106-840; 106-850; 139-3; 139-4(d)(9) and 14.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Commission for Public Health intends to readopt with substantive changes the rules cited as 10A NCAC 41C .0601, .0602, .0608 and repeal through readoption the rule cited as 10A NCAC 41C .0304.

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://cph.publichealth.nc.gov/

Proposed Effective Date: January 1, 2021

Public Hearing:

Date: September 25, 2020

Time: 10:00 a.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 teleconference at 919-715-0769 (no access code).

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A, periodic review and expiration of existing rules, the Commission for Public Health is proposing to readopt 10A NCAC 41C .0601, .0602, and .0608 with substantive changes to update these rules to reflect current requirements and processes and repeal through readoption 10A NCAC 41C .0304.

Comments may be submitted to: Virginia Niehaus, CPH Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; email cphcomment@lists.ncmail.net

Comment period ends: November 2, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2)

from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

CHAPTER 41 - EPIDEMIOLOGY HEALTH

SUBCHAPTER 41C - OCCUPATIONAL HEALTH

SECTION .0300 - INDUSTRIAL HYGIENE CONSULTATION PROGRAM

10A NCAC 41C .0304 TRAINING AND TECHNICAL ASSISTANCE

Authority G.S. 130A-5(3).

SECTION .0600 - ASBESTOS HAZARD MANAGEMENT PROGRAM

10A NCAC 41C .0601 GENERAL

(a) The definitions contained in G.S. 130A-444 and the following definitions shall apply throughout this Section:

- (1) "Abatement Designer" means a person who is directly responsible for planning all phases of an asbestos abatement design from abatement site preparation through complete disassembly of all abatement area barriers and who meets the barriers. In addition to meeting the accreditation requirements of Rule .0602(e)(5) .0602(c) of this Section. Section, the abatement designer may be subject to the licensure requirements for a Registered Architect as defined in G.S. 83A or a Professional Engineer as defined in G.S. 89C.
(2) "Abatement Project Monitoring Plan" means a written project-specific plan for conducting visual inspections and ambient and clearance air sampling.
(3) "Air Monitor" means a person who implements the abatement project monitoring plan, collects ambient and clearance air samples, performs visual inspections, or monitors and evaluates asbestos abatement projects. abatement, and

- who meets the requirements of Rule .0602(c) of this Section.
- (4) "Asbestos Abatement Design" means a written or graphic plan that is prepared by an accredited abatement designer as defined in Subparagraph (a)(1) of this Rule and that specifies specifying how an asbestos abatement project will be ~~performed, performed, and includes, but is not limited to, scope of work and technical specifications.~~ The An asbestos abatement design designer's signature and accreditation number shall be on all such abatement designs. include, at minimum, the following:
- (A) a scope of work and technical specifications;
- (B) the asbestos abatement designer's signature; and
- (C) the accreditation number.
- (5) "Completion Date" means the date on which all activities on a permitted asbestos removal requiring the use of accredited workers and supervisors are complete, including the ~~complete~~ disassembly of all removal area barriers.
- (6) "Emergency Renovation Operation" means the same as defined in 40 CFR Part 61.141 and as adopted in Rule .0609 of this Section.
- (7) "Inspector" means a person who examines buildings or structures for the presence of asbestos containing materials, collects bulk ~~samples~~ samples, or conducts physical assessments of the asbestos containing ~~materials.~~ materials, and who meets the requirements of Rule .0602(c) of this Section. A person whose asbestos inspection activities are limited to roofing products is not considered an inspector under this definition if the person is accredited as a roofing supervisor under this Section.
- (8) "Installation" means any building or structure or group of buildings or structures at a single site under the control of the same owner or operator.
- (9) "Management Planner" means a person who interprets inspection reports, conducts hazard assessments of asbestos containing ~~materials~~ materials, or and prepares written management ~~plans.~~ plans, and who meets the requirements of Rule .0602(c) of this Section.
- (10) "Nonscheduled Asbestos Removal" means as defined in 40 CFR Part 61.141, an asbestos removal required by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.
- (11) "Program" means the Health Hazards Control ~~Branch~~ Unit within the Division of Public Health.
- (12) "Public Area" means as defined in G.S. 130A-444(7). ~~Any area to which access by the general public is usually prohibited, or is usually limited to access by escort only, shall not constitute a "public area."~~
- (13) "Regulated Asbestos Containing Material" means the same as defined in 40 CFR Part 61.141 and as adopted in Rule .0609 of this Section.
- (14) "Start Date" means the date on which activities begin on a permitted an asbestos removal project that is permitted pursuant to Rule .0605 of this Section and that requires requiring the use of ~~accredited~~ workers and supervisors begin, who are accredited pursuant to Rule .0602 of this Section, including removal area isolation and preparation or any other activity which may disturb asbestos containing materials.
- (15) "Supervising Air Monitor" means a person who meets the requirements of Rule .0602(c) of this Section and who prepares a written abatement project monitoring plan and implements the plan or ensures that the plan is implemented by an air monitor working under his or her supervision. The supervising air monitor directs, coordinates and approves all activities of air monitors working under his or her supervision. The supervising air monitor may also perform the duties of an air monitor.
- (16) "Supervisor" means a person who is a "competent person" as defined in 29 CFR 1926.1101(b) and ~~adopted by 13 NCAC 07F .0201 and amendments or recodifications as adopted by the North Carolina Department of Labor, and~~ who is an "on-site representative" as defined in 40 CFR Part 61.145(c)(8) as adopted in Rule .0609 of this ~~Section,~~ Section and who performs the duties specified therein.
- (17) "Under the direct supervision" means working ~~under the immediate guidance of an accredited individual who is accredited pursuant to Rule .0602 of this Section and who is responsible for all activities performed.~~
- (18) "Worker" means a person who performs asbestos abatement under the direct supervision of an accredited supervisor.
- (19) "Working day" means Monday through ~~Friday.~~ Friday, including any holidays. Holidays falling on any of these days are included in the definition.
- (20) "Class II Asbestos Work" means as defined in 29 CFR ~~1926.1101(b)~~ 1926.1101(b), which is incorporated by reference in Paragraph (e) of this Rule.
- (21) "Roofing Worker" means a person whose duties regarding asbestos are limited to Class II asbestos work involving the removal of roofing products that are classified as regulated

asbestos containing ~~material~~ material and who works under the direct supervision of a roofing supervisor.

- (22) "Roofing Supervisor" means a supervisor as defined in Subparagraph (a)(16) of this Rule, whose duties regarding asbestos are limited to Class II asbestos work involving only roofing products that are classified as regulated asbestos containing material. This person may also perform asbestos roofing inspection activities which are limited to roofing products, including the collection of bulk samples.
- (23) "Roofing Products" means bituminous built-up roofing systems, roofing membranes, asphalt shingles, cement shingles, roofing cements, mastics, coatings, panels, light weight roofing concrete, and flashings.

(b) ~~In addition to the rules of this Section and the Asbestos Hazard Emergency Response Act (AHERA) as defined at G.S. 130A-444(1), Asbestos asbestos management activities conducted pursuant to this Section shall comply with the following: "AHERA" as defined in G.S. 130A-444(1) and 40 CFR Part 763, Subpart E and Appendices, as applicable. 40 CFR Part 763, Subpart E is hereby incorporated by reference, including any subsequent amendments and editions. This document is available for inspection at the Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915. Copies may be obtained from the Government Printing Office by writing to the Superintendent of Documents, Government Printing Office, PO Box 371954, Pittsburgh, PA 15250-7954, at a cost of twenty six dollars (\$26.00).~~

- (1) 40 CFR Part 763, Subpart E and Appendices, which are hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at: <https://www.ecfr.gov/>.
- (2) 29 CFR 1926.1101, which is hereby incorporated by reference, including and subsequent amendments and editions, and available free of charge at <https://www.ecfr.gov/>.

~~(c) 29 CFR 1926.1101 is hereby incorporated by reference, including any subsequent amendments and editions. This document is available for inspection at the Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915. Copies may be obtained from the Government Printing Office by writing to the Superintendent of Documents, Government Printing Office, PO Box 371954, Pittsburgh, PA 15250-7954, at a cost of twenty six dollars (\$26.00).~~

Authority G.S. 130A-5(3); 130A-451.

10A NCAC 41C .0602 ACCREDITATION

(a) No person shall perform asbestos management activities until that person has been accredited by the Program in the appropriate accreditation category, as set forth in Paragraphs (b) and (c) of this Rule, except as provided for in G.S. 130A-447, ~~(b) 130A-447(b)~~ and (c).

(b) An applicant for accreditation shall meet the ~~provisions~~ requirements of the "EPA Model Contractor Accreditation Plan" contained in 40 CFR Part 763, Subpart E, Appendix C and shall successfully complete the applicable training courses approved by the Program pursuant to Rule .0603 of this Section. Section and as set forth in this Rule for each accreditation category. However, ~~an~~ An applicant applying for roofing worker or roofing supervisor accreditation shall only be required to ~~successfully~~ successfully complete the ~~applicable~~ training courses as described under Rule .0611 of this Section.

(c) In addition to the requirements in Paragraph (b) of this Rule, an applicant, other than for the worker or roofing worker categories, shall meet the following:

- (1) an applicant for initial accreditation shall have ~~successfully~~ completed an approved initial training course for the ~~specific~~ specific discipline in which the applicant seeks accreditation within the 12 months immediately preceding application. If initial training was completed more than 12 months prior to application, the applicant shall have ~~successfully~~ completed an approved refresher training course for the ~~specific~~ specific discipline in which he or she seeks accreditation at least every 24 months from the date of completion of initial training to the date of application;
- (2) an inspector shall have:
 - (A) a high school diploma or equivalent; and
 - (B) at least three months of experience working as an accredited asbestos inspector related experience as, or three months of experience working under the direct supervision of, of an accredited inspector, or equivalent experience; inspector.
- (3) a management planner shall have a high school diploma or equivalent and shall be an ~~accredited inspector; inspector,~~ inspector, as defined in Subparagraph (c)(2) of this Rule.
- (4) a supervisor or roofing supervisor shall have:
 - (A) a high school diploma or equivalent; except that this requirement shall not apply to supervisors that were accredited on November 1, 1989, or roofing supervisors that were accredited prior to April 1, 1997; and
 - (B) at least three months of experience working as an accredited asbestos supervisor related experience as, or three months of experience working under the direct supervision of, of an accredited supervisor, or equivalent experience; supervisor.
- (5) an abatement designer shall have:
 - (A) a high school diploma or equivalent; and
 - (B) at least three months of experience working as an accredited asbestos

- ~~designer related experience as, or three months of experience working under the direct supervision of, of an accredited abatement designer, or equivalent experience; designer.~~
- (6) an air monitor shall work only under an accredited supervising air monitor or meet the provisions of Part (c)(7)(C) of this Rule. However, this requirement shall not apply to the owner or operator of a building and his ~~permanent~~ employees when performing air monitoring in non-public areas. In addition, all air monitors shall meet the following requirements:
- (A) Education and Work Experience:
- (i) a high school diploma or equivalent; and
- (ii) at least three months of experience working as an asbestos air monitor monitoring experience as, or three months of experience working under the direct supervision of, of an accredited air monitor or equivalent within 12 months prior to applying for accreditation; monitor.
- (B) Training Requirements:
- (i) complete a Program approved NIOSH National Institute for Occupational Safety and Health (NIOSH) 582 or Program approved NIOSH 582 equivalent Equivalency Course and meet the initial and refresher training requirements of this Rule for supervisors; Program approved project monitor refresher course may be substituted for the supervisor refresher course; or
- (ii) meet the initial and refresher training requirements of this Rule for a Program approved five-day project monitor course and a Program approved annual refresher ~~course; course.~~
- ~~(iii) air monitors with a valid accreditation on October 1, 1994 shall have until October 1, 1995 to meet the training requirements for air monitors set forth in this Paragraph;~~
- (7) a supervising air monitor shall meet the following requirements:
- (A) Education and Work Experience:
- (i) a high school diploma or equivalent;
- (ii) at least three months of experience working as an asbestos air monitoring experience as, monitor or three months of experience working under the direct supervision of, of an accredited air monitor monitor, or equivalent within 12 months prior to applying for accreditation;
- (B) Training Requirements:
- (i) complete a Program approved NIOSH 582 or Program approved NIOSH 582 ~~equivalent~~ Equivalency Course and meet the initial and refresher training requirements of this Rule for supervisors; a Program approved project monitor refresher course may be substituted for the supervisor refresher course; or
- (ii) meet the initial and refresher training requirements of this Rule for a Program approved five-day project monitor course and a Program approved annual refresher ~~course; course.~~
- ~~(iii) supervising air monitors with a valid accreditation on October 1, 1994 shall have until October 1, 1995 to meet the training requirements for supervising air monitors set forth in this Paragraph;~~
- (C) Professional Status:
- (i) a supervising air monitor who was accredited as an air monitor on or after February 1, 1991, or an air monitor accredited prior to that date who has not continuously maintained accreditation, shall be a Certified Industrial Hygienist;
- (ii) a supervising air monitor who was accredited as an air monitor prior to February 1, 1991, who has continuously maintained accreditation shall be a Certified Industrial Hygienist, Professional

- Engineer, or Registered Architect; Architect.
- (D) Air monitors with a valid accreditation on January 1, 1995 supervising other accredited air monitors shall be deemed to be accredited supervising air monitors for the duration of their existing air monitor accreditation.
- (d) To obtain accreditation, the applicant shall ~~submit~~ submit, or cause to be submitted, to the Program:
- (1) a completed application on a form provided by the ~~Program~~ Program, which is available at: <https://epi.dph.ncdhhs.gov/asbestos/healthaz.html>. A completed application form shall include ~~with~~ the following information:
 - (A) ~~full name; name and social security number of applicant;~~
 - (B) address, including city, state, zip code, and telephone number;
 - (C) date of birth, sex, height, and weight;
 - (D) discipline applied for;
 - (E) name, address, and telephone number of employer;
 - (F) training agency attended;
 - (G) name of training course completed; and
 - (H) dates of course attended;
 - (2) ~~one two~~ current 1.25 43 inch x 1.25 43 inch color photograph ~~photographs~~ of the applicant per application with the applicant's full name and social security number printed on the back; back of each photograph;
 - (3) ~~confirmation~~ confirmation of completion of an approved initial or refresher training course from the training ~~agency;~~ agency. The ~~the~~ confirmation shall be in the form of an original certificate of completion of the approved training course bearing the training agency's official ~~seal;~~ seal or an original letter from the training agency on training agency letterhead that confirming completion of the course on training agency letterhead, or an original letter from the training agency listing names of persons who have successfully completed the training course, with the applicant's name included, on the training agency letterhead; includes the following information:
 - (A) the name of the course completed;
 - (B) the date of course completion;
 - (C) the unique certificate number; and
 - (D) a list of names for the individuals who successfully completed the training course, with the applicant's name included in that list;
 - (4) when education is a ~~requirement;~~ requirement in accordance with this Rule, a copy of the ~~diploma~~ diploma; ~~or other written documentation;~~
 - (5) when work experience is a ~~requirement;~~ requirement in accordance with this Rule, documentation of the applicant's asbestos related work experience that includes the following: work history documenting asbestos related experience, including employer name, address and phone number; positions held; and dates when the positions were held; and
 - (A) employer name;
 - (B) employer address and phone number;
 - (C) position(s) held by applicant; and
 - (D) dates when the applicant held each position;
 - (6) when applicants for initial air monitor accreditation are working under an accredited supervising air monitor pursuant to Subparagraph (c)(6) of this Rule, the accredited supervising air monitor shall submit an original, signed letter acknowledging responsibility for the applicant's air monitoring activities. The applicant shall ensure that a new letter is submitted to the Program any time the information in the letter currently on file is no longer accurate.
- (e) All accreditations shall expire at the end of the 12th month following completion of required initial or refresher training. Work performed after the 12th month and prior to reaccreditation shall constitute a violation of this Rule. To be reaccredited, an applicant shall have ~~successfully~~ completed the required refresher training course within 24 months after the initial or refresher training course. An applicant for reaccreditation shall also submit information specified in Subparagraphs (d)(1)-(d)(6) of this Rule. If a person fails to obtain the required training within 12 calendar months after the expiration date of accreditation, that person ~~may~~ shall be accredited only by meeting the requirements of Paragraphs (b), (c), and (d) of this Rule.
- (f) All accredited persons shall be assigned an accreditation number and issued a photo-identification card by the Program.
- (g) In accordance with G.S. 130A-23, the Program may revoke accreditation or reaccreditation for any violation of G.S. 130A, Article 19 or the rules in this Section, or upon determining finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue accreditation or reaccreditation. The Program shall ~~may~~ also revoke accreditation or reaccreditation upon a finding that the accredited person has violated any requirement referenced in Rule .0605(e) of this Section. A person whose accreditation is revoked because of fraudulent misrepresentations or because of violations that create a significant public health hazard shall not reapply for accreditation before six months after the revocation and shall repeat the initial training course and other requirements as set out in Paragraphs (b), (c), and (d) of this Rule.

Authority G.S. 130A-5(3); 130A-23; 130A-447.

10A NCAC 41C .0608 TRAINING COURSE INSTRUCTOR QUALIFICATIONS

(a) Any person seeking approval as an instructor for courses covered under 40 CFR Part 763, Subpart E, Appendix C, Rule

.0603(a)(3) and .0611 of this Section shall meet the applicable requirements listed in this Rule.

(b) All training course providers shall ~~submit~~ submit, or cause to be submitted, to the Program the following:

- (1) a completed application on a form provided by the Program and available at <https://epi.dph.ncdhhs.gov/asbestos/healthaz.html>. A completed application form shall include with the following information:
 - (A) name, address, and telephone number of the applicant;
 - (B) name, address and telephone number of the training provider that is employing the applicant;
- (2) when training course completion is a ~~requirement,~~ requirement pursuant to Rule .0602 of this Section, confirmation of completion of an approved training course. ~~course;~~ The confirmation shall be in the form of an original certificate of completion of the approved training course or the following information: ~~the course title, dates of instruction, names of instructors, name, address and telephone number of the training provider;~~
 - (A) the course title;
 - (B) dates of the course instruction;
 - (C) name(s) of instructor(s); and
 - (D) name, address and telephone number of the training provider;
- (3) when education is a requirement, a copy of the high school diploma or other written documentation; equivalent;
- (4) when work experience is a ~~requirement,~~ requirement pursuant to Rule .0602 of this Section, documentation of the applicant's relevant work history, including the following: ~~employer name, address and telephone number, positions held, dates when positions were held, and copies of any licenses, registrations, certifications or accreditations that are relevant to the subject matter to be taught; and~~
 - (A) employer name;
 - (B) employer address and phone number;
 - (C) position(s) held by applicant;
 - (D) dates when the applicant held each position; and
 - (E) copies of any licenses, registrations, certifications, or accreditations related to the subject matter to be taught; and
- (5) when experience as an instructor is a ~~requirement,~~ requirement pursuant to Rule .0602 of this Section, documentation of ~~relevant~~ instructional experience including the following: ~~name of training courses taught, topics taught for each course, inclusive dates of each training course, and name, address and telephone number of each training organization for which experience is claimed.~~
 - (A) name(s) of the course(s) taught;

- (B) the topic that the applicant taught for each course;
- (C) the dates of the courses that the applicant taught; and
- (D) the name, address, and phone number of each training organization for which experience is claimed.

(c) ~~Work practice topics for each Training courses shall include;~~ Work practice topics for each Training courses shall include instruction on specific topics as follows:

- (1) for the worker and roofing worker courses: ~~state of the art work~~ current best practices;
- (2) for the supervisor and roofing supervisor courses: ~~state of the art work~~ current best practices practices, and techniques for asbestos abatement activities;
- (3) for the inspector course: pre-inspection planning and review of previous inspection records, inspecting for friable and nonfriable asbestos containing materials and assessing the condition of friable asbestos containing materials, bulk ~~sampling/documentation~~ sampling and documentation of asbestos in schools, recordkeeping and writing inspection reports;
- (4) for the management planner course: ~~evaluation/interpretation~~ evaluation and interpretation of survey results, hazard assessment, developing an operations and maintenance plan, recordkeeping for the management planner, and assembling and submitting the management plan;
- (5) for the abatement designer course: safety system design specifications, designing abatement solutions, ~~budgeting/cost~~ budgeting and cost estimation, writing abatement specifications, preparing abatement drawings and occupied buildings; and
- (6) for the project monitor course: asbestos abatement contracts, specifications and drawings, response actions and abatement practices, air monitoring strategies, conducting visual inspections, and recordkeeping and report writing.

(d) Instructors for ~~work practice~~ topics, hands-on exercises, workshops, or field trips ~~where required for courses~~ covered under 40 CFR Part 763, Subpart E, Appendix C shall meet the following requirements as applicable:

- (1) For the worker initial and refresher and the supervisor initial and refresher courses:
 - (A) the applicant shall have ~~successfully~~ completed the initial and subsequent refresher training course requirements for supervisor; and
 - (B) the applicant shall meet at least one of the following education and asbestos work experience combinations:
 - (i) If the applicant does not possess either a high school

diploma or equivalent, the applicant shall:

- (I) have at least 1440 hours experience in a worker or supervisory capacity in a contained work area; and
- (II) have at least 360 hours as an instructor in an Environmental Protection Agency-approved or ~~Environmental Protection Agency~~ state Program approved worker course.

(ii) If the applicant possesses either a high school diploma or equivalent, the applicant shall:

- (I) have at least 960 hours experience in a worker, supervisory, or consulting capacity in a contained work area; or
- (II) have at least 240 hours as an instructor in an Environmental Protection Agency-approved or ~~Environmental Protection Agency~~ state Program approved asbestos worker or supervisor ~~course~~ course, or other courses that provide instruction on the occupational safety and health topics described in 29 CFR or environmental safety and health topics described in 40 CFR, ~~courses required to meet federal and state regulations.~~

(iii) If the applicant possesses at least an associate degree from a ~~regionally an~~

accredited college or university, the applicant shall:

- (I) have at least 480 hours experience in a worker, supervisory, or consulting capacity in a contained area; or
- (II) have at least 120 hours as an instructor in an Environmental Protection Agency-approved or ~~Environmental Protection Agency~~ state Program approved asbestos worker or supervisor ~~course~~ course, or other courses that provide instruction on the occupational safety and health topics described in 29 CFR or environmental safety and health topics described in 40 CFR, ~~courses required to meet federal and state regulations.~~

(2) For the inspector initial and refresher courses:

- (A) the applicant shall have successfully completed the initial and subsequent refresher training course requirements for inspector; and
- (B) the applicant shall meet at least one of the following education and asbestos work experience combinations:
 - (i) If the applicant possesses either a high school diploma or equivalent, the applicant shall:
 - (I) have documented experience, including asbestos inspections in at least 1,000,000 square feet of building space in the past three years; or
 - (II) have at least 60 hours as an instructor in an

Environmental Protection Agency-approved or ~~Environmental Protection Agency state~~ Program approved inspector ~~course~~ course, or other courses that provide instruction on the occupational safety and health topics described in 29 CFR or environmental safety and health topics described in 40 CFR. ~~courses required to meet federal and state regulations.~~

(ii) If the applicant possesses at least an associate degree from a ~~regionally~~ an accredited college or university, the applicant shall:

(I) have documented experience, including asbestos inspections in at least 500,000 square feet of building space in the past three years; or

(II) have at least 40 hours as an instructor in an Environmental Protection Agency-approved or ~~Environmental Protection Agency state~~ Program approved inspector ~~course~~ course, or other courses that provide instruction on the occupational safety and health topics described in 29 CFR or environmental safety and health topics described in 40 CFR. ~~courses required to meet federal and state regulations.~~

(3) For the management planner initial and refresher courses:

(A) the applicant shall have successfully completed the initial and subsequent refresher training course requirements for management planner; and
(B) the applicant shall meet at least one of the following education and asbestos work experience combinations:

(i) If the applicant possesses either a high school diploma or equivalent, the applicant shall:

(I) have documented management planning experience showing at least 25 management plans or reinspection reports written in the past three years, or documented experience as the management consultant for at least 25 asbestos projects in the past three years, or a combination of management plans and projects managed; or

(II) have at least 48 hours as an instructor in an Environmental Protection Agency-approved or ~~Environmental Protection Agency state~~ Program approved management planner course or other courses that provide instruction on the occupational safety and health topics described in 29 CFR or environmental safety and health topics described in 40 CFR. ~~courses required to meet federal and state regulations.~~

(ii) If the applicant possesses at least an associate degree

from ~~a regionally~~ an accredited college or university, the applicant shall:

- (I) have documented management planning experience showing at least 12 management plans or reinspection reports written in the past three years, or documented experience as the management consultant for at least 12 asbestos projects in the past three years, or a combination of management plans and projects managed; or
- (II) have at least 32 hours as an instructor in an Environmental Protection Agency-approved or ~~Environmental Protection Agency state~~ Program approved management planner course or other courses that provide instruction on the occupational safety and health topics described in 29 CFR or environmental safety and health topics described in 40 CFR. courses required to meet federal and state regulations.

- (4) For the project designer initial and refresher courses:
 - (A) the applicant shall have successfully completed the initial and subsequent refresher training course requirements for abatement project designer; and
 - (B) the applicant shall meet at least one of the following education and asbestos work experience combinations:
 - (i) If the applicant possesses either a high school diploma

or equivalent, the applicant shall:

- (I) have documented asbestos abatement project design experience including the design of at least 12 asbestos projects in the past three years; or
- (II) have at least 30 hours as an instructor in an Environmental Protection Agency-approved or ~~Environmental Protection Agency state~~ Program approved abatement project designer course or other courses that provide instruction on the occupational safety and health topics described in 29 CFR or environmental safety and health topics described in 40 CFR. courses required to meet federal and state regulations.
- (ii) If the applicant possesses at least an associate degree from ~~a regionally~~ an accredited college or university, the applicant shall:
 - (I) have documented asbestos abatement project design experience, including the design of at least six asbestos projects in the past three years; or
 - (II) have at least 20 hours as an instructor in an Environmental Protection Agency-approved or ~~Environmental Protection Agency state~~ Program

approved abatement project designer course or other courses that provide instruction on the occupational safety and health topics described in 29 CFR or environmental safety and health topics described in 40 CFR, ~~courses required to meet federal and state regulations.~~

- (5) For the project monitor initial and refresher courses:
 - (A) the applicant shall meet the qualifications for project designer instructor under Subparagraph (d)(4) of this Rule or the qualifications for supervisor instructor under Subparagraph (d)(1) of this Rule to teach the work practice topics of asbestos abatement contracts, specifications and drawings or response action and abatement practices;
 - (B) the applicant for work practice topics of air monitoring strategies, conducting visual inspections, and recordkeeping and report writing shall:
 - (i) possess either a high school diploma or equivalent;
 - (ii) successfully complete a Program approved NIOSH 582 course, course or Program approved NIOSH 582 Equivalency Course equivalent, or a Program approved project monitor course; and
 - (iii) have documented asbestos air monitoring experience on at least six asbestos removals.

~~(6) All instructors approved under Paragraph (d) of this Rule shall take a refresher training in at least one discipline from a training provider other than their employer every other year.~~

(e) Instructors who teach one or more segments of a training course covered under 40 CFR Part 763, Subpart E, Appendix C, Rule .0603(a) or Rule .0611 of this ~~Section (other Section, other than work practice topics, hands-on exercises, workshops, or field trips)~~ trips, shall meet the following requirements:

- (1) be actively currently working in the field of expertise in which training is conducted; and

- (2) have a minimum of a high school diploma or equivalent.
- (f) Instructors for a Program approved NIOSH 582 or Program approved NIOSH 582 Equivalency Course equivalent shall meet the following requirements:
 - (1) have a high school diploma or equivalent;
 - (2) attend a ~~the National Institute for Occupational Safety and Health's~~ NIOSH 582 training course or a Program ~~approved~~ approved NIOSH 582 Equivalency Course equivalent course; and
 - (3) for teaching the NIOSH 7400 Method, have at least three months work experience as a microscopist performing analysis using the NIOSH 7400 Method.
- (g) Instructors who teach work practice or hands-on topics in Program approved roofing worker or roofing supervisor initial or refresher courses shall meet the following requirements:
 - (1) have a high school diploma or equivalent;
 - (2) successfully complete either an initial asbestos supervisor or initial asbestos roofing supervisor course, and subsequent annual refreshers courses;
 - (3) successfully complete an initial asbestos inspector course; and
 - (4) have at least three months' experience as a roofing supervisor ~~or foreman~~ or asbestos supervisor.

Authority G.S. 130A-447. ~~P.L. 99-519.~~

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rule cited as 14B NCAC 17 .0202.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://ncdps.gov/dps-services/permits-licenses/alarm-system-licensing-board>

Proposed Effective Date: *January 1, 2021*

Public Hearing:
Date: *October 6, 2020*
Time: *2:00 p.m.*
Location: *Conference Room, ASLB Office, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609*

Reason for Proposed Action: *The amendment adds an additional source for minimum training.*

Comments may be submitted to: *Paul Sherwin, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609; phone (919) 788-5320; email paul.sherman@ncdps.gov*

Comment period ends: *November 2, 2020*

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

CHAPTER 17 - ALARM SYSTEMS LICENSING BOARD

SECTION .0200 – PROVISIONS FOR LICENSEES

14B NCAC 17 .0202 EXPERIENCE REQUIREMENTS FOR LICENSE

(*) Applicants for an alarm system license shall meet the following requirements, which are additional in addition to those specified in G.S. 74D:

- (1) establish two year's experience within the past five years in alarm systems installation or service, or alarm systems business ~~management; management; or~~
- (2) ~~no longer than one year prior to the application date, successfully pass an oral or written examination required by the Board to measure an individual's knowledge and competence in the alarm systems business; or~~
- (*) (2) no longer than one year prior to the application date, successfully complete the Certified Alarm Technician Level I Course offered by the National Electronic Security Association or Association, Elite CEU's on-line training ~~course; course, or Complete Electrical Academy's Level I training course.~~

(b) ~~An applicant who takes the examination required by the Board under Subparagraph (a)(2) of this Rule and who does not successfully complete said examination after two attempts shall wait six months before being allowed to take the examination again.~~

Authority G.S. 74D-5.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02B .0227 and .0311.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://deq.nc.gov/news/events/public-notice-hearings>

Proposed Effective Date: July 1, 2021

Public Hearing:

Date: October 20, 2020

Time: 6:00 p.m.

Location: *In the abundance of caution, and to address protective measures to help prevent the spread of COVID-19, the NC Division of Water Resources is holding an online public hearing that can be joined starting at 5:45 pm via WebEx link <https://tinyurl.com/yxo91csz>, password bpKhm8bjP32, phone number 1-415-655-0003 and access code 161 082 1972.*

To register for the hearing and provide your preference regarding speaking at the hearing, please visit <https://tinyurl.com/y6g9hf7a>; registration must be completed by 12:00 pm on October 20, 2020. If you have any problems registering online, please call 919-707-9011 by the registration deadline of 12:00 pm on October 20, 2020.

The Division of Water Resources highly recommends testing your computer's WebEx capabilities prior to the hearing at <https://www.webex.com/test-meeting.html>. For instructions about digital ways to join the public hearing, please refer to the WebEx Help Center online at <https://help.webex.com/en-us/>.

To comment during the hearing after your name is called as a registered speaker and/or after the hearing officer asks if any people wish to comment following the registered speakers:

*- If you join the hearing by phone, press *3 to "raise your hand," speak once called upon to do so, and press *3 again to "lower your hand."*

- If you join the hearing online, press the hand icon to "raise your hand," speak once called upon to do so, and press the hand icon again to "lower your hand."

- The Hearing Officer may limit the length of time that you may speak, so that all those who wish to speak may do so.

Reason for Proposed Action: *In 2014, the Lower Cape Fear River Program had requested that a segment of the lower Cape Fear River in New Hanover and Brunswick Counties be reclassified from Class SC to Class SC Swamp. The DO standard and pH standard for the Class SC classification is 5 mg/l, and a range between 6.8 – 8.5, respectively. The Sw classification allows, if caused by natural conditions, the pH of the subject waters to reach as low as 4.3 and the DO to be lower than 5 mg/l. A water quality management plan was proposed along with the Swamp classification to help implement the current permitting policy for new wastewater discharges and expansions of existing wastewater discharges to the subject waters, with effluent limits*

for oxygen consuming wastes that are similar to the same limits for High Quality Waters (HQWs). The Swamp classification and management plan became effective in 2017 in the North Carolina Administrative Code, providing a path forward for discharges and local communities.

In 2018, the U.S. Environmental Protection Agency (EPA) disapproved the Swamp classification and a part of the associated management plan for the above-mentioned portion of the lower Cape Fear River. In 2019, the Environmental Management Commission (EMC) received a petition for rulemaking from the Cape Fear River Watch and Waterkeeper Alliance in care of the Southern Environmental Law Center. The petition requested that the EMC "...remove the supplemental swamp waters classification from the lower Cape Fear River." At its July 2019 meeting, the EMC granted the petition and approved the initiation of rulemaking to remove the EPA-disapproved Swamp classification and to remove the EPA-disapproved portion of the management plan from the lower Cape Fear River.

The subject waters are comprised of a portion of the Cape Fear River from the upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut, where the Intracoastal Waterway (ICW) meets the river. Wetlands, mixed with developed lands, other open waters, forest lands, shrub/scrub lands, and primarily Swamp classified tributaries exist directly adjacent to the proposed waters. In these waters, there are several tidal saltwater species, including the federally endangered shortnose sturgeon and Atlantic sturgeon, and the Marine Fisheries Commission designation of Primary Nursery Area, or PNA, which received the HQW classification. In addition, during the rulemaking for the reclassification and management plan, there were eight NPDES permitted wastewater discharges, no known planned new NPDES wastewater discharges, and one planned expansion of an existing NPDES wastewater discharge that met the requirements of the classification and management plan but had not been permitted; since then, the one planned expansion got permitted, and currently there are eight NPDES permitted wastewater discharges and no known planned new NPDES wastewater expansions to these waters. Lastly, there are no plans for expansions of existing NPDES wastewater discharges that require permitting.

Comments may be submitted to: Elizabeth Kountis, DEQ-DWR Planning Section, 1611 Mail Service Center, Raleigh, NC 27699-1611; phone (919) 707-3685; email elizabeth.kountis@ncdenr.gov

Comment period ends: November 2, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule,

the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B .0227 WATER QUALITY MANAGEMENT PLANS

(a) In implementing the water quality standards to protect the "existing uses" [as defined by Rule .0202 of this Section] of the waters of the State or the water quality that supports those uses, the Commission shall develop water quality management plans on a priority basis to attain, maintain or enhance water quality throughout the State. Additional specific actions deemed necessary by the Commission to protect the water quality or the existing uses of the waters of the State shall be specified in Paragraph (b) of this Rule. These actions may include anything within the powers of the Commission, as set forth in G.S. 143-21 and G.S. 143B-282. The Commission may also consider local actions that have been taken to protect a waterbody in determining the appropriate protection options to be incorporated into the water quality management plan.

(b) All waters determined by the Commission to be protected by a water quality management plan are listed with specific actions either in Rules .0601 - .0608 of this Subchapter that address the Goose Creek watershed (Yadkin Pee-Dee River Basin) or as follows:

- (1) The Lockwoods Folly River Area (Lumber River Basin), which includes all waters of the lower Lockwoods Folly River in an area extending north from the Intracoastal Waterway to a line extending from Genoes Point to Mullet Creek, shall be protected by the specific actions described in Parts (A) through (D) of this Subparagraph.
 - (A) New development activities within 575' of the mean high water line that require a Sedimentation Erosion Control Plan or a CAMA major

development permit shall comply with the low density option of the coastal stormwater requirements as specified in 15A NCAC 02H .1005(3)(a).

~~dissolved oxygen at total permitted capacity for all discharges.~~

Authority G.S. 143-214.1; 143-215.8A.

- (B) New or expanded NPDES permits shall be issued only for non-domestic, non-industrial process type discharges, such as non-industrial process cooling or seafood processing discharges. Pursuant to 15A NCAC 02H .0111, a public hearing shall be mandatory for any proposed (new or expanded) NPDES permit to this protected area.
- (C) New or expanded marinas shall be located in upland basin areas.
- (D) No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of "submerged aquatic vegetation habitat" or "shellfish producing habitat" that are defined in 15A NCAC 03I .0101, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the protected area or maintenance dredging for activities such as agriculture.

(2) A part of the Cape Fear River (Cape Fear River Basin) comprised of a section of Index No.18-(71) from upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut shall be protected by the Class SC ~~Sw~~ standards as well as the following site-specific action: All new individual NPDES wastewater discharges and expansions of existing individual NPDES wastewater discharges shall be required to provide treatment for oxygen consuming wastes as described in Parts (A) ~~through (C)~~ and (B) of this Subparagraph.

- (A) Effluent limitations shall be as follows: BOD₅ = 5 mg/l, NH₃-N = 1 mg/l and DO = 6 mg/l, or utilize site-specific best available technology on a case-by-case basis for industrial discharges in accordance with Rule .0406 (e) of this Subchapter.
- (B) Seasonal effluent limits for oxygen consuming wastes shall be considered in accordance with Rule .0404 of this Subchapter.
- ~~(C) Any new or expanded permitted pollutant discharge of oxygen consuming waste shall not cause the dissolved oxygen of the receiving water to drop more than 0.1 mg/l below the modeled in-stream~~

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0311 CAPE FEAR RIVER BASIN

(a) Classifications assigned to the waters within the Cape Fear River Basin are set forth in the Cape Fear River Basin Classification Schedule, which may be inspected at the following places:

- (1) the Internet at <https://deq.nc.gov/about/divisions/water-resources/water-planning/classification-standards/river-basin-classification>; and
- (2) the following offices of the North Carolina Department of Environmental Quality:
 - (A) Winston-Salem Regional Office
450 West Hanes Mill Road
Winston-Salem, North Carolina;
 - (B) Fayetteville Regional Office
225 Green Street
Systel Building Suite 714
Fayetteville, North Carolina;
 - (C) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina;
 - (D) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina;
 - (E) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North Carolina; and
 - (F) Division of Water Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) The Cape Fear River Basin Classification Schedule was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) December 14, 1980;
- (4) August 9, 1981;
- (5) April 1, 1982;
- (6) December 1, 1983;
- (7) January 1, 1985;
- (8) August 1, 1985;
- (9) December 1, 1985;
- (10) February 1, 1986;
- (11) July 1, 1987;
- (12) October 1, 1987;
- (13) March 1, 1988;
- (14) August 1, 1990.

(c) The Cape Fear River Basin Classification Schedule was amended effective June 1, 1988 as follows:

- (1) Cane Creek [Index No. 16-21-(1)] from source to a point 0.5 mile north of N.C. Hwy. 54 (Cane

Reservoir Dam) including the Cane Creek Reservoir and all tributaries has been reclassified from Class WS-III to WS-I.

- (2) Morgan Creek [Index No. 16-41-1-(1)] to the University Lake dam including University Lake and all tributaries has been reclassified from Class WS-III to WS-I.

(d) The Cape Fear River Basin Classification Schedule was amended effective July 1, 1988 by the reclassification of Crane Creek (Crains Creek) [Index No. 18-23-16-(1)] from source to mouth of Beaver Creek including all tributaries from C to WS-III.

(e) The Cape Fear River Basin Classification Schedule was amended effective January 1, 1990 as follows:

- (1) Intracoastal Waterway (Index No. 18-87) from southern edge of White Oak River Basin to western end of Permuda Island (a line from Morris Landing to Atlantic Ocean), from the eastern mouth of Old Topsail Creek to the southwestern shore of Howe Creek and from the southwest mouth of Shinn Creek to channel marker No. 153 including all tributaries except the King Creek Restricted Area, Hardison Creek, Old Topsail Creek, Mill Creek, Futch Creek and Pages Creek were reclassified from Class SA to Class SA ORW.
- (2) Topsail Sound and Middle Sound ORW Area which includes all waters between the Barrier Islands and the Intracoastal Waterway located between a line running from the western most shore of Mason Inlet to the southwestern shore of Howe Creek and a line running from the western shore of New Topsail Inlet to the eastern mouth of Old Topsail Creek was reclassified from Class SA to Class SA ORW.
- (3) Masonboro Sound ORW Area which includes all waters between the Barrier Islands and the mainland from a line running from the southwest mouth of Shinn Creek at the Intracoastal Waterway to the southern shore of Masonboro Inlet and a line running from the Intracoastal Waterway Channel marker No. 153 to the southside of the Carolina Beach Inlet was reclassified from Class SA to Class SA ORW.

(f) The Cape Fear River Basin Classification Schedule was amended effective January 1, 1990 as follows: Big Alamance Creek [Index No. 16-19-(1)] from source to Lake Mackintosh Dam including all tributaries has been reclassified from Class WS-III NSW to Class WS-II NSW.

(g) The Cape Fear River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules (15A NCAC 02B .0100, .0200 and .0300), which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification

after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Cape Fear River Basin Classification Schedule was amended effective June 1, 1994 as follows:

- (1) The Black River from its source to the Cape Fear River [Index Nos. 18-68-(0.5), 18-68-(3.5) and 18-65-(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
- (2) The South River from Big Swamp to the Black River [Index Nos. 18-68-12-(0.5) and 18-68-12(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
- (3) Six Runs Creek from Quewhiffle Swamp to the Black River [Index No. 18-68-2] was reclassified from Class C Sw to Class C Sw ORW.

(i) The Cape Fear River Basin Classification Schedule was amended effective September 1, 1994 with the reclassification of the Deep River [Index No. 17-(36.5)] from the Town of Gulf-Goldston water supply intake to US highway 421 including associated tributaries from Class C to Classes C, WS-IV and WS-IV CA.

(j) The Cape Fear River Basin Classification Schedule was amended effective August 1, 1998 with the revision to the primary classification for portions of the Deep River [Index No. 17-(28.5)] from Class WS-IV to Class WS-V, Deep River [Index No. 17-(41.5)] from Class WS-IV to Class C, and the Cape Fear River [Index 18-(10.5)] from Class WS-IV to Class WS-V.

(k) The Cape Fear River Basin Classification Schedule was amended effective April 1, 1999 with the reclassification of Buckhorn Creek (Harris Lake)[Index No. 18-7-(3)] from the backwaters of Harris Lake to the Dam at Harris Lake from Class C to Class WS-V.

(l) The Cape Fear River Basin Classification Schedule was amended effective April 1, 1999 with the reclassification of the Deep River [Index No. 17-(4)] from the dam at Oakdale-Cotton Mills, Inc. to the dam at Randleman Reservoir (located 1.6 mile upstream of U.S. Hwy 220 Business), and including tributaries from Class C and Class B to Class WS-IV and Class WS-IV & B. Streams within the Randleman Reservoir Critical Area have been reclassified to WS-IV CA. The Critical Area for a WS-IV reservoir is defined as 0.5 mile and draining to the normal pool elevation of the reservoir. All waters within the Randleman Reservoir Water Supply Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in Rule .0248 of this Subchapter.

(m) The Cape Fear River Basin Classification Schedule was amended effective August 1, 2002 as follows:

- (1) Mill Creek [Index Nos. 18-23-11-(1), 18-23-11-(2), 18-23-11-3, 18-23-11-(5)] from its source to the Little River, including all tributaries was reclassified from Class WS-III NSW and Class WS-III B NSW to Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.
- (2) McDeed's Creek [Index Nos. 18-23-11-4, 18-23-11-4-1] from its source to Mill Creek, including all tributaries was reclassified from Class WS III NSW and Class WS-III B NSW to

Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.

The "@" symbol as used in this Paragraph means that if the governing municipality has deemed that a development is covered under a "5/70 provision" as described in Rule .0215(3)(b)(i)(E) of this Subchapter, then that development is not subject to the stormwater requirements as described in 15A NCAC 02H .1006.

(n) The Cape Fear River Basin Classification Schedule was amended effective November 1, 2004 as follows:

- (1) the portion of Rocky River [Index Number 17-43-(1)] from a point 0.3 mile upstream of Town of Siler City upper reservoir dam to a point 0.3 mile downstream of Lacy Creek from WS-III to WS-III CA.
- (2) the portion of Rocky River [Index Number 17-43-(8)] from dam at lower water supply reservoir for Town of Siler City to a point 65 feet below dam (site of proposed dam) from C to WS-III CA.
- (3) the portion of Mud Lick Creek (Index No. 17-43-6) from a point 0.4 mile upstream of Chatham County SR 1355 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.
- (4) the portion of Lacy Creek (17-43-7) from a point 0.6 mile downstream of Chatham County SR 1362 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.

(o) The Cape Fear River Basin Classification Schedule was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water Resources maintains a Geographic Information Systems data layer of these UWLs.

- (1) Military Ocean Terminal Sunny Point Pools, all on the eastern shore of the Cape Fear River [Index No. 18-(71)] were reclassified to Class WL UWL.
- (2) Salters Lake Bay near Salters Lake [Index No. 18-44-4] was reclassified to Class WL UWL.
- (3) Jones Lake Bay near Jones Lake [Index No. 18-46-7-1] was reclassified to Class WL UWL.
- (4) Weymouth Woods Sandhill Seep near Mill Creek [18-23-11-(1)] was reclassified to Class UWL.
- (5) Fly Trap Savanna near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL.
- (6) Lily Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL.
- (7) Grassy Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL.
- (8) The Neck Savanna near Sandy Run Swamp [Index No. 18-74-33-2] was reclassified to Class WL UWL.
- (9) Bower's Bog near Mill Creek [Index No. 18-23-11-(1)] was reclassified to Class WL UWL.
- (10) Bushy Lake near Turnbull Creek [Index No. 18-46] was reclassified to Class WL UWL.

(p) The Cape Fear River Basin Classification Schedule was amended effective January 1, 2009 as follows:

- (1) the portion of Cape Fear River [Index No. 18-(26)] (including tributaries) from Smithfield Packing Company's intake, located approximately 2 miles upstream of County Road 1316, to a point 0.5 miles upstream of Smithfield Packing Company's intake from Class C to Class WS-IV CA.
- (2) the portion of Cape Fear River [Index No. 18-(26)] (including tributaries) from a point 0.5 miles upstream of Smithfield Packing Company's intake to a point 1 mile upstream of Grays Creek from Class C to Class WS-IV.

(q) The Cape Fear River Basin Classification Schedule was amended effective August 11, 2009 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at B. Everett Jordan Reservoir from Class C NSW and Class B NSW to Class WS-V NSW and Class WS-V & B NSW, respectively. All waters within the B. Everett Jordan Reservoir Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in Rules .0262 through .0273 of this Subchapter.

(r) The Cape Fear River Basin Classification Schedule was amended effective September 1, 2009 with the reclassification of a portion of the Haw River [Index No. 16-(28.5)] from the Town of Pittsboro water supply intake, which is located approximately 0.15 mile west of U.S. 15/501, to a point 0.5 mile upstream of the Town of Pittsboro water supply intake from Class WS-IV to Class WS-IV CA.

(s) The Cape Fear River Basin Classification Schedule was amended effective March 1, 2012 with the reclassification of the portion of the Haw River [Index No. 16-(1)] from the City of Greensboro's intake, located approximately 650 feet upstream of Guilford County 2712, to a point 0.5 miles upstream of the intake from Class WS-V NSW to Class WS-IV CA NSW, and the portion of the Haw River [Index No. 16-(1)] from a point 0.5 miles upstream of the intake to a point 0.6 miles downstream of U.S. Route 29 from Class WS-V NSW to Class WS-IV NSW.

~~(t) The Cape Fear River Basin Classification Schedule was amended effective June 30, 2017 with the reclassification of a section of 18 (71) from upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut from Class SC to Class SC Sw. A site specific management strategy is outlined in 15A NCAC 02B .0227.~~

~~(u)~~(t) The Cape Fear River Basin Classification Schedule was amended effective September 1, 2019 with the reclassification of a portion of Sandy Creek [Index No. 17-16-(1)] (including tributaries) from a point 0.4 mile upstream of SR-2481 to a point 0.6 mile upstream of N.C. Hwy 22 from WS-III to WS-III CA. The reclassification resulted in an updated representation of the water supply watershed for the Sandy Creek reservoir.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

TITLE 16 – DEPARTMENT OF PUBLIC INSTRUCTION

PROPOSED RULES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to repeal the rules cited as 16 NCAC 06E .0202 and .0203.

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://stateboard.ncpublicschools.gov>

Proposed Effective Date: *January 1, 2021*

Public Hearing:

Date: *October 13, 2020*

Time: *9:00 a.m.*

Location: *<https://ncgov.webex.com/meet/lou.martin>, or to join by phone:*

1+415-655-0003 US Toll

1+904-900-2303 United States Toll (Jacksonville)

Access code: 615 950 383

Reason for Proposed Action: *The State Board of Education proposes to repeal 16 NCAC 06E .0202 INTERSCHOLASTIC ATHLETICS because it substantially duplicates proposed rule 16 NCAC 06E .0204 INTERSCHOLASTIC ATHLETICS.*

The State Board of Education proposes to repeal 16 NCAC 06E .0203 ATHLETIC INJURY MANAGEMENT because it substantially duplicates proposed rule 16 NCAC 06E .0206 ATHLETIC TRAINERS.

Comments may be submitted to: *Lou Martin, State Board of Education, 6302 Mail Service Center, Raleigh, NC 27699-6302; email lou.martin@dpi.nc.gov*

Comment period ends: *November 2, 2020*

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

CHAPTER 06 ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 06E - STUDENTS

SECTION .0200 - SCHOOL ATHLETICS AND SPORTS MEDICINE

16 NCAC 06E .0202	INTERSCHOLASTIC ATHLETICS	
16 NCAC 06E .0203	ATHLETIC MANAGEMENT	INJURY

Authority G.S. 115C-12(12); 115C-47(4); N.C. Constitution, Article IX, Sec. 5.

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Child Care Commission*

Rule Citation: *10A NCAC 09 .3101-.3104*

Effective Date: *August 13, 2020*

Findings Reviewed and Approved by the Codifier: *August 5, 2020*

Reason for Action: *The Governor has declared a state of emergency to enact protective measures to help prevent the spread of the Coronavirus Disease (COVID-19). This disease can result in serious illness or death to the public. The public health emergency, and the resulting closure of public schools, has impacted North Carolina school-age children and their families. To the degree that it is able, the North Carolina Child Care Commission is implementing emergency rules in order to give public schools options to provide care outside, or in addition to, the traditional school building, as well as give licensed facilities some flexibility to create and fill additional slots for school-age children to receive care while attending remote/online learning programs.*

CHAPTER 09 - CHILD CARE RULES

SECTION .3100 – CARE FOR SCHOOL-AGE CHILDREN DURING STATE OF EMERGENCY

10A NCAC 09 .3101 SCOPE

The rules in this Section apply to care for school-age children, as defined by 10A NCAC 09 .0102(41), during the declared 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"). All rules in Section .2500 of this Chapter apply except as provided in this Section.

History Note: Authority G.S. 110-85, 110-86; 110-88; 110-91; Emergency Adoption Eff. August 13, 2020.

10A NCAC 09 .3102 DEFINITIONS

The terms and phrases used in this Chapter are defined as follows except when the context of the rule requires a different meaning.

- (1) "Public schools" means:
 - (a) any building that is approved for school occupancy and which houses school-age children as part of the

public school system during the school year; or

(b) a Remote Learning Facility.

(2) "Remote Learning Facility" means any building that is used by a public school system, pursuant to a Contractual Arrangement, to house school-age children enrolled in that public school system during the school year for the purpose of facilitating online or remote learning programs, and which follows the "Strong Schools NC: Public Health Toolkit (K-12) Interim Guidance" established by the North Carolina Department of Health and Human Services.

(3) "Contractual Arrangement" means a written agreement wherein the local school administrative unit agrees as follows:

(a) to be responsible for the enrollment and attendance of school-age children at a Remote Learning Facility; and

(b) that it shall be liable for any incidents or occurrences at the Remote Learning Facility in the same way it would be liable if the school-age child(ren) were in a building that is approved for school occupancy and which houses any part of the public school system. Notwithstanding the foregoing, this provision shall not prohibit the local school administrative unit from obtaining liability insurance or from contracting with the Remote Learning Facility regarding indemnification or other terms regarding the apportionment of liability between themselves for incidents or occurrences.

History Note: Authority G.S. 110-85, 110-86; 110-88; 110-91; Emergency Adoption Eff. August 13, 2020.

10A NCAC 09 .3103 PUBLIC SCHOOLS

Pursuant to G.S. 110-86(2)(e), Public schools are not child care and are, therefore, exempt from licensure. Notwithstanding any other provision of this Section, all NC Pre-K programs, as defined in Section .3000 of this Chapter, and Developmental Day Services, as defined in Section .2900 of this Chapter, and any program or arrangement housed in a Public school that is not operated by the local school administrative unit and provides care to three or more infants, toddlers, or preschoolers on a regular basis of at least once per week for more than four hours from

persons other than their guardians or full time custodians or from persons not related to them by birth, marriage, or adoption are child care as defined in G.S. 110-86(2) and requires a child care license.

History Note: Authority G.S. 110-85, 110-86; 110-88; 110-91;

Emergency Adoption Eff. August 13, 2020.

10A NCAC 09 .3104 ADDING SPACE AT LICENSED CENTERS FOR CARE OF SCHOOL-AGE CHILDREN

If an operator of a licensed child care center wishes to use space, regardless of location, not previously approved for child care ("additional space") to care for school-age children during the Declaration of a State of Emergency, the operator shall notify the Division of the desired change pursuant to 10A NCAC 09 .0204, but shall have six months to obtain any required inspections of the additional space by the local health, building, and fire inspections in accordance with G.S. 110-91(1), (4), and (5). If all other standards set forth in G.S. 110-91 and this Chapter are met, the operator may provide care to school-age children in the additional space and the Division shall document the same in a manner that will notify parents and the public of the change. Once the operator

provides documentation that the additional space conforms to all applicable sanitation, building, and fire standards, and if all applicable requirements of G.S. 110, Article 7 and this Chapter are met, the Division shall issue a new license pursuant to 10A NCAC 09 .0204. If a health, building, and/or fire inspection reveals that the additional space does not conform to the required standards, the Division may issue a provisional license under the policies of the Commission, as set forth in 10A NCAC 09 .2204. Any additional space that the operator desires to use as additional space for care of school-age children, which is not located within the currently licensed facility, shall not be required to meet the outdoor space and fencing requirements of G.S. 110-91(6). If there is no safe outdoor space at the additional space to be used for care of school-age children, which is not located within the currently licensed facility, operators shall not be required to meet the requirements of 10A NCAC 09 .0508(c). Notwithstanding any other provision in this Section, operators shall provide adequate indoor space for daily gross motor activities when safe outdoor space is not available.

History Note: Authority G.S. 110-85; 110-86; 110-88; 110-91;

Emergency Adoption Eff. August 13, 2020.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on July 16, 2020 Meeting.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

PESTICIDE BOARD

<u>Duties (Continued)</u>	02 NCAC 09L .0102*	34:11 NCR
<u>Assignment of Duties</u>	02 NCAC 09L .0103*	34:11 NCR
<u>Registration for the Following Year</u>	02 NCAC 09L .0308*	34:11 NCR
<u>ReRegistration</u>	02 NCAC 09L .0310*	34:11 NCR
<u>Registration of Pesticides to Meet Special Local Needs</u>	02 NCAC 09L .0317*	34:11 NCR
<u>Exemption of Agencies for Use of Pesticides in Emergencies</u>	02 NCAC 09L .0318*	34:11 NCR
<u>Tolerances</u>	02 NCAC 09L .0402*	34:11 NCR
<u>List of Restricted Use Pesticides</u>	02 NCAC 09L .0502*	34:11 NCR
<u>Pesticide Applicators</u>	02 NCAC 09L .0503*	34:11 NCR
<u>Definitions</u>	02 NCAC 09L .0504*	34:11 NCR
<u>Classifications</u>	02 NCAC 09L .0505	34:11 NCR
<u>Consultant Education Requirements</u>	02 NCAC 09L .0509*	34:11 NCR
<u>Continuances</u>	02 NCAC 09L .0516*	34:11 NCR
<u>Certification</u>	02 NCAC 09L .0519*	34:11 NCR
<u>Recertification Requirements</u>	02 NCAC 09L .0520*	34:11 NCR
<u>Recertification Options</u>	02 NCAC 09L .0522*	34:11 NCR
<u>Recertification in Additional Categories</u>	02 NCAC 09L .0523*	34:11 NCR
<u>Expiration of Certification</u>	02 NCAC 09L .0524*	34:11 NCR
<u>Recertification of Pesticide Dealers</u>	02 NCAC 09L .0525*	34:11 NCR
<u>Pesticide Dealer Recertification Options</u>	02 NCAC 09L .0526*	34:11 NCR
<u>Expiration of Pesticide Dealer Certification</u>	02 NCAC 09L .0527*	34:11 NCR
<u>Disposal of Pesticides</u>	02 NCAC 09L .0602*	34:11 NCR
<u>Disposal of Pesticide Containers</u>	02 NCAC 09L .0603*	34:11 NCR
<u>Orchard Rats</u>	02 NCAC 09L .0701*	34:11 NCR
<u>Restrictions Concerning Control of Orchard Rats</u>	02 NCAC 09L .0702*	34:11 NCR
<u>Gulls</u>	02 NCAC 09L .0703*	34:11 NCR
<u>Restrictions Concerning Control of Pigeons</u>	02 NCAC 09L .0705*	34:11 NCR
<u>Eastern and Hairy-Tailed Moles</u>	02 NCAC 09L .0707*	34:11 NCR
<u>Adoption by Reference</u>	02 NCAC 09L .0810*	34:11 NCR
<u>Definitions</u>	02 NCAC 09L .1001*	34:11 NCR
<u>General Requirements</u>	02 NCAC 09L .1002*	34:11 NCR
<u>Drift Control</u>	02 NCAC 09L .1003*	34:11 NCR
<u>Restricted Areas</u>	02 NCAC 09L .1005*	34:11 NCR
<u>Exemptions</u>	02 NCAC 09L .1006*	34:11 NCR
<u>Notification of Apiaries</u>	02 NCAC 09L .1009*	34:11 NCR
<u>Definitions</u>	02 NCAC 09L .1102*	34:11 NCR
<u>Certification Examination</u>	02 NCAC 09L .1103*	34:11 NCR
<u>Single Purchase Emergency Certification Permit</u>	02 NCAC 09L .1104*	34:11 NCR
<u>Applications Under Supervision Of Certified Applicator</u>	02 NCAC 09L .1105*	34:11 NCR

APPROVED RULES

<u>Age Limitations</u>	02 NCAC 09L .1107*	34:11 NCR
<u>Term of Certification; Recertification</u>	02 NCAC 09L .1108	34:11 NCR
<u>Certification of Private Applicators</u>	02 NCAC 09L .1109*	34:11 NCR
<u>Certification/Recertification Fee</u>	02 NCAC 09L .1111	34:11 NCR
<u>Restrictions on Use and Storage</u>	02 NCAC 09L .1201*	34:11 NCR
<u>Pesticide Dealer and Purchaser Responsibility</u>	02 NCAC 09L .1202*	34:11 NCR
<u>General Requirements</u>	02 NCAC 09L .1302*	34:11 NCR
<u>Exemptions</u>	02 NCAC 09L .1303*	34:11 NCR
<u>Record Keeping Requirements</u>	02 NCAC 09L .1305*	34:11 NCR
<u>Recipient Identification</u>	02 NCAC 09L .1306*	34:11 NCR
<u>Definitions</u>	02 NCAC 09L .1401*	34:11 NCR
<u>Record Keeping Requirements</u>	02 NCAC 09L .1402	34:11 NCR
<u>Drift Control</u>	02 NCAC 09L .1404	34:11 NCR
<u>Adoption by Reference</u>	02 NCAC 09L .1805*	34:11 NCR
<u>Crop Advisor Exemption</u>	02 NCAC 09L .1806*	34:11 NCR
<u>Definitions</u>	02 NCAC 09L .1901*	34:11 NCR
<u>Storage Requirements for All Pesticides</u>	02 NCAC 09L .1902*	34:11 NCR
<u>Storage Facility Requirements: RUP</u>	02 NCAC 09L .1905*	34:11 NCR
<u>Large Storage Facility Requirements: RUP</u>	02 NCAC 09L .1906*	34:11 NCR
<u>Purpose and Implementation of Contingency Plan</u>	02 NCAC 09L .1907*	34:11 NCR
<u>Content of Contingency Plan</u>	02 NCAC 09L .1908*	34:11 NCR
<u>Copies of Contingency Plan</u>	02 NCAC 09L .1909*	34:11 NCR
<u>Effective Date of Storage Regulation</u>	02 NCAC 09L .1913	34:11 NCR
<u>Bulk Storage Requirements</u>	02 NCAC 09L .1914*	34:11 NCR
<u>Definitions</u>	02 NCAC 09L .2001*	34:11 NCR
<u>Application of Pesticides Through Irrigation Systems</u>	02 NCAC 09L .2002*	34:11 NCR
<u>Prohibition of Connection to a Public Water System</u>	02 NCAC 09L .2003*	34:11 NCR
<u>Inspection: Maintenance and Modification</u>	02 NCAC 09L .2004*	34:11 NCR
<u>Definitions</u>	02 NCAC 09L .2201	34:11 NCR
<u>Pesticide Use Limitation Areas</u>	02 NCAC 09L .2202	34:11 NCR
<u>Pesticides with Additional Use Limitations</u>	02 NCAC 09L .2203*	34:11 NCR

COMMERCE - EMPLOYMENT SECURITY, DIVISION OF

<u>Addresses for Filing Claims, Appeals, Exceptions, Request...</u>	04 NCAC 24A .0104*	34:19 NCR
<u>Method of Payment</u>	04 NCAC 24A .0206	34:19 NCR
<u>Written Request Required</u>	04 NCAC 24A .0501*	34:19 NCR
<u>Content of Request for Documents, Hearing Recordings and ...</u>	04 NCAC 24A .0502*	34:19 NCR
<u>Indigency</u>	04 NCAC 24A .0503*	34:19 NCR
<u>Invoice and Fees</u>	04 NCAC 24A .0504*	34:19 NCR
<u>Official Forms</u>	04 NCAC 24A .0601*	34:19 NCR
<u>Notice Requirement for Overpayment</u>	04 NCAC 24B .0601*	34:19 NCR
<u>Administrative Proceedings</u>	04 NCAC 24C .0301*	34:19 NCR
<u>General Format of Reports and Forms and Methods of Submis...</u>	04 NCAC 24D .0601*	34:19 NCR
<u>Requirements for Transfer of Experience</u>	04 NCAC 24D .0702*	34:19 NCR
<u>Late Notice of Transfer</u>	04 NCAC 24D .0703*	34:19 NCR
<u>Special Tax Investigations</u>	04 NCAC 24D .0901*	34:19 NCR
<u>Division's Obligations</u>	04 NCAC 24D .1002	34:19 NCR

ELECTIONS, STATE BOARD OF

Expenditures for Residential Real Property 08 NCAC 21 .0301* 34:20 NCR

BLIND, COMMISSION FOR THE

Suspension of Termination of License and Removal from Bus... 10A NCAC 63C .0203* 34:17 NCR

Filling of Vacancies 10A NCAC 63C .0204* 34:17 NCR

Procedure 10A NCAC 63C .0403* 34:17 NCR

General Responsibilities 10A NCAC 63C .0601 34:17 NCR

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Nature of Probationary Certificate 11 NCAC 08 .0602 34:18 NCR

Nature of Standard Certificate 11 NCAC 08 .0702 34:18 NCR

Residential Changeout Inspector 11 NCAC 08 .0734* 34:18 NCR

ALARM SYSTEMS LICENSING BOARD

Application for License 14B NCAC 17 .0201* 34:18 NCR

Renewal or Reinstatement of License 14B NCAC 17 .0204* 34:18 NCR

Application for Registration 14B NCAC 17 .0301 34:18 NCR

MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE

Practice During a Disaster 21 NCAC 32V .0111* 34:03 NCR

FUNERAL SERVICE, BOARD OF

Petition for Predetermination 21 NCAC 34A .0204 34:19 NCR

PHARMACY, BOARD OF

Right To Hearing 21 NCAC 46 .2001* 34:18 NCR

Request for Hearing 21 NCAC 46 .2004* 34:18 NCR

Granting or Denying Hearing Request 21 NCAC 46 .2005* 34:18 NCR

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Who Shall Hear Contested Cases 21 NCAC 46 .2007* 34:18 NCR

Informal Procedures 21 NCAC 46 .2008* 34:18 NCR

Petition for Intervention 21 NCAC 46 .2009 34:18 NCR

Types of Intervention 21 NCAC 46 .2010 34:18 NCR

Disqualification of Board Members 21 NCAC 46 .2011* 34:18 NCR

Subpoenas 21 NCAC 46 .2013* 34:18 NCR

Witnesses 21 NCAC 46 .2014 34:18 NCR

Final Decision 21 NCAC 46 .2015* 34:18 NCR

Proposals for Decisions 21 NCAC 46 .2016* 34:18 NCR

Reapplications, Reinstatement, Rehearing and Reconsideration 21 NCAC 46 .2017* 34:18 NCR

The following rules are subject to Legislative Review.

FUNERAL SERVICE, BOARD OF

Procedures for Provisional Licensure 21 NCAC 34B .0313* 34:19 NCR

Application Form and Equivalent Examinations for Reciproc... 21 NCAC 34B .0502* 34:19 NCR

TITLE 02 - DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 09L .0102 DUTIES (CONTINUED)

The North Carolina Pesticide Board has delegated the following statutory powers, duties, and authorities to the Commissioner of Agriculture:

- (1) the first sentence of G.S. 143-442(a);
- (2) G.S. 143-442(c);
- (3) the first two sentences of G.S. 143-442(d);
- (4) G.S. 143-443(a)(1);
- (5) G.S. 143-443(a)(2);
- (6) G.S. 143-445(a)(3) and (b);
- (7) the first sentence of G.S. 143-446(a);
- (8) the first sentence of G.S. 143-446(c);
- (9) G.S. 143-447(b);
- (10) G.S. 143-448(c);
- (11) G.S. 143-448(e);
- (12) G.S. 143-448(f);
- (13) G.S. 143-449(a);
- (14) the first sentence of G.S. 143-449(b);
- (15) the first phrase of G.S. 143-450(a);
- (16) G.S. 143-452(a);
- (17) G.S. 143-452(b), excluding the first sentence;
- (18) G.S. 143-452(e);
- (19) the first sentence and last two sentences of G.S. 143-452(f);
- (20) G.S. 143-453(a);
- (21) the first sentence of G.S. 143-453(b);
- (22) G.S. 143-454(a);
- (23) the first sentence of G.S. 143-455(a);
- (24) G.S. 143-455(b);
- (25) the first sentence of G.S. 143-455(c);
- (26) G.S. 143-461(7);
- (27) G.S. 143-461(8);
- (28) G.S. 143-465(b);
- (29) G.S. 143-466(b);
- (30) the first sentence of G.S. 143-466(c);
- (31) the first sentence of G.S. 143-466(d); and
- (32) G.S. 143-466(e).

History Note: Authority G.S. 143-461(5);
Eff. February 1, 1976;
Amended Eff. November 1, 1988; August 1, 1987;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0103 ASSIGNMENT OF DUTIES

The Commissioner of Agriculture has assigned the administrative and enforcement duties and functions assigned to him in the North Carolina Pesticide Law of 1971 to the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services.

History Note: Authority G.S. 143-438(4);
Eff. February 1, 1976;
Amended Eff. August 1, 1982; January 27, 1978;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0308 REGISTRATION FOR THE FOLLOWING YEAR

Registration of a pesticide registered the previous year will be renewed provided its registration status with the Environmental Protection Agency remains unchanged at the time of review and its continued use in North Carolina is in the best interest of the public as stated in G.S. 143-442(d).

History Note: Authority G.S. 143-442;
Eff. February 1, 1976;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0310 REREGISTRATION

Reregistration of a pesticide registered the previous year with the label or labeling revised shall be accepted provided the following conditions are met:

- (1) The revision and amendment have been accepted by the Environmental Protection Agency or approved for special local needs; and
- (2) The revision and amendment shall cause no unreasonable adverse effects as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 2 (bb).

History Note: Authority G.S. 143-442;
Eff. February 1, 1976;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0317 REGISTRATION OF PESTICIDES TO MEET SPECIAL LOCAL NEEDS

"Regulations Pertaining to State Registration of Pesticides to Meet Special Local Needs," 40 C.F.R. Part 162, Subpart D is incorporated by reference, including subsequent amendments and editions. This document may be obtained at no cost from the U.S. Government Printing Office at http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr162_main_02.tpl.

History Note: Authority G.S. 143-437; 143-440; 143-461;
Eff. November 1, 1988;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0318 EXEMPTION OF AGENCIES FOR USE OF PESTICIDES IN EMERGENCIES

"Exemption of Federal and State Agencies for Use of Pesticides in Emergencies," 40 C.F.R. Section 166 is incorporated by reference including subsequent amendments and editions. This document may be obtained at no cost from the U.S. Government Printing Office at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr166_main_02.tpl.

History Note: Authority G.S. 143-437; 143-440; 143-461;
 150B-14;
Eff. November 1, 1988;
Readopted Eff. August 1, 2020.

02 NCAC 09L .0402 TOLERANCES

In regards to establishing tolerances providing for deviations from the guaranteed analysis statement for official samples, the following enforcement standards shall apply:

- (1) A "passed" judgment on a pesticide formulation shall be made if the analytical results are within the following allowable deviations below guarantee:

Pesticide Active Ingredient Guarantee, Percent	Allowable Deviation Below Guarantee
<1.00	15 percent of Guarantee
1.00 - 19.99	0.1 plus 5 percent of Guarantee
20.00 - 49.99	0.5 plus 3 percent of Guarantee
50.00 - 100.00	1.0 plus 2 percent of Guarantee

- (2) A sample result falling outside of the allowable deviations below guarantee shall not be "deficient" if one of the following factors could have contributed to the off-limits analysis:
 - (2) arsenic trioxide; and
 - (3) any pesticide approved under Rule .0318 of this Subchapter.

(a) special sampling problems, such as fertilizer-pesticide mixtures and certain granular products; or
 (b) accuracy, specificity, and reproducibility of the methods used when applied to the particular formulation;

History Note: Authority G.S. 143-440(a),(b); 143-441; 143-458; Eff. February 1, 1976; Amended Eff. April 21, 1977; Emergency Amendment [(e)] Eff. July 8, 1977, for a Period of 176 Days to Expire on December 31, 1977; Emergency Amendment [(e)] Expired Eff. December 31, 1977; Amended Eff. January 1, 1990; August 1, 1982; January 1, 1979; June 30, 1978; Readopted Eff. August 1, 2020.

- (3) Allowable deviations, similar to those for "deficiencies," shall not be applicable to pesticide formulations with active ingredients found to be in excess of the guarantee ("overages"). Each sample analysis shall be judged individually as to whether or not the overage is excessive by using the following criteria:
 - (a) no illegal residues resulting from use according to directions;
 - (b) no unreasonable adverse effects to applicator or user;
 - (c) no unreasonable adverse effects to non-target organisms or the environment;
 - (d) stability of ingredients and the need for "over-formulating"; or
 - (e) accuracy, specificity, reproducibility, etc., of the methods used when applied to the particular formulation.

History Note: Authority G.S. 143-437(1); 143-446; Eff. February 1, 1976; Amended Eff. November 1, 1988; August 1, 1982; January 27, 1978; Readopted Eff. August 1, 2020.

02 NCAC 09L .0502 LIST OF RESTRICTED USE PESTICIDES

For the purpose of this Subchapter a "restricted use pesticide" shall be:

- (1) any pesticide required by the Environmental Protection Agency to bear the designation on its labeling "Restricted Use Pesticide;"

02 NCAC 09L .0503 PESTICIDE APPLICATORS

- (a) The Commissioner shall require the licensing of at least one person at each business location who shall be responsible for the application of pesticides for routine pest control situations.
- (b) The person licensed as the pesticide applicator shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

History Note: Authority G.S. 143-452; 143-453; 143-458; 143-460(30); Eff. February 1, 1976; Readopted Eff. August 1, 2020.

02 NCAC 09L .0504 DEFINITIONS

The following definitions apply to Rules .0505, .0506, and .0507 of this Section:

- (1) "Agricultural pest control":
 - (a) Plant. Includes pesticide applicators using or supervising the use of pesticides in production of agricultural crops, including tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural lands; and
 - (b) Animal. Includes pesticide applicators using or supervising the use of pesticides on animals, including, but not limited to, the foregoing, beef

- cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places where animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.
- (2) "Forest pest control" includes pesticide applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas.
 - (3) "Ornamental and turf pest control" includes pesticide applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.
 - (4) "Seed treatment" includes pesticide applicators using or supervising the use of pesticides on seeds.
 - (5) "Aquatic pest control" includes pesticide applicators using or supervising the use of any pesticide intended to be applied to standing or running water, excluding applicators engaged in public health related activities included in Item (7) of this Rule.
 - (6) "Right-of-way pest control" includes pesticide applicators using or supervising the use of pesticides in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way, or other similar areas.
 - (7) "Public health pest control" includes primarily, but is not limited to, state, federal, or other governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.
 - (8) "Regulatory pest control" includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of regulated pests.
 - (9) "Demonstration and research pest control" includes the following:
 - (a) persons who demonstrate to the public the use and techniques of application of pesticides or supervise such demonstration, including extension specialists and county agents; commercial representatives demonstrating pesticide products, and those persons demonstrating methods used in public programs; and
 - (b) persons who use or supervise the use of pesticides while conducting field research with pesticides. This includes state, federal, commercial, and other

- persons conducting field research on or utilizing pesticides.
- (10) "Wood treatment" includes pesticide applicators using or supervising the use of restricted use pesticides in wood preservation and wood products treatment.
- (11) "Soil and growing media fumigation pest control" includes individuals using or supervising the use of any fumigant pesticide injected or applied to soils or growing media. This category excludes fumigation of raw agricultural commodities and all structural fumigation such as:
 - (a) boxcars;
 - (b) warehouses;
 - (c) tractor trailers; and
 - (d) grain bins.
- (12) "Growing media" includes a substance or substances through which roots grow and extract water and nutrients.

History Note: Authority G.S. 143-452(d); 143-460(29); 40 C.F.R. 171.3; Eff. February 1, 1976; Amended Eff. June 1, 2016; November 1, 1984; August 1, 1982; October 27, 1979; Readopted Eff. August 1, 2020.

02 NCAC 09L .0505 CLASSIFICATIONS

The following classifications and subclassifications shall apply to the licensing of pesticide applicators:

- (1) pesticide applicators and public operators utilizing ground equipment:
 - (a) agricultural pest control:
 - (i) plant; and
 - (ii) animal;
 - (b) forest pest control;
 - (c) ornamental and turf pest control;
 - (d) aquatic pest control;
 - (e) right-of-way pest control;
 - (f) public health pest control;
 - (g) regulatory pest control;
 - (h) demonstration and research pest control:
 - (i) agricultural pest control:
 - (A) plant; and
 - (B) animal;
 - (ii) forest pest control;
 - (iii) ornamental and turf pest control;
 - (iv) aquatic pest control;
 - (v) right-of-way pest control;
 - (vi) public health pest control;
 - (vii) regulatory pest control;
 - (viii) seed treatment;
 - (ix) wood treatment; and
 - (x) soil and growing media fumigation pest control;
- (i) seed treatment;

- (j) wood treatment; and
- (k) soil and growing media fumigation pest control;
- (2) pesticide applicators and public operators utilizing aerial equipment:
 - (a) agricultural pest control: plant;
 - (b) forest pest control;
 - (c) ornamental and turf pest control;
 - (d) aquatic pest control;
 - (e) right-of-way pest control;
 - (f) public health pest control;
 - (g) regulatory pest control; and
 - (h) demonstration and research pest control:
 - (i) agricultural pest control: plant;
 - (ii) forest pest control;
 - (iii) ornamental and turf pest control;
 - (iv) aquatic pest control;
 - (v) right-of-way pest control;
 - (vi) public health pest control; and
 - (vii) regulatory pest control.

History Note: Authority G.S. 143-452(d); 143-460(29); 143-460(33);
 Eff. February 1, 1976;
 Amended Eff. June 1, 2016; November 1, 1984; August 26, 1976;
 Readopted Eff. August 1, 2020.

02 NCAC 09L .0509 CONSULTANT EDUCATION REQUIREMENTS

- (a) An applicant for a pest control consultant license shall possess a Ph.D., master's, or bachelor's degree in an agricultural or biological science from an accredited college or university with 30 semester hours or 45 quarter hours of credit in subject areas in which the applicant seeks to obtain a license. Emphasis of study shall include insect, plant, bacterial, and fungal pests, as applicable to the category, and integrated pest management. As used in this Rule, "accredited college or university" means an institution that is accredited by an accrediting commission recognized by the Council on Post-Secondary Accreditation.
- (b) The provisions of this Section shall not apply to anyone holding a valid North Carolina pest control consultant license on or before July 1, 1992.

History Note: Authority G.S. 143-455; 143-460(27);
 Eff. February 1, 1976;
 Amended Eff. July 1, 1992; November 1, 1988;
 Readopted Eff. August 1, 2020.

02 NCAC 09L .0516 CONTINUANCES

Any firm, corporation, or government unit that is deprived of the services of the sole individual at an business location who is licensed as a pesticide dealer may continue to operate in their usual manner for a maximum of two months, provided:

- (1) It directs a request for an examination appointment for a designated individual to the

- Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services within two weeks of the date it terminates or loses the services of its licensed pesticide dealer;
- (2) It has available a designated individual who has worked in pesticide sales under a licensed pesticide dealers supervision for at least three months; and
- (3) The designated individual shall supervise pesticide sales during the interim period.

History Note: Authority G.S. 143-449(b); 143-461(a);
 Eff. February 1, 1976;
 Amended Eff. August 1, 1982; January 27, 1978;
 Readopted Eff. August 1, 2020.

02 NCAC 09L .0519 CERTIFICATION

- (a) Pesticide applicators, public operators, and pest control consultants, as defined by G.S. 143-460, who have completed the pesticide license examination requirements of G.S. 143-453 or 143-455, as applicable, are certified to use or supervise the use of any restricted use pesticide, as defined by Rule .0502(1) of this Section. Certification is valid only for those uses covered by the certified individual's certification category(ies), as defined by Rule .0504 of this Section.
- (b) The term of certification shall be five years for individuals licensed to use ground equipment and two years for individuals (contractors and pilots) licensed to use aerial equipment. However, all individuals shall renew their pesticide license annually, as required in the North Carolina Pesticide Law of 1971.

History Note: Authority G.S. 143-437(1); 143-440(b);
 143-452(a); 143-453(c)(2); 143-455(d);
 Eff. September 10, 1980;
 Amended Eff. January 1, 1990;
 Readopted Eff. August 1, 2020.

02 NCAC 09L .0520 RECERTIFICATION REQUIREMENTS

- (a) In order to ensure that certified pesticide applicators, public operators, and pest control consultants continue to meet the needs of changing technology necessary for the use of pesticides, they shall be subject to recertification requirements as herein defined.
- (b) The license of a certified pesticide applicator, public operator, or pest control consultant shall not be renewed annually for more than five years for individuals licensed to use ground equipment or two years for individuals (contractors and pilots) licensed to use aerial equipment unless the individual has been recertified through one of the options in Rule .0522 of this Section.

History Note: Authority G.S. 143-437(1); 143-440(b);
 143-452(a); 143-453(c)(2); 143-455(d);
 Eff. September 10, 1980;
 Readopted Eff. August 1, 2020.

02 NCAC 09L .0522 RECERTIFICATION OPTIONS

- (a) Pesticide applicators, public operators, and pest control consultants may be recertified by completion of approved

continuing certification credit requirements in the pest control category in which the individual is certified and desires to retain certification. A "continuing certification credit" is defined as one hour of approved continuing certification training. Continuing certification training shall be approved by the Board based upon the US Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.103, and "Standards for recertification of certified applicators," as contained in 40 CFR 171.107. Such training may consist of grower meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training organizations approved by the Board. Continuing certification requirements for each pest control category are as follows:

- | | | |
|------|----------------------------|------------------------------|
| (1) | aquatic | 6 credits per 5-year period |
| (2) | public health | 6 credits per 5-year period |
| (3) | forest | 6 credits per 5-year period |
| (4) | right-of-way | 4 credits per 5-year period |
| (5) | regulatory | 6 credits per 5-year period |
| (6) | ag pest-animal | 6 credits per 5-year period |
| (7) | ornamental and turf | 10 credits per 5-year period |
| (8) | seed treatment | 3 credits per 5-year period |
| (9) | ag pest-plant | 10 credits per 5-year period |
| (10) | demonstration and research | 10 credits per 5-year period |

The continuing certification credits required for demonstration and research may consist of any combination of credits divided between training in the primary categories set forth in Subparagraph (a)(1) through (a)(9) of this Rule and training in demonstration and research.

- | | | |
|------|--------|-----------------------------|
| (11) | aerial | 4 credits per 2-year period |
|------|--------|-----------------------------|
- The Continuing Certification Credits required for aerial applicators shall include one credit obtained through training in aerial methods.
- | | | |
|------|-----------------------------------|-----------------------------|
| (12) | wood treatment | 4 credits per 5-year period |
| (13) | soil and growing media fumigation | 3 credits per 5-year period |

The Continuing Certification Credits established for each ground application pest control category shall be obtained in at least two years of the five-year period.

(b) Pesticide applicators, public operators, and pest control consultants may be recertified by passing a written comprehensive examination administered by North Carolina Department of Agriculture and Consumer Services personnel and based on training materials that have been approved by the Board.

History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d); Eff. September 10, 1980; Amended Eff. June 1, 2016; November 1, 1984; Readopted Eff. August 1, 2020.

02 NCAC 09L .0523 RECERTIFICATION IN ADDITIONAL CATEGORIES

(a) Individuals desiring to retain certification in more than one pest control category shall complete for each category any one of the recertification options described in Rule .0522 of this Section.

(b) Individuals desiring to retain certification through Continuing Certification Training in more than one ground pest control category may do so upon completion of total Continuing Certification Credit Requirements in the category carrying the highest credit requirements, by completing three Continuing Certification Credits in each additional category.

(c) Individuals desiring to retain certification through Continuing Certification Training in more than one aerial pest control category may do so upon completion of total Continuing Certification Credit Requirements in any one category, by completing one Continuing Certification Credit in each additional category.

History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d); Eff. September 10, 1980; Amended Eff. October 22, 1981; Readopted Eff. August 1, 2020.

02 NCAC 09L .0524 EXPIRATION OF CERTIFICATION

- (a) The recertification period shall expire on June 30th.
- (b) Each certified individual shall be notified 6-9 months prior to the recertification expiration date of the individual's remaining requirements for recertification.
- (c) A certified individual who has completed none of the recertification options in Rule .0522 of this Section prior to the recertification expiration date shall retake and pass a comprehensive license examination defined in G.S. 143-453 or 143-455 before a license will be reissued in any category.
- (d) No individual shall be allowed to carry over any Continuing Certification Credits from one recertification period to another.

History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d); Eff. September 10, 1980; Amended Eff. February 4, 1993; November 1, 1988; Readopted Eff. August 1, 2020.

02 NCAC 09L .0525 RECERTIFICATION OF PESTICIDE DEALERS

(a) Pesticide dealers who have completed the pesticide license examination requirements of G.S. 143-449 are certified for a period of five years. However, all such individuals shall renew their pesticide licenses annually, as required in the North Carolina Pesticide Law of 1971.

(b) In order to ensure that certified pesticide dealers continue to meet the needs of changing technology necessary for the use of pesticides, they shall be subject to recertification requirements as defined in Rule .0526 of this Section.

(c) In no event shall the license of a pesticide dealer continue to be renewed annually for more than five years unless the individual has been recertified through one of the options in Rule .0526 of this Section.

History Note: Authority G.S. 143-448; 143-449; Eff. October 22, 1981; Amended Eff. November 1, 1988; Readopted Eff. August 1, 2020.

**02 NCAC 09L .0526 PESTICIDE DEALER
RECERTIFICATION OPTIONS**

(a) A pesticide dealer may be recertified by completing five approved Pesticide Dealer Continuing Certification Credits. A "Pesticide Dealer Continuing Certification Credit" is defined as one hour of approved Pesticide Dealer Continuing Certification Training. Continuing certification training shall be approved by the Board based upon the U.S. Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.103. Such training may consist of meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training organizations. The Continuing Certification Credits shall be obtained in at least two years of the five-year period.

(b) Instead of completing five certification credits, a pesticide dealer may be recertified by passing a written comprehensive examination administered by North Carolina Department of Agriculture and Consumer Services personnel and based upon the U.S. Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.103.

*History Note: Authority G.S. 143-448; 143-449;
Eff. October 22, 1981;
Readopted Eff. August 1, 2020.*

**02 NCAC 09L .0527 EXPIRATION OF PESTICIDE
DEALER CERTIFICATION**

Pesticide dealers shall be subject to the same certification expiration requirements as set forth in Rule .0524 of this Section.

*History Note: Authority G.S. 143-448; 143-449;
Eff. October 22, 1981;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0602 DISPOSAL OF PESTICIDES

(a) Any person disposing of pesticides shall give first preference to recovering some useful value from excess pesticides. Whenever possible, excess pesticide shall be used according to its labeling for the purpose originally intended.

(b) Excess pesticides and pesticide-related wastes shall be disposed of in accordance with labeling requirements. Note: In addition to the requirements of these rules, disposal of excess pesticides and pesticide-related wastes is also subject to rules adopted by the North Carolina Commission for Public Health as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste Management.

*History Note: Authority G.S. 143-441;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; December 1, 1989;
Readopted Eff. August 1, 2020.*

**02 NCAC 09L .0603 DISPOSAL OF PESTICIDE
CONTAINERS**

(a) Prior to disposal, all pesticide containers shall be emptied, using the practices employed to remove materials from that type of container; including shaking, pumping, pouring, triple rinsing,

or equivalent, and draining into the application tank. The materials so removed shall be applied to the labeled site or otherwise disposed of in accordance with this Section.

(b) Pesticide containers shall be disposed of in accordance with labeling requirements. Note: In addition to the requirements of these rules, pesticide container disposal is also subject to rules adopted by the North Carolina Commission for Public Health as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste Management, and to rules adopted by the North Carolina Environmental Management Commission as set forth in 15A NCAC 02D, Air Pollution Control Requirements.

*History Note: Authority G.S. 143-441;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; December 1, 1989;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0701 ORCHARD RATS

The North Carolina Pesticide Board hereby declares as a pest pine voles (*Pitymys*, or *Microtus Pinetorum*) and meadow voles (*Microtus pennsylvanicus*), (called orchard rats) on or adjacent to cultivated land; forest plantations; ornamentals nurseries; orchards; or horticultural plantings in institutional, recreational, and residential areas.

*History Note: Authority G.S. 143-444(1);
Eff. February 1, 1976;
Amended Eff. March 1, 1993;
Readopted Eff. August 1, 2020.*

**02 NCAC 09L .0702 RESTRICTIONS CONCERNING
CONTROL OF ORCHARD RATS**

Pesticides used to control Orchard Rats shall be applied according to label directions to minimize the hazards to nontarget species.

*History Note: Authority G.S. 143-458;
Eff. February 1, 1976;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0703 GULLS

The North Carolina Pesticide Board hereby declares as a pest gulls (members of the genus *Larus*) on or adjacent airport runways when they occur in such manner that may endanger air traffic by impacting landings and take-offs.

*History Note: Authority G.S. 143-444(1);
Eff. February 1, 1976;
Readopted Eff. August 1, 2020.*

**02 NCAC 09L .0705 RESTRICTIONS CONCERNING
CONTROL OF PIGEONS**

The following restrictions apply concerning the use of pesticides in controlling the pigeon (*Columba livia*), also known as rock dove:

- (1) only materials registered for pigeons shall be used;
- (2) the pesticides shall be used in accordance with the directions on the label;

- (3) the pesticides shall be distributed in such a manner as to minimize hazard to non-target species, and that all unconsumed bait that is not in protected bait stations shall be picked up within one week; and
- (4) in municipalities dead birds shall be picked up and disposed of by incineration or buried at intervals not to exceed 24 hours.

*History Note: Authority G.S. 143-458;
Eff. February 1, 1976;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0707 EASTERN AND HAIRY-TAILED MOLES

- (a) The North Carolina Pesticide Board hereby declares the eastern mole, *Scalopus aquaticus*, and the hairy-tailed mole, *Parascalops breweri*, to be pests.
- (b) Pesticides registered for use to control the eastern mole and the hairy-tailed mole may be used when either species is tunneling in managed turf in the following areas:
 - (1) residential;
 - (2) commercial;
 - (3) government property, excluding federal and State parks;
 - (4) golf courses, driving ranges, and golf instructional facilities;
 - (5) sod farms;
 - (6) athletic fields; or
 - (7) cemeteries.
- (c) For purposes of this Rule, managed turf shall not include pastures.
- (d) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied within 100 feet of natural or man-made bodies of water, including streams, rivers, ponds, swamps, lakes, and wetlands.
- (e) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied at elevations of 4000 feet or greater.

*History Note: Authority G.S. 143-444(1); 143-458;
Eff. April 1, 2015;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .0810 ADOPTION BY REFERENCE

Part 165 of Title 40: Protection of Environment of the Code of Federal Regulations, entitled "Pesticides Management and Disposal Subpart E – Standards for Pesticide Containment Structures is incorporated by reference, including subsequent amendments and editions. This document may be accessed at no cost at www.gpoaccess.gov/cfr/index.html.

*History Note: Authority G.S. 143-441; 143-461;
Eff. April 1, 2009;
Readopted Eff. August 1, 2020.*

02 NCAC 09L .1001 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, unless the context otherwise requires.

- (1) "Agricultural Aircraft Operation" means the operation of an aircraft for the purpose of dispensing any pesticide directly affecting agriculture, horticulture, forest preservation, or for any other pest control operation.
- (2) "Adverse Effect" means personal injury, damage to personal property, damage to real property, damage to the environment, or any combination of these.
- (3) "Aircraft" means a weight-carrying structure for navigation of the air that is supported either by its own buoyancy or by the dynamic action of the air against its surfaces. This shall include either fixed-wing or rotary-wing aircraft.
- (4) "Congested Areas" means the same meaning as described in case law opinions interpreting Title 14 CFR Part 137, Subpart C.
- (5) "Contractor" means any person who owns or manages an aerial application business that is engaged in the custom application of pesticides.
- (6) "Custom Application" means any application of pesticides by aircraft for which service a payment is made.
- (7) "Drift" means the airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target area.
- (8) "Emergency" means an occurrence that can impair public health or safety or result in injury, damage, or loss of life that calls for action. An emergency may be minor or of such magnitude as to create a disaster.
- (9) "Environment" means water, air, land, plants, man and other animals living therein and the interrelationships which exist among these.
- (10) "F.A.R.-137" means Title 14 CFR Part 137, incorporated by reference, including subsequent amendments and editions, relating to agricultural aircraft operations. This document may be accessed at <https://www.law.cornell.edu/cfr/text/14/part-137>.
- (11) "Pilot" means the person in control of the aircraft during the application of a pesticide.
- (12) "Registered Apiary" means any place where one or more colonies of bees are kept and registered with the North Carolina Department of Agriculture and Consumer Services.
- (13) "Respirator" means a respirator or mask of a type that has been tested by the National Institute of Occupational Safety and Health and found to be satisfactory for protection against the particular pesticide being used.
- (14) "Spray Equipment" means the equipment used for spraying liquid mixtures of pesticides in an agricultural aircraft operation.
- (15) "Target Area" means intended site of pesticide application.

- (16) "Toxicity Category I Pesticides" means any pesticide products that are required to display the signal word "Danger" on the label.

History Note: Authority G.S. 143-458; 143-463; Eff. July 2, 1976; Amended Eff. January 1, 1985; Readopted Eff. August 1, 2020.

02 NCAC 09L .1002 GENERAL REQUIREMENTS

(a) All agricultural aircraft operations in North Carolina shall comply with the Federal Occupational Safety and Health Act of 1971 (OSHA), Title 29 U.S.C. Chapter 15, the North Carolina Occupational Safety and Health Law, G.S. Chapter 95 Article 16, all rules and regulations promulgated thereunder and the Federal Aviation Regulations Part 137. In any case of conflict, a provision of the aforementioned authorities takes precedence over any of these Rules.

(b) Each aerial application business shall have a licensed contractor. The contractor shall be responsible for the compliance of the business with the North Carolina Pesticide Law of 1971 and all rules promulgated thereunder except where the responsibility is designated to another person(s) this Section.

(c) All agricultural aircraft operations (pilot or contractor) shall keep a written record to be completed within 72 hours after each application, unless requested sooner by an employee of the Pesticide Section for the purposes of a pesticide incident investigation. The record shall show the following:

- (1) name of contractor;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or land sites treated with pesticide(s);
- (4) name of crop which was treated;
- (5) total number of acres treated;
- (6) the year, month, date, and the specific time of day when each pesticide application was completed;
- (7) the brand name of the pesticide(s) and EPA registration number;
- (8) amount of formulated product or active material applied per acre shall be specified;
- (9) total gallons or pounds per acre of the final tank mix applied per acre;
- (10) name of pilot; and
- (11) signature of person completing this record.

(d) Each day of application shall be recorded as a separate record.

- (e) The pilot shall, prior to application, learn and confirm:
- (1) the boundaries and exact location of the target area(s); and
 - (2) the identity of nontarget areas and safety hazards located on or adjacent to the target areas.

(f) Spray and spreading equipment shall be rinsed after each agricultural aircraft operation except when the next agricultural aircraft operation will be made using the same pesticide, or if another pesticide, compatible with the previous pesticide according to the manufacturer's recommendations was previously in the equipment, and will not result in any adverse effects or

created by the drainage or disposal of waste materials and conducted with methods which will not create an adverse effect as defined in this Section.

(g) During application, the flow and mixture of the pesticide(s) shall be uniform. Pilots and contractors shall utilize equipment which will maintain a uniform mixture and flow during application.

(h) Pilots and contractors shall use and operate, in any agricultural aircraft operation, aircraft equipped with spray or spreading equipment suited, according to its manufacturer's recommendations for the pesticide(s) to be applied. All aerial spray or spreading equipment shall be free of leaks and shall have a positive shutoff system to prevent leaking and dissemination of pesticides on any nontarget areas over which the flight is made. Such equipment shall not allow spillage, dripping and backflow or create a hazard from vapors or drift.

(i) The loading area shall be kept free of pesticide contamination.

(j) No pesticide(s) shall be applied by an aerial applicator while any persons other than those assisting in the application are in the target area.

(k) The shape of the tank or hopper of the spray or spreading equipment shall be such as to allow complete drainage during flight and on ground.

(l) The contractor or pilot shall notify the Secretary of the Board of any emergency or accidental release of pesticide(s) from the application or auxiliary equipment. They shall provide the following information:

- (1) the name of the pilot;
- (2) the contractor involved;
- (3) the name of the property owner or operator;
- (4) the location of the incident;
- (5) the name of the pesticide;
- (6) the estimated amount of pesticide involved;
- (7) the estimated size of the area that received the spill;
- (8) the description of what is located within 300 feet from the edge of the spill in all directions;
- (9) the number of humans or animals known to have been contaminated; and
- (10) the weather conditions at the site of the emergency or accidental release of pesticide(s).

History Note: Authority G.S. 143-458; 143-463; 143-466; Eff. July 2, 1976; Amended Eff. May 1, 2009; February 1, 1989; January 1, 1985; August 1, 1982; Readopted Eff. August 1, 2020.

02 NCAC 09L .1003 DRIFT CONTROL

No person shall apply a pesticide(s) aerially under such conditions that drift from pesticide(s) particles or vapors results in adverse effect. As a minimum, the following precautions shall be taken:

- (1) Fixed nozzles shall be spaced on the boom to afford a uniform spray pattern at the height the aircraft will be flown.
- (2) All pesticides applied aerially as liquids, in liquid carriers, or as dusts shall be released within 15 feet above the canopy of the target, except where obstructions in or adjacent to the

- target would endanger the safety of the pilot while applying pesticides at that altitude.
- (3) All pesticides applied aerially as dry granules or pellets shall be released within 40 feet above the canopy of the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.
 - (4) All applications of the following liquid pesticide formulations shall be made using a D4 or larger disk with a 46 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch, or a system producing a droplet size range not smaller than the above system, except for rotary-wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward:
 - (a) phenoxy herbicides,
 - (b) paraquat,
 - (c) picloram (Tordon), and
 - (d) dicamba.
 - (5) Restricted use pesticides other than those specified in (4) of this Rule shall be applied as follows:
 - (a) use a D4 or larger disk with a 45 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch; or
 - (b) a system producing a droplet size range not smaller than the above system, except for rotary-wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward; or
 - (c) use a boom with outside nozzles placed no closer to the wingtips than 12-1/2 percent of the total wingspan distance. If the length of the boom of the spraying equipment exceeds the nozzle span, a bleeder line shall be provided from the end of the boom to the last nozzle on the boom.

History Note: Authority G.S. 143-458; 143-463; Eff. July 2, 1976; Amended Eff. January 1, 1985; Readopted Eff. August 1, 2020.

02 NCAC 09L .1005 RESTRICTED AREAS

- (a) No pesticide shall be applied by aircraft within the limits of any congested area except when permission is granted under 14 CFR Part 137.
- (b) No pesticide shall be deposited by aircraft within 300 feet of the premises of schools, hospitals, nursing homes, churches, or

- any building, other than a residence which is used for business or social activities if any person is in the building or on the premises.
- (c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.
- (d) No pesticide labeled toxic or harmful to aquatic life shall be deposited in or adjacent to any body of water in such a manner as to be hazardous to aquatic life unless such aquatic life is the intended target of the pesticide.
- (e) No pesticide shall be deposited within 100 feet of any residence.
- (f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that an adverse effect will occur.

History Note: Authority G.S. 143-458; Eff. July 2, 1976; Amended Eff. July 1, 1988; January 1, 1985; December 1, 1976; Readopted Eff. August 1, 2020.

02 NCAC 09L .1006 EXEMPTIONS

There shall be no exemptions from this Section except under the following conditions:

- (1) During an emergency proclaimed by the Commissioner, under G.S. 143.461(2), specific aerial applicators may, on a temporary basis, be exempted from all, or from specific regulations by the Commissioner.
- (2) The North Carolina Pesticide Board may authorize exemptions:
 - (a) from specific rules for specific aerial applications when deemed appropriate for specific aerial applications upon consideration of public health, environmental, and economic impact; or
 - (b) from specific rules for an aerial applicator applying pesticides while engaged in experimental work for or under the direct supervision of a public agency or while engaged in experimental work for a private individual or person.
- (3) Any State, federal, or public agency or aerial applicator under contractual agreement with and under supervision of such an agency when conducting a pest control operation may be exempted from Rule .1002(j) of this Section, and Rule .1005(b) through (e) of this Section provided that, at least 30 days prior to the proposed initiation of the subject operation they present to the Pesticide Section, a complete description of the operation that meets or exceeds the following standards:
 - (a) Project Description. The application shall include all of the following:
 - (i) explanation of why the project is needed;

- (ii) identification of target pest or pests;
 - (iii) map showing treatment area;
 - (iv) total acreage to be treated; and
 - (v) proposed date or dates of application (range).
- (b) Description of the Pesticide. The application shall contain a description of the pesticide(s) proposed for use under the exemption. Such information shall include:
- (i) a statement that the pesticide product(s) proposed for use carries current State and federal registration and are labeled for the proposed use. The EPA registration number for each pesticide shall be included in the statement;
 - (ii) a Safety Data Sheet (SDS) for each pesticide proposed for use;
 - (iii) a statement specifying the composition of the final spray mixture to be applied to the target area. Identify any diluent(s), adjuvant(s), or other materials to be used with the pesticide(s) in the final spray mixture.
- (c) Aircraft Information. The description shall include the following:
- (i) identification of type(s) of aircraft proposed for use (fixed wing, helicopter, etc.); and
 - (ii) identification of equipment specifications.
- (d) Environmental Evaluation. The description shall include the following:
- (i) identify or map any hospitals, schools, nursing homes, watersheds, and any other sensitive environmental areas in or near the proposed treatment area;
 - (ii) list any rare, threatened, or endangered species in the proposed treatment area and describe measures, if any, to lessen adverse environmental impacts to such species or their habitat from the proposed treatment(s);
 - (iii) describe alternative methods of pest control (options). A no treatment alternative shall be included. Describe probable environmental consequences of each alternative; and
- (iv) describe measures, if any, to mitigate the adverse environmental impacts of the proposed project.
- (e) Notification and Public Input Plan. The application shall contain the following:
- (i) Preliminary Notification:
 - (A) For small projects less than 50 acres or fewer than 20 landowners, individual notification by written, oral, digital communication, or mailings, may be used. This notification shall include the information in criteria (a) through (c);
 - (B) For larger projects, print, broadcast, or internet news media may be used for preliminary notification. A public meeting may also be used as a preliminary notification tool. This notification shall include the information in criteria (a) through (c);
 - (ii) Input Plan. There should be a plan for allowing public input about the project prior to the final choice of the course of action to be taken;
 - (iii) Operational Notification. After a decision is made on the course of action to be taken on the project, the people affected by the project shall be informed of the decision. On small projects this may be done on an individual basis. On larger projects the news media shall be an appropriate avenue of notification;

- (iv) A contact person and telephone number shall be listed in the public notice; and
- (v) Evacuation Plan. For persons concerned about the project because of health reasons, there shall be a notification procedure so they may leave the treatment area while the project is underway.

The Pesticide Section shall either approve, disapprove, or refer to the North Carolina Pesticide Board all applications for exemption.

- (4) Any local health director or aerial applicator licensed under the subcategory of public health pest control, under supervision of such local health director when conducting a control operation for disease vectors or other pest of public health significance shall be exempted from 02 NCAC 09L .1002(j) General Requirements; .1003, Drift Control; and .1005(b) through (e), Restricted Areas, provided such local health director or his authorized designee notifies the secretary of the Board prior to initiation of subject operation and submits the following information:
 - (a) name of aerial applicator or contractor,
 - (b) location and general description of operation area(s),
 - (c) identity of target pest(s),
 - (d) brand name(s) and EPA registration number(s) of the pesticide(s) to be used,
 - (e) scheduled date(s) of application(s), and
 - (f) outline of nature of operation.

All pesticide(s) shall be applied in compliance with label requirements.

History Note: Authority G.S. 143-458; 143-461(1),(2),(5); 143-463; Eff. July 2, 1976; Amended Eff. October 1, 1988; January 1, 1985; August 1, 1982; July 21, 1978; Readopted Eff. August 1, 2020.

02 NCAC 09L .1009 NOTIFICATION OF APIARIES

- (a) Any person who hires the services of an aerial applicator to apply a pesticide labeled as toxic to bees shall notify, based on available listings of registered apiaries, the owner or operator of any registered apiary located within one mile of the target area not less than 48 hours nor more than 10 days prior to the beginning of a single application or a seasonal spray schedule, giving the approximate time of day of application and type of pesticide to be used.
- (b) "Notification" for the purposes of this Paragraph is defined as follows:
 - (1) written communication by:

- (A) U.S. mail,
 - (B) Notification left at residence, or
 - (C) Notification left at alternate address as designated on the honeybee registration list.
- (2) oral communication by:
 - (A) telephone,
 - (B) personal communication, or
 - (C) verbal communication with an alternate person as designated on the honeybee registration list.
 - (3) digital communication by:
 - (A) electronic mail or
 - (B) instant cellular text messaging.

(c) The Pesticide Section shall distribute new registrations of beekeepers and their alternates by U.S. mail on the first of each quarter (January 1, April 1, July 1, and October 1) to all farmers growing crops within one mile of the apiaries that are identified on the "Apiary Registration Form" of the Plant Industry Division. The list of revised registered apiaries shall become effective on the fifth day of the first month in the quarter stated in this Rule. The registration of apiaries shall be effective for the calendar year that they are registered.

History Note: Authority G.S. 143-443(b)(4); 143-458; 143-463; 143-466; Eff. January 1, 1985; Amended Eff. January 1, 2016; Readopted Eff. August 1, 2020.

02 NCAC 09L .1102 DEFINITIONS

The following definitions apply in this Section.

- (1) "Certified applicator" means any individual who is certified to use or supervise the use of any restricted use pesticide.
- (2) "Private pesticide applicator" means a person who uses or supervises the use of any restricted use pesticide under the following conditions:
 - (a) for the purpose of producing any agricultural commodity on property owned or rented by the person or the person's employer; or
 - (b) if the pesticide is applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.
- (3) "Private pesticide applicator certification standards review" means a training session designed by the North Carolina State University Pesticide Safety Extension Specialist to advance a private pesticide applicator's practical knowledge in areas such as:
 - (a) the pest problems and pest control practices associated with agricultural operations;
 - (b) storage, use, handling, and disposal of pesticides and their containers;
 - (c) labels and labeling information;

- (d) local environmental situations to consider during application to avoid contamination;
- (e) recognition of poisoning symptoms and procedures to follow in case of a pesticide accident;
- (f) protective clothing, equipment, and other worker protection standards;
- (g) federal and State pesticide laws, rules, and regulations and the applicator's related legal responsibility;
- (h) current agricultural production-related pesticide technology; and
- (i) sources of advice and guidance necessary for the safe and proper use of each pesticide related to his or her certification including EPA guidance, extension publications and court decisions.

These training sessions shall be taught by Cooperative Extension Service pesticide training agents or other individuals approved by the Board on a case-by-case basis, based upon the individual's education, experience, and knowledge of Subparagraph (c)(1) through (9) of this Rule.

- (4) "Continuing certification credit" means one hour of continuing certification training. Such training may be offered during grower meetings, seminars, short courses, or other presentations taught by Cooperative Extension Service pesticide training agents, or other privately or publicly sponsored training organizations. Private applicators may also earn continuing certification credits by attending training sessions for which credit has been assigned in the following commercial categories as set forth in Rule .0505(1)(a) through (1)(k):
 - (a) aquatic;
 - (b) agricultural pest - animal;
 - (c) agricultural pest - plant;
 - (d) ornamental and turf;
 - (e) forest;
 - (f) seed treatment; and
 - (g) soil and growing media fumigation.

History Note: Authority G.S. 143-440; 143-453; Eff. December 1, 1976; Amended Eff. June 1, 2016; October 1, 2002; November 1, 1988; July 1, 1987; February 5, 1978; April 20, 1977; Readopted Eff. August 1, 2020.

02 NCAC 09L .1103 CERTIFICATION EXAMINATION

(a) An applicant for an initial private pesticide applicator's certification shall demonstrate by written examination his or her knowledge of pesticides and their usefulness and hazards; his or her competence to act as a private pesticide applicator; and his or her knowledge of the laws and rules governing the use and

application of pesticides by private pesticide applicators. Passing grade shall be 70 percent.
 (b) Any applicant for initial certification in any private applicator certification subclass shall first become certified as a private pesticide applicator.

History Note: Authority G.S. 143-440; Eff. December 1, 1976; Amended Eff. August 1, 2015; October 1, 2002; July 1, 1987; February 5, 1978; Readopted Eff. August 1, 2020.

02 NCAC 09L .1104 SINGLE PURCHASE EMERGENCY CERTIFICATION PERMIT

(a) For emergency certification of any applicant who has not previously been certified and did not anticipate the need for a restricted use pesticide, a 10-day Single Purchase Emergency Certification Permit may be issued by his or her resident county agricultural extension service pesticide coordinator authorizing the purchase and use of one restricted use pesticide for one application to a crop or site. Permits shall not be issued if:

- (1) there is sufficient time prior to the needed use for the individual to become certified;
- (2) an individual had been previously certified, but let the certification lapse; or
- (3) after discussion with the Cooperative Extension Agent, it is determined that a general pesticide, one available to the general public and not requiring certification to purchase and apply, may be used.

(b) Prior to issuance of the permit, the resident county agricultural extension service pesticide coordinator shall:

- (1) provide the applicant with a training manual and information relative to obtaining full private pesticide applicator certification; and
- (2) discuss with the applicant proper use of the restricted use pesticide.

(c) If the individual requires further use of restricted use pesticides, he or she shall complete one of the certification options set forth in Rule .1103 of this Section.

(d) The agricultural extension service pesticide coordinator shall keep a copy of the permit provided by the North Carolina Department of Agriculture and Consumer Services that contains the following information:

- (1) the name and address of the applicant;
- (2) the name and amount of restricted use pesticide;
- (3) the crop or site to be treated; and
- (4) the date the permit was issued.

Copies of the permits shall be available for review by the North Carolina Department of Agriculture and Consumer Services.

(e) A Single Purchase Emergency Certification Permit shall not be issued for fumigation of soil, growing media, or agricultural commodities.

History Note: Authority G.S. 143-440; Eff. December 1, 1976; Amended Eff. June 1, 2016; August 26, 1977; Readopted Eff. August 1, 2020.

02 NCAC 09L .1105 APPLICATIONS UNDER SUPERVISION OF CERTIFIED APPLICATOR

(a) The certified applicator acting in a supervisory role shall be available to the non-certified applicator in the event he is needed. It shall be the responsibility of the certified applicator to keep the non-certified applicator aware of all directions for use and cautions for safe use and application of any restricted use pesticide he or she may be directed to apply.

(b) All non-certified applicators applying any restricted use pesticide under the direct supervision of a certified applicator shall have available at the application site or at the loading and mixing site, if different from the application site, the following:

- (1) written or printed directions for applying the restricted use pesticide, which may include pesticide product labeling;
- (2) written or printed instructions describing procedures to be followed in order to prevent injury to the applicator, other persons and unreasonable adverse effects on the environment which may include pesticide product labeling; and
- (3) instructions for direct communication with the certified applicator under whose supervision the non-certified applicator is working (i.e., name, location, telephone number, radio contact, etc.); Such instructions, when followed, shall be considered direct communication with the certified applicator.

History Note: Authority G.S. 143-440; Eff. December 1, 1976; Amended Eff. February 5, 1978; Readopted Eff. August 1, 2020.

02 NCAC 09L .1107 AGE LIMITATIONS

Individuals who wish to be certified as private pesticide applicators shall be 16 years old prior to participating in a certification option or being issued a single purchase permit under the emergency certification procedure; however, in hardship cases individuals below the age of 16 may be licensed by the Board on an individual basis when they demonstrate to the Board by written, or written and oral examination their qualifications as a private pesticide applicator.

History Note: Authority G.S. 143-440; Eff. December 1, 1976; Readopted Eff. August 1, 2020.

02 NCAC 09L .1108 TERM OF CERTIFICATION; RECERTIFICATION

- (a) The term of certification shall be for a period of three years.
- (b) In order to be recertified as a private pesticide applicator without a written examination, a person shall complete two hours of private pesticide applicator certification standards review, plus two continuing certification credit hours, as defined in Rule .1102(d) of this Section.
- (c) A private pesticide applicator certified in the subclass of soil and growing media fumigation or agricultural commodity fumigation shall earn one hour of continuing certification credit

specific to each applicable subclass to retain the subclass certification.

History Note: Authority G.S. 143-440; 143-453; Eff. July 1, 1987; Amended Eff. June 1, 2016; October 1, 2002; Readopted Eff. August 1, 2020.

02 NCAC 09L .1109 CERTIFICATION OF PRIVATE APPLICATORS

The following subclassifications are established for the certification of private pesticide applicators:

- (1) "Soil and growing media fumigation" means private pesticide applicators utilizing ground equipment applying restricted use fumigants to property they own or lease, their employer's property, or applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.
- (2) "Agricultural commodity fumigation" means private pesticide applicators applying restricted use fumigants to agricultural commodities on property they own or lease, their employer's property, or applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

History Note: Authority G.S. 143-440; Eff. August 1, 2015; Readopted Eff. August 1, 2020.

02 NCAC 09L .1111 CERTIFICATION/ RECERTIFICATION FEE

A nonrefundable fee of ten dollars (\$10.00) shall be required for private pesticide applicator certification or recertification.

History Note: Authority G.S. 143-440(b); Temporary Adoption Eff. October 1, 1987, for a Period of 180 Days to Expire on March 29, 1988; Eff. March 1, 1988; Amended Eff. May 1, 2010; Readopted Eff. August 1, 2020.

02 NCAC 09L .1201 RESTRICTIONS ON USE AND STORAGE

All pesticide formulations containing the active ingredient arsenic trioxide shall not be used or stored inside or adjacent to any building used as a human dwelling.

History Note: Authority G.S. 143-440(b); 143-441; Eff. April 21, 1977; Readopted Eff. August 1, 2020.

02 NCAC 09L .1202 PESTICIDE DEALER AND PURCHASER RESPONSIBILITY

The pesticide dealer shall secure the signature of the purchaser attesting to the fact that the purchaser has knowledge of the use

restrictions on arsenic trioxide contained in this Section. However, any licensed pesticide applicator under the authority of G.S. 143-452 or G.S. 106-65.25 may use formulations containing arsenic trioxide in or around human dwellings provided such use is performed in a manner consistent with the product label keeps the pesticide product out of the reach of children.

History Note: Authority G.S. 143-440(b); 143-441; 143-466; Eff. April 21, 1977; Amended Eff. November 1, 1988; Readopted Eff. August 1, 2020.

02 NCAC 09L .1302 GENERAL REQUIREMENTS

It shall be unlawful for any person to make any restricted use pesticide available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee, or any individual who holds an emergency certification permit pursuant to Rule .1104 of this Subchapter.

History Note: Authority G.S. 143-440; 143-463; Eff. August 26, 1977; Amended Eff. February 5, 1978; Readopted Eff. August 1, 2020.

02 NCAC 09L .1303 EXEMPTIONS

(a) Restricted use pesticides may be made available to an employee under the supervision of a certified private or licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee provided the employee is acting under the direction and supervision of said applicators or licensees and provided further that said employee is 16 years of age or older.

(b) This exemption applies to restricted use pesticides in channels of trade prior to making them available for end use.

(c) Prior to making available restricted use pesticides to an employee under the supervision of a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee, all persons shall require the employee to sign his or her name and list the certification number of employer under whose direction and supervision the employee is acting. Such information shall be available for routine inspection by the North Carolina Pesticide Board or its agent.

History Note: Authority G.S. 143-437; 143-440; 143-466; Eff. August 26, 1977; Amended Eff. November 1, 1988; February 5, 1978; Temporary Amendment Eff. November 1, 2001; Amended Eff. August 1, 2002; Readopted Eff. August 1, 2020.

02 NCAC 09L .1305 RECORD KEEPING REQUIREMENTS

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (1) date of sale;
- (2) initials of sales clerk;

- (3) name of certified or licensed applicator as set out in Rule .1302 of this Section or employees as set out in Rule .1303 of this Section;
- (4) certification or license number of certified or licensed applicator as set out in Rule .1302 of this Section;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card;
- (6) product brand name;
- (7) EPA registration number;
- (8) number of individual containers;
- (9) size of individual containers; and
- (10) total quantity sold.

History Note: Authority G.S. 143-437; 143-440; 143-466; Temporary Adoption Eff. November 1, 2001; Eff. August 1, 2002; Readopted Eff. August 1, 2020.

02 NCAC 09L .1306 RECIPIENT IDENTIFICATION

Prior to making restricted use pesticides available to those identified in Rule .1302 of this Section or the employee as identified in Rule .1303 of this Section, the pesticide dealer or the designated representative of the pesticide dealer shall verify the identity of the recipient.

History Note: Authority G.S. 143-437; 143-440; 143-466; Temporary Adoption Eff. November 1, 2001; Eff. August 1, 2002; Readopted Eff. August 1, 2020.

02 NCAC 09L .1401 DEFINITIONS

All specific words or terms used in this Section other than those defined below shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460:

- (1) "Adverse Effect" means personal injury, damage to personal property, damage to real property, damage to the environment, or any combination of these.
- (2) "Drift" means the airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target area.
- (3) "Environment" means water, air, land, all plants, man, and other animals living therein and the interrelationships which exist among these.
- (4) record keeping purposes, licensed pesticide applicators shall use the Farm Service Agency (FSA) farm number, common name of farm, address of farm, or other means of identification of farm.
- (5) "Identification of Site" means for record keeping purposes, licensed pesticide applicators under contractual agreement with or under supervision of a federal, State, or public agency shall use name(s) of county(s), name(s) of city(s), name(s) of body(s) of water, or other

means of identification of site. All other licensed pesticide applicators shall use name of specific right-of-way, name and address of golf course, specific address of site, or other means of identification of site.

- (6) "Object" means a physical or living thing occurring on a site including a structure, animal, tree, ornamental plant, or material.

History Note: Authority G.S. 143-458; 143-463; 143-466(a); Eff. October 21, 1977;
Amended Eff. November 1, 1988; August 1, 1985; February 5, 1978;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1402 RECORD KEEPING REQUIREMENTS

All pesticide applicators, as defined in G.S. 143-460 utilizing ground equipment shall keep for three years records of all applications of restricted use pesticides. The records shall show the following:

- (1) name of licensed pesticide applicator or licensed public operator;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or site(s) treated with pesticide(s);
- (4) name of crop, commodity, or object(s) that was treated with pesticide(s);
- (5) approximate acres, size, or number of other object(s) treated;
- (6) the year, month, date, and the specific time of day when each pesticide application was completed and each day of application shall be recorded as a separate record;
- (7) the brand name of the pesticide(s) and EPA registration number(s);
- (8) amount (volume or weight) of pesticide formulation(s) or active ingredient(s) applied per unit of measure; and
- (9) name(s) of person(s) applying pesticide(s).

History Note: Authority G.S. 143-458; 143-463; 143-466(a); Eff. October 21, 1977;
Amended Eff. April 1, 2009;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1404 DRIFT CONTROL

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

History Note: Authority G.S. 143-458; 143-463; Eff. August 1, 1985;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1805 ADOPTION BY REFERENCE

40 CFR Part 170, "Worker Protection Standard" is incorporated by reference, including subsequent amendments and editions. Copies of this material may be obtained from the U.S.

Government Printing Office, Washington, D.C. 20402, at no cost at <https://www.ecfr.gov/cgi-bin/text-id?mc=true&node=pt40.24.170&rgn=div5>.

History Note: Authority G.S. 143-458(a); Eff. July 1, 1993;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1806 CROP ADVISOR EXEMPTION

For the purposes of exemptions contained in 40 CFR Part 170.601 of the Worker Protection Standard, the following definitions shall be in effect throughout this Section:

- (1) "Crop Advisor" means any certified and licensed "pest control consultant" as defined in G.S. 143-460(27) while engaged in the performance of crop advisor tasks as defined in this Rule and any "pesticide applicator" as defined in G.S. 143-460(29) who is currently certified and licensed in the subcategory "Demonstration and Research Pest Control" as defined in Rule .0504(9) of this Subchapter, but only while performing or supervising the performance of crop advisor tasks as defined in this Rule.
- (2) "Crop Advisor Tasks" means assessing pest numbers or damage, pesticide distribution, or status or requirements of agricultural plants.

History Note: Authority G.S. 143-458(a); Eff. April 1, 1996;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1901 DEFINITIONS

All specific words or terms used in this Section other than those defined in this Rule shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460.

- (1) "Storage" means the act of storing a pesticide or pesticide container unless the pesticide or pesticide container is being transported or used. It does not include:
 - (a) pesticide containers which are empty and triple-rinsed, or equivalent;
 - (b) pesticides that meet the requirements of a Resource Conservation and Recovery Act (RCRA) hazardous waste (40 CFR 261.33) and are in the possession of a person possessing a valid EPA RCRA identification number as a generator (40 CFR 261.12) or transporter (40 CFR 263.11) of hazardous waste or who owns or operates a facility for the treatment, storage, or disposal of hazardous waste (40 CFR 264.11).
- (2) "Commercial Storage" means storage of a pesticide by any person from the time of manufacture, prior to possession by the end user.

- (3) "Storage Facility" means any property or contiguous properties under the same ownership used for commercial storage of pesticides. Multiple storage areas in or on single or contiguous properties under the same ownership are considered to be in the same storage facility.
- (4) "Large Storage Facility" means any storage facility that stores 10,000 pounds or more of restricted use pesticides at any time.
- (5) "Storage Area" means that portion of a storage facility actually used to store pesticides.
- (6) "Contingency Plan" means a description of a facility's plans and capabilities to deal with a pesticide emergency resulting from operational procedures, accidental releases, fires, or other emergencies, to contain or otherwise prevent the release of pesticides so as to minimize unreasonable adverse effects on public health or the environment.
- (7) "Bulk Storage" means Commercial Storage of any pesticide held in stationary pesticide containers designed to hold undivided quantities equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to this Rule unless any of the following conditions exists:
 - (a) The container is empty, that is, all pesticide that can be removed by the methods such as draining, pumping, or aspirating has been removed, whether or not the container has been rinsed or washed.
 - (b) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.
 - (c) The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.
 - (d) The container is dedicated to non-pesticide use, and is labeled accordingly.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
 Eff. January 1, 1984;
 Amended Eff. April 1, 2009; November 1, 1989; November 1, 1988;
 Readopted Eff. August 1, 2020.

02 NCAC 09L .1902 STORAGE REQUIREMENTS FOR ALL PESTICIDES

- (a) The requirements of this Rule shall apply to all pesticides.
- (b) Pesticides shall be stored to prevent leaking and to facilitate inspection.

(c) Formulated pesticide products shall not be stored in unlabeled containers. The following minimum information shall be legible and obvious on any containers of formulated pesticide:

- (1) Common chemical name;
- (2) Percentage of each active ingredient;
- (3) EPA registration number;
- (4) Signal word;
- (5) Use classification (restricted use or general use).

Pesticide products which are labeled in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the North Carolina Pesticide Law of 1971, and rules and regulations promulgated thereunder shall be deemed to have met the requirements of Paragraph (c) of this Rule.

(d) Pesticides (formulated products or dilutions) shall not be stored in any food, feed, beverage, or medicine container that has previously been used for such purposes, or that is designed to contain only those products.

(e) Pesticides shall not be stored in a manner that could cause the contamination of foods, feeds, beverages, eating utensils, tobacco, tobacco products, other pesticides, seeds, or fertilizers, or otherwise likely to result in accidental ingestion by humans or domestic animals.

- (f) Pesticides shall be stored in accordance with the following:
- (1) storage recommendations, if any, on their labeling; and
 - (2) labeling on all other products, including non-pesticide products, held in the same storage area.

(g) When unattended, pesticides shall be stored to prevent unauthorized access.

(h) Pesticides shall be stored in an area that is dry, does not accumulate water, and ventilated.

(i) Pesticide storage areas shall be free of combustible materials such as gasoline, kerosene, or petroleum solvents other than those associated with pesticide application and debris such as waste paper, rags, or used cardboard boxes which may provide an ignition source, and shall be separated from other operations which present a fire hazard such as welding or burning. Care shall be taken to minimize fire hazard potential when providing supplemental heating to storage during winter months.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
 Eff. January 1, 1984;
 Amended Eff. November 1, 1989;
 Readopted Eff. August 1, 2020.

02 NCAC 09L .1905 STORAGE FACILITY REQUIREMENTS: RUP

(a) In addition to the requirements as set forth in Rule .1902 of this Section, the requirements of this Rule shall apply to any quantity of restricted use pesticides in commercial storage.

(b) Storage areas shall utilize security precautions that prevent unauthorized access to pesticides. Non-display pesticide storage areas shall be locked when unattended. A warning sign shall be posted beside all entrances to non-display pesticide storage areas stating "PESTICIDE STORAGE," "AUTHORIZED

PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL _____."

(c) Pesticide spills shall be cleaned up with regard to personnel safety by wearing appropriate personal protective equipment (PPE) and handling the pesticide in accordance with the manufacturer's product labeling. Floor-sweeping compounds such as adsorptive clay, sand, sawdust, lime, or similar suitable materials shall be kept on hand to absorb spills or leaks. Safe disposal techniques in accordance with the labeling shall be employed when disposing of pesticide contaminated adsorptive materials.

(d) Pesticides shall be stored to prevent contact with water resulting from area cleanup, the intrusion of storm waters, leaks, or impounded or flowing waters, or any other source which represents a likely potential for flooding.

(e) Pesticides shall not be stored within 100 feet horizontally of a public water supply. Pesticides shall not be stored within 50 feet horizontally of a private water supply. An exemption from the requirements of this Paragraph may be granted by the Board upon receipt of written request for such exemption from the owner or operator of a storage facility. Each request shall describe existing conditions requiring such exemption. When reviewing exemption requests, the Board shall consider the potential for groundwater or aquifer contamination, such as whether drainage from the facility is designed to protect the public water supply and ensure that runoff from the facility would be directed away from the water source, or if the source is no longer used as a public or private water supply, or whether a well has been properly closed and sealed according to 15A NCAC 02C .0113.

(f) The person responsible for each pesticide storage facility shall also be responsible for the following:

- (1) compliance with all State and local fire codes and building codes and with all applicable State environmental laws and rules applicable to the type of facility;
- (2) development of a prefire plan for the storage facility. The plan shall be a description of the facility's plans and procedures for management of fires involving pesticides.
 - (A) one copy of the plan approved by the fire department or emergency services office having jurisdiction shall be maintained in the office of the storage facility for inspection by the Board;
 - (B) one copy of the plan shall be filed with the fire department or emergency services office having jurisdiction;
 - (C) a request shall be made in writing to the local fire department or emergency services office having jurisdiction for no less than an annual inspection of the facility.

(g) The person responsible for the storage facility shall upon discovery of any emergency such as a fire, spill, or unintended release of pesticides into the environment from the facility, notify the secretary of the Board if such emergency threatens the health, safety or welfare of man, animals, aquatic life, or damage to property. Such notification of the secretary does not preclude notification being given to the appropriate local fire department,

emergency services office, or other State or federal agencies requiring such notification.

(h) Any person operating a storage facility shall maintain a current inventory list of the kinds of stored pesticides by brand name and formulation. An inventory list shall be considered current if it is updated every 30 days. A copy of this list shall be maintained in a separate location from the storage facility. This list shall be made available to the Board or its agents upon request.

(i) Pesticide applicators storing restricted use pesticides shall be subject to the same requirements as set forth in this Rule.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, 1989;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1906 LARGE STORAGE FACILITY REQUIREMENTS: RUP

(a) In addition to Rule .1905 of this Section, the requirements of this Rule shall apply to large storage facilities.

(b) Pesticides shall not be stored within 200 feet of the property line of any schools, hospitals, nursing homes, or other institutional facilities.

(c) The person responsible for a large storage facility shall have a Board-approved contingency plan for the facility. The contingency plan shall be submitted to the Board. The Board shall consider such factors as the size of the facility, location in relation to the sensitive environmental areas, proximity to industrial, institutional and residential areas, type of pesticides to be stored, and description of the facility's capabilities to deal with emergencies resulting from operational procedures, accidental release, fires, floods, or other emergencies, to minimize, contain and prevent adverse effects from any release of pesticide.

(d) Pesticide applicators storing 10,000 pounds or more of restricted use pesticides shall be subject to the same requirements as set forth in this Rule.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, 1989;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1907 PURPOSE AND IMPLEMENTATION OF CONTINGENCY PLAN

The provisions of the contingency plan shall be carried out whenever there is a fire, explosion, spill, or other release of pesticides or pesticide contaminated materials which could threaten human health or the environment.

History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Amended Eff. November 1, 1989;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1908 CONTENT OF CONTINGENCY PLAN

(a) The contingency plan shall describe the actions facility personnel shall take to respond to fires, explosions, spills, or any other release of pesticides or pesticide contaminated materials to air, soil, or surface water at the facility.

(b) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services.

(c) The plan shall list names, addresses, and office and home phone numbers of all persons designated by the facility owner or operator to act as alternates who can be reached at any time of the day, seven days a week, and who are knowledgeable of the facility operational and emergency procedures. Where more than one person is listed, one shall be named as primary alternate, and others shall be listed in the order in which they will assume responsibility as alternates.

History Note: Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1909 COPIES OF CONTINGENCY PLAN

A copy of the contingency plan and all revisions to the plan shall be:

- (1) maintained at the facility; and
- (2) submitted to the North Carolina Pesticide Board in care of the North Carolina Department of Agriculture and Consumer Services, Pesticide Section.

History Note: Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;
Eff. January 1, 1984;
Readopted Eff. August 1, 2020.

02 NCAC 09L .1913 EFFECTIVE DATE OF STORAGE REGULATION

History Note: Authority G.S. 143-441; 143-461;
Eff. January 1, 1984;
Repealed Eff. August 1, 2020.

02 NCAC 09L .1914 BULK STORAGE REQUIREMENTS

(a) Outlets, filler, and access ports shall be locked at all times when not in use. Keys to the outlet, filler, and access ports shall be in the possession of the purchaser and his or her authorized employees only. Locks on ports are not required if bulk tanks are stored inside a facility to prevent unauthorized access to the bulk pesticide storage area.

(b) All bulk pesticide storage tanks shall display the signal word as shown on the pesticide product label on all sides exposed to view. The words shall be either stenciled on the containers or storage tanks or placed on a sign of durable construction which is attached to the containers and storage tanks. All letters of said

words shall be a minimum of four inches in height and one inch in width, and shall be printed in contrasting colors to the containers and storage tanks which are visible.

(c) All bulk storage areas shall be posted with a durable sign stating "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL _____"

(d) Pesticide applicators utilizing bulk storage containers shall be subject to the same requirements as set forth in this Rule.

History Note: Authority G.S. 143-441; 143-461;
Eff. April 1, 2009;
Readopted Eff. August 1, 2020.

02 NCAC 09L .2001 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, or unless the context otherwise requires, other definitions shall be:

- (1) "Antisiphon Device" means any equipment that prevents the backflow of a pesticide into any water supply or the backflow of water into a pesticide supply. Antisiphon devices include automatic low pressure drain, check valve, flow interrupter, and vacuum relief valve.
- (2) "Automatic Low Pressure Drain" means a self-activating device to drain that portion of an irrigation pipeline whose contents could enter the water supply when operation of the irrigation system pumping plant fails or is shut down.
- (3) "Check Valve" means a device to provide a positive closure of an irrigation pipeline or pesticide injection line that prohibits the flow of pesticide or water in the opposite direction of that desired when operation of the irrigation system pumping plant or pesticide injection unit fails or is shut down.
- (4) "Chemigation" means any process whereby pesticides are applied to land, crops, or plants utilizing an irrigation system. Some examples are agricultural, nursery, turf, lawn, golf course, and greenhouse sites.
- (5) "Chemigation and/or Irrigation Water Supplies" means any source of water that is used for chemigation and/or irrigation to include private wells, public water systems, ground or surface water sources.
- (6) "Flow Interrupter" means a device that provides positive interruption or cessation of pesticide or water flow in either direction upon pesticide injection unit shutdown or failure.
- (7) "Functional Systems Interlock" means a system used to link irrigation pumps and pesticide injection units, other pumps or supply tanks so designed that in the event of irrigation pump malfunction or failure, shutdown of the pesticide injection units will occur.

- (8) "Inspection Port" means a place on the irrigation pipeline that can be utilized to determine visually if the check valve leaks.
- (9) "Irrigation" means the act of mechanically supplying water to land, crops and/or plants.
- (10) "Irrigation System" means any device or combination of devices having hose, pipe, or other conduit which connects directly to any water supply. The term does not include any handheld hose-end sprayer which is constructed so that an interruption in water flow prevents any backflow to the water supply.
- (11) "Public Water System" means:
 - (a) a system for the provision to the public of piped water for human consumption if such system has at least 15 service connections or serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes:
 - (i) any collection, treatment, storage, and distribution facility under control of the operator of such system and used in connection with such system; and
 - (ii) any collection or pre-treatment storage facility not under such control which is used primarily in connection with such system.
 - (b) It is either a "community water system" or a "non-community water system":
 - (i) Community Water System. A public water system which serves at least 15 service connections or regularly serves at least 25 year-round residents.
 - (ii) Non-Community Water System. A public water system which is not a community water system.
- (12) "Vacuum Relief Valve" means a device to relieve or break vacuum in an irrigation pipeline.

- supplies during times of irrigation system failure or equipment shutdown.
- (b) Pesticides shall not be injected into an irrigation system on the suction side of the irrigation pump.
- (c) Safety devices or valves shall be installed between:
 - (1) the irrigation system pump discharge and the point of pesticide injection into the irrigation system, and
 - (2) the point of pesticide injection into the irrigation system and the pesticide tank or container in accordance with Rule .2002(d).
- (d) Such systems shall meet the following criteria:
 - (1) double check valves shall be located between the irrigation pump discharge and the point of pesticide injection into the irrigation pipeline. These valves, when installed, shall be on a horizontal plane and level. A deviation of not more than 10 degrees from the horizontal shall be set;
 - (2) an inspection port shall be located between the irrigation pump discharge and the mainline check valves. In many cases, the vacuum relief valve connection can serve as the inspection port;
 - (3) a vacuum relief valve shall be located on the top of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. The vacuum relief valve shall have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter;
 - (4) an automatic low pressure drain shall be located on the bottom of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. Such device shall be level and have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter. The drain shall not extend beyond the inside surface of the bottom of the irrigation pipeline and shall be at least two inches above grade. The automatic low pressure drain shall discharge at least 20 feet from any water supply. The discharge from the drain shall be controlled to prevent the drainage from reentering the water supply;
 - (5) a flow interrupter device shall be located in the pesticide supply line between the pesticide injection unit and the pesticide supply tank or container. A closed solenoid-operated valve or other similar device is an acceptable method to prevent flow of pesticide or water in either direction during pesticide injection system failure or shutdown;
 - (6) a check valve shall be located on the pesticide injection line between the point of pesticide

History Note: Authority G.S. 143-463; 143-466; Eff. January 1, 1987; Readopted Eff. August 1, 2020.

02 NCAC 09L .2002 APPLICATION OF PESTICIDES THROUGH IRRIGATION SYSTEMS

(a) Irrigation systems shall be fitted with antisiphon devices and a functional systems interlock that will prevent the backflow of pesticide or pesticide-water mixtures into water supplies or the backflow of water or pesticide-water mixtures into pesticide

- (7) injection into the irrigation system and the pesticide injection unit to prevent the overflow of the pesticide supply tank or container; and a functional systems interlock shall be provided. If interruption of the irrigation water flow occurs, the interlock must, at a minimum, cause the shutdown of the pesticide injection unit. If the irrigation pump and pesticide injection unit are at different sites, a low pressure cutoff, located near the point of pesticide injection into the irrigation system, may be electrically connected to the pesticide injection unit to provide for its shutdown in the event of low water pressure.

History Note: Authority G.S. 143-463; 143-466; Eff. January 1, 1987; Readopted Eff. August 1, 2020.

02 NCAC 09L .2003 PROHIBITION OF CONNECTION TO A PUBLIC WATER SYSTEM

- (a) An irrigation system used for pesticide application shall not be connected to a public water system.
- (b) The water from a public water system shall be discharged into a reservoir tank.
- (c) There shall be a physical break (air gap) between the outlet end of the fill pipe and the top or overflow rim of the reservoir tank of at least twice the inside diameter of the fill pipe.

History Note: Authority G.S. 143-463; 143-466; Eff. January 1, 1987; Readopted Eff. August 1, 2020.

02 NCAC 09L .2004 INSPECTION: INSTALLATION: MAINTENANCE AND MODIFICATIONS

- (a) Antisiphon devices and a functional systems interlock, used for chemigation purposes, shall be installed and maintained in accordance with manufacturer's directions during chemigation.
- (b) During periods of chemigation, the system operator shall inspect the antisiphon devices and the functional systems interlock to ensure that they are functioning properly per the manufacturer's directions.
- (c) If modifications or changes in design, technology, irrigation practices, or other reasons warrant the use or placement of equipment in lieu of that specified in Paragraphs (a) and (b) of this Rule, the Pesticide Board may allow for such changes in advance of use, provided protection to the water supply is at least equal to that provided by the equipment, or placement thereof, required in this Rule.
- (d) Inspections of an irrigation system utilized for chemigation may be made at any time by a representative of the Pesticide Section, North Carolina Department of Agriculture. Whenever any such equipment is determined not to be in compliance with this Section, the owner or operator shall be issued a stop use order, and the equipment shall not be used for the purpose of applying pesticide(s) until such time as proper repairs or alterations are made and the stop use order is released by official notice from the North Carolina Department of Agriculture.

History Note: Authority G.S. 143-463; 143-466; Eff. January 1, 1987; Readopted Eff. August 1, 2020.

02 NCAC 09L .2201 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460.

History Note: Authority G.S. 143-458; 143-466(a); Eff. July 1, 2009; Readopted Eff. August 1, 2020.

02 NCAC 09L .2202 PESTICIDE USE LIMITATION AREAS

The table in 02 NCAC 09L .2203 contains pesticide active ingredients that have specific limitations on pesticide use in order to protect the federally listed endangered species Carolina heelsplitter (*Lasmigona decorata*) in Union County, NC, in the vicinity of:

- (1) the main stem of Goose Creek from the NC Highway 218 bridge, downstream to its confluence with the Rocky River;
- (2) the main stem of Duck Creek, from the Mecklenburg/Union County line, downstream to its confluence with Goose Creek; and
- (3) the main stem of Waxhaw Creek, from NC Highway 200 bridge, downstream to the North Carolina/South Carolina State line.

History Note: Authority G.S. 143-458; 143-466(a); Eff. July 1, 2009; Readopted Eff. August 1, 2020.

02 NCAC 09L .2203 PESTICIDES WITH ADDITIONAL USE LIMITATIONS

The application of any of the following pesticides in the vicinity of the areas identified in Rule .2202 of this Section shall not occur within the areas identified by the codes in the following table:

Pesticide Active Ingredient	Code
Azinphos-methyl	2x
Benomyl	1x
Captan	1x
Carbaryl	2x
Carbofuran	1x
Chlorpyrifos	3z
Diazinon	2x
Dicofol	2x
Dimethoate	2x
Endosulfan	2x
Esfenvalerate	1x
Ethion	2x
Ethoprop	1x
Fenamiphos	2x
Fonofos	2x
Malathion	2x
Methidathion	2x
Methomyl	1x

Mevinphos	2x
Naled	1x
Parathion (ethyl)	2x
Pendimethalin	2x
Permethrin	1x
Phorate	1x
Phosmet	1x
Phosphamidon	1x
Propiconazole	1x
Pyrethrins	2x
Terbufos	2x
Trichlorfon	2x

(5) include social security numbers or employer account numbers. Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or issue identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.

Code/Limitations:

- (1) 1x - Within the area described in Rule .2202 of this Section, and one-half mile up all streams that join the area, this pesticide shall not be applied within 20 yards from the edge of water for ground applications and within 100 yards for aerial applications;
- (2) 2x - Within the area described in Rule .2202 of this Section, and one-half mile up all streams that join the area, this pesticide shall not be applied within 40 yards from the edge of water for ground applications and within 200 yards for aerial applications;
- (3) 3z - Within the area described in Rule .2202 of this Section, his pesticide shall not be applied within 100 yards from the edge of water for ground applications and within one-fourth mile for aerial applications.

(c) Appeals of a Non-Fraud Overpayment Determination shall be filed with the Benefits Integrity Unit in SCUBI, by mail or facsimile.

- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
- (2) The facsimile number is (919) 857-1296.
- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.

History Note: Authority G.S. 143-458; 143-466(a); Eff. July 1, 2009; Readopted Eff. August 1, 2020.

TITLE 04 - DEPARTMENT OF COMMERCE

04 NCAC 24A .0104 ADDRESSES FOR FILING CLAIMS, APPEALS, EXCEPTIONS, REQUESTS OR PROTESTS

- (a) Claimants shall file a claim for unemployment insurance benefits on DES's website or by telephone.
 - (1) The telephone number for DES's Customer Call Center for filing a new initial claim or inquiring about an existing claim is (888) 737-0259.
 - (2) The telephone number for filing weekly certifications is (888) 372-3453.
- (b) Appeals from a Determination by Adjudicator shall be filed with the Appeals Section in SCUBI, by mail, facsimile or email.
 - (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
 - (2) The facsimile number is (919) 857-1296.
 - (3) The email address is des.public.appeals@nccommerce.com.
 - (4) Correspondence and appeals submitted by email outside the SCUBI system shall not

(5) Any questions regarding the contents of a Non-Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 857-1296, or email at des.ui.bpc@nccommerce.com.

(d) Appeals of a Fraud Overpayment Determination shall be filed with the Benefits Integrity Unit in SCUBI, by mail or facsimile.

- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
- (2) The facsimile number is (919) 857-1296.
- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a

telephone number for the party or party's legal representative.

- (5) Any questions regarding the contents of a Fraud Overpayment Determination shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 857-1296, or email at des.ui.bpc@nccommerce.com.

(e) Appeals of a Monetary Determination denying a protest to a Wage Transcript and Monetary Determination shall be filed with the Tax Administration Section in SCUBI, by mail, facsimile or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
- (2) The facsimile number is (919) 733-1255.
- (3) The email address is des.tax.customerservice@nccommerce.com.
- (4) Correspondence and appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (5) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (6) Any questions regarding the contents of a determination denying a protest to a Wage Transcript and Monetary Determination shall be directed to the Wage Records Unit of the Tax Administration Section by telephone to (919) 707-1191, facsimile at (919) 733-1255, or email at des.tax.customerservice@nccommerce.com.

(f) Protests of a Wage Transcript and Monetary Determination shall be filed with the Tax Administration Section in SCUBI, by mail or facsimile.

- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
- (2) The facsimile number is (919) 733-1255.
- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Protests shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest, the docket or identification number of the determination being protested, the claimant's identification number, the names of the claimant and employer, each reason for the protest, the name of the individual filing the protest, the official position of an individual filing the protest on behalf of the party, and a

telephone number for the party or party's legal representative.

- (5) Any questions regarding the contents of a Wage Transcript and Monetary Determination shall be directed to the Wage Records Unit by telephone to (919) 707-1191, facsimile at (919) 733-1255, or email at des.tax.customerservice@nccommerce.com.

(g) Petitions for Waiver of Overpayment shall be filed with the Benefits Integrity Unit in SCUBI, by mail or facsimile.

- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
- (2) The facsimile number is (919) 857-1296.
- (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Petitions shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the petition, docket or identification number of the overpayment determination, the claimant's identification number, the name of the claimant, each reason for the request to waive repayment of the overpayment, the name of the individual filing the petition, the official position of an individual filing the petition on behalf of the party, and a telephone number for the party or party's legal representative.

(h) Claimant Appeals of a North Carolina Department of Revenue (NCDOR) Offset Letter shall be filed with the Benefits Integrity Unit in SCUBI, by mail or facsimile.

- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
- (2) The facsimile number is (919) 857-1296.
- (3) Correspondence regarding a claimant's NCDOR Offset Letter submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the offset letter being appealed, the claimant's identification number, the name of the claimant, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (5) Any questions regarding the contents of a claimant's NCDOR Offset Letter shall be directed to the Benefits Integrity Unit by telephone to (919) 707-1338, facsimile at (919) 857-1296, or email at des.ui.bpc@nccommerce.com.

(i) Employer Appeals of a North Carolina Department of Revenue (NCDOR) Offset Letter for outstanding tax debts shall be filed with the Tax Administration Section by mail or facsimile.

- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
 - (2) The facsimile number is (919) 733-1255.
 - (3) Correspondence regarding an employer's NCDOR Offset Letter submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (4) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or identification number of the offset letter, the name of the employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.
 - (5) Any questions regarding the contents of an employer's NCDOR Offset letter for outstanding tax debts shall be directed to the Tax Administration Section by facsimile at (919) 733-1255, or email at des.tax.customerservice@nccommerce.com.
- (j) Claimant Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with the Benefits Integrity Unit in SCUBI, by mail or facsimile.
- (1) The mailing address is Post Office Box, 27967, Raleigh, North Carolina 27611-7697.
 - (2) The facsimile number is (919) 857-1296.
 - (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (4) Requests shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket or identification number of the TOP notice, the claimant's identification number, the name of the claimant, each reason for the request, the name of the individual filing the request, the official position of an individual filing the request on behalf of the party, and a telephone number or the party or party's legal representative.
 - (5) Claimant questions regarding TOP shall be directed to a Recovery Specialist by telephone to (919) 707-1338, or email at des.ui.bpc@nccommerce.com.
- (k) Employer Requests for Reevaluation under the Treasury Offset Program (TOP) shall be filed with the Tax Administration Section by mail or facsimile.
- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
 - (2) The facsimile number is (919) 733-1255.
 - (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (4) Requests shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket or identification number of the TOP notice, the name of the employer, each reason for the request, the name of the individual filing the request, the official position of an individual filing the request on behalf of the party, and a telephone number for the party or party's legal representative.
 - (5) Employer questions regarding TOP shall be directed to the Tax Administration Section by telephone to (919) 707-1150, facsimile at (919) 733-1255, or email at des.tax.customerservice@nccommerce.com.
- (l) Appeals from an Appeals Decision shall be filed with the Board of Review in SCUBI, by mail, facsimile or email.
- (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611-8263.
 - (2) The facsimile number is (919) 733-0690.
 - (3) The email address is des.ha.appeals@nccommerce.com.
 - (4) Correspondence and appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (5) Appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the appeal, the docket or issue identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the appeal, the name of the individual filing the appeal, the official position of an individual filing the appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (m) Protests or Appeals of Adequacy Determinations shall be filed with the Claims Unit in SCUBI, by mail or facsimile.
- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
 - (2) The facsimile number is (919) 857-1296.
 - (3) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (4) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the determination being protested or appealed, the name of the employer, each reason for the protest or appeal, the name of the party filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (n) Protests or Appeals of a Tax Liability Determination shall be filed with the Tax Administration Section by mail, facsimile or email.

- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
 - (2) The facsimile number is (919) 715-7197.
 - (3) The email address is des.tax.customerservice@nccommerce.com.
 - (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the determination being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (o) Protests or Appeals of a Tax Rate Assignment shall be filed with the Tax Administration Section by mail, facsimile or email.
- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
 - (2) The facsimile number is (919) 733-1255.
 - (3) The email address is des.tax.customerservice@nccommerce.com.
 - (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the rate assignment, the name and address of the employer, the employer's account number, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (p) Protests or Appeals of Audit Results shall be filed with the Tax Administration Section by mail, facsimile or email.
- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
 - (2) The facsimile number is (919) 733-1255.
 - (3) The email address is des.tax.customerservice@nccommerce.com.
 - (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of
- the protest or appeal, the docket or identification number of the result being protested or appealed, the name of the employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (q) Protests or Appeals of Tax Assessments shall be filed with the Tax Administration Section by mail, facsimile or email.
- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
 - (2) The facsimile number is (919) 733-1255.
 - (3) The email address is des.tax.customerservice@nccommerce.com.
 - (4) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the assessment being protested or appealed, the name of the employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of the individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (r) Exceptions to a Tax Opinion shall be filed with the Board of Review by mail, facsimile or email.
- (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611-8263.
 - (2) The facsimile number is (919) 715-7193.
 - (3) The email address is BOR@nccommerce.com.
 - (4) Correspondence and exceptions submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (5) Exceptions shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the exceptions, the docket or identification number of the tax opinion, the claimant's identification number, the names of the claimant and employer, the name of the individual filing the exceptions, each reason for the exceptions, the official position of an individual filing the exceptions on behalf of the party, and a telephone number for the party or party's legal representative.
- (s) Requests for Non-Charging of Benefits to an employer's account, and protests or appeals of benefit charges to an employer's account shall be filed with the Claims Unit in SCUBI, by mail or facsimile.

- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
 - (2) The facsimile number is (919) 857-1296.
 - (3) Correspondence, requests, protests, or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (4) Requests for non-charging and protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket or employer's identification number, the name of the employer, each reason for the request, the name and official position of the individual filing the request, protest, or appeal, on behalf of the party, and a telephone number for the party or party's legal representative.
- (t) Requests for Seasonal Determinations and Protests or Appeals of a Denial of Seasonal Assignments shall be filed with the Tax Administration Section by mail, facsimile or email.
- (1) The mailing address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
 - (2) The facsimile number is (919) 715-7197.
 - (3) The email address is des.tax.customerservice@nccommerce.com.
 - (4) Correspondence and protests or appeal submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (5) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the denial being appealed, the name of the employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's legal representative.
- (u) Transmittal of interstate work search records and photo identification shall be filed with the Claims Unit by mail or facsimile.
- (1) The mailing address is Post Office Box 27967, Raleigh, North Carolina 27611-7967.
 - (2) The facsimile number is (919) 857-1296.
- (v) Requests for oral arguments or to reschedule oral arguments shall be filed with the Board of Review in SCUBI, by mail, facsimile or email.
- (1) The mailing address is Post Office Box 28263, Raleigh, North Carolina 27611-8263.
 - (2) The facsimile number is (919) 733-0690.
 - (3) The email address is des.ha.appeals@nccommerce.com.
 - (4) Correspondence and requests for oral arguments submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Requests for oral arguments shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the request, the docket or issue identification number of the decision being appealed, the claimant's identification number, the names of the claimant and employer, the name and official position of the individual filing the request on behalf of the party, a telephone number for the party or party's legal representative and a statement that a copy of the request was served on the opposing party, if one exists.
- (w) Employers may file Requests for Compromise of Tax Debts with DES's Tax Administration Section by mail, facsimile or email.
- (1) The address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
 - (2) The facsimile number is (919) 733-1255.
 - (3) The email address is des.tax.customerservice@nccommerce.com.
 - (4) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (5) The letter shall contain the date of the request, the name of the employer, the name and official position of the individual filing the election on behalf of the employer, and a telephone number for the party or party's legal representative.
- (x) Employers electing to pay reimbursements for benefits, rather than contributions, shall submit written notice of their election to DES's Tax Administration Section by mail, facsimile or email.
- (1) The address is Post Office Box 26504, Raleigh, North Carolina 27611-6504.
 - (2) The facsimile number is (919) 733-1255.
 - (3) The email address is des.tax.customerservice@nccommerce.com.
 - (4) Correspondence submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
 - (5) The letter shall contain the date of the notice of election, the name and address of the employer, the name and official position of the individual filing the election on behalf of the employer, and a telephone number for the party or party's legal representative.
- (y) Employers shall make payments to DES by credit card, money order, electronic check, business check with funds drawn from a U.S. financial institution, cashier's check from a U.S. financial institution, automated clearing house (ACH) credit, or cash submitted in-person to DES's Tax Auditor.
- (1) Payments made by money order, business check or cashier's check shall be sent by mail or delivery service to DES's Tax Administration Section, Post Office Box 26504, Raleigh, North Carolina 27611-6504, or by delivery to an agent of DES designated to accept payments in accordance with G.S. 96-10.

- (2) Payments by electronic transmission, as defined in 04 NCAC 24A .0105(25), shall be made on DES's website.
- (3) Payments by ACH credit shall be initiated by employers through their U.S. financial institution.

(z) Claimants shall make payments to DES by cashier's check from a U.S. financial institution, by personal check with funds drawn from a U.S. financial institution, by money order, or by credit card.

- (1) Payments by mail or delivery service shall be sent to the Benefit Payment Control (BPC) Unit, Post Office Box 25903, Raleigh, North Carolina 27611-5903.
- (2) Payments by credit card shall be made on DES's website, or by calling BPC at (919) 707-1338.

(aa) Payment of fees for documents, digital recordings, and transcripts shall be made by money order, cashier's check from a U.S. financial institution, or by personal or business check with funds drawn from a U.S. financial institution.

- (1) An agency of state or federal government, a county, or a municipality may pay fees by bank draft.
- (2) Payment shall be sent by mail to DES's Office of Finance & Budget, Post Office Box 25903, Raleigh, North Carolina 27611-5903.

(bb) Protests or Appeals from a Result of Investigation shall be filed with the Legal Services Section, ATTN: Chief Counsel, by mail or facsimile.

- (1) The mailing address is Post Office Box 25903, Raleigh, North Carolina 27611-5903.
- (2) The facsimile number is (919) 733-8745.
- (3) Correspondence and protests or appeals submitted by email outside the SCUBI system shall not include social security numbers or employer account numbers.
- (4) Protests or appeals shall be filed by a party or a party's legal representative as defined in 04 NCAC 24A .0105 and shall contain the date of the protest or appeal, the docket or identification number of the determination or result being appealed, the claimant's identification number, the names of the claimant and employer, each reason for the protest or appeal, the name of the individual filing the protest or appeal, the official position of an individual filing the protest or appeal on behalf of the party, and a telephone number for the party or party's representative.
- (5) Questions regarding Results of Investigation shall be directed to the Legal Services Section by telephone to (919) 707-1025, or facsimile to (919) 733-8745.

History Note: Authority G.S. 75-62; 96-4; 96-9.6; 96-9.8; 96-10; 96-10.1; 96-14.1; 96-15; 96-17; 96-18; 96-40; 20 C.F.R. 603.4; 20 CFR 603.8; Eff. July 1, 2015; Amended Eff. September 1, 2017;

Amended Eff. August 1, 2020; July 1, 2018.

04 NCAC 24A .0206 METHOD OF PAYMENT

Payment of fees for the release of records unrelated to a pending matter or contested case shall be made to DES in accordance with 04 NCAC 24A .0104(aa).

History Note: Authority G.S. 96-4; 20 CFR 603.8; Eff. July 1, 2015; Amended Eff. August 1, 2020; July 1, 2018.

04 NCAC 24A .0501 WRITTEN REQUEST REQUIRED

(a) A party requesting a copy of file documents, a digital recording of a hearing, or a written transcript of a hearing in a matter where an appeal is pending shall submit the request in writing.

(b) A party's written request for a copy of the file documents, digital recording of the hearing, or written transcript of the hearing shall include:

- (1) the name and address of the party making the request;
- (2) the claimant's name, if applicable;
- (3) the employer's name, if applicable;
- (4) the docket or issue identification number of the case;
- (5) the date of or approximate date that the record was made;
- (6) the person or office that made the record; and
- (7) the name and address to which the record shall be sent.

(c) When a party has requested a written transcript, any other party with appeal rights to the proceeding may request a copy of the transcript. The request shall meet the requirements of Paragraphs (a) and (b) of this Rule.

(d) The request may accompany or be included in an appeal letter. Requests may also be submitted to the Legal Services Section, ATTN: Request for Hearing Record by mail to Post Office Box 25903, Raleigh, North Carolina, 27611-5903, or by facsimile to (919) 733-8745.

(e) Requests for file documents, digital recordings, or hearing transcripts from any individual or entity who is not a party with appeal rights in the proceeding shall be evaluated pursuant to Section .0200 of this Subchapter.

(f) Requests for file documents, digital recordings, or hearing transcripts in a matter where appeal rights have expired and the decision became final shall be made in accordance with Section .0200 of this Subchapter.

History Note: Authority G.S. 96-4; 96-15; 20 CFR 603.5; Eff. August 1, 2020.

04 NCAC 24A .0502 INDIGENCY

(a) A party who is unable to provide payment assurance with a written transcript request pursuant to 04 NCAC 24A .0501 may proceed in forma pauperis. The party may obtain a transcript if the request is accompanied by a written affidavit stating that he or she is unable to advance the required costs, and proof pursuant to Paragraph (b) of this Rule.

(b) The Chief Counsel or designee shall authorize release of the transcript to an indigent party if the person submits the required affidavit and meets one or more of the following criteria:

- (1) receives electronic food and nutrition benefits;
- (2) receives Work First Family Assistance;
- (3) receives Supplemental Security Income (SSI);
- (4) is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons;
- (5) is represented by private counsel working on behalf of or under the auspices of a legal services organization in accordance with Subparagraph (4) of this Paragraph; or
- (6) is represented by private counsel under a written agreement to provide pro bono legal services.

History Note: Authority G.S. 1-110; 96-4; 96-15; Eff. August 1, 2020.

04 NCAC 24A .0503 INVOICE AND FEES

(a) A party who requests a copy of the file documents or a digital recording in a pending appeal or contested case under this Section shall be provided with the file documents and digital recording free of charge.

(b) A request for a written transcript of the hearing shall include payment assurance by stating that the requesting party will pay the fee for the transcript in accordance with 04 NCAC 24A .0104(z) or (aa). Payment is due upon receipt, but no more than 15 days after the date that the transcript was mailed or transmitted to the party.

(c) A party who requests a written transcript of a hearing but does not provide payment assurance in accordance with 04 NCAC 24A .0104(z) or (aa) shall receive a digital recording of the hearing free of charge.

(d) A party who requests a written transcript of a hearing with payment assurance as set forth in 04 NCAC 24A .0104(z) or (aa) shall receive a written transcript. An invoice for the fees charged by DES shall accompany the transcript and shall not exceed the lesser of sixty-five cents per page or sixty-five dollars (\$65.00) per transcript pursuant to G.S. 96-15(f).

(e) Payment for transcripts under this Section shall include the invoice number and be made in accordance with 04 NCAC 24A .0104(z) or (aa).

History Note: Authority G.S. 96-4; 96-15; 20 CFR 603.8; Eff. August 1, 2020.

04 NCAC 24A .0504 DISCLOSURE OF RECORDS RELATED TO PENDING APPEAL OR CONTESTED CASE

(a) The Chief Counsel or designee shall transmit a copy of the requested record to the requesting party by mail, unless the party requests or authorizes delivery by electronic transmission or delivery service in accordance with 04 NCAC 24A .0103.

(b) A party who files an appeal to the superior court from a decision of the Board of Review regarding the rights, liabilities, and status of an employer and complies with the requirements of G.S. 96-4 shall receive a copy of the transcript of all testimony,

records, evidence, and assignment of errors free of charge when it is transmitted to the court in accordance with G.S. 96-4(q).

(c) A party who files a petition for judicial review and complies with the requirements of G.S. 96-15 shall receive a copy of the transcript and entire record under review free of charge when it is transmitted to the court in accordance with G.S. 96-15(h).

History Note: Authority G.S. 96-4; 96-15; 20 CFR 603.5; Eff. August 1, 2020.

04 NCAC 24A .0601 OFFICIAL FORMS

(a) Unless otherwise provided, all employer forms referenced under the rules of this Chapter are available at des.nc.gov, or by contacting the Employer Call Center (ECC) as follows:

- (1) mailing address is Post Office Box 26504, Raleigh, North Carolina 27611;
- (2) phone number is (919) 707-1150;
- (3) facsimile number is (919) 715-0780; or
- (4) email address is des.tax.customerservice@nccommerce.com.

(b) Unless otherwise provided, all claimant forms referenced under the rules of this Chapter are available at des.nc.gov, or by contacting the Customer Call Center (CCC) as follows:

- (1) mailing address is P.O. Box 25903, Raleigh, North Carolina 27611-5903;
- (2) phone number is (888) 737-0259;
- (3) facsimile number is (919) 250-4315; or
- (4) email address is des.ui.customerservice@nccommerce.com.

History Note: Authority G.S. 96-4; Eff. July 1, 2015; Recodified from 04 NCAC 24D .1401 Eff. August 1, 2020; Amended Eff. August 1, 2020.

04 NCAC 24B .0601 NOTICE REQUIREMENT FOR OVERPAYMENT

(a) A determination by DES finding an overpayment of benefits to a claimant shall contain:

- (1) the date the determination was mailed or sent to the claimant by electronic transmission;
- (2) reasons for the overpayment;
- (3) the statutory authority under G.S. 96-18(g)(3) for seeking repayment of the overpayment;
- (4) notice that the claimant may protest the overpayment determination and instructions on how to protest the overpayment determination as provided in 04 NCAC 24A .0104(c) or (d); and
- (5) notice that the claimant may file a request for waiver of the overpayment in the same manner as provided in 04 NCAC 24A .0104(g).

(b) A determination notifying a claimant of an overpayment of benefits caused by the reversal of a previous decision that found the claimant eligible or not disqualified to receive benefits shall contain the same information contained in Subparagraphs (a)(1) through (3) of this Rule, and shall:

- (1) have no protest rights;

- (2) notify the claimant that the overpayment may only be protested by appealing the underlying decision that ruled the claimant ineligible or disqualified for benefits; and
- (3) notify the claimant that DES shall not consider a request to waive repayment of an overpayment while an appeal of the underlying decision that resulted in the overpayment is pending, or until the underlying decision that resulted in the overpayment is final.

History Note: Authority G.S. 96-4; 96-15; 96-18;
Eff. July 1, 2015;
Amended Eff. August 1, 2020; October 1, 2017.

04 NCAC 24C .0301 ADMINISTRATIVE PROCEEDINGS

- (a) An individual who is a party to a proceeding may represent himself or herself before an Appeals Referee.
- (b) A partnership may be represented by an employee or any of the partners.
- (c) A corporation may be represented by an officer, employee, or agent as defined in G.S. 32C-1-102.
- (d) An association may be represented by an employee or any of its members.
- (e) A limited liability company may be represented by an employee, agent, or any of its members.
- (f) Any party may be represented by a legal representative as defined in 04 NCAC 24A .0105.

History Note: Authority G.S. 96-4; 96-15; 96-17;
Eff. July 1, 2015;
Amended Eff. August 1, 2020.

04 NCAC 24D .0601 GENERAL FORMAT OF REPORTS AND FORMS AND METHODS OF SUBMISSION

- (a) The following shall file the Employer's Quarterly Tax and Wage Report (NCUI 101) using compact disks, or electronic transmission via the internet at des.nc.gov, or paper returns.
 - (1) employers with 10 or more employees in any one calendar quarter; and
 - (2) other entities, including agents reporting on behalf of employers, who file reports for a client employer with a total of 10 or more employees in any one calendar quarter.
- (b) The Employer's Quarterly Tax and Wage Reports shall contain the:
 - (1) quarter for which the wages are being reported;
 - (2) employer's account number;
 - (3) tax rate assigned by DES;
 - (4) date that the NCUI 101 was due to DES;
 - (5) total amount of taxable wages paid to employees in accordance with G.S. 96-9.3;
 - (6) total amount of wages that exceed the taxable wages;
 - (7) total amount of tax due for the quarter;
 - (8) total amount of interest due for the quarter;

- (9) amount of late filing penalty in accordance with G.S. 96-10, if applicable;
- (10) amount of late payment penalty in accordance with G.S. 96-10, if applicable;
- (11) name, social security number, and gross wages of each employee;
- (12) name, title, telephone number, and signature of the individual submitting the NCUI 101 on behalf of the employer; and
- (13) date that form is submitted to DES.

(c) Employers, including agents, who file an Employer's Quarterly Tax and Wage Report for a client employer with less than 10 total employees in any one calendar quarter shall use compact disks, electronic transmissions via DES's website, or paper returns.

(d) Agents reporting on behalf of employers with less than 10 employees may submit compact disks, electronic transmissions via DES's website, or paper returns that contain information from multiple employers.

History Note: Authority G.S. 96-4; 96-9.15;
Eff. July 1, 2015;
Amended Eff. August 1, 2020.

04 NCAC 24D .0702 REQUIREMENTS FOR TRANSFER OF EXPERIENCE

- (a) A successor employer shall use the following information when requesting a partial transfer of experience rating:
 - (1) the total three-year taxable payroll ending June 30th prior to the last computation date for the transferring employer; and
 - (2) the total three-year taxable payroll ending June 30th prior to the last computation date for the transferring employer, relating to the severable portion acquired.
- (b) Notwithstanding Paragraph (a) of this Rule, an alternate three-year payroll may be used when the severed or retained unit was not operated by the transferring employer during the three-year period ending June 30th prior to the last computation date.
- (c) A successor employer that acquires the experience rating account, either total or partial, shall be liable for accrued benefits and acquire related rights based on the transferring employer's employment prior to the acquisition. Benefit charges to the transferring or successor employer shall be made in accordance with the percentage used to transfer the experience rating account, based on wages paid prior to the transfer.
- (d) The requirements of this Section shall apply to transfers mandated by law, and those requiring DES's approval pursuant to G.S. 96-11.7.
- (e) DES shall issue a written determination of whether there was a partial or total transfer of an experience rating account when a request for a transfer of experience rating account is made by a successor employer.
- (f) A successor employer's completion and submission of an Application for Partial Transfer of Experience Rating Account (Form NCUI 603) for a transfer pursuant to G.S. 96-11.7(b) within two years of the date that part of the organization, trade, or business was transferred, with the information described in

Paragraph (a) of this Rule and by any means set forth in 04 NCAC 24A .0104(o) shall satisfy the requirements of this Rule.

(g) The successor employer's completion and submission of Form NCUI 603 for a transfer pursuant to G.S. 96-11.7(c) within 30 days of the mailing date of the written determination that part of the organization, trade, or business was transferred, with the information described in Paragraph (a) of this Rule, and by any means set forth in 04 NCAC 24A .0104(o) shall satisfy the requirements of this Rule.

(h) Form NCUI 603 shall contain:

- (1) the date that part of the organization, trade, or business was transferred;
- (2) the percent of the payroll transferred to the successor;
- (3) the percent of the payroll retained by the predecessor;
- (4) whether the successor employer is related to the predecessor employer;
- (5) the predecessor employer's name and account or federal ID number;
- (6) the name, title, and signature of individual signing the form on behalf of the predecessor employer;
- (7) the date that individual signed the form on behalf of the predecessor employer;
- (8) the successor employer's name and account number;
- (9) the name, title, and signature of individual signing the form on behalf of the successor employer; and
- (10) the date that individual signed the form on behalf of the successor employer.

(i) A successor employer that disagrees with a determination that there was a partial or total transfer of an experience rating account, or with the tax rate set forth in the determination, may file a written protest of the determination and request a hearing.

- (1) The protest shall be filed with DES's Tax Administration Section within 30 days from the date that the determination is mailed pursuant to 04 NCAC 24A .0104(o), as for protests of a Tax Rate Assignment.
- (2) Hearings requested pursuant to this Section shall be conducted as set forth in 04 NCAC 24F .0303.

History Note: Authority G.S. 96-4; 96-10; 96-11.7; Eff. July 1, 2015; Amended Eff. August 1, 2020.

04 NCAC 24D .0703 LATE NOTICE OF TRANSFER

(a) The following definitions shall apply in this Rule:

- (1) A related transfer is an acquisition by related party as defined in G.S. 96-11.7(c).
- (2) An "unrelated transfer" is any business transfer recognized in G.S. 96-11.7 except that of G.S. 96-11.7(c).

(b) A successor employer shall notify DES of an unrelated transfer within two years of the date that part of the organization, trade, or business was transferred in accordance with G.S. 96-

11.7(b) and 04 NCAC 24D .0702. If a successor employer does not notify DES within two years of the date that part of the organization, trade, or business was transferred, and later requests a redetermination of its tax rate, DES shall not approve the transfer, and shall notify the employer in writing.

(c) A successor employer shall notify DES of a related transfer within 10 days of the date that part of the organization, trade, or business was transferred in accordance with G.S. 96-11.7(c) and pursuant to 04 NCAC 24D .0702. If a successor employer does not notify DES of a related transfer within 10 days of the date that part of the organization, trade, or business was transferred, and later requests a redetermination of its tax rate, DES shall recalculate the tax rate back to the date of acquisition, or January 1 of the year in which it received notice of the transfer, whichever is later.

History Note: Authority G.S. 96-4; 96-11.7; Eff. August 1, 2020.

04 NCAC 24D .0901 SPECIAL TAX INVESTIGATIONS

(a) When it is discovered by a representative of DES that a claimant is alleging that he or she was an employee and the employer is alleging that the claimant was not an employee, the matter shall be referred to DES's Assistant Secretary in writing.

(b) The Assistant Secretary, on behalf of DES, shall refer the matter to the Tax Administration Section for an investigation. Upon receipt of the findings of the investigation, the Assistant Secretary shall issue a Result of Investigation by the Tax Administration Section. The Result of Investigation shall be in writing and mailed to each party to the controversy pursuant to 04 NCAC 24A .0103.

(c) The Result of Investigation shall provide notice of each party's rights for filing an appeal to obtain a hearing before the Board of Review, and the 10-day time period from the date of mailing within which an appeal shall be filed pursuant to 04 NCAC 24A .0104(bb) and G.S. 96-15(c).

(d) Appeal hearings pursuant to this Section shall be upon order of the Board of Review and conducted pursuant to 04 NCAC 24F .0303.

History Note: Authority G.S. 96-4; Eff. July 1, 2015; Amended Eff. August 1, 2020; July 1, 2018.

04 NCAC 24D .1002 DIVISION'S OBLIGATIONS

(a) DES shall review the employing unit's request to review and redetermine its tax rate and all available facts, and shall issue a written ruling. The ruling shall be mailed to the employing unit's address as set forth in 04 NCAC 24A .0103 and include the following:

- (1) whether the application was granted or denied;
- (2) the applicable legal authority, with specific citations, for the ruling;
- (3) the mailing date of the notice;
- (4) a statement containing the employer's right to appeal the notice; and
- (5) the time period within which an appeal may be filed.

(b) The employing unit may file a written appeal of the ruling and request a hearing.

- (1) The appeal shall be filed with DES's Tax Administration Section within 30 days of the mailing date of the redetermination ruling pursuant to 04 NCAC 24A .0104(o).
- (2) Hearings requested pursuant to this Section shall be conducted as set forth in 04 NCAC 24F .0303.

History Note: Authority G.S. 96-4; 96-9.2; Eff. July 1, 2015; Amended Eff. August 1, 2020; July 1, 2018.

TITLE 08 - BOARD OF ELECTIONS

08 NCAC 21 .0301 EXPENDITURES FOR RESIDENTIAL REAL PROPERTY

(a) Pursuant to G.S. 163-278.16B, a candidate or candidate campaign committee may not use contributions if the purpose of the expenditure is to purchase, lease, rent, or make mortgage payments on residential real property that is owned, either directly or indirectly, by the candidate or officeholder, or a member of the candidate's or officeholder's family, even if a portion of the residence is used for the campaign or holding office.

(b) For the purpose of this Rule:

- (1) "family" includes a candidate's or officeholder's spouse, children, parents, brothers, or sisters.
- (2) "indirectly" includes ownership by any corporation or business entity in which the candidate or officeholder or the candidate's or officeholder's family member has an ownership interest.

History Note: Authority G.S. 163-278.16B; 163-278.21; Eff. August 1, 2020.

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 63C .0203 SUSPENSION OR TERMINATION OF LICENSE AND REMOVAL FROM BUSINESS ENTERPRISES FACILITY

(a) The Division may suspend or terminate the license of an operator, after affording the operator an opportunity to appeal the decision as set forth in Section .0400.

(b) Licenses to licensees and operators shall be terminated if the licensee or operator:

- (1) no longer meets the definition of legally blind pursuant to Rule .0101 of this Subchapter;
- (2) withdraws from the program and sends written notification to the Division;
- (3) is convicted of a misdemeanor involving crimes of dishonesty or any felony;

- (4) provides false information to the Division pertaining to eligibility requirements set forth pursuant to Rule .0202 of this Subchapter;
- (5) unlawfully possesses firearms or lethal weapons on the job;
- (6) uses Business Enterprises equipment purchased with program funds or a Business Enterprises facility to operate another business; or
- (7) if an operator's license is suspended 3 times within a consecutive 24-month period in accordance with Paragraph (c) of this Rule, regardless of the reason for suspension.

(c) Licenses to operators shall be suspended if the operator:

- (1) fails to operate the Business Enterprises facility in accordance with the operator agreement for three or more consecutive months;
- (2) commits willful acts in the Business Enterprises facility or on the grounds of the facility to create a threat to the health and safety of facility staff, customers or the general public;
- (3) reports to a Business Enterprises facility under the influence of alcohol or any controlled substance or partakes of such on the job. This shall not include unanticipated effects from the ingestion of prescription medications taken in accordance with the directions of a doctor;
- (4) fails to personally operate the awarded facility, as set forth in the operator agreement, unless prior written approval to operate the facility in another manner has been obtained from the Division. This requirement shall not mandate the physical presence of the operator at the facility at all times of its operation;
- (5) fails three times during the calendar year to pay set-aside and liability fees and health insurance premiums and phone bills, if applicable, to the Controller's Office by the 15th day of the month following the month in which the business was transacted;
- (6) fails to preserve financial and other records pertaining to the operation of the Business Enterprises facility as required by Rule .0601(a)(8) of this Subchapter;
- (7) fails to respond to requests made by an auditing authority conducting audits pursuant to State or federal law, as required by this Subchapter;
- (8) fails to maintain liability and workers compensation insurance coverage as required by law and by Rule .0607 of this Subchapter;
- (9) removes Business Enterprises equipment purchased with program funds from the facility without written authorization from the Division;
- (10) fails to comply with federal or State law prohibiting discrimination in hiring and service to customers;
- (11) fails to comply with federal or State tax laws for individuals who are self-employed if this violation relates to the Business Enterprises

facility. This suspension shall only occur if there has been a final adjudication of the violation by State and federal authorities; or

- (12) fails to comply with the operator's responsibilities as required by Rule .0601 of this Subchapter.

(d) Prior to the suspension of an operator's license, the Division shall provide the operator with a written corrective action plan. The Division and the operator shall both sign the corrective action plan. The corrective action plan shall include:

- (1) the specific provision in Paragraph (c) of this Rule that the operator has violated, the specific provision contained in the operator's agreement that has been violated, or the specific provision otherwise contained in this Subchapter that has not been complied with;
- (2) the specific corrective actions that the operator must take to cure the violation identified in Subparagraph (d)(1) of this Rule, including participation in training or receipt of technical assistance provided by the Division, if necessary; and
- (3) the time frame in which the operator must cure the violation, which shall not exceed 90 days. The time frame in which to cure the violation may be extended if actions are being taken to resolve the violations pursuant to a written agreement between the operator and Division.

(e) If an operator fails to complete the corrective action plan to cure the violation within the time set forth in the corrective action plan, or otherwise refuses to sign a corrective action plan, the Division shall suspend the license of the operator. The length of a suspension shall not exceed 60 days.

(f) During the time period in which an operator's license is suspended, the Division shall identify another operator to assume responsibility for the locations of the suspended operator.

History Note: Authority G.S. 111-27; 111-27.1; 34 C.F.R. 395.3; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107; Eff. October 1, 1978; Amended Eff. August 1, 2002; February 1, 1986; Readopted Eff. August 1, 2020.

10A NCAC 63C .0204 FILLING OF VACANCIES

(a) The Division shall send a notice of vacant facilities to all operators and licensees within the last 10 business days of the month. The notice shall provide a description of the vacancy, who to contact for more information, the address where the application may be submitted, and the deadline for receipt of application. The deadline specified in the notice shall be no earlier than that 10th day of the following month, or the first business day thereafter. In the event of an emergency vacancy, including death or illness of an operator, the schedule for sending notices of vacant facilities, conducting interviews, and awarding vacancies set forth in this Rule may be changed as determined by the Chief of Business Enterprises and the chairman of the Elected Committee of Blind Vendors or his or her designee.

(b) An individual shall be eligible to apply for a vacancy if the individual currently possesses the license level required by the

vacant facility or, if the training is not currently provided by the Division or otherwise available for the license level required for the vacant facility, the individual shall be eligible to apply if the applicant holds the next lower license level.

(c) An individual who has received written notice from the Division that the individual owes money to the Business Enterprises Program and still owes that money is only eligible to apply for a vacancy if:

- (1) the individual has a repayment plan in place to repay the money he or she owes and is in compliance with that repayment plan; or
- (2) there is a pending grievance as set forth in Section .0400 in this Chapter.

(d) An individual shall not be eligible to apply for a vacancy if the individual has failed to appear for a scheduled interview twice during the preceding 12 months. In this instance, the individual will not be eligible to apply for a vacancy for 24 months from the date of the last scheduled interview. This provision shall not apply if the applicant withdrew from the interview by providing notice to the Division 48 hours prior to the scheduled appearance or if prior to the interview, the individual provides information to the Division documenting that the individual is unable to attend due to health reasons.

(e) Operators and licensees who wish to apply for any vacancy shall submit an application to the address contained in the notice or to office of the Chief of Business Enterprises via electronic mail, personal delivery, the United States Postal Service, or commercial delivery services.

(f) The application shall include the applicant's name, address, telephone number, the name of the current BEP facility assigned to the applicant if applicable, the name of the facility that the applicant is applying for, the applicant's signature, and the date the application is signed.

(g) All applications shall be received by the Division no later than the deadline date identified in the notice. "Received" for the purpose of this Paragraph means that the application is in the possession of the Division. If the application is not received by the Division by the deadline, the applicant shall not be eligible to interview for the vacancy. However, if the Division does not receive the application by the deadline, an applicant may demonstrate compliance with this Paragraph by demonstrating he or she submitted the application in compliance with Paragraph (d) and any failure or delay in the delivery was due to causes beyond the applicant's control.

(h) At least 10 business days prior to the interview, the Business Enterprises Consultant who works with the applicant shall calculate the applicant's points for sanitation, seniority, and financial performance as set forth in Subparagraphs (i)(1), (2), and (3) of this Rule and inform the applicant of his or her point total in writing and shall include with that communication a description of any ways in which the Business Enterprises Consultant noted that the applicant failed to provide the information required by Subparagraphs (i)(1), (2), and (3) of this Rule. The applicant shall have five business days from his or her receipt of the notice from the Business Enterprises Consultant to request any adjustments to the point total. As part of the request, the applicant must provide to the Business Enterprise Consultant all supporting information with the request, including documents required to complete a new financial analysis and operation standard tool (FAOS) if another

FAOS is requested by the applicant. The applicant's points for sanitation, seniority, and FAOS shall be shared with all members of the interview committee.

(i) The Business Enterprises Consultant shall assign points to each applicant for sanitation, seniority, and financial performance as follows:

- (1) Five sanitation points may be awarded based on the sanitation grades for the Business Enterprises facilities that were operated by an applicant, as follows:
 - (A) The applicant shall verify with the Business Enterprises Consultant that he or she has copies of every sanitation inspection form from the specified period so that the points can be calculated.
 - (B) One point shall be awarded for each sanitation grade point above 90, which shall be determined by averaging all sanitation scores received during the previous 24 months.
 - (C) Any points deducted on the sanitation review reports for deficiencies that are the responsibility of facility management, pertaining to the condition of bathrooms, floors, ceilings and walls, shall be added in the calculations by the Business Enterprises Consultant.
 - (D) An applicant who is a licensee with a score of 90 percent or greater on his or her most recent National Restaurant Association's ServSafe exam shall be assigned three sanitation points.
- (2) A maximum of five seniority points may be awarded based on the number of years an applicant has worked as an operator in the Business Enterprises Program. The applicant shall be awarded 0.2 points for each 12 months worked as an operator in the Business Enterprises Program. The cutoff date for accruing time in the facility shall be the end of the month when the vacancy is advertised.
- (3) A maximum of 50 financial performance points may be awarded. Financial performance for applicants who are operators shall be based on the facilities assigned to the operator. Financial performance shall be calculated by analyzing the average monthly sales and average gross profit percentage for sales during the 12-month period ending with the last day of the month preceding the month in which the vacancy is advertised. The cut-off date for calculating financial performance shall be the 12-month period ending with the last day of the month in which the vacancy is advertised. The FAOS shall be utilized to help determine the financial performance of the facility. A FAOS shall be completed by the Business Enterprises

Consultant for a facility every two years to determine the optimum sales percentage and optimum gross profit percentage without consideration for theft or waste. Eighty-five percent of the optimum sales percentage and optimum gross profit percentage shall be the standard for each Business Enterprises facility.

- (A) If an applicant who is not currently operating a Business Enterprises facility applies for a vacancy within 12 months of leaving a facility, the FAOS for the applicant's prior facility shall be used for the calculations in this Subparagraph if the FAOS was completed within the required two-year period.
- (B) The applicant's Business Enterprises Consultant shall determine the FAOS points by tabulating all the invoices for purchases for resale for that facility for the 12-month period ending with the last day of the preceding month in which the vacancy is advertised. The Business Enterprises Consultant shall calculate the month sales average for each of the 12 months for the numbers identified in the following Subparts and using those monthly averages, determine the three months that are closest to the monthly average to allocate points as follows:
 - (i) applicants shall receive 20 points for meeting or exceeding 85 percent of their sales standard;
 - (ii) applicants shall receive 20 points for meeting or exceeding 85 percent of their gross profit percentage standard;
 - (iii) applicants shall receive 5 points for meeting or exceeding 92.5 percent of their optimum sales percentage;
 - (iv) applicants shall receive 5 points for meeting or exceeding 92.5 percent of their optimum gross profit percentage;
 - (v) applicants who are operators of a Business Enterprises military facility at the time of application shall be assigned 50 FAOS points;
 - (vi) applicants who are licensees at the time of application shall be assigned 40 FAOS points; and

(vii) applicants who have operated a Business Enterprises facility for less than 6 months prior to the cut-off date for calculating financial performance shall be assigned 40 FAOS points.

- (j) The Interview Committee shall consist of:
- (1) the Chief of the Business Enterprises Program or his or her designee;
 - (2) a Business Enterprises Program Consultant or Business Enterprises Program designee;
 - (3) the vice-chair of the Elected Committee of Vendors (ECBV) or ECBV designee; and
 - (4) the chair of the ECBV transfer and promotion subcommittee or ECBV designee.

(k) The Interview Committee shall interview all eligible applicants who present for the scheduled interview. The Interview Committee shall select 15 questions developed by the Interview Committee prior to the interview. A maximum of two points per question may be awarded for a maximum total of 30 points by each Interview Committee member participating in the interview. The interview questions shall relate to any special needs of the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. There shall be at least two math questions. A calculator shall be provided by the Interview Committee, although applicants may bring their own calculator.

(l) An applicant shall not sit on the Interview Committee for a location where he or she is applying or if a member of his or her immediate family has applied for a vacant facility. For the purpose of this Rule, "immediate family" means a spouse, parent, or child, as well as siblings, and step, half and in-law relationships. If the vice-chair of the ECBV or the chair of the ECBV transfer and promotions committee are disqualified from serving as a result of this Rule, the vice-chair of the ECBV and the chair of the ECBV transfer and promotions committee shall jointly select two members of the Elected Committee of Blind Vendors to sit on the Interview Committee.

- (m) The interview shall be conducted and evaluated as follows:
- (1) all applicants shall be notified in writing of the date, time, and place of their interview;
 - (2) the interview shall be face-to-face. For the purposes of this Rule, a conference call shall not be considered face-to-face; and
 - (3) each member of the Interview Committee shall evaluate the applicant's response to each interview question. The applicant shall receive up to two points per question as determined by committee members.

(n) The Interview Committee shall calculate the point total under this Rule for each applicant, which shall equal the sum of the points awarded to the applicant for sanitation, seniority, FAOS, the interview score pursuant to Paragraphs (i) and (k) of this Rule. The applicant with the highest point total shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the applicant with the next highest point total. In the case of an exact tie, the Division shall award the location to the applicant that has worked the

longest period of time as an operator in a Business Enterprises facility.

(o) The Division shall notify each applicant by telephone after the conclusion of interviews whether the applicant was awarded the location and shall confirm the notification in writing.

(p) The location shall not be filled for 10 business days following the Division's providing notice to all applicants pursuant to G.S. 150B-23(f) of the results of the award process, in order to allow time for administrative appeals to be filed. If an appeal is filed, the location shall be filled on a conditional basis until the appeal is resolved. For the purposes of this Rule, "conditional basis" means that the operator may manage the location until the appeal has been resolved. If there is only one applicant for a location, the 20 business days waiting period shall not apply.

(q) Upon being awarded a location, the applicant shall have 20 business days to assume the responsibilities for the operation of the vacant facility. The Division shall agree to a different time frame if adhering to the 20 business days' timeframe would cause a hardship to the applicant awarded the facility.

(r) Applicants shall be reimbursed for their expenses to come to the interview at the State's per diem rates. Applicants who are receiving vocational rehabilitation services shall be reimbursed through the vocational rehabilitation program. The Business Enterprises Program shall only reimburse an applicant for three interviews per year. After three interviews, applicants shall bear their own expenses.

(s) Applicants not selected may file an administrative appeal as provided for in Section .0400 of this Subchapter. The time limit to file an appeal shall be 10 business days from the date that the applicant receives a notice of the results of the award process that conforms to the requirements of G.S. 150B-23(f).

History Note: Authority G.S. 111-27; 111-27.1; 143B-157; 20 U.S.C. sec. 107; Eff. October 1, 1978; Amended Eff. January 1, 2009; August 1, 2002; May 1, 1996; December 1, 1993; February 1, 1986; February 1, 1981; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015; Amended Eff. August 1, 2020.

10A NCAC 63C .0403 PROCEDURE

(a) A licensee, operator, or the ECBV dissatisfied with any action or inaction taken by the Division related to the Business Enterprises Program may request an informal review by the Operator Relations Committee. Participation in an informal review is not required to obtain a full evidentiary hearing, nor does participation in an informal review waive any right to obtain a full evidentiary hearing.

- (1) When a licensee, operator, or the ECBV wishes to request an informal review by the Operator Relations Committee, the licensee, operator, or ECBV shall submit a written request to the Business Enterprises Program Chief. The licensee, operator, or the ECBV shall have 20 business days after the action or inaction taken by the Division that they are dissatisfied with to request an informal review.

- (2) The written request of the licensee, operator, or ECBV shall include:
- (A) their name, address, and preferred means of receiving written communication with the Division;
 - (B) a statement that they are requesting an informal review;
 - (C) a statement explaining the actions or inactions with which they are dissatisfied; and
 - (D) a statement explaining the resolution sought by the licensee, operator, or ECBV.

This request shall be transmitted to the Business Enterprises Program Chief personally, electronically, or by certified mail, return receipt requested.

- (3) The licensee, operator, or the ECBV shall be notified of the date and location of the informal review at least five business days in advance of the informal review. The informal review shall be conducted within 25 business days of receipt of the request. The Operator Relations Committee shall issue a written decision within 10 business days after the informal review is conducted and mail the decision to the licensee, operator, or ECBV and the Division.
- (4) The Division shall review the decision of the Operator Relations Committee and shall notify the licensee, operator, or ECBV in writing whether the Division affirms or overrules the decision within five business days of receipt of the decision.
- (5) A request for an informal review under this Rule shall have the effect of suspending the time limitation for filing a petition for contested case hearing pursuant to G.S. 150B-23 and other provisions of Chapter 150B, Article 3 until the later of the following:
- (A) the licensee, operator, or the ECBV receives written notice of the Division's final decision regarding the informal review; or
 - (B) the licensee, operator, or the ECBV withdraws its request for informal review

(b) Notwithstanding any other provision in this Rule, a licensee, operator, or the ECBV dissatisfied with any action or inaction taken by the Division related to the Business Enterprises Program may request a full evidentiary hearing by filing a petition for contested case hearing with the Office of Administrative Hearings. Such a request for a full evidentiary hearing shall be filed within the time limitation contained in G.S. 150B-23(f).

- (1) This hearing shall be held in accordance with G.S. 150B, Article 3.
- (2) If the dispute(s) is not resolved to the satisfaction of the licensee, operator, or the ECBV after the conclusion of a full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of Education

for the convening of an arbitration panel in accordance with 34 C.F.R. 395.13.

History Note: Authority G.S. 111-27; 111-27.1; 143B-157; 150B-23; 20 U.S.C. 107b-1; 20 U.S.C. 107d-1; Eff. October 1, 1978; Amended Eff. August 1, 2002; May 1, 1996; August 1, 1990; February 1, 1984; February 1, 1983; December 1, 1981; Readopted Eff. August 1, 2020.

10A NCAC 63C .0601 GENERAL RESPONSIBILITIES

- (a) A Business Enterprises operator shall:
- (1) ensure the operation of a Business Enterprises facility in accordance with the rules of the Commission for the Blind, the contractual agreement between the Division and the operator, and the terms and conditions of the permit or contract with the host facility including any amendments if provided to the operator. This requirement shall not mandate the physical presence of the operator at the facility at all times of its operation;
 - (2) operate the facility in accordance with all applicable public health laws and Rules;
 - (3) purchase merchandise, price goods for sale as set forth in Rule .0608 of this Subchapter, purchase supplies for the facility, rotate stock, and control inventory in the Business Enterprises facility;
 - (4) open and maintain a business bank account for the management of funds derived from the Business Enterprises facility;
 - (5) submit an electronic profit and loss report (D-sheet) to the Division by the 15th of the month following the reporting month. Assistance shall be provided with the electronic submission of the report by the Business Enterprises Consultant upon request from the operator;
 - (6) submit payment of all monthly fees, including set-aside and liability fees, health insurance premiums, and phone bill payments, if applicable, to the Controller's Office by the 15th of the month following the month in which the business was transacted;
 - (7) keep all records supporting the monthly profit and loss report (D-sheet) for three calendar years;
 - (8) provide records for the assigned facility to the Division upon request for reviews as required by this Subchapter. That may include cash sales deposit receipts, cash register tapes, monthly bank and credit card statements, invoices and receipts for purchases and expenses, weekly or monthly card reader reports, and payroll records;
 - (9) be available for all appointments with the Division staff members, which will be scheduled at the convenience of both parties;

- (10) not subcontract management of the Business Enterprises facility except as approved in writing by the Division;
- (11) take actions to correct deficiencies noted on Business Enterprises facility audits or reviews within 15 business days after receiving notification of the deficiencies and a description of the corrective actions to be taken, unless an extension to this time frame has been agreed to by the Division and operator in writing; and
- (12) notify the Division of changes to the following no later than 10 business days after the change occurs:
 - (A) the facility telephone number;
 - (B) the address to which Business Enterprises correspondence is delivered; and
 - (C) emergency contact information.

(b) The operator shall be accountable to the Division for the proceeds of the Business Enterprises facility and shall handle the proceeds as set forth in Section .0700 of the Subchapter.

History Note: Authority G.S. 111-27; 111-27.1; 34 C.F.R. 395.3; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107; Eff. February 1, 1976; Readopted Eff. November 16, 1977; Amended Eff. August 1, 2002; April 1, 1990; February 1, 1984; October 1, 1978; Readopted Eff. August 1, 2020.

- (3) possessing one of the experience qualifications listed in 11 NCAC 08 .0706 in each area of code enforcement for which the probationary certificate is issued; or
- (4) achieving a minimum score of 70 percent on the probationary prequalification exam administered by the Board in each area of code enforcement for which the probationary certificate is issued.

(b) A probationary certificate as a residential changeout inspector set forth in 11 NCAC 08 .0734 may be issued to any employed code enforcement official, whose employment can be verified pursuant to 11 NCAC 08 .0734(d)(2), who lacks a standard certificate as a residential changeout inspector and who successfully completes a residential changeout inspections course set forth in 11 NCAC 08 .0734(d)(3). A probationary certificate shall be issued for three years only and shall not be renewed. During the three-year period, the official shall complete the requirements set forth in 11 NCAC 08 .0706 to qualify for the appropriate standard certificate. A probationary certificate as a residential changeout inspector shall authorize the official, during the effective period of the certificate, to hold the position set forth in 11 NCAC 08 .0734(a). The probationary certificate shall be conditioned on the applicant's completion of a high school diploma or a high school equivalency certificate and working under the direct supervision of a person who possesses, or persons who collectively possess, standard certificates as an electrical inspector III, mechanical inspector III, and plumbing inspector III or an individual holding a residential changeout inspector certificate and five years of code enforcement experience.

History Note: Authority G.S. 143-151.12(2); 143.151.13; Eff. June 28, 1979; Amended Eff. December 1, 1982; Temporary Amendment Eff. January 1, 1983; For a Period of 120 Days to Expire on April 30, 1983; Amended Eff. December 1, 2017; July 18, 2002; October 1, 1992; February 1, 1991; May 1, 1983; Readopted Eff. July 1, 2019; Amended Eff. August 1, 2020.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 08 .0602 NATURE OF PROBATIONARY CERTIFICATE

(a) A probationary certificate may be issued as a building inspector, electrical inspector, mechanical inspector, plumbing inspector, or fire inspector as set forth in 11 NCAC 08 .0706, without examination, to any newly employed or newly promoted code enforcement official who lacks a standard certificate that covers the new position. A probationary certificate shall be issued for three years only and shall not be renewed. During the three-year period, the official shall complete the requirements set forth in 11 NCAC 08 .0706 to qualify for the appropriate standard certificate. A probationary certificate shall authorize the official, during the effective period of the certificate, to hold the position of the type, level, and location specified. The certificate shall be conditioned on the applicant's completion of a high school diploma or a high school equivalency certificate and meeting one of the following:

- (1) working under supervision sufficient, as determined by a supporting letter provided for in 11 NCAC 08 .0706(b), to protect the public health and safety;
- (2) possessing a minimum of two years of design, construction, or inspection experience working under a certified inspector or under a licensed professional engineer, registered architect, or licensed contractor;

11 NCAC 08 .0702 NATURE OF STANDARD CERTIFICATE

(a) The Board shall issue one or more standard certificates to each code enforcement official demonstrating the qualifications set forth in 11 NCAC 08 .0706, .0707, and .0734. Standard certificates are available for each of the following types of qualified code enforcement officials:

- (1) building inspector;
- (2) electrical inspector;
- (3) mechanical inspector;
- (4) plumbing inspector;
- (5) fire inspector; and
- (6) residential changeout inspector.

(b) The holder of a standard certificate may practice code enforcement only within the inspection area and level described upon the certificate issued by the Board. A code enforcement official may qualify and hold more than one certificate. These certificates may be for different levels in different types of positions.

(c) A code enforcement official holding a certificate indicating a specified level of proficiency in a particular type of position may hold a position calling for that type of qualification anywhere in the State. A standard certificate must be renewed annually in order to remain valid.

History Note: Authority G.S. 143-151.13; 143-151.16; Eff. January 15, 1980; Amended Eff. August 1, 2004; August 1, 1990; July 1, 1983; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018; Amended Eff. August 1, 2020.

11 NCAC 08 .0734 RESIDENTIAL CHANGEOUT INSPECTOR

(a) Qualifications and types:

- (1) A residential changeout inspector shall be authorized to inspect the replacement of a residential appliance as described in Subparagraph (2) of this Paragraph for one-and-two family dwellings, and individual residential units of condominiums and apartments provided the individual residential appliance serves only that residential dwelling unit.
- (2) A residential changeout inspector may inspect the replacement of heating and air conditioning appliances and water heaters, provided that all of the following apply:
 - (A) the new appliance requires no alterations to the existing ducting, fuel type, venting, or piping systems other than that required for transitioning to the new appliance;
 - (B) the new appliance does not require relocation, excluding minor adjustments in the same general vicinity;
 - (C) the installation of the new appliance does not require the relocation or addition to the existing electrical system, except the replacement of the appliance's branch circuit overcurrent device, or the replacement of the appliance's branch circuit where such circuit does not pass through a rated assembly shall be allowed; and
 - (D) the electrical branch circuit serving the appliance is single phase.

(b) The inspection performance log referenced in this Rule is available on the Office of State Fire Marshal website. The inspection performance log shall describe the criteria for authenticating the applicant and supervisors' qualifications, and the inspections performed.

(c) Every applicant shall:

- (1) provide documentation that the applicant possesses a minimum of a high school education or a high school equivalency certificate;

- (2) provide notarized certification by a city or county manager, clerk, or director of inspection department that the applicant will be performing "code enforcement," as defined in G.S. 143-151.8(a)(3), as an employee of that city or county; or provide certification by the head of the Engineering and Building Codes Division of the North Carolina Department of Insurance that the applicant will be performing "code enforcement," as defined in G.S. 143-151.8(a)(3), for a State department or agency;
- (3) successfully complete courses developed by the Board. All applicants must successfully complete a law and administration course and a residential changeout inspections course. For the purpose of entry into the written examination administered by the Board, courses must be completed within five years of the exam in Subparagraph (4) of this Paragraph. These courses shall be administered and taught in the N.C. Community College System or other educational agencies accredited by a regional accrediting association. The North Carolina Department of Insurance, Office of State Fire Marshal may administer and teach certification courses for the purposes of developing program content and professional development. For the purposes of this Rule, "successful completion" is defined as attendance of a minimum of 80 percent of the hours taught and achieving a minimum score of 70 percent on the course exam; and
- (4) achieve a passing grade of 70 percent on the written examination administered by the Board.

(d) Residential Changeout Inspector. A standard certificate, residential changeout inspector, shall be issued to any applicant who possesses a probationary residential changeout inspection certificate pursuant to Rule 11 NCAC 08 .0602, complies with Paragraph (c) of this Rule, and one of the following education and experience qualifications:

- (1) possess any level standard certificate as an electrical inspector, mechanical inspector, or plumbing inspector; or
- (2) all the following:
 - (A) at least six months of conducting residential changeout inspections with a probationary residential changeout inspection certificate; and
 - (B) completion and submission of an inspection performance log as administered by the North Carolina Department of Insurance, Office of State Fire Marshal.

History Note: Authority G.S. 143-151.12; 143-151.13; Eff. August 1, 2020.

14B NCAC 17 .0201 APPLICATION FOR LICENSE

(a) Each applicant for a license shall submit an online application on the website provided by the Board. When this online application is submitted, it shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigation or one set of classifiable fingerprints on an F.B.I. fingerprint card provided by the Board and mailed separately to the Board's office;
- (2) one head and shoulders digital photograph of the applicant in JPG format of sufficient quality for identification, taken within six months prior to the online submission, and uploaded with the application submission;
- (3) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceding 60 months; and
- (4) the applicant's application fee, along with a four dollar (\$4.00) convenience fee charged by the third-party vendor and credit card transaction fee charged by the applicant's credit card provider and collected online.

(b) Each applicant shall upload evidence of high school graduation either by diploma, G.E.D. certificate, or other equivalent documentation.

(c) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee, the Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74D and the administrative rules in this Chapter during the personal meeting. The applicant shall sign a form provided by the Board stating that the applicant has reviewed the information with the Board's representative and that the applicant understands G.S. 74D and the administrative rules in this Chapter. During a national or State declared state of emergency which restricts or prohibits travel the personal meeting requirement may be waived in lieu of alternative means of communication.

(d) Each applicant for a branch office license shall submit an online application on the website provided by the Board. This online application shall be accompanied by the branch office application fee.

History Note: Authority G.S. 74D-2; 74D-2.1; 74D-3; 74D-5; 74D-7; 74D-8;

Temporary Rule Eff. January 9, 1984, for a period of 120 days to expire on May 7, 1984;

Eff. May 1, 1984;

Amended Eff. December 1, 2012; February 1, 2012; January 1, 2007; September 1, 2006; March 1, 1993; July 1, 1987; January 1, 1986;

Transferred and Recodified from 12 NCAC 11 .0201 Eff. July 1, 2015;

Amended Eff. December 1, 2017;

Readopted Eff. June 1, 2018;

Amended Eff. September 1, 2019;

Emergency Amendment Eff. June 9, 2020;

Amended Eff. August 1, 2020.

14B NCAC 17 .0204 RENEWAL OR REINSTATEMENT OF LICENSE

(a) Each applicant for a license renewal shall submit an online renewal application on the website provided by the Board. This online application shall be submitted not less than 30 days prior to expiration of the applicant's current license and shall be accompanied by:

- (1) statements of the result of a local statewide criminal history records search by the reporting services service designated by the Board pursuant to G.S. 74D-2.1 for any state where the applicant has resided within the preceding 24 months;
- (2) the applicant's renewal fee as set forth in .0203(a)(2); and
- (3) proof of liability insurance pursuant to G.S. 74D-9.

(b) Applications for renewal shall be submitted not less than 30 days before the expiration date of the license. No renewal shall be granted more than 90 days after the date of expiration of a license.

(c) Applications for renewal submitted after the expiration date of the license shall be accompanied by the late renewal fee established by Rule .0203 of this Section and shall be submitted not later than 90 days after the expiration date of the license.

(d) If a licensee has maintained a license at least two years and then allows the license to expire, the license may be re-issued if application is made within one year of the expiration date by submitting an online reinstatement of an expired license application accompanied by the items required in Subparagraphs (a)(1) through (3) of this Rule and the late fee required by Paragraph (c) of this Rule. The licensee shall remain responsible for compliance with the Board's law and administrative rules during the period of lapse.

(e) The Director shall review and approve or recommend denial of an application for renewal or reinstatement. All denials shall be submitted to the Board for a final Board decision.

(f) Members of the armed forces whose licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall be granted the same extension of time to pay the license renewal fee and to complete the continuing education requirements prescribed in Section .0500 of this Chapter. 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.

History Note: Authority G.S. 74D-2(a); 74D-5; 74D-7; 93B-15;

Eff. January 1, 1995;

Temporary Adoption Eff. May 18, 1995;

Amended Eff. February 1, 2012; July 1, 2010; May 1, 1999; October 1, 1995;

Transferred and Recodified from 12 NCAC 11 .0204 Eff. July 1, 2015;

Amended Eff. April 1, 2018;

Readopted Eff. June 1, 2018;

Amended Eff. August 1, 2020; September 1, 2019.

14B NCAC 17 .0301 APPLICATION FOR REGISTRATION

(a) Each licensee or qualifying agent shall submit an online application for the registration of his or her employee on the website provided by the Board. When this online application is submitted, it shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigation or one set of classifiable fingerprints on a standard F.B.I. fingerprint card mailed separately to the Board's office;
- (2) one original signed S.B.I. release of information form uploaded online and the original mailed separately to the Board's office;
- (3) one head and shoulders digital photograph of the applicant of acceptable quality for identification, taken within six months prior to online submission, and uploaded with the application submission;
- (4) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceding 60 months;
- (5) the registration fee required by Rule .0302 of this Section, along with a four dollar (\$4.00) convenience fee charged by the third-party provider and credit card transaction fee charged by the applicant's credit card provider and collected online; and
- (6) a completed affidavit form and public notice statement form.

(b) The employer of an applicant who is currently registered with another alarm business shall complete an online application form provided by the Board. This form shall be accompanied by the applicant's multiple registration fee along with a four dollar (\$4.00) convenience fee charged by the third-party provider and credit card transaction fee charged by the applicant's credit card provider and collected online. This online application shall be accompanied by a completed affidavit form and public notice statement form.

(c) The employer of each applicant for registration shall print and retain a copy of the applicant's online application in the individual applicant's personnel file in the employer's office.

History Note: Authority G.S. 74D-2.1; 74D-5; 74D-8; Temporary Rule Eff. January 9, 1984 for a Period of 120 Days to Expire on May 7, 1984; Eff. May 1, 1984; Amended Eff. December 1, 2012; January 1, 2007; July 1, 1993; March 1, 1993; September 1, 1990; November 1, 1988; Transferred and Recodified from 12 NCAC 11 .0301 Eff. July 1, 2015; Amended Eff. December 1, 2017; Readopted Eff. June 1, 2018; Amended Eff. August 1, 2020; September 1, 2019.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 32 - MEDICAL BOARD

21 NCAC 32V .0111 PRACTICE DURING A STATE OF EMERGENCY

(a) The Board shall waive the requirements for licensure in the circumstances set forth in G.S. 90-12.5.

(b) The following individuals may practice under this Rule if he or she either:

- (1) holds a full, unlimited, and unrestricted license to practice perfusion in another U.S. state, territory or district; or
- (2) is a current, active certified clinical perfusionist who practices in a state where licensure is not required who practices perfusion at a North Carolina hospital that is licensed by the North Carolina Department of Health and Human Services and the hospital meets the following requirements:
 - (A) verifies the perfusionist's credentials and privileges; and
 - (B) maintains a list of all perfusionists coming to practice and provides this list to the Board within 10 days of each perfusionist practicing at the hospital. The hospital shall also provide the Board a list of when each perfusionist has stopped practicing perfusion in North Carolina under this Rule within 10 days after each perfusionist has stopped practicing perfusion under this Rule.

(c) A perfusionist may practice under this Rule for the shorter of either:

- (1) thirty days from the date the perfusionist has started practicing under this Rule; or
- (2) thirty days after a statement by an appropriate authority is made that the state of emergency has been withdrawn or ended.

(d) All perfusionists practicing under this Rule shall be authorized to practice perfusion in North Carolina and shall be deemed to be licensed in this State. The Board shall have jurisdiction over perfusionists practicing under this Rule for all purposes set forth in or related to G.S. 90, Articles 1 and 40, and such jurisdiction shall continue in effect even after the perfusionist has stopped practicing under this Rule.

History Note: Authority G.S. 90-12.5; 90-685; Eff. September 1, 2007; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016; Amended Eff. August 1, 2020.

CHAPTER 34 – BOARD OF FUNERAL SERVICE

21 NCAC 34A .0204 PETITION FOR PREDETERMINATION

(a) General. An individual seeking predetermination pursuant to G.S. 93B-8.1(b6) and this Rule may file with the Board a petition form located on the Board's website, www.ncbfs.org.

(b) Petition Procedure. The petition form shall include all of the following information:

- (1) The person's name;
- (2) The last four digits of the person's social security number;
- (3) The person's current residential address;
- (4) The person's current mailing address;
- (5) A nationwide criminal history record report from a reporting service designated by the Board, the cost of which shall be borne by the petitioner;
- (6) For each crime identified in the criminal history record report, the following information:
 - (A) Whether the crime was a felony or misdemeanor;
 - (B) The date that the crime occurred;
 - (C) The date the person was convicted of, or plead guilty or nolo contendere to, the crime;
 - (D) The age of the person at the time of the crime;
 - (E) The circumstances surrounding the commission of the crime;
 - (F) The sentence imposed for the crime;
 - (G) The period of time during which the person was incarcerated for the crime, if any;
 - (H) The period of time during which the person was on probation or parole for the crime, if any;
 - (I) Any documentation related to the person's rehabilitation or employment since the date of the crime, if any;
 - (J) Whether the person has undergone any rehabilitative drug or alcohol treatment since the date of the crime;
 - (K) Whether a Certificate of Relief has been granted regarding the crime, pursuant to G.S. 15A 173.2; and
 - (L) Any affidavits or other written documents, including character references, for the person; and
- (7) An affirmation under oath that the person has read the statutes and rules governing the practice of funeral service and that the information contained in the petition is true and accurate.

Incomplete petitions shall not be considered by the Board. If incomplete petitions received by the Board are not made complete within 30 days of receipt, the incomplete petitions will be returned to the person from whom the request was made.

(c) Petition Fee. A non-refundable petition fee of forty-five dollars (\$45.00) shall accompany each petition. This fee may be paid by certified bank check or money order made payable to the

North Carolina Board of Funeral Service. Cash shall not be accepted.

(d) Delegation of Authority for Predetermination. The Board delegates authority for rendering predeterminations under this Rule to a committee of the Board that is tasked with reviewing disciplinary matters.

History Note: Authority G.S. 90-210.25; 93B-8.1; Eff. August 1, 2020.

21 NCAC 34B .0313 PROCEDURES FOR PROVISIONAL LICENSURE

(a) Definitions. As used in this Rule:

- (1) "Applicant" shall mean the person submitting an Application for Provisional License on a form made available by the Board on its website at ncbfs.org and providing: his or her contact information; social security number; date and place of birth; sex; education and employment experience; the location where provisional work will be done; whether the applicant currently or has ever been licensed to practice funeral service, funeral directing, or embalming in another jurisdiction; whether the applicant ever has had any occupational or business license denied, suspended, or revoked; whether the applicant ever has been convicted of any felony or misdemeanor crime other than traffic infractions; whether the applicant has been subject of any investigation for employee misclassification in the preceding two years; and payment of a non-refundable fee pursuant to G.S. 90-210.25(a)(3a).
- (2) "Entry-Level Examination" shall mean an examination that is equivalent to the State Board Examination-Arts in Funeral Directing to assess competency in funeral arranging and directing; funeral service marketing and merchandising; funeral service counseling; legal and regulatory compliance; and cemetery and crematory operations pursuant to G.S. 90-210.25(a)(1)(e)(1). The National Board Examination-Arts that is administered by the International Conference of Funeral Service Examining Boards is equivalent to the State Board Examination-Arts in Funeral Directing.
- (3) "Laws and Rules Examination" shall mean an examination prepared by the Board of funeral practice and related laws of North Carolina, the federal Funeral Rule as expressed in the standards set forth in Funeral Industry Practices, 16 C.F. R. 453 (1984), pursuant to its most recent version, and the administrative rules governing the practice or professional funeral service as expressed in the NC Administrative Code.
- (4) "Professional Experience" shall mean work providing knowledge, skill, and proficiency resulting from the performance of funeral-

related duties and responsibilities; work requiring knowledge attained through academic education beyond high school; work that is intellectual in nature; and work requiring the exercise of independent discretion and judgment.

- (5) "Provisional Licensee" shall mean any individual satisfying the provisional licensure requirements pursuant to G.S. 90-210.25(a)(3a) and who engages in the practice of professional funeral service under the supervision of a funeral director or funeral service licensee in good standing with the Board for a period not to exceed three years.
 - (6) "Supervision" shall mean oversight and direction from a licensee in funeral directing or funeral service, who is in good standing with the Board, and who has practiced professional funeral service as his or her primary occupation more than 30 hours per week for at least five years.
- (b) The following provisions shall apply to provisional license applicants and licensees only:
- (1) Applicants shall submit with their application for provisional licensure proof of satisfying the education requirements pursuant to G.S. 90-210.25(a)(3a)(d). Such proof shall include certified transcripts from an accredited post-secondary institution, or, if applicable, a certified transcript from a funeral director program accredited by the American Board of Funeral Service Education (ABFSE) or a funeral director program offered at a post-secondary institution that is accredited by ABFSE. Certified transcripts shall come from the educational institution directly to the Board.
 - (2) Applicants not otherwise qualified as a certified trainee or eligible for a certified traineeship shall submit with their application for provisional licensure an employment history on a form provided by the Board on its website at ncbfs.org, which shall supplement the provisional license application and requires a listing of funeral-related work including name and contact information of employer, dates of employment, and duties and responsibilities performed.
 - (3) Prior to licensure as a Funeral Director, provisional licensees shall have attained a passing score of 75 percent on the Entry-Level Examination. Applicants shall have attained a passing score of 75 percent on the Laws and Rules Examination.
 - (4) Applicants shall be subject to a criminal history background check pursuant to the requirements of the North Carolina State Bureau of Investigation and may be approved for licensure in the absence of any disqualifying conditions pursuant to G.S. 93B-8.1.

Applicants shall complete forms provided by the Board on its website at ncbfs.org for the electronic submission of fingerprints if North Carolina residents; non-residents shall complete a fingerprint card and application information through a local law enforcement agency.

- (5) Provisional licensees shall be subject to the same license renewal requirements as licensees in funeral directing, including completion of a renewal application as set forth in Rule .0309 of this Section by December 31st of each year but not later than February 1st of the year immediately following the expiration of the license and submission of a non-refundable renewal fee of two hundred fifty dollars (\$250.00).
- (6) Provisional licensees shall be subject to the same requirements for continuing education as for licensees in funeral directing including a minimum of five continuing education credits annually and not exceeding two hours annually through online instruction. All continuing education credits shall be awarded only for Board-approved courses of instruction provided through an accredited sponsor or other approved provider, as set forth in Section .0400 of this Subchapter.

History Note: Authority G.S. 90-210.25(a)(3a); Eff. Pending Legislative Review.

21 NCAC 34B .0502 APPLICATION FORM AND EQUIVALENT EXAMINATIONS FOR RECIPROCAL LICENSE

- (a) Applications by an out-of-state licensee for a North Carolina license pursuant to G.S. 90-210.25(b)(1) shall be made on forms provided by the Board on its website at ncbfs.org. The form shall require the applicant to furnish the applicant's name, address, phone number, email address, social security number, date and place of birth, and sex; name and address of present employer; whether the applicant has military training or experience in the practice of funeral service; whether the applicant is a military spouse; whether the applicant has had recent experience in the practice of the type of reciprocal license sought for at least two of the five years preceding the date of the application; whether the applicant has any pending complaints against his or her license in any jurisdiction in which he or she is licensed to practice funeral service; educational history; license applied for; name of the jurisdiction where licensed and the kinds of licenses held; whether the applicant ever has had any occupational or business license denied, suspended or revoked; whether the applicant ever has been convicted of any felony or misdemeanor crime other than traffic infractions; whether the applicant has been subject to any investigation for employee misclassification in the preceding two years; and the notarized signature of the applicant.
- (b) The form shall require the licensing board of the other jurisdiction(s) to certify that the applicant is licensed and in good standing in that jurisdiction and to furnish the Board with the

name of the applicant, licenses held and dates granted, and the name and address of the Board in such other jurisdiction.

(c) The applicant shall provide an employment history to show at least three years of professional practice in the other jurisdiction(s).

(d) Funeral director applicants shall be deemed to have satisfied the examination requirements for reciprocal licensure if they have completed with passing scores the Entry-Level Examination defined in 21 NCAC 34B .0313(a)(2) as a requirement for licensure in the other jurisdiction and the Laws and Rules Examination defined in 21 NCAC 34B .0313(a)(3).

(e) Funeral service applicants shall be deemed to have satisfied the examination requirements for reciprocal licensure if they have completed the National Board Examinations as administered through The International Conference of Funeral Service Examining Boards, or equivalent examinations, as a requirement for licensure in the other jurisdiction and the Laws and Rules Examination defined in 21 NCAC 34B .0313(a)(3).

History Note: Authority G.S. 90-210.23(a); 90-210.25(b)(1); 93B-15.1; Eff. February 1, 1976; Readopted Eff. September 27, 1977; Amended Eff. November 1, 2004; September 1, 1979; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017; Amended Eff. Pending Legislative Review.

CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .2001 FILING AND SERVICE

(a) Parties shall file all papers provided for in this Section with the Board, either before service or within five days after service. The Board shall consider a paper to be filed when the Board actually receives it. Parties shall direct filings to the Investigations and Inspections Coordinator, North Carolina Board of Pharmacy, 6105 Farrington Road, Suite 201, Chapel Hill, North Carolina 27517.

(b) In addition to filing all papers with the Board, the Board and other parties shall serve all papers as follows:

- (1) The Board shall serve a notice of hearing under Rule .2006 of this Section on all parties by any method for service of process permitted by G.S. 150B-38(c).
(2) Parties shall serve subpoenas under Rule .2013 of this Section by any method for service permitted by G.S. 150B-39(c). While investigating, preparing for, or during a contested case, among others who are authorized to serve subpoenas, Board staff may serve subpoenas on behalf of the Board, pursuant to G.S. 1A-1, Rule 45.
(3) Parties shall serve all other papers in the contested case on all parties, including counsel to the Board, by any method for service permitted by G.S. 1A-1, Rule 5.

- (4) The Board shall serve all its orders by any method for service permitted by G.S. 150B-42(a).

History Note: Authority G.S. 90-85.6; 90-85.38; 150B-38; 150B-39; 150B-40; 150B-41; 150B-42; Eff. April 1, 1983; Amended Eff. October 1, 1990; May 1, 1989; July 1, 1988; March 1, 1987; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended Eff. August 1, 2020.

21 NCAC 46 .2004 REQUEST FOR HEARING

(a) A person aggrieved by a Board administrative action who has not received a notice of hearing from the Board may file a request for a hearing.

(b) The request for hearing shall contain the following information:

- (1) the petitioner's name and address;
(2) a short and plain statement of the Board action that the petitioner challenges;
(3) a short and plain statement of the way in which the petitioner has been aggrieved; and
(4) an explicit statement of request for a hearing.

(c) In order to preserve a person's rights with respect to a Board action, the person shall file a request for hearing with the Board within 60 days after the person receives notice of the Board action that the person challenges.

History Note: Authority G.S. 90-85.6; 150B-38; Eff. September 1, 1988; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended Eff. August 1, 2020.

21 NCAC 46 .2005 GRANTING OR DENYING HEARING REQUEST

(a) The Board shall grant a request for a hearing if it determines that the petitioner is a "person aggrieved" within the meaning of G.S. 150B-2(6). The Board shall provide notice of the time and place for the hearing. If the party fails to appear, the Board may deny the party's request for failure to prosecute it or may proceed to hear the matter in the party's absence.

(b) If the Board determines the petitioner is not a person aggrieved, the Board shall issue a denial that shall constitute a final agency decision.

History Note: Authority G.S. 90-85.6; 150B-38; 150B-40; 150B-42; Eff. July 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended Eff. August 1, 2020.

21 NCAC 46 .2006 NOTICE OF HEARING

(a) Before imposing final discipline under G.S. 90-85.38 on a person who holds a license, registration, permit, or other privilege

issued by the Board, the Board shall file and serve a notice of hearing pursuant to G.S. 150B-38(b).

(b) A party who has been served with a notice of hearing may file and mail to all other parties a written response not less than 10 days before the date set for the hearing. If the party wishes to submit this written response instead of personally appearing at the hearing, the party shall state that desire in the written response, and the Board shall consider the written response in lieu of a personal appearance.

(c) If a party who has been served with a notice of hearing neither appears pursuant to the notice nor files and serves a written response as set out in Paragraph (b) of this Rule, the Board shall rule the party to be in default and the allegations of the notice admitted. The Board may enter a final agency decision by default granting any relief available to the Board.

(d) If the Board determines that the public health, safety, or welfare requires action, it may summarily suspend a license, registration, permit, or other privilege granted by the Board. Upon service of the order, the licensee, registrant, or permit holder to whom the order is directed shall immediately stop practicing pharmacy and stop dispensing devices and medical equipment in North Carolina. Failure to receive the order shall not invalidate the order. The suspension shall remain in effect pending a final agency decision pursuant to G.S. 150B-42. However, pursuant to Rules .2004 and .2005 of this Section, a person subject to a summary suspension may request a hearing on whether the public health, safety, or welfare permits terminating or modifying the terms of the summary suspension pending a final agency decision. Neither an order of summary suspension nor a decision on whether the summary suspension order shall be terminated or modified is a final agency decision.

History Note: Authority G.S. 90-85.6; 90-85.12; 90-85.38; 150B-3; 150B-38; 150B-40; 150B-42; Eff. July 1, 1988; Amended Eff. September 1, 1995; May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended Eff. August 1, 2020.

21 NCAC 46 .2007 WHO SHALL HEAR CONTESTED CASES

(a) A majority of the Board shall conduct all hearings, as set forth in G.S. 150B-40(b), except as provided in G.S. 150B-40(e).

(b) The Board President shall be the presiding officer at any hearing, unless the President is disqualified, absent, or otherwise determines that he or she is unable to serve in that capacity. In the event that the President does not preside, the Board Vice President shall be the presiding officer at any hearing, unless the Vice President is disqualified, absent, or otherwise determines that he or she is unable to serve in that capacity. In the event that neither the President nor the Vice President preside, the Board shall designate another presiding officer. The presiding officer shall have all duties and powers set forth in G.S. 150B-40(c).

History Note: Authority G.S. 90-85.6; 90-85.12; 150B-38; 150B-40; Eff. July 1, 1988; Amended Eff. September 1, 1995;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended Eff. August 1, 2020.

21 NCAC 46 .2008 INFORMAL PROCEDURES

(a) Before issuing a notice of hearing, the Board may conduct one or more conferences in which a member of the Board and the party or parties meet to consider the possibility of resolving the dispute or any other matter as may aid in the disposition of the dispute. The member of the Board may direct one or more of the following dispositions:

- (1) Submission to the Board with a recommendation to dismiss with no action;
- (2) Submission to the Board with a recommendation that Board staff provide informal guidance to resolve the dispute;
- (3) Submission to the Board with a recommendation to resolve the dispute or to expedite the hearing by consent order; or
- (4) Scheduling, with appropriate notice, for contested case hearing.

The Board must approve all recommendations under Subparagraphs (1), (2) and (3) of this Paragraph. The Board member who participated in the conference may participate in Board discussions concerning any recommendation made but may not vote upon the recommendation. The Board member who participated in the conference shall disqualify himself or herself in accordance with Rule .2011 of this Section from participation in any hearing or decision in the matter discussed in the conference if the matter results in a contested case hearing before the Board.

(b) The Board and the party or parties may agree to simplify the hearing by stipulation or any other method provided by G.S. 150B-41(c).

History Note: Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40; 150B-41; 150B-42; Eff. July 1, 1988; Amended Eff. April 1, 2001; September 1, 1995; October 1, 1990; May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended Eff. August 1, 2020.

21 NCAC 46 .2009 MOTIONS

Except as otherwise provided in this Section, parties must file and serve motions related to a contested case at least ten days before the hearing, except those made during the hearing. The presiding officer may decide to hear pre-hearing motions either before the hearing or at the hearing before witnesses testify.

History Note: Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40; 150B-41; Eff. July 1, 1988; Amended Eff. May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended Eff. August 1, 2020.

21 NCAC 46 .2010 TYPES OF INTERVENTION

History Note: Authority G.S. 90-85.6; 150B-38; Eff. July 1, 1988; Amended Eff. May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Repealed Eff. August 1, 2020.

21 NCAC 46 .2011 DISQUALIFICATION OF BOARD MEMBERS

- (a) If a Board member determines that personal bias or other reason for that Board member's disqualification exists in a contested case, that Board member shall decline to participate in the hearing or decision.
- (b) If any party in a contested case, in good faith, has evidence that a Board member is personally biased or another reason for disqualification exists, the party may file and serve a motion for disqualification, which must be supported by a sworn, notarized affidavit testifying to the facts relevant to disqualification.
- (c) Ex parte communication by or on behalf of a party with a Board member about the facts of a case at any time during either the investigation or prosecution of potential violations shall be grounds for disqualification of that Board member, other than communications by Board counsel and staff during the course of seeking a summary suspension or communications during any other proceeding before the Board. Before a hearing begins, or during the hearing, if applicable, both the Board member and the party must disclose the communications between the Board member and a party about the facts of the case to the Board and to the parties.
- (d) A party may file and serve a motion for disqualification less than ten days before or during a hearing only when based on newly discovered evidence that by due diligence could not have been discovered in time to file a timely motion. Under these circumstances, the hearing shall continue with the challenged Board member sitting.
- (e) The Board shall decide whether the evidence requires disqualification before it renders the final agency decision in the contested case. The decision about the disqualification of a Board member shall be made by the other Board members. The Board is not required to grant a new hearing if a Board member is disqualified during the course of a hearing.
- (f) The presiding officer may determine the method of resolving the motion for disqualification in the presiding officer's discretion under G.S. 150B-40. This may include the authority to direct that the Board's Executive Director oversee an investigation of the allegations and report the findings to the Board.
- (g) In the event of disqualification, the disqualified member shall not participate in further deliberation or decision of the case but may be called on to furnish information to the other members of the Board.
- (h) If three or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

History Note: Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40; 150B-41;

Eff. July 1, 1988; Amended Eff. May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended Eff. August 1, 2020.

21 NCAC 46 .2013 SUBPOENAS

- (a) A party shall file and serve a request for a subpoena, attaching a proposed subpoena. A form of subpoena is available on the Board's website at ncbop.org/lawandrules.htm. The Board may issue the subpoena in accordance with G.S. 150B-39(c). Subpoenas must be issued and signed by the Presiding Officer, the Board's Executive Director, the Board's legal counsel, or a Board staff member designated by the Executive Director.
- (b) The party shall serve the subpoena along with the fees and expenses required by G.S. 150B-39(c).
- (c) After service of the subpoena, the party serving the subpoena shall file and serve sworn proof of the method of service, demonstrating compliance with G.S. 150B-39(c).
- (d) G.S. 150B-39(c) governs the recipients' duties in responding to subpoenas. A party to the case or person subject to the subpoena may object to a subpoena by filing a motion to quash. The movant shall file and serve the motion to quash within 10 days of service of the subpoena or seven days before the contested case hearing, whichever is sooner. The Board shall hear and rule on objections as provided in G.S. 150B-39(c).

History Note: Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40; Eff. September 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended Eff. August 1, 2020.

21 NCAC 46 .2014 WITNESSES

All testimony at the hearing shall be under oath or affirmation and shall be recorded. The presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

History Note: Authority G.S. 90-85.6; 150B-38; 150B-39; 150B-40; 150B-41; 150B-42; Eff. July 1, 1988; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017; Amended Eff. August 1, 2020.

21 NCAC 46 .2015 FINAL DECISION

In a contested case, the Board shall issue a final agency decision in compliance with G.S. 150B-42. All final agency decisions shall be drafted by Board staff or Board counsel and presented to the presiding officer. In the event that the presiding officer determines that the drafted order does not reflect the Board's findings of fact, conclusions of law, or ruling, the presiding officer shall revise the drafted order to reflect the Board's decision.

History Note: Authority G.S. 90-85.6; 90-85.38; 150B-3; 150B-38; 150B-40; 150B-41; 150B-42; Eff. July 1, 1988;

Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. October 3, 2017;
Amended Eff. August 1, 2020.

21 NCAC 46 .2016 PROPOSALS FOR DECISIONS

- (a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), that statute governs the procedures before the administrative law judge.
- (b) Within 10 days after the proposal for decision is served on the parties under G.S. 150B-40(e), a party may file and serve written exceptions to this proposal for decision and submit its own proposed findings of fact and conclusions of law. The party shall explicitly state what exceptions are taken to the decision or procedure and what relief the party seeks. Exceptions must refer to pages of the record or otherwise identify the occurrence to which the party takes exception. Each proposed finding of fact shall refer to pages of the record or otherwise identify the evidence supporting the proposed finding, and each proposed conclusion of law must refer to or otherwise identify both the findings of fact and legal support for the proposed conclusion. A party may file and serve written arguments along with the exceptions and proposed findings of fact and conclusions of law.
- (c) A party may ask to present oral argument to the Board. The party must file and serve the request with the written submissions under Paragraph (b) of this Rule. If a party requests oral argument, the Board will notice the time and place for such oral argument. The presiding officer may set the terms of oral argument, including order of argument and time limitations.
- (d) After the procedures set forth in this Section, the Board will issue a final agency decision in accordance with Rule .2015 of this Section.

History Note: Authority G.S. 90-85.6; 150B-38; 150B-40; 150B-41; 150B-42;
Eff. July 1, 1988;
Amended Eff. May 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. October 3, 2017;
Amended Eff. August 1, 2020.

21 NCAC 46 .2017 REAPPLICATIONS, REINSTATEMENT, REHEARING, AND RECONSIDERATION

- (a) The following terms govern reapplication, reinstatement, rehearing, and other reconsideration requests from a final agency decision, unless otherwise expressly provided in that final agency decision:
 - (1) No individual who holds a license, registration, or other privilege from the Board who has that license, registration, or other privilege either revoked or actively suspended indefinitely or for more than five years may petition for reinstatement, to have the revocation or suspended lifted, for reconsideration or rehearing, or otherwise for modification or rescinding the order, until at least five years from the effective date of the revocation or suspension.

- (2) No individual who has had an application for a license, registration, or other privilege from the Board denied may submit another application or petition for reconsideration or rehearing or otherwise for modification or rescinding the denial, until at least two years from the date of the most recent application that the Board denied. At that time, the individual must submit a new application for the Board to consider.
- (3) No permit holder who has had that permit either revoked or actively suspended indefinitely or for more than five years may submit another application or petition for reinstatement, to have the revocation or suspended lifted, for reconsideration or rehearing, or otherwise for modification or rescinding the order, until at least five years from the effective date of the revocation or suspension.
- (4) No proposed permit holder who has had an application for a permit denied may submit another application for a permit or petition for reconsideration or rehearing or otherwise for modification or rescinding the denial, until at least two years from the date of the most recent application that was denied. At that time, the proposed permit holder must submit a new application for the Board to consider.
- (5) If any license, registration, permit, or any other privilege is subject to a stayed suspension or an active suspension for a period of five years or shorter, the person holding that privilege may not submit another application, or petition for reinstatement, to have the suspension lifted, for reconsideration or rehearing, or otherwise for modification or rescinding the order, before the conclusion of that suspension.
- (6) For the purposes of Subparagraphs (3), (4), and (5) of this Paragraph, the Board shall treat a permit holder or proposed permit holder the same as a prior permit holder or proposed permit holder if either of the following two conditions is true:
 - (A) the permit holder or proposed permit holder has the same pharmacy manager and there is more than 10 percent common ownership as the prior permit holder or proposed permit holder; or
 - (B) the permit holder or proposed permit holder has 50 percent or more common ownership as the prior permit holder or proposed permit holder.

To determine common ownership under this Rule, the Board shall consider business entities to be identical to other business entities if there is more than a 50 percent common ownership. Furthermore, to determine common ownership under this Rule, the Board shall combine the interests of individuals with the interests of any business entities in which the individuals have more than a 10

percent interest, as well as with the interests of individuals in the same family.

(b) The Board may alter the terms provided in Paragraph (a) of this Rule, after applying the facts and circumstances of the matter and its application of the disciplinary provision in G.S. 90-85.38. Unless the Board expressly modifies these terms in the final agency decision, the terms of Paragraph (a) of this Rule apply to that decision.

(c) If a person submits a petition or application that does not meet the requirements set forth in this Rule, the Executive Director shall not schedule any hearing on the petition or application before the Board until the limits set forth in this Rule are satisfied.

(d) Upon a petition for reinstatement or to submit a new application permitted under this Rule, the Board will grant or

reinstate a license, registration, permit, or other privilege only after a finding that the grant or reinstatement is appropriate under the Pharmacy Practice Act and the Board's rules and regulations. In making that decision, the Board will consider the gravity of the misconduct that caused the denial, suspension, or revocation; the applicant's history; the applicant's current ability to practice pharmacy with reasonable skill, competence, and safety to the public; and the applicant's conduct since the order of denial, suspension, or revocation.

History Note: Authority G.S. 90-85.6; 90-85.38; 150B-38; 150B-40; 150B-42; Eff. August 1, 2020.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission September 17, 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
Randy Overton

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

September 17, 2020 October 15, 2020
November 19, 2020 December 17, 2020

AGENDA

RULES REVIEW COMMISSION

THURSDAY, SEPTEMBER 17, 2020 9:00 A.M.

1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Crime Victims Compensation Commission – 14B NCAC 09 .0303, .0304 (Snyder)
 - B. Private Protective Services Board - 14B NCAC 16 .1001, .1002, .1003, .1207, .1304, .1404 (Reeder)
 - C. Environmental Management Commission - 15A NCAC 02D .0403, .0501, .0502, .0503, .0504, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515, .0516, .0517, .0519, .0521, .0524, .0527, .0528, .0529, .0530, .0531, .0532, .0533, .0534, .0535, .0536, .0537, .0538, .0539, .0541, .0542, .0543, .0544, .0615 (May)
 - D. Environmental Management Commission - 15A NCAC 02D .0901, .0902, .0903, .0906, .0909, .0912, .0918, .0919, .0922, .0923, .0924, .0925, .0926, .0927, .0928, .0930, .0931, .0932, .0933, .0935, .0937, .0943, .0944, .0945, .0947, .0948, .0949, .0951, .0952, .0955, .0956, .0957, .0958, .0959, .0960, .0961, .0962, .0963, .0964, .0965, .0966, .0967, .0968, .1401, .1402, .1403, .1404, .1405, .1407, .1408, .1409, .1410, .1411, .1412, .1413, .1414, .1415, .1418, .1423, .1701, .1702, .1703, .1704, .1705, .1706, .1707, .1708, .1709, .1710, .2615 (Reeder)
 - E. Environmental Management Commission - 15A NCAC 13B .0531, .0532, .0533, .0534, .0535, .0536, .0537, .0538, .0539, .0540, .0541, .0542, .0543, .0544, .0545, .0547, .1601, .1602, .1603, .1604, .1617, .1618, .1619, .1620, .1621, .1622, .1623, .1624, .1625, .1626, .1627, .1629, .1630, .1631, .1632, .1633, .1634, .1635, .1636, .1637, .1680 (Snyder)
 - F. State Board of Education - 16 NCAC 06B .0111, .0112, .0113, .0114 (Snyder)
 - G. State Board of Education - 16 NCAC 06C .0334, .0335, .0336, .0337, .0338, .0339, .0340, .0341, .0342, .0343, .0344, .0345, .0346, .0347, .0348, .0349, .0350, .0351, .0352, .0353, .0354, .0355, .0356, .0357, .0358, .0359, .0360, .0361, .0362, .0363, .0364, .0365, .0366, .0367, .0368, .0369, .0370, .0371, .0372, .0373, .0374, .0375, .0376, .0377, .0378, .0379, .0380, .0381, .0382, .0383, .0384, .0385, .0386, .0387, .0388, .0389, .0390, .0391, .0392, .0393, .0394, .0395, .0396, .0397, .0701 (May)

RULES REVIEW COMMISSION

- H. State Board of Education 16 NCAC 06D .0211, .0212, .0307, .0308, .0309, .0310, .0311, .0313; 06E .0107, .0204, .0206; 06G .0314, .0315, .0316, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515, .0516, .0517, .0518, .0519, .0520, .0521, .0522, .0523, .0524 (Snyder)
- I. State Board of Education 16 NCAC 06H .0113, .0114, .0115, .0116, .0117; 06K .0101, .0103, .0104, .0105 (Reeder)

- IV. Review of Log of Filings (Permanent Rules) for rules filed between July 21, 2020 through August 20, 2020
 - Radiation Protection Commission (Reeder)
 - Commission for Public Health 10A (May)
 - Criminal Justice Education and Training Standards Commission (May)
 - Coastal Resources Commission (May)
 - Wildlife Resources Commission (May)
 - Commission for Public Health 15A (May)
 - Board of Barber Examiners (Reeder)
 - Board of Examiners of Fee-Based Practicing Pastoral Counselors (Reeder)
 - Addictions Specialist Professional Practice Board (Snyder)
 - Building Code Council (Reeder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
- VII. Commission Business
 - Election of Commission Officers
 - Next meeting: Thursday, October 15, 2020

**Commission Review
Log of Permanent Rule Filings
July 21, 2020 through August 20, 2020**

RADIATION PROTECTION COMMISSION

The rules in Chapter 15 are from the Radiation Protection Commission and include general provisions (.0100); registration of radiation machines, facilities and services (.0200); licensing of radioactive material (.0300); safety requirements for industrial radiography operations (.0500); x-rays in the healing arts (.0600); use of radioactive sources in the healing arts (.0700); requirements for analytical x-ray equipment (.0800); requirements for particle accelerators (.0900); notices, instructions, reports and inspections (.1000); fees (.1100); land disposal of radioactive waste (.1200); requirements for wire-line service operators and subsurface-tracer studies (.1300); tanning facilities (.1400); licenses for disposal site access (.1500); and standards for protections against radiation (.1600).

Records: Reports and Operating Requirements 10A NCAC 15 .1418
Readopt with Changes*

PUBLIC HEALTH, COMMISSION FOR

The rules in Subchapter 42B concern laboratory sections.

Newborn Screening 10A NCAC 42B .0102
Amend*

Fees 10A NCAC 42B .0108
Adopt*

The rules in Chapter 43 are personal health rules.

The rules in Subchapter 43H are rules of the Sickle Cell Syndrome, genetic counseling and children and youth section including rules about the sickle cell syndrome program (.0100); sickle cell contract funds (.0200); and genetic health care (.0300).

Submission of Blood Specimens for Screening of Newborns 10A NCAC 43H .0314
Amend*

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

Minimum Standards for Criminal Justice Officers 12 NCAC 09B .0101
Amend*

Responsibilities of the School Director 12 NCAC 09B .0202
Amend*

Criminal Justice Instructor Training 12 NCAC 09B .0209
Amend*

Certification of Instructors 12 NCAC 09B .0301
Amend*

Criminal Justice Instructor Training Course 12 NCAC 09B .0410
Amend*

The rules in Subchapter 9G are the standards for correction including scope, applicability and definitions (.0100); minimum standards for certification of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0200); certification of correctional officers, probation/parole officers, probation/parole officers intermediate and instructors (.0300); minimum standards for training of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0400); enforcement of rules (.0500); professional certification program (.0600); and forms (.0700).

Notification of Criminal Charges/Convictions 12 NCAC 09G .0302
Amend*

Certification of Instructors 12 NCAC 09G .0307
Amend*

Corrections Instructor Training Course 12 NCAC 09G .0313
Amend*

Instructor Training 12 NCAC 09G .0414
Amend*

COASTAL RESOURCES COMMISSION

The rules in Subchapter 7H are the state guidelines for areas of environmental concern (AECs) including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); general permit to construct boat ramps along estuarine and public trust shorelines and into estuarine and public trust waters (.1300); groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); construction of sheetpile sill for shoreline protection in estuarine and public trust waters (.2100); construction of freestanding moorings in established waters and public trust areas (.2200); replacement of

existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); placement of riprap for wetland protection in estuarine and public trust waters (.2400); replacement of structures; the reconstruction of primary or frontal dune systems; and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms (.2500); construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

<u>Ocean Hazard Categories</u> Readopt without Changes*	15A NCAC 07H .0301
<u>Significance of the Ocean Hazard Category</u> Readopt without Changes*	15A NCAC 07H .0302
<u>Management Objective of Ocean Hazard Areas</u> Readopt without Changes*	15A NCAC 07H .0303
<u>AECs Within Ocean Hazard Areas</u> Readopt without Changes*	15A NCAC 07H .0304
<u>General Identification and Description of Landforms</u> Readopt without Changes*	15A NCAC 07H .0305
<u>General Use Standards for Ocean Hazard Areas</u> Readopt without Changes*	15A NCAC 07H .0306
<u>Specific Use Standards for Ocean Hazard Areas</u> Readopt without Changes*	15A NCAC 07H .0308
<u>Use Standards for Ocean Hazard Areas: Exceptions</u> Readopt without Changes*	15A NCAC 07H .0309
<u>Use Standards for Inlet Hazard Areas</u> Readopt without Changes*	15A NCAC 07H .0310
<u>Installation and Maintenance of Sand Fencing</u> Readopt without Changes*	15A NCAC 07H .0311
<u>Technical Standards for Beach Fill Projects</u> Readopt without Changes*	15A NCAC 07H .0312

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).

<u>Dog Training and Field Trials</u> Readopt with Changes*	15A NCAC 10B .0114
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The rules in Subchapter 10G concern distribution and sale of hunting: fishing: and trapping license including license agents (.0100); boat registration agents (.0200); fur tag agents (.0300); wildlife service agents (.0400); licensee requirements (.0500) and license eligibility (.0600).

<u>Totally Disabled License Eligibility</u> Amend*	15A NCAC 10G .0601
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The rules in Subchapter 10H concern activities regulated by the Commission including controlled hunting preserves for domestically raised game birds (.0100), holding wildlife in captivity (.0300), commercial trout ponds (.0400), fish propagation (.0700), falconry (.0800), game bird propagators (.0900), taxidermy (.1000), furbearer propagation (.1100), controlled fox hunting preserves (.1200), and reptiles and amphibians (.1300).

<u>Records</u> Amend*	15A NCAC 10H .1003
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The rules in Subchapter 10L concern the wildlife conservation land program.

<u>Wildlife Conservation Land</u> Adopt*	15A NCAC 10L .0101
<u>Protection of Species on the Protected Animal List</u> Adopt*	15A NCAC 10L .0102
<u>Conservation of Priority Wildlife Habits</u> Adopt*	15A NCAC 10L .0103
<u>Wildlife Reserve</u> Adopt*	15A NCAC 10L .0104

PUBLIC HEALTH, COMMISSION FOR

The rules in Chapter 18 cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration mechanical purification facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants, meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); primitive camps (.3500); rules governing the sanitation of resident camps (.3600); and private drinking water well sampling (.3800).

<u>Definitions</u> Amend*	15A NCAC 18A .2508
<u>Water Recreation Attractions</u> Amend*	15A NCAC 18A .2543

BARBER EXAMINERS, BOARD OF

The rules in Subchapter 6N establish fees and provide for the use of various forms.

<u>Form Bar-1</u> Amend*	21 NCAC 06N .0102
<u>Form Bar-3</u> Amend*	21 NCAC 06N .0104
<u>Form Bar-4</u> Amend*	21 NCAC 06N .0105
<u>Form Bar-5</u> Amend*	21 NCAC 06N .0106
<u>Form Bar-6</u> Amend*	21 NCAC 06N .0107
<u>Form Bar-8</u> Amend*	21 NCAC 06N .0109
<u>Form Bar-9</u> Amend*	21 NCAC 06N .0110
<u>Form Bar-11</u> Amend*	21 NCAC 06N .0112
<u>Form Bar-12</u>	21 NCAC 06N .0113

Amend*

PASTORAL COUNSELORS, BOARD OF EXAMINERS OF FEE-BASED PRACTICING

The rules in Chapter 45 concern the Board of Examiners of Fee-Based Practicing Pastoral Counselors including general provisions (.0100); application for certification(.0200); examination (.0300); certification renewal (.0400); continuing education (.0500); definitions (.0600); temporary certificates (.0700); and supervision (.0800).

<u>Address</u> Amend*	21	NCAC	45	.0101
<u>Review Procedure</u> Amend*	21	NCAC	45	.0202
<u>Types</u> Amend*	21	NCAC	45	.0301
<u>Certification Renewal Form</u> Amend*	21	NCAC	45	.0401
<u>Reinstatement After Suspension</u> Adopt*	21	NCAC	45	.0403
<u>Continuing Education Requirements</u> Amend*	21	NCAC	45	.0501
<u>Equivalency</u> Amend*	21	NCAC	45	.0601
<u>Issuance of Temporary Certificate</u> Amend*	21	NCAC	45	.0701
<u>Approved Supervision</u> Amend*	21	NCAC	45	.0801

ADDICTIONS SPECIALIST PROFESSIONAL PRACTICE BOARD

The rules in Chapter 68 include general provisions (.0100); certification (.0200); clinical addictions specialist (.0300); education (.0400); ethical principles of conduct (.0500); grounds for discipline and disciplinary procedures (.0600); and appeals process (.0700).

<u>Definitions</u> Readopt with Changes*	21	NCAC	68	.0101
<u>Board Address</u> Readopt with Changes*	21	NCAC	68	.0102
<u>Application for Registration</u> Readopt with Changes*	21	NCAC	68	.0201
<u>Registration Process for Board Credential</u> Readopt with Changes*	21	NCAC	68	.0202
<u>Supervised Practicum for Certified Alcohol and Drug Couns...</u> Readopt with Changes*	21	NCAC	68	.0204
<u>Reciprocity</u> Readopt with Changes*	21	NCAC	68	.0209
<u>Continuing Education Approval Policy</u> Readopt/Repeal*	21	NCAC	68	.0213
<u>University Substance Abuse Specialty Curricula</u> Readopt with Changes*	21	NCAC	68	.0214
<u>Verification</u> Readopt/Repeal*	21	NCAC	68	.0215
<u>Background Investigation</u> Readopt with Changes*	21	NCAC	68	.0216

RULES REVIEW COMMISSION

<u>Supervised Practicum for Criminal Justice Addictions Prof...</u> Readopt with Changes*	21	NCAC	68	.0217
<u>Notice to Applicant of Failure to Satisfy Board</u> Readopt without Changes*	21	NCAC	68	.0220
<u>Applicant Hearing</u> Readopt without Changes*	21	NCAC	68	.0221
<u>Ethics and Quality Assurance Inquiry</u> Readopt with Changes*	21	NCAC	68	.0222
<u>Standards and Quality Assurance Committee Actions</u> Readopt with Changes*	21	NCAC	68	.0223
<u>Credentialing Status Denied if Serving Sentence</u> Readopt without Changes*	21	NCAC	68	.0224
<u>Suspension of Authority and Escrow of Funds</u> Readopt without Changes*	21	NCAC	68	.0225
<u>Armed Services Extension for Credential</u> Readopt without Changes*	21	NCAC	68	.0226
<u>Credentials by Endorsement or Reciprocity Based on Milita...</u> Readopt with Changes*	21	NCAC	68	.0227
<u>Substance Use Disorder Credential by Endorsement or Recip...</u> Readopt with Changes*	21	NCAC	68	.0228
<u>Scope</u> Readopt without Changes*	21	NCAC	68	.0301
<u>Application for Deemed Status by Professional Discipline</u> Readopt without Changes*	21	NCAC	68	.0303
<u>Three-Year Standards Review of Deemed Status Standing</u> Readopt without Changes*	21	NCAC	68	.0304
<u>Revocation of Credential When Change in Status</u> Readopt without Changes*	21	NCAC	68	.0307
<u>Educational Approval Policy</u> Readopt with Changes*	21	NCAC	68	.0401
<u>General Training Pre-Approval Guidelines</u> Readopt with Changes*	21	NCAC	68	.0402
<u>In-Service Training Event</u> Readopt with Changes*	21	NCAC	68	.0403
<u>Credit Denial or Limitation</u> Readopt with Changes*	21	NCAC	68	.0404
<u>Sponsor Guidelines</u> Readopt with Changes*	21	NCAC	68	.0405
<u>Procedures for Approval of Self-Study Courses</u> Readopt/Repeal*	21	NCAC	68	.0406
<u>Education Submission Guidelines</u> Readopt with Changes*	21	NCAC	68	.0407
<u>Purpose and Scope</u> Readopt with Changes*	21	NCAC	68	.0501
<u>Non-Discrimination</u> Readopt without Changes*	21	NCAC	68	.0502
<u>Competence</u> Readopt with Changes*	21	NCAC	68	.0503
<u>Legal Standards and Ethical Standards</u> Readopt without Changes*	21	NCAC	68	.0504
<u>Education and Training Standards</u> Readopt without Changes*	21	NCAC	68	.0505

<u>Publication Credit</u>	21	NCAC	68	.0506
Readopt without Changes*				
<u>Client Welfare</u>	21	NCAC	68	.0507
Readopt without Changes*				
<u>Confidentiality</u>	21	NCAC	68	.0508
Readopt with Changes*				
<u>Client Relationships</u>	21	NCAC	68	.0509
Readopt with Changes*				
<u>Interprofessional Relationships</u>	21	NCAC	68	.0510
Readopt without Changes*				
<u>Remuneration</u>	21	NCAC	68	.0511
Readopt without Changes*				
<u>Responsibilities of Supervisor to Supervisee</u>	21	NCAC	68	.0512
Readopt with Changes*				
<u>Grounds for Professional Discipline</u>	21	NCAC	68	.0601
Readopt without Changes*				
<u>Complaint Procedures</u>	21	NCAC	68	.0602
Readopt with Changes*				
<u>Investigation of Complaint</u>	21	NCAC	68	.0603
Readopt without Changes*				
<u>Hearing Before Board</u>	21	NCAC	68	.0604
Readopt without Changes*				
<u>Method of Discipline</u>	21	NCAC	68	.0605
Readopt with Changes*				
<u>Effect of Court or of Other Professional Groups</u>	21	NCAC	68	.0606
Readopt with Changes*				
<u>Discretion of the Board</u>	21	NCAC	68	.0607
Readopt without Changes*				
<u>Confidentiality</u>	21	NCAC	68	.0608
Readopt without Changes*				
<u>Petition for Reopening Case</u>	21	NCAC	68	.0609
Readopt without Changes*				
<u>Awarding the Credential Following Denial</u>	21	NCAC	68	.0610
Readopt without Changes*				
<u>Proof of Rehabilitation</u>	21	NCAC	68	.0611
Readopt without Changes*				
<u>Informal Proceedings</u>	21	NCAC	68	.0615
Readopt without Changes*				
<u>Publication of Ethics Sanctions</u>	21	NCAC	68	.0620
Readopt with Changes*				
<u>Hearing Before Board: Time Requirement</u>	21	NCAC	68	.0701
Readopt without Changes*				
<u>Right to Hearing</u>	21	NCAC	68	.0702
Readopt without Changes*				
<u>Request for Hearing</u>	21	NCAC	68	.0703
Readopt without Changes*				
<u>Hearing Requests</u>	21	NCAC	68	.0704
Readopt without Changes*				
<u>Notice of Hearing</u>	21	NCAC	68	.0705
Readopt without Changes*				
<u>Who Shall Hear Contested Cases</u>	21	NCAC	68	.0706
Readopt without Changes*				

<u>Petition for Intervention</u> Readopt without Changes*	21	NCAC	68	.0707
<u>Types of Intervention</u> Readopt without Changes*	21	NCAC	68	.0708
<u>Disqualification of Board Member</u> Readopt with Changes*	21	NCAC	68	.0709

BUILDING CODE COUNCIL

<u>2018 NC Mechanical Code/Minimum Ventilation Rates</u> Amend*	Table 403.3.1.1
<u>2018 NC Energy Conservation Code/Application</u> Amend*	C401.2
<u>2018 NC Energy Conservation Code/Compliance</u> Amend*	R401.2
<u>2018 NC Residential Code/Appendices</u> Amend*	R102.5
<u>2018 NC Residential Code/Egress Door</u> Amend*	R311.2
<u>2018 NC Residential Code/Walkline</u> Amend*	R311.7.4
<u>2018 NC Residential Code/Winder Treads</u> Amend*	R311.7.5.2.1
<u>2018 NC Residential Code/Nosings</u> Amend*	R311.7.5.3
<u>2018 NC Residential Code/Height</u> Amend*	R312.1.2
<u>2018 NC Residential Code/Opening Limitations</u> Amend*	R313.1.3
<u>2018 NC Residential Code/Size and Height of Wood Studs</u> Amend*	Table R602.3(5)
<u>2018 NC Residential Code/Minimum Number of Full Height Ki...</u> Amend*	Table R602.7.5
<u>2018 NC Residential Code/Support by Steel Angle</u> Amend*	R703.8.2.1
<u>2018 NC Building Code/Minimum Number of Required Plumbing...</u> Amend*	2902.1
<u>2018 NC Building Code/Separate Facilities</u> Amend*	2902.2
<u>2018 NC Building Code/Small Occupancies</u> Amend*	2902.6
<u>2018 NC Plumbing Code/Minimum Number of Required Plumbing...</u> Amend*	Table 403.1
<u>2018 NC Plumbing Code/Separate Facilities</u> Amend*	403.2
<u>2018 NC Plumbing Code/Small Occupancies</u> Amend*	410.2
<u>2018 NC Fire Code/Fire Escape Stairs and Ladders</u> Adopt*	1031.10
<u>2018 NC Existing Building Code/Marking</u>	405.6

Adopt*

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	ABC	01878	7/30/2020	NC Alcoholic Beverage Control Commission	v.	H and M Citgo LLC T/A Lawson Park Citgo	Overby
19	DHR	02914	7/1/2020; 8/17/2020	Joseph L Pomranky	v.	NC Dept. of Health and Human Services	Jacobs
19	DHR	03768	7/13/2020	Arimeta Portee (Sunrise Residential Care)	v.	NC Department of Health Service Regulation	Overby
20	DHR	01298	7/24/2020	Vine & Branch Homecare d/b/a Vine and Branch Homecare	v.	NC Department of Health and Human Services	Malherbe
20	DOJ	00887	7/9/2020	Jessica Chambers	v.	NC Private Protective Services Board	Byrne
20	DOJ	00890	7/9/2020	Dionne Maurice Gretsinger	v.	NC Private Protective Services Board	Byrne
19	DST	05261	7/30/2020	Kirk Justin Barefoot	v.	NC Retirement Systems Division	Jacobs
				<u>Unpublished</u>			
20	ABC	02025	7/30/2020	NC Alcoholic Beverage Control Commission	v.	AMHART Corp T/A Samuel C Hart American Legion Post 14	May
17; 19	CSE	07718; 05797	7/20/2020	Calvin Tyrone Norton	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby

CONTESTED CASE DECISIONS

18	CSE	06413	7/1/2020	Leonardo R Chavez	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
19	CSE	05802	7/10/2020	David F Janney	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
19	CSE	06028	7/17/2020	John W Ivey	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Culpepper
19	CSE	06056	7/16/2020	Devon J Calhoun	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Culpepper
19	CSE	06237	7/9/2020	Ephraim C Davis	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	May
19	CSE	06432	7/20/2020	Michael W Palm	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	06535	7/20/2020	Stanley N Simons	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Ward
19	CSE	06640	7/8/2020	Nathan A Durfee	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Lassiter
19	CSE	06656	7/21/2020	June Pressley	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	00406	7/14/2020	Loc T Duong	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinheimer
20	CSE	00534	7/14/2020	Rexie Andrade	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinheimer
20	CSE	00630	7/14/2020	Edward E Gordon Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Services	Bawtinheimer
20	CSE	01881	7/28/2020	Mateo Friend	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	DCS	01946	7/30/2020	Tamekia Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
20	DHR	00204	7/29/2020	Teresa Carlisle	v.	NC Division of Childcare	Jacobs
20	DHR	00954	7/29/2020	David M Brandmahl	v.	NC Department of Health and Human Services, Environmental Health Section	Bawtinheimer
20	DHR	01490	7/24/2020	Mary Vernon	v.	DHHS	Mann
20	DHR	01552	7/10/2020	Niya Wilson	v.	Department of Health and Human Services	Sutton
20	DHR	01651	7/1/2020	Kaylee Ray Smith - Nurse Aid 1 #524069	v.	NC Department of Health and Human Services, Division of Health Service Regulation	May
20	DHR	01851	7/23/2020	Carolina Regional Homecare Kathy McKinney	v.	NC Department of Health and Human Services	Sutton

CONTESTED CASE DECISIONS

20	DHR	02050	7/23/2020	Melissa A Matzko	v.	Department of Health and Human Services	Sutton
20	DHR	02109	7/23/2020	Kathy McKinney	v.	NCDHHS	Sutton
20	DOA	02604	7/29/2020	Amy Betts	v.	DHHS NC Department of Administration et al	Malherbe
20	DOJ	00256	7/31/2020	Corey Nathan McDuffie	v.	NC Private Protective Services Board	Bawtinhimer
20	DOT	01825	7/7/2020	Lucillie Basnight Spencer	v.	NC Department of Transportation	Bawtinhimer
20	INS	00863	7/1/2020	Jackie Renee Everhart	v.	North Carolina State Health Plan	May