

# ***NORTH CAROLINA REGISTER***

**VOLUME 35 • ISSUE 08 • Pages 822 – 892**

**October 15, 2020**

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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 <sup>th</sup> day from publication in the Register
34:13	01/02/20	12/06/19	01/17/20	03/02/20	03/20/20	04/16/20	05/01/20	09/28/20
34:14	01/15/20	12/19/19	01/30/20	03/16/20	03/20/20	04/16/20	05/01/20	10/11/20
34:15	02/03/20	01/10/20	02/18/20	04/03/20	04/20/20	05/21/20	06/01/20	10/30/20
34:16	02/17/20	01/27/20	03/03/20	04/17/20	04/20/20	05/21/20	06/01/20	11/13/20
34:17	03/02/20	02/10/20	03/17/20	05/01/20	05/20/20	06/18/20	07/01/20	11/27/20
34:18	03/16/20	02/24/20	03/31/20	05/15/20	05/20/20	06/18/20	07/01/20	12/11/20
34:19	04/01/20	03/11/20	04/16/20	06/01/20	06/22/20	07/16/20	08/01/20	12/27/20
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34:23	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
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35:07	10/01/20	09/10/20	10/16/20	11/30/20	12/21/20	01/21/21	02/01/21	06/28/21
35:08	10/15/20	09/24/20	10/30/20	12/14/20	12/21/20	01/21/21	02/01/21	07/12/21
35:09	11/02/20	10/12/20	11/17/20	01/04/21	01/20/21	02/18/21	03/01/21	07/30/21
35:10	11/16/20	10/23/20	12/01/20	01/15/21	01/20/21	02/18/21	03/01/21	08/13/21
35:11	12/01/20	11/05/20	12/16/20	02/01/21	02/22/21	03/18/21	04/01/21	08/28/21
35:12	12/15/20	11/20/20	12/30/20	02/15/21	02/22/21	03/18/21	04/01/21	09/11/21

## EXPLANATION OF THE PUBLICATION SCHEDULE

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

### GENERAL

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

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

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

### FILING DEADLINES

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

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

### NOTICE OF TEXT

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

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

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



# State of North Carolina

ROY COOPER  
GOVERNOR

September 14, 2020

## EXECUTIVE ORDER NO. 164

### EXTENDING CERTAIN TRANSPORTATION-RELATED PROVISIONS IN PREVIOUS EXECUTIVE ORDERS

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

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

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

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

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

**WHEREAS**, in responding to the COVID-19 pandemic, and for the purposes of protecting the health, safety and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, and 161-163; and

**WHEREAS**, more than 185,000 thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and over 3,000 people in North Carolina have died from the disease; and

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

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

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

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

**WHEREAS**, on September 11, 2020, the Federal Motor Carrier Safety Administration (“FMCSA”) issued the Extension of Expanded Emergency Declaration No. 2020-002 to provide regulatory relief for commercial motor vehicle operations that provide direct assistance in support of emergency relief efforts related to COVID-19; and

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

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

**WHEREAS**, Executive Order No. 157, issued on August 14, 2020, extended the transportation related provisions in Executive Order Nos. 116, 119, 133, 140, 146, and 150; and

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

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

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

**WHEREAS**, N.C. Gen. Stat. § 166A-19.70(b), allows for the undersigned to declare by executive order that the health, safety, or economic well-being of persons or property in this state require that the maximum hours of service prescribed by the Department of Public Safety pursuant to N.C. Gen. Stat. § 20-381 and similar rules be waived for persons transporting essentials or assisting 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. Extensions**

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

**A. Executive Order Nos. 116 and 119.**

1. Sections 3 to 5.5 of Executive Order No. 119 (which were extended by Executive Order Nos. 133, 140, 146, 150 and 157) are hereby extended through the end of the calendar day on December 31, 2020.
2. Section 5 of Executive Order No. 116 (which was amended by Section 6 of Executive Order No. 119, Section 1 of Executive Order No. 146, Section 1 of Executive Order No. 150 and Section 1 of Executive Order No. 157 and extended by Executive Order Nos. 133, 140, 146, 150 and 157) is extended pursuant to N.C. Gen. Stat. § 166A-19.70(b) through the end of the calendar day on December 31, 2020.

3. This Executive Order does not amend the sixty (60) day postponement of DMV-related hearings established in Section 3.f of Executive Order No. 119.

4. The first sentence of Section 8 of Executive Order No. 119 is amended to read:

“This Executive Order is effective immediately and shall remain in effect until the end of the calendar day on December 31, 2020, or until rescinded or superseded by another applicable Executive Order

B. **Miscellaneous provisions.** For avoidance of doubt:

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

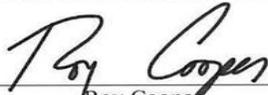
**Section 2. Distribution**

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

**Section 3. Effective Date**

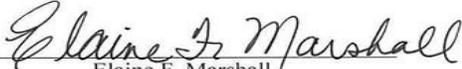
This Executive Order is effective immediately. This Executive Order shall remain in effect until December 31, 2020, unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 14<sup>th</sup> day of September 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

September 21, 2020

**EXECUTIVE ORDER NO. 165**

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

**WHEREAS**, on March 10, 2020, the undersigned issued Executive Order No. 116 (the "Declaration of a State of Emergency") which declared a State of Emergency to coordinate the state's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina; 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, 146-153, 155-157, and 161-164; and

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

**WHEREAS**, more than 193,000 people in North Carolina have had laboratory-confirmed cases of COVID-19, and over 3,200 people in North Carolina have died from the disease; and

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

**WHEREAS**, certain provisions of Executive Order Nos. 130 and 139 were extended by Executive Order Nos. 144, 148, and 152, but these provisions are set to expire unless the undersigned takes further action; and

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

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

**WHEREAS**, the Secretary of NCDHHS has been working closely with long term care facility industry leaders, advocates, and families to continue efforts to mitigate the spread of COVID-19, and has the expertise to determine necessary restrictions and requirements for long term care facilities to provide safe environments of care for staff and residents; and

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

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

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

**WHEREAS**, N.C. Gen. Stat. § 166A-19.10(b)(4) gives the undersigned the authority to "cooperate and coordinate" with the President of the United States, and the orders and authorizations below cooperate and coordinate with Centers for Medicare and Medicaid Services ("CMS") and utilize the flexibility provided in CMS waiver letters; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(7) the undersigned is authorized and empowered to utilize the services, equipment, supplies, and facilities of departments, offices, and agencies of the state in response to the emergency; and

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

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

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

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

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

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.30(c)(ii), the undersigned has determined that local control of the emergency is insufficient to assure adequate protection for

lives and property of North Carolinians because some but not all local authorities have taken implementing steps under such ordinances or declarations, if enacted or declared, in order to effectuate control over the emergency that has arisen; and

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

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

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

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

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

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

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

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

**Section 1. Extension, Generally.**

For the reasons and pursuant to the authority set forth above and in Executive Order Nos. 130, 139, 144, 148, and 152, and to meet the goal of providing human services during the COVID-19 pandemic, the undersigned orders as follows:

A. **Executive Order No. 152.**

Executive Order No. 152 is modified to be in effect until November 20, 2020. Except as specified in Section 2 herein, all references to "September 22, 2020" in Executive Order No. 152 shall be replaced with "November 20, 2020."

B. **Temporary Nature of this Section.**

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

**Section 2. Expiration of Changes to the Program of All-Inclusive Care for the Elderly (PACE).**

Notwithstanding Section 1 herein, or any other provision of Executive Orders Nos. 130, 139, 144, 148, or 152, the second sentence of Section 1(A) of Executive Order No. 152 is modified to read, "Section 6(A) of Executive Order No. 130, which was extended by Executive Order No. 144, shall expire on September 22, 2020."

**Section 3. Delegation of Authority on Long Term Care Facilities.**

Section 2 of Executive Order No. 152 is amended to read as follows:

Pursuant to N.C. Gen. Stat. § 166A-19.10(b)(3), the undersigned delegates to the Secretary of the Department of Health and Human Services the authority under N.C. Gen. Stat. § 166A-19.30(c), in conjunction with N.C. Gen. Stat. § 166A-19.31 (b)(1 ),(2), and (5), to prohibit and restrict activities and operations of long term care facilities, including skilled nursing facilities, combination homes, adult care homes, mental health group homes, and intermediate care facilities for individuals with intellectual disabilities, which may be reasonably necessary to maintain order and protect lives and property during this state of emergency. This Section will remain in effect for the duration of the State of Emergency as declared in Executive Order No 116, unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Section.

**Section 4. 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.

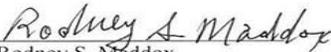
**Section 5. Effective Date.**

This Executive Order is effective immediately. Except as set forth expressly above, this Executive Order shall remain in effect until November 20, 2020 unless rescinded or replaced with a superseding Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 21<sup>st</sup> day of September in the year of our Lord two thousand and twenty.

  
\_\_\_\_\_  
Roy Cooper  
Governor

ATTEST:

  
\_\_\_\_\_  
Rodney S. Maddox  
Chief Deputy Secretary of State





North Carolina Department of Labor  
Division of Occupational Safety and Health  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
(919) 707-7806

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**NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS**

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

- Rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101, 13 NCAC 07F .0501, and 13 NCAC 07F .0201 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1910, 1915, and 1926 promulgated as of February 18, 2020, except as specifically described, and
- The *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, OSHA Standards and Regulations; Corrections, 29 CFR § 1910 (General Industry), 1915 (Shipyard Employment), 1926 (Construction) (*85 FR 8726, February 18, 2020*)

The final rule is published in the Federal Register on February 18, 2020 (85 FR 8726). In this rule OSHA is correcting typographical errors, including extraneous or omitted materials and inaccurate graphics, in 27 OSHA standards and regulations. These revisions do not affect the substantive requirements or coverage of the standards, do not modify or revoke existing rights or obligations, and do not establish new rights or obligations. OSHA's final rule on correcting amendments was effective February 18, 2020.

For additional information, please contact:

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

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

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

Summary of Verbatim Adoptions  
Effective September 23, 2020

**Occupational Safety and Health Standards**

The final rule is published in the Federal Register on February 18, 2020 (85 FR 8726). In this rule OSHA is correcting typographical errors, including extraneous or omitted materials and inaccurate graphics, in 27 OSHA standards and regulations. These revisions do not affect the substantive requirements or coverage of the standards, do not modify or revoke existing rights or obligations, and do not establish new rights or obligations. OSHA's final rule on correcting amendments was effective February 18, 2020.

The attached amendments of 13 NCAC 07F .0101, 13 NCAC 07F .0201, and 13 NCAC 07F .0501, are required by 29 CFR 1902.4(a) and G.S. 95-131(a) in order for North Carolina's Occupational Safety and Health program to be as effective as the federal program and to maintain North Carolina's state plan status under the federal Occupational Safety and Health Act of 1970. This rule was adopted in accordance with 150B-21.5(c). Pursuant to the provisions of G.S. 150B-21.3(e), the effective date of this action is September 23, 2020.

**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.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Department of Environmental Quality intends to adopt the rules cited as 04 NCAC 12D .0132, .0133, amend the rule cited as 04 NCAC 12D .0101, readopt with substantive changes the rules cited as 01 NCAC 41C .0101, .0201-.0209, .0211, .0301-.0303; 04 NCAC 12D .0102, .0116, .0117, readopt without substantive changes the rules cited as 01 NCAC 41C .0210; 41D .0101, .0102, .0201, .0202, .0301, .0302, .0401, and repeal through readoption the rules cited as 01 NCAC 41A .0101-.0103; 41E .0101; 04 NCAC 12C .0108; 12D .0103.*

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

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

**Proposed Effective Date:** February 1, 2021

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice):

Contact Star Hodge, State Energy Program Manager, as listed:  
 Star.hodge@ncdenr.gov  
 NC Department of Environmental Quality  
 MSC #1613  
 Raleigh, NC 27699-1613

**Reason for Proposed Action:** General Statute 150B-21.3A requires state agencies to review their existing rules every 10 years to determine which rules are still necessary, and to either readopt or repeal each rule as appropriate. Amendments to these State Energy Office rules will expand the scope of the Energy Loan Fund and modify loan conditions for energy efficiency and renewable energy projects in accordance with Session Law 2009-475. Additional technical amendments will correct outdated and obsolete rules for clarity before they are transferred and codified in Title 15A of the Administrative Code under the Department of Environmental Quality.

**Comments may be submitted to:** Star Hodge, NC Department of Environmental Quality, State Energy Office, MSC #1613, Raleigh, NC 27699-1613; email Star.hodge@ncdenr.gov

**Comment period ends:** December 14, 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 - STATE ENERGY OFFICE**

**SUBCHAPTER 41A - ORGANIZATION**

- 01 NCAC 41A .0101 PURPOSE**
- 01 NCAC 41A .0102 DEFINITIONS**
- 01 NCAC 41A .0103 SCOPE AND PURPOSE OF STATE SET-ASIDE**

Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449.

**SUBCHAPTER 41C - ENERGY IMPROVEMENT LOAN PROGRAM**

**SECTION .0100 - GENERAL PROVISIONS**

**01 NCAC 41C .0101 DEFINITIONS**

For the purposes of this ~~Chapter~~, Subchapter, the following definitions apply:

- (1) "Allowable ~~Costs~~, "Costs" means origination cost, ~~up front cost~~, letter of credit fee (first year), engineering design fee, and implementation of an eligible energy conservation measure. All allowable costs to be included in the loan ~~must~~ shall be incurred after the execution date of the Letter of ~~Intent~~, Intent.
- (2) "Applicant," "Applicant" means any commercial or industrial business, nonprofit institution, local government entity,

- or resident applying for a loan under the ~~Program;~~ Program.
- (3) "~~Btu,~~" "Btu" means British thermal unit; the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit at or near 39.2 degrees ~~F;~~ F.
- (4) "~~Btu/sq. ft./yr.,~~" "Btu/sq. ft./yr." means Btu per square foot per year; an index of building energy use, calculated by dividing the total annual energy use of a building by its square foot ~~area;~~ area.
- (5) "Commercial or industrial ~~business,~~" "business" means a commercial or industrial concern ~~which that~~ provides goods or services for profit from a location in North Carolina.
- (6) "Commercially available" means available to the general public and does not include experimental or research-related technologies.
- (6)(7) "~~Credit worthiness,~~" "worthiness" means ability of applicant to meet lending institution's standard lending ~~criteria;~~ criteria;
- (7) "~~DOA Fiscal Department,~~" the Fiscal Management Department, N. C. Department of Administration;
- (8) "Energy conservation ~~measure,~~" "measure" means a commercially available energy efficient device, technique or technology, designed to reduce energy consumption, peak demand, or ~~as~~ utility costs at an existing or proposed commercial or industrial ~~business;~~ business, nonprofit institution, local government entity, or residence.
- (9) "Financial Services Division" means the Fiscal Management Department, within the N.C. Department of Environmental Quality.
- (9)(10) "Letter of ~~intent,~~" "Intent" means written notification of the ~~intent of the~~ Department of Environmental Quality's intent to originate the ~~Loan,~~ loan, subject to the conditions and limitations of the ~~Program;~~ Energy Improvement Loan Program.
- (10)(11) "~~Payback,~~" "Payback" means the total energy conservation measure costs (including installation, equipment and engineering design) divided by the total annual estimated utility cost ~~savings;~~ savings for a period of years.
- (11)(12) "~~Program,~~" "Program" means the Energy Improvement Loan ~~Program;~~ Program.
- (12)(13) "~~Recycling Projects,~~" "Projects" means projects which extract and reprocess energy, water and materials for reuse in buildings, transportation systems, environmental management, consumer ~~products and/or outreach;~~ products, or outreach.
- (13)(14) "~~Renewables,~~" "Renewable" means solar, wind, ~~biomass~~ biomass, or hydropower ~~resources;~~ resources.
- (14)(15) "Repayment ~~Schedule,~~" "Schedule" means a schedule of periodic payments based upon ~~simple~~ payback as projected in the Technical Analysis rounded to the next quarter. Prepayments shall reduce the term of the loan with periodic payments remaining ~~unchanged;~~ unchanged.
- (15)(16) "State Energy Office" means, the State Energy Office, Division of Energy, within the N. C. Department of Administration; Environmental Quality.
- (16)(17) "Technical Analysis ("~~TA~~")", ("TA")" means a report ~~that identifies and analyzes~~ identifying and analyzing the cost-effective capital energy conservation improvements that the applicant wishes to implement. ~~The Technical Analysis need address only the specific energy conservation measures for which the loan is being requested. Each energy conservation measure analyzed shall be the subject of a single recommendation incorporating technical and economic analyses of the measure, considering building, process and equipment characteristics and energy use patterns pertinent to the improvement. The Technical Analysis must shall include the estimated cost of the implementation, a construction schedule, and expected energy savings;~~
- (17)(18) "Technical analyst," "Analyst" means a person with experience in energy conservation licensed engineer, architect, or certified Home Energy Rating System, "HERS" ®, rater ~~to~~ conduct that conducts the technical analysis for the purposes of this ~~article;~~ Subchapter.
- (18)(19) "Third Party Technical ~~Analyst,~~" "Analyst" means a ~~technical~~ Technical analysis performed by an agency or someone Analyst, who performs the Technical Analysis and does not have ~~has~~ neither a financial interest in the commercial ~~business,~~ or industrial business, nonprofit institution, or local government ~~institution, entity, or industrial business nor~~ or in the sale and installation of any proposed energy conservation ~~measure;~~ measure. ~~however, the Technical Analyst is permitted to provide construction management services to an approved applicant;~~
- (19)(20) "Unallowable ~~costs,~~" "costs" means costs associated with Technical Analysis preparation, costs associated with pre-application conference, costs incurred prior to the execution date of the Letter of Intent, or costs associated with loan application ~~(i.e., application, i.e., consultation fees, or Technical Analysis modifications);~~ and modifications.
- (20) "Up front cost," means the prepaid charge, if any, at a rate to be determined by the DOA ~~Fiscal Department~~ Financial Services Division sufficient to cover the costs of administering and servicing the program.

- (21) "Useful life" means the period during which an asset or property is expected to continue to function for the purpose for which the asset or property was acquired.

Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).

**SECTION .0200 – LOANS**

**01 NCAC 41C .0201 ELIGIBILITY**

The following classes of applicants are eligible to apply for loans:

- (1) ~~A local government organization, nonprofit organization, commercial or industrial business~~ commercial or industrial business, nonprofit organization, local government entity, or resident located in North Carolina that owns the existing building or site of planned construction where the energy conservation measures will be made, or ~~which that~~ has a lease or management agreement for ~~such the~~ the proposed building site or building extending beyond the term of the loan; provided, however, that where the owner of the building authorizes the approved energy conservation measures, the lease or management agreement need not extend beyond the term of the loan.
- (2) ~~A Nonprofit organization, commercial or industrial business~~ commercial or industrial business, nonprofit organization, local government entity, or resident relocating to North Carolina that owns the site of planned construction where the energy conservation measures will be made, or ~~which that~~ has a lease or management agreement for such proposed building or building site extending beyond the term of the ~~loan; provided, however, that where~~ loan. However, when the owner of the building or building site authorizes the approved energy conservation measures, the lease or management agreement need not extend beyond the term of the loan.

Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).

**01 NCAC 41C .0202 CRITERIA FOR ENERGY CONSERVATION LOANS**

Energy conservation projects for which the loans are desired ~~must~~ shall meet the following criteria:

- (1) The building site where the measures are to be installed ~~must shall~~ shall be in North Carolina;
- (2) The project ~~must shall~~ shall demonstrate in the Technical Analysis the ability to conserve energy through efficient energy use or the utilization of renewable energy resources ~~which that~~ results in energy savings based upon a net reduction in the use of nonrenewable ~~resources;~~ resources.

- (3) ~~A maximum total loan indebtedness of five hundred thousand dollars (\$500,000) for a single local government organization, nonprofit organizations, commercial business or industrial business at any given time; in accordance with G.S. 143B-344.44(b)(2).~~
- (4) The project ~~must shall~~ shall utilize commercially available ~~technologies~~ energy conservation measures.
- (5) ~~Experimental or research related technologies are not eligible for funding;~~
- (6) ~~Each energy conservation measure must address energy efficiency;~~
- (7)(5) The installation of the energy conservation measure may, at the discretion of the applicant, commence after ~~DOA Fiscal Office~~ the Financial Services Division issues the Letter of Intent; however, the applicant ~~places itself at risk and is reminded that~~ origination of the Loan loan is shall still be subject to the conditions and limitations of the ~~Program; Program,~~ Program, pursuant to Rule .0203 of this Section.
- (8)(6) The energy conservation measure ~~must shall be demonstrated, within the~~ demonstrated, within the Technical Analysis, to have a payback of less than one over a period of 20 years or less, ~~a simple payback period of 10 years or less;~~
- (9)(7) Each energy conservation measure ~~must shall~~ shall be demonstrated to have a payback less than one over the useful life of the energy conservation measure, ~~have a useful life at least equal to its estimated simple payback;~~
- (10)(8) Eligible energy conservation measures shall fall under one of the following categories:
  - (a) lighting systems;
  - (b) heating, ventilation, and air conditioning systems;
  - (c) electrical distribution systems (motors, variable speed drives, fans, etc.);
  - (d) energy management systems;
  - (e) boiler efficiency systems;
  - (f) energy recovery systems, including on-site generation of electricity;
  - (g) alternate/renewable energy systems;
  - (h) building envelope (doors, windows, roofs, etc.);
  - (i) industrial process or fabrication systems;
  - (j) load management systems;
  - (k) ~~fuel conversion projects~~ projects; provided that the simple payback calculations shall be based on the cost of the current fuel;
  - (l) ~~other cost effective demand related or rate based improvements; and~~
  - (m) ~~recycling projects; projects.~~
- (11)(9) The energy conservation measure shall meet applicable state air and water quality ~~standards;~~

~~and standards, in accordance with 15A NCAC 02B, 02D, and 02L, which are incorporated by reference, including all subsequent amendments.~~

~~(12)(10) The energy conservation measure shall be based on a ~~current~~ Technical Analysis report as defined in Rule .0101 of this ~~Subchapter~~. ~~Subchapter~~, conducted within the previous year.~~

*Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).*

**01 NCAC 41C .0203 LOAN PERCENTAGE AND CONDITIONS AND LIMITATIONS**

~~Loans are made subject to the following conditions and limitations:~~

- ~~(1) Interest shall be charged at the rate of three percent per annum and one percent for renewable and recycling projects;~~
- ~~(2) The amount of the loan shall not exceed allowable costs;~~
- ~~(3) The repayment schedule shall be based on the estimated payback as shown in the Technical Analysis report;~~
- ~~(4) Payments shall be made at a frequency of not less than once per month;~~
- ~~(5) The total amount of the loan, or any portion thereof may be repaid at any time without penalty;~~
- ~~(6) Rebates received through other program offerings of the State Energy Office for projects undertaken from loan proceeds shall be used to reduce the amount of principal;~~
- ~~(7) The borrower shall warrant that all work or construction done with the proceeds of a loan under this program shall comply with all building codes and standards;~~
- ~~(8) Project implementation shall begin within 90 days after approval of the application. If delays are encountered following loan closing, any arbitrage profits will be repaid to the revolving fund;~~
- ~~(9) Loans shall not be used to replace an existing loan;~~
- ~~(10) Loan payments or drafts shall be sent or delivered to the DOA Fiscal Department at its current address as stated in the loan agreement;~~
- ~~(11) A letter of credit from a bank approved to do business in North Carolina shall secure the loan against non-payment and also serve as a quarterly drafting mechanism for loan repayment from the bank; and~~
- ~~(12) No loans shall be forgiven.~~

(a) The interest rate on the loan shall be set pursuant to G.S. 143B-344.44(c) by the State Energy Office based on the following:

- (1) previous State Energy Office loan recipients get one percent deduction with closed loans and no defaults to a minimum of zero percent;
- (2) loans made to residents and small businesses shall receive a one percent interest rate;
- (3) loans made to non-profits and local governments projects shall receive a two percent interest rate; and
- (4) loans made to commercial and industrial entities shall receive a three percent interest rate.

(b) Loans are made subject to the following conditions:

- (1) the repayment schedule shall be based on the estimated payback as shown in the Technical Analysis Report, pursuant to Rule .0303 of this Subchapter;
- (2) the commercial or industrial business, nonprofit organization, local government entity, or resident shall make payments at least once a month;
- (3) the total amount of the loan, or any portion thereof, may be repaid at any time before the total amount is due, without penalty;
- (4) rebates received through other program offerings of the State Energy Office for projects undertaken from loan proceeds shall be used to reduce the amount of principal;
- (5) the borrower shall warrant that all work or construction done with the proceeds of a loan under this program shall comply with all building codes and standards;
- (6) project implementation shall begin within 90 days after approval of the application. If delays are encountered following loan closing, any arbitrage profits will be repaid to the Alternative Fuel Revolving Fund;
- (7) loan payments or drafts shall be sent or delivered to the Financial Service Division, in accordance with 04 NCAC 12D .0101; and
- (8) a letter of credit from a bank approved to do business in North Carolina shall secure the loan against non-payment and also serve as a quarterly drafting mechanism for loan repayment from the bank.

(c) Loans are made subject to the following limitations:

- (1) the amount of the loan shall not exceed allowable costs;
- (2) loans shall not be used to replace an existing loan; and
- (3) no loans shall be forgiven.

*Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44.*

**01 NCAC 41C .0204 PRE-APPLICATION CONFERENCE**

(a) The potential applicant shall schedule a pre-application conference with the State Energy Office by email, telephone or office visit ~~At~~ at least one week prior to submission of a project

~~application application, the State Energy Office shall convene a pre-application conference by email, telephone or office visit. During the pre-application conference, the parties shall:~~

- ~~(1) ensure the application procedures are understood; and~~
- ~~(2) reach an understanding among all parties that the project is eligible for approval in accordance with Rule .0202 of this Section.~~

~~(b) Parties present at the pre-application conference shall include representatives from the DOA Fiscal Division, Financial Services Division, the State Energy Office, and the applicant or the applicant's engineer.~~

~~(c) The purpose of the conference is to help ensure the application procedures are understood and that the application and technical analysis, when accepted, shall be complete.~~

~~(d)(c) The applicant shall offer verbal, and if available, written project descriptions.~~

~~(e)(d) The applicant shall address provide applicable water and air quality permits required for environmental impact of the project.~~

~~(f)(e) When final, copies of water and air permits shall be provided by the applicant in addition to the technical analysis. Technical Analysis shall be provided by the applicant.~~

~~(g) Another purpose of this conference shall be to reach an understanding among all parties that the project is of the type that may be considered for approval.~~

~~Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).~~

**01 NCAC 41C .0205 APPLICATION PROCEDURES**

The applicant shall complete an application on a form provided by the ~~DOA Fiscal Department~~ Financial Service Division, which can be found at <http://portal.ncdenr.org/web/lr/state-energy-office>. The application shall contain the following information:

- ~~(1) The the name and complete mailing address, including the county, of the applicant;~~
- ~~(2) The the address, building name (where applicable) or site description description, including photographs photographs, to locate where the energy conservation measure(s) will be installed;~~
- ~~(3) The the name of a contact person, including title and telephone number;~~
- ~~(4) The amount of the loan requested; the loan amount requested;~~
- ~~(5) The the estimated dates of start implementation and completion of the project;~~
- ~~(6) A a copy of the Technical Analysis approved by the State Energy Office; as fulfilling the energy aspects of the proposed energy conservation measures;~~
- ~~(7) Identification identification of the commercial lending institution that is providing the letter of credit, depository and repayment services;~~
- ~~(8) All applicants commercial or industrial business, nonprofit organizations, or local government entity applicants shall provide financial data data, including financial~~

statements from the last five years and profit and loss statements, on which to base a determination of the applicant's creditworthiness. Residential applicants shall provide a credit report. Documentation shall include the following:

- (a) Financial statements from the last five years; and
- (b) Profit and loss statements.

Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).

**01 NCAC 41C .0206 APPLICATION REVIEW**

Application review shall consist of the following phases:

- ~~(1) The administrative review shall be conducted by the DOA Fiscal Department and may include any data or information needed to complete that review.~~
- ~~(2) The technical review shall be conducted of the Technical Analysis by the State Energy Office.~~
- ~~(3) The technical review may occur concurrently with application submittal to the DOA Fiscal Department.~~
- ~~(4) The technical review shall consider each energy conservation measure for which funding is requested and shall include the accuracy and sufficiency of calculations, engineering principles considered, and labor and material costs relative to the current local market.~~
- ~~(5) Following acceptance, the State Energy Office will approve those Energy Conservation Measures that were found to meet the energy aspects of the Program.~~
- ~~(6) No application shall be accepted for consideration by the DOA Fiscal Department without the acceptance of the Technical Analysis by the State Energy Office.~~

(a) The Department shall conduct concurrent administrative and Technical Analysis reviews as follows:

- (1) the administrative review shall be conducted by the Financial Services Division and may include any financial data or information needed to complete the review;
- (2) the Technical Analysis review shall be conducted by the State Energy Office and shall consider each energy conservation measure for which funding is requested, include the accuracy and sufficiency of calculations, engineering principles considered, and labor and material costs relative to the current local market. This review shall be conducted concurrently with the Financial Services Division's administrative review.

(b) Following the reviews in Paragraph (a) of this Rule, the State Energy Office shall approve those energy conservation measures that were determined to meet the requirements of this Subchapter.

Authority G.S. ~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).~~

**01 NCAC 41C .0207 LOAN APPROVAL**

~~Applications shall be considered for loan approval upon completion of the administrative and technical review. Approval shall be based upon the following: Following the review set forth in Rule .0206 of this Section, the State Energy Office shall approve the application provided:~~

- ~~(1) Results of the administrative and technical Technical Analysis review reviews satisfy the requirements of this Subchapter; documenting energy efficiency; and~~
- ~~(2) Creditworthiness the creditworthiness of the applicant is established; and~~
- ~~(3) funds are available.~~

Authority G.S. ~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).~~

**01 NCAC 41C .0208 LOAN AGREEMENT AND PROMISSORY NOTE**

~~After an application for a loan is approved, a loan agreement shall be executed between the DOA Fiscal Department Financial Services Division and the borrower. The loan agreement shall include a promissory note and other necessary documents including, but not limited to, security agreements, mortgages, recordings; and shall contain the covenants and representations as to the borrower's qualification to borrow for the loan, intended use of the loan proceeds, conditions under which the loan will be repaid and events requiring the acceleration, rights and responsibilities of the parties and the terms and conditions of the loan. The requirements to secure the loan shall be included in the loan agreement. Loans shall be secured through bank Letter of Credit.~~

Authority G.S. ~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).~~

**01 NCAC 41C .0209 REPORTS**

~~Reports ~~must~~ shall be submitted as follows:~~

- ~~(1) Progress progress reports ~~must~~ shall be submitted quarterly to the State Energy Office during the period of implementation or while construction installation is in progress and ~~must~~ shall include a description of of:
 
  - ~~(a) the current status; status;~~
  - ~~(b) any problems; problems; and~~
  - ~~(c) a forecast of expectations or deviations from the planned schedule and; Technical Analysis, prepared in accordance with Rule .0303 of this Subchapter.~~~~
- ~~(2) A final report certified by the technical analyst ~~must~~ shall be submitted to the State Energy Office upon completion of the project. The report ~~must~~ shall include a description of:
 
  - ~~(a) the measures implemented;~~~~

- ~~(b) the actual cost of each ~~measure,~~ measure; and~~
- ~~(c) the adjusted estimated payback, based on the actual cost.~~

Authority G.S. ~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).~~

**01 NCAC 41C .0210 MONITORING**

~~The DOA Fiscal Department Financial Service Division shall monitor the use of the funds under this program through continuous review of reports. The State Energy Office shall monitor those ~~buildings/projects~~ buildings or projects where the energy conservation projects are in progress to verify the installation of the energy conservation measures conforms to the original Technical Analysis. At least one visit shall be made to the site of each energy conservation project during the life of the loan.~~

Authority G.S. ~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).~~

**01 NCAC 41C .0211 DEFAULT**

~~If the borrower violates any of the terms of the loan agreement, the DOA Fiscal Department Financial Service Division ~~may~~ shall place the borrower in default. Borrowers determined to be in default shall be notified by certified mail and the terms of the letter of credit ~~shall be executed, provided as security shall be used to protect the interest of the State of North Carolina.~~~~

Authority G.S. ~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).~~

**SECTION .0300 - TECHNICAL ANALYSIS**

**01 NCAC 41C .0301 TECHNICAL ANALYSIS REQUIRED**

~~An application for an energy conservation loan ~~must~~ shall be accompanied by a Technical Analysis that has been conducted by a third party ~~technical analyst~~ Technical Analyst and certified by the State Energy Office as fulfilling the energy aspects of the Program. The Technical Analysis need address only the specific energy conservation measures for which the loan is being requested. Each energy conservation measure analyzed shall be the subject of an individual recommendation incorporating technical and economic analyses of the measure, considering building, process and equipment characteristics, and energy use patterns pertinent to the improvement. The Technical Analysis shall include the estimated cost of the implementation, a construction schedule, and expected energy savings.~~

Authority G.S. ~~143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3); 143B-344.44(b)(4).~~

**01 NCAC 41C .0302 TECHNICAL ANALYST QUALIFICATIONS DISQUALIFICATIONS**

~~A Technical Analyst shall not have a financial interest in the commercial or industrial business, nonprofit organization, local government entity, or residence or in the sale and installation of~~

any proposed energy conservation measure, however, the Technical Analyst is permitted to provide construction management services to an approved applicant.

To be qualified to conduct the Technical Analysis required by this article, a technical analyst must meet the following requirements:

- (1) ~~Have experience in energy conservation in building construction, mechanical systems or manufacturing processes;~~
- (2) ~~Have neither financial interest in the commercial business, non-profit institution, local government institution, or industrial business nor in the sale and installation of any proposed energy conservation measure; however, the Technical Analyst is permitted to provide construction management services to an approved applicant.~~

Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3);143B-344.44(b)(4).

**01 NCAC 41C .0303 REPORT REQUIRED**

A qualified third party ~~technical analyst~~ Technical Analyst shall submit three copies of the results of a Technical Analysis in writing on a form provided by the State Energy Office, which can be found at <http://portal.ncdenr.org/web/lr/state-energy-office>.

The report ~~must~~ shall include the following:

- (1) A a description of the facility characteristics and energy data, including the operational characteristics of the energy-using systems;
- (2) A a description and engineering analysis of each identified energy conservation measure, including the following:
  - (a) ~~An~~ an estimate of the cost of design, acquisition, and installation, including monitoring equipment to assess the performance of the measure, discussing assumptions as ~~necessary~~; the Technical Analyst deems necessary.
  - (b) ~~An~~ an estimate of the annual energy saved and energy cost savings by fuel type, using generally-accepted engineering standards and ~~practices~~; practices, that comply with standards recognized by the North Carolina Professional Engineering Licensing Board, including all formulae, ~~data~~ data, and assumptions ~~clearly~~ presented in arriving at the estimate;
  - (c) ~~The~~ the results of a combustion efficiency test, if furnace or boiler modifications or replacements are being implemented;
  - (d) ~~The~~ simple the payback period of each energy conservation ~~measure~~; measure; and calculated by dividing the estimated total cost of the measure by the estimated annual energy cost saving;

(e) A a proposed construction schedule for each energy conservation measure; and

(f) ~~The~~ the payback period of each energy conservation measure;

(3) ~~The~~ the energy use and cost data for each fuel type used for the prior ~~12 month~~ period, by ~~month~~ or in accordance with the usual billing cycle; billing period;

(4) ~~An~~ an outline of qualifications of the ~~analyst~~ Technical Analyst, documenting previous experience in energy conservation in building construction, mechanical systems, ~~and/or~~ or manufacturing processes.

Authority G.S. 143-345.18(b)(2a); 143-345.18(b)(3); 143B-344.44(b)(3);143B-344.44(b)(4).

**SUBCHAPTER 41D - ENERGY POLICY ACT CREDIT BANKING AND SELLING PROGRAM**

**SECTION .0100 - GENERAL PROVISIONS**

**01 NCAC 41D .0101 PURPOSE AND ORGANIZATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

(a) Pursuant to G.S. 143-58.4 the State Energy Office has established a credit banking and selling program to allow State departments, institutions, and agencies to use monies generated by the sale of EAct credits to purchase alternative fuel, develop related refueling infrastructure and purchase alternative fuel vehicles.

(b) Pursuant to G.S. 143-58.5, the State Energy Office has established an Alternative Fuel Revolving Fund generated from the sale of EAct credits. These funds may to be used to purchase alternative fuel, develop related refueling infrastructure and purchase alternative fuel vehicles for use by State departments, institutions, and agencies.

Authority G.S. 143-58.4; 143-58.5.

**01 NCAC 41D .0102 DEFINITIONS**

For the purposes of this Chapter, the following definitions apply:

- (1) "AFV" means the same as defined in G.S. 143-58.4.
- (2) "Alternative fuel" means the same as defined in G.S. 143-58.4.
- (3) "Biodiesel Fuel Use Credit" means an EAct credit given by the U.S. DOE for each 450 gallons of pure biodiesel purchased for use in blends of 20% or higher. No credit is granted for the petroleum portion of biodiesel fuel blends.
- (4) "B20" means the same as defined in G.S. 143-58.4.
- (5) "Department" means the Department of Environmental Quality. ~~Administration.~~
- (6) "Energy Policy Act" means the same as defined in G.S. 143-58.4.

- (7) "EPAAct credit" means the same as defined in G.S. 143-58.4.
- (8) "EPC" means the Energy Policy Council, created pursuant to G.S. Chapter 113B, Article 1.
- (9) "E85" means the same as defined in G.S. 143-58.4.
- (10) "FFV" means a flexible fuel vehicle that is capable of operating on both E85 and gasoline.
- (11) "Incremental fuel cost" means the same as defined in G.S. 143-58.4.
- (12) "Incremental vehicle cost" means the same as defined in G.S. 143-58.4. difference in cost between an AFV and conventional vehicle of the same make and model. For vehicles with no comparable conventional model, incremental vehicle cost means the generally accepted difference in cost between an AFV and a similar conventional model.
- (13) "LDV" means a light duty vehicle that has less than an 8,500 lb. gross vehicle weight rating (GVWR).
- (14) "NC Alternative Fuel Consortium" means a voluntary group of state agencies, institutions and interested entities that meet at least quarterly and is hosted by the State Energy Office to coordinate alternative fuel and petroleum displacement activities in North Carolina.
- (15) "OEM" means original equipment manufacturer.
- (16) "SEO" means the State Energy Office.
- (17) "U.S. DOE" means the United States Department of Energy.
- (18) "U.S. EPA" means the United States Environmental Protection Agency.

*Authority G.S. 143-58.4; 143-58.5.*

**SECTION .0200 - CREDIT BANKING AND SELLING PROGRAM PROVISIONS**

**01 NCAC 41D .0201 BANKING (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

- (a) EPAAct credits shall be accrued and banked according to the following:
  - (1) The U.S. DOE Alternative Fuel Transportation Program (10 CFR Part 490) requires that 75% of LDVs acquired by state fleets shall be FFVs, compressed natural gas vehicles, propane vehicles or electric vehicles;
  - (2) One credit is earned for each OEM or EPA certified retrofit FFV, compressed natural gas, propane or electric vehicle purchased;
  - (3) Credits that exceed the annual minimum state AFV acquisition requirements may be banked through the U.S. DOE Office of Freedom Car and Vehicle Technologies Program to meet future year requirements or traded;

- (4) State fleets can earn Biodiesel Fuel Use Credits to meet 50% of their annual AFV acquisition requirements by purchasing and using biodiesel; and
- (5) Biodiesel Fuel Use Credits cannot be traded or banked.
- (b) Credits are determined by state agencies in cooperation with the State Energy Office in the following manner:
  - (1) Each year by December 1st every State department, institution and agency subject to EPAAct requirements shall provide the State Energy Office with the types of vehicles purchased, the vehicle identification numbers and the dates of purchase to determine the number of EPAAct credits generated by the State; and
  - (2) The SEO shall submit an annual EPAAct credit report to the U.S. DOE by December 31st.
- (c) The following provisions shall be used in determining credits:
  - (1) EPAAct credits eligible for sale include FFVs if the FFVs are operating on E85;
  - (2) EPAAct credits generated through the use of B20 are not eligible for sale or transfer, however, they shall be used by the State to meet 50% of Energy Policy Act requirements; and
  - (3) State agencies and institutions that purchase FFVs shall record the use of E85 for the FFVs.

*Authority G.S. 143-58.4; 143-58.5.*

**01 NCAC 41D .0202 SELLING (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

- (a) The State Energy Office shall form a Credit Selling Work Group to determine the number of excess credits to be sold as follows:
  - (1) The Credit Selling Work Group shall consist of:
    - (A) Department of Administration Motor Fleet Management designee;
    - (B) Department of Transportation Equipment Unit designee;
    - (C) State Energy Office designee; and
    - (D) Designees of other state agencies and institutions that generate EPAAct credits; and
  - (2) The Credit Selling Work Group shall determine the asking price for credits.
- (b) The State Energy Office shall obtain approval from the Energy Policy Council prior to selling EPAAct credits.
- (c) The State Energy Office shall sell EPAAct credits in accordance with the provisions of the Energy Policy Act.

*Authority G.S. 143-58.4; 143-58.5.*

**SECTION .0300 - PROCEEDS AND DISTRIBUTION**

**01 NCAC 41D .0301 PROCEEDS AND DISTRIBUTION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

(a) Funds generated by the sale or transfer of EAct credits by the Department shall be deposited into the Alternative Fuel Revolving Fund.

(b) The following shall be undertaken to determine the distribution of proceeds from the Alternative Fuel Revolving Fund:

- (1) The State Energy Office shall annually inform the NC Alternative Fuel Consortium of the amount of revenue accrued to the Alternative Fuel Revolving Fund and the percentage of these funds that were generated by participating state agencies, institutions or entities;
- (2) The State Energy Office shall organize meetings of the NC Alternative Fuel Consortium and the Credit Selling Work Group to discuss and prioritize distribution of funds;
- (3) Fund distribution shall be prioritized based on maximizing benefits to the State for the purchase of alternative fuel, related refueling infrastructure and AFV purchases;
- (4) An annual plan for the dispersion of Alternative Fuel Revolving Funds shall be prepared by the State Energy Office based on recommendations of the Alternative Fuels Consortium and the Credit Selling Work Group; and
- (5) The Energy Policy Council shall review and approve the annual plan.

Authority G.S. 143-58.4; 143-58.5.

**01 NCAC 41D .0302 FUND DISBURSEMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

All state departments, institutions and agencies are eligible to utilize Alternative Fuel Revolving Funds.

Authority G.S. 143-58.4; 143-58.5.

**SECTION .0400 - REPORTS**

**01 NCAC 41D .0401 REPORTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

(a) Progress reports shall be submitted biannually by State departments, agencies, and institutions that receive funds from the Alternative Fuel Revolving Fund.

(b) The progress report shall include a description of the current project, number of gallons of alternative fuel or vehicles purchased, challenges and successes, and forecast of expectation or deviation from the planned schedule.

Authority G.S. 143-58.4; 143-58.5.

**SUBCHAPTER 41E – ENERGY POLICY COUNCIL**

**01 NCAC 41E .0101 FUNCTIONS**

Authority G.S. 113B-2; 143B-429; 143B-430; 143B-431; 143B-449.

**CHAPTER 12 - ENERGY**

**SUBCHAPTER 12C - ORGANIZATION**

**04 NCAC 12C .0108 RESIDENTIAL CONSERVATION SERVICE PROGRAM**

Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449; 150B-12; Title II, Part I (NECPA); P.L. 95-619; 92 Stat. 3206; Title V, Subtitle B (ESA), P.L. 96-294, 94 Stat. 611.

**SUBCHAPTER 12D – PETITION FOR RULEMAKING AND ADMINISTRATIVE HEARINGS DECLARATORY RULINGS**

**04 NCAC 12D .0101 DELEGATION OF AUTHORITY FOR RULEMAKING HEARINGS AND STATE ENERGY OFFICE CONTACT INFORMATION**

(a) The Secretary of ~~Commerce~~ the Department of Environmental Quality designates the State Energy Director ~~of the Energy Division~~ or his or her designee as the hearing officer to conduct rulemaking hearings in matters pertaining to rules and regulations of the ~~State Energy Division~~ Office.

(b) All notices required by the rules in this Subchapter to be submitted to the State Energy Office or the Financial Services Division shall be made to: The North Carolina State Energy Office, 1613 Mail Service Center, Raleigh, NC 27699-1613. The physical address of the State Energy Office is 217 W. Jones St., Raleigh, NC 27603.

Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449; 143-58.4(c); 143B-344.44(b)(3); 150B-20.

**04 NCAC 12D .0102 PETITION FOR RULEMAKING HEARINGS SUBMISSION AND CONTENTS OF PETITION FOR RULEMAKING**

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the ~~Secretary of Commerce~~ State Energy Office, within the Department of Environmental Quality shall petition the State Energy Director by submitting the information required in Paragraph (b) of this Rule. ~~The petitioner shall send the petition in accordance with Rule .0101 of this Section.~~ ~~address a petition to: Director, Energy Division, North Carolina Department of Commerce, 430 North Salisbury Street, P.O. Box 25249, Raleigh, North Carolina 27611.~~ ~~The outside envelope containing the petition should clearly display the notation: RULEMAKING PETITION RE and then the subject area or an indication of any other area over which the Secretary of Commerce may have rulemaking authority.~~

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s) for adoption or amendment;
- (2) a statement of the reasons for the adoption of a proposed rule(s), amendment or repeal of existing rule(s);

- (3) a statement of the effect on existing rules or orders;
- (4) any documents and data supporting the proposed rule(s);
- (5) the name(s) and addresses(es) of petitioner(s); and
- (6) a request to present the petition to the hearing officers in accordance with Rule .0101 of this Section, if desired.

(c) The petitioner may include the following information within the request:

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

(d) The State Energy Director shall return petitions that do not contain the information required by Paragraph (b) of this Rule to the petitioner.

*Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449; ; 143-58.4(c); 143B-344.44(b)(3); 150B-20.*

**04 NCAC 12D .0103 CONTENTS OF PETITION**

*Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449.*

**04 NCAC 12D .0116 SUBMISSION OF REQUEST FOR RULING ISSUANCE OF DECLARATORY RULINGS**

~~All requests for declaratory rulings shall be directed to the Secretary of Commerce and mailed to the Director of the Energy Division, 430 N. Salisbury Street, P.O. Box 25249, Raleigh, North Carolina 27611. The outside envelope containing the request should display the notation: REQUEST FOR DECLARATORY RULING. The request must include the following information:~~

- ~~(1) name and address of petitioner;~~
- ~~(2) statute or rule to which petition relates;~~
- ~~(3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;~~
- ~~(4) a statement of whether an oral hearing is desired, and if so, the reason therefor.~~

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Secretary of the Department of Environmental Quality may issue a declaratory ruling as provided in G.S. 150B-4 and the rules of this Section.

*Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449; 143-58.4(c); 143B-344.44(b)(3); 150B-3.*

**04 NCAC 12D .0117 DISPOSITION OF REQUEST FOR DECLARATORY RULING**

~~(a) When the Secretary of Commerce deems it appropriate to issue a declaratory ruling, he shall issue such declaratory ruling within 60 days of receipt of the petition.~~

~~(b) A declaratory ruling proceeding may consist of written submissions, an oral hearing, or other procedure as may be appropriate in the circumstances of the particular request.~~

~~(c) Whenever the secretary believes "for good cause" that the issuance of a declaratory ruling is undesirable, he may refuse to issue such ruling. When good cause is deemed to exist, he will notify the petitioner of his decision in writing, stating the reasons for the denial of the declaratory ruling.~~

~~(d) For purposes of Subpart (c) of this Rule, the Secretary of Commerce will ordinarily refuse to issue a declaratory ruling:~~

- ~~(1) unless the petitioner shows that the circumstances are so changed since the adoption of the rule that such a ruling would be warranted;~~
- ~~(2) unless the petitioner shows that the agency did not give to the factors specified in the request for a declaratory ruling a full consideration at the time the rule was issued;~~
- ~~(3) where there has been a similar controlling factor determination in a contested case, or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record;~~
- ~~(4) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.~~

(a) The State Energy Director shall make a determination on the completeness of the request for a declaratory ruling based on Rule .0133 of this Section.

(b) Before deciding the merits of the request, and upon consideration of the complete request for a declaratory ruling, the Director shall determine if additional information or presentation(s) are needed and if so:

- (1) request additional written submissions from the petitioner(s);
- (2) request a written response from the State Energy Office staff or any other person; and
- (3) hear oral arguments from the petitioner(s), interveners, and the State Energy Office staff or their legal counsel.

(c) The Director shall decline to issue a declaratory ruling if any of the following are found:

- (1) that there has been a similar determination in a previous contested case or declaratory ruling;
- (2) that the matter is the subject of a pending contested case, hearing, or litigation in any North Carolina or federal court;
- (3) that no genuine controversy exists as to the application of a statute, rule, or order to the specific factual situation presented; or
- (4) that the factual situation presented as the subject of the declaratory ruling was

specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;

(d) The Department shall keep a record of each request for declaratory ruling, which shall include the following items:

- (1) the request for a ruling;
- (2) any written submission by a party;
- (3) the facts on which the ruling was based;
- (4) any transcripts of oral proceedings, if available, and recordings of oral arguments;
- (5) any other information such as documents, photographs, recordings, maps, plats, articles, and studies considered by the Director in the making of the decision; and
- (6) the declaratory ruling, or the decision to decline to issue a declaratory ruling, together with the reasons therefore.

(e) The Department shall notify the petitioner in writing of the Director's decision on the request for declaratory ruling, including the basis for the decision.

(f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;
- (2) any court of the Appellate Division of the General Courts of Justice construes the statute or rule that is the subject of a declaratory ruling to be irreconcilable with the declaratory ruling; or
- (3) any court sets aside the declaratory ruling in litigation between the Department and the party requesting the ruling.

(g) Any Division of the Department may be a party to any request for declaratory ruling upon written request. The request shall be made to the Director within five days of receipt of notice of the request for a declaratory ruling.

(h) Upon written request, the petitioner(s), intervener(s), and the Division each shall be allowed to present oral arguments to the Director. No party shall offer testimony or conduct cross-examination before the Director.

(i) The Director shall issue a decision on whether to grant or deny the request for declaratory ruling within 30 days of the receipt of the petition. If granted, the Director shall have 45 days from the date of granting the request to issue a ruling on the merits of the request.

(k) A declaratory ruling, or failure to issue a declaratory ruling, is subject to judicial review as provided in G.S. 150B-4(a)(1).

*Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449; 143-58.4(c); 143B-344.44(b)(3); 150B-4.*

**04 NCAC 12D .0132 DISPOSITION OF PETITIONS FOR RULEMAKING**

(a) If the State Energy Director determines the petition to be complete in accordance with Rule .0102 of this Section, the Director shall notice a hearing at least 15 days before the hearing's scheduled date.

(b) The petitioner shall be afforded the opportunity to present the petition to the Director if so requested in accordance with Rule .0102(b)(6) of this Section. The State Energy Office may also make a presentation to the Director.

(c) The Director shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Director shall determine whether additional interested persons are permitted to make oral presentations during the hearing. Interested persons shall request the opportunity to make a presentation to the Director through the State Energy Office, in accordance with Rule .0101 of this Section, at least five days prior to the scheduled hearing. The request shall:

- (1) state the interest of the person in the petition for rulemaking;
- (2) state the person's position on the petition; and
- (3) be accompanied by any supporting materials.

*Authority G.S. 143-58.4(c); 143B-344.44(b)(3); 150B-20.*

**04 NCAC 12D .0133 SUBMISSION OF REQUEST FOR DECLARATORY RULING**

(a) All requests for a declaratory ruling shall be filed in accordance with Rule .0101 of this Section.

(b) All requests for declaratory rulings shall include the following:

- (1) the name and address of petitioner(s);
- (2) the statute, rule, or order upon which a ruling is desired;
- (3) a concise statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a statute, rule, or order to a given factual situation;
- (4) arguments or data demonstrating that the petitioner is aggrieved by the statute, rule, or order, or by its potential application to the petitioner;
- (5) a statement of the consequences of failure to issue a declaratory ruling in favor of the petitioner;
- (6) a statement of the desired outcome; and
- (7) a statement of whether an oral argument is desired, and if so, the reason(s) for requesting such an oral argument.

(c) A petitioner may request a declaratory ruling on the applicability of a statute, rule, or order to the petitioner, or on the validity of a Department rule. The petitioner may request both types of declaratory ruling in a single request. A request on the applicability of a statute, rule, or order shall include a detailed statement of the facts and documentation supporting such facts, in addition to the requirements of Paragraph (b) of this Rule. A request to determine the validity of a Department rule shall state the petitioner's reason(s) for the request and a written argument, in addition to the requirements of Paragraph (b) of this Rule.

(d) Any other person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. The State Energy Director shall determine whether to grant the motion to intervene in accordance with Rule 24 of the North Carolina Rules of Civil Procedure.

Authority G.S. 143-58.4(c); 143B-344.44(b)(3); 150B-3.

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TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0304 and .0312.

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

Proposed Effective Date: March 1, 2021

Public Hearing:

Date: November 3, 2020

Time: 11:00 a.m.

Location:

https://ncdenrits.webex.com/ncdenrits/j.php?MTID=m7bf333bca374e27e16e647eed7088a13

Reason for Proposed Action:

15A NCAC 07H .0304 defines and establishes AECs that are within the Ocean Hazard Areas along the State’s Atlantic Ocean shoreline. Due to overwash impacts to vegetation caused by Hurricane Isaias at Oak Island, the Coastal Resources Commission is proposing to amend its administrative rules in order to reflect physical changes that occurred at two locations by establishing an Unvegetated Beach Area of Environmental Concern and measurement lines from which setbacks are temporarily measured until vegetation is re-established and is considered stable and natural.

15A NCAC 07H .0312 ensures that sand used for beach nourishment closely matches the sand on the existing beach. The Coastal Resources Commission is proposing to amend this rule to allow more flexibility with sampling protocol that assures sediment compatibility between the beach and borrow area, while strengthening recipient beach sampling protocols.

Comments may be submitted to: Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557; phone (252) 808-2808; email Braxton.Davis@ncdenr.gov

Comment period ends: December 14, 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 07 - COASTAL MANAGEMENT

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

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

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 180 feet landward from the first line of stable and natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at http://www.nccoastalmanagement.net.
(2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially

vulnerable to erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance encompassing that area within which the inlet migrates, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties, terminal groins, and channelization. The areas on the maps identified as Inlet Hazard Areas included in the report entitled *INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978*, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas, except for:

- (a) the location of a former inlet which has been closed for at least 15 years;
  - (b) inlets that due to shoreline migration, no longer include the current location of the inlet; and
  - (c) inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.
- In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule.

(3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable and natural vegetation is present may be designated as Unvegetated Beach Areas on either a permanent or temporary basis as follows:

- (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the

website referenced in Item (1) of this Rule.

- (b) An area that is unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

The Commission designates as temporary unvegetated beach areas those oceanfront areas of Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018, of:

- (i) Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018, and
- (ii) Oak Island in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration and Geological Survey imagery dated August 4, 2020 was destroyed as a result of Hurricane Isaias in August 2020.

The designation AEC boundaries can be found on the Division's website at [https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated\\_beach\\_aec.pdf](https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf), [https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated\\_beach\\_aec.pdf](https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf) and [https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unveg\\_beachAEC\\_Oak\\_Island.zip](https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unveg_beachAEC_Oak_Island.zip). This designation shall continue until such time as the stable and natural vegetation has reestablished, or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item (3)(a) of this Rule.

- (4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained

by the United States Army Corps of Engineers. These areas are unique due to the influence of federally-maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward as designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management, and on the internet at the website at [https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state\\_port\\_aec.pdf](https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state_port_aec.pdf).

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

**15A NCAC 07H .0312 TECHNICAL STANDARDS FOR BEACH FILL PROJECTS**

Placement of sediment along the oceanfront shoreline is referred to in this Rule as "beach fill." Sediment used solely to establish or strengthen dunes ~~or shall conform to the standards contained in 15A NCAC 07H .0308(b).~~ Sediment used to re-establish state-maintained transportation corridors across a barrier island breach in a disaster area as declared by the Governor is not considered a beach fill project under this Rule. Beach fill projects including beach nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control may be permitted under the following conditions:

- (1) The applicant shall characterize the recipient beach according to the following ~~methodology;~~ methodology. Initial characterizations of the recipient beach shall serve as the baseline for subsequent beach fill projects:
  - (a) Characterization of the recipient beach is not required for the placement of sediment directly from and completely confined to a cape shoal system, or maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal ~~system;~~ system. For purposes of this Rule, "cape shoal systems" include Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras;
  - (b) Sediment sampling and analysis shall be used to capture the ~~three-dimensional~~ spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;
  - (c) Shore-perpendicular transects shall be established for topographic and bathymetric surveying of the recipient ~~beach shall be conducted to determine the beach profile.~~ beach. Topographic

and bathymetric surveying shall occur along a minimum of five shore-perpendicular transects evenly spaced throughout the entire project ~~area.~~ area with spacing not to exceed 5,000 feet (1,524 meters) in the shore-parallel direction. Each transect shall extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) or to the shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. ~~Transect spacing shall not exceed 5,000 feet (1,524 meters) in the shore-parallel direction.~~ Elevation data for all transects shall be ~~referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);~~ compliant with Standards of Practice for Land Surveying in North Carolina pursuant to 21 NCAC 56 .1600;

- (d) ~~No fewer than 13 sediment samples shall be taken along each beach profile transect.~~ At Along each transect, at least one sample shall be taken from each of the following morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth increments from 6 feet (1.8 meters) to 20 feet (6.1 meters) or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;
- (e) For the purpose of this Rule, "sediment grain size categories" are defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four grain size categories;
- (f) A composite of the simple arithmetic mean for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for

each transect. A grand mean shall be established for each of the four grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach is the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;

- (g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment ~~samples along each transect defined in Sub-Item (1)(d) of this Rule.~~ samples. The value that characterizes the carbonate content of the recipient beach is a grand mean calculated by summing the average percentage by weight calcium carbonate for each transect and dividing by the total number of transects. ~~For beaches on which fill activities have taken place prior to the effective date of this Rule, the Division of Coastal Management shall consider visual estimates of shell content as a proxy for carbonate weight percent;~~
- (h) ~~The total number of sediments greater than or equal to one inch (25.4 millimeters) in diameter, and shell material greater than or equal to three inches (76 millimeters) in diameter, observable on the surface of the beach between mean low water (MLW) and the frontal dune toe, shall be calculated for an area of 50,000 square feet (4,645 square meters) within the beach fill project boundaries. This area is considered a representative sample of the entire project area and referred to as the "background" value; diameter shall be differentiated and calculated through visual observation of an area of 10,000 square feet centered on each transect, and between mean tide level (MTL) and the frontal dune toe within the beach fill project boundaries. A simple arithmetic mean shall be calculated for both sediments and shell by summing the totals for each across all transects and dividing by the total number of transects, and these values shall be considered representative of the entire project area, and referred to as the "background" values for large sediment and large shell material;~~
- (i) Beaches that received sediment prior to the effective date of this Rule shall

be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and ~~shall~~ may use data collected from the recipient beach prior to the addition of beach fill. ~~If such data were not collected or are unavailable, a dataset best reflecting the sediment characteristics of the recipient beach prior to beach fill shall be developed in coordination with the Division of Coastal Management; and fill where data are available, and in coordination with the Division of Coastal Management; and~~

- (j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (2) Characterization of borrow areas is not required if completely confined to a cape shoal system. For the purposes of this Rule, "cape shoal systems" include the Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras. The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:
  - (a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal areas shall be designed to capture the ~~three dimensional~~ spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;
  - (b) The characterization of borrow sites shall may include sediment characterization data provided by the Division of Coastal Management where available. These data can be found in individual project reports and studies, and shall be provided by the Division of Coastal Management upon request and where available; historical sediment characterization data where available and collected using methods consistent with Sub-Items (2)(c) through (2)(g) of this Rule, and in coordination with the Division of Coastal Management.
  - (c) Seafloor surveys shall measure elevation and capture acoustic imagery of the seafloor. Measurement of seafloor elevation shall cover 100 ~~percent~~ percent, or the maximum extent practicable, of each submarine

borrow site and use survey-grade swath sonar (e.g. multibeam or similar technologies) in accordance with current US Army Corps of Engineers standards for navigation and dredging technologies). Seafloor imaging without an elevation component (e.g. sidescan sonar or similar technologies) shall also cover 100 percent percent, or the maximum extent practicable, of each borrow site and be performed in accordance with US Army Corps of Engineers standards for navigation and dredging site. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Alternative elevation surveying methods for water depths less than 10 feet (3 meters) may be evaluated on a case-by-case basis by the Division of Coastal Management. Elevation data shall be tide- and motion-corrected and referenced to NAVD 88 and NAD 83, compliant with Standards of Practice for Land Surveying in North Carolina pursuant to 21 NCAC 56 .1600. Seafloor imaging data without an elevation component shall be referenced to the NAD 83. All final seafloor survey data shall conform to standards for accuracy, quality control and quality assurance as set forth by the US Army Corps of Engineers (USACE). The current surveying standards for navigation and dredging can be obtained from the Wilmington District of the USACE, compliant with Standards of Practice for Land Surveying in North Carolina pursuant to 21 NCAC 56 .1600. For offshore dredged material disposal sites, only one set of imagery without elevation is required. Sonar imaging of the seafloor without elevation is also not required for borrow sites completely confined to maintained navigation channels, and for sediment deposition basins within the active nearshore, beach or inlet shoal system;

(d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site and shall use survey grids with a line spacing not to exceed 1,000 feet (305 meters).

~~Offshore dredged material disposal sites shall use a survey grid not to exceed 2,000 feet (610 meters) and only one set of geophysical imaging of the seafloor subsurface is required. Survey grids shall incorporate at least one tie point per survey line. site.~~ Because shallow submarine areas can pose technical challenges and physical limitations for geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters), and the Division of Coastal Management shall evaluate these areas on a case-by-case basis. Subsurface geophysical imaging shall not be required for borrow sites completely confined to maintained navigation channels, and for sediment deposition basins within the active nearshore, beach or inlet shoal system, or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions and be referenced to NAD 83; compliant with Standards of Practice for Land Surveying in North Carolina pursuant to 21 NCAC 56 .1600;

(e) ~~Sediment~~ Sediment With the exception of upland borrow sites, sediment sampling of all borrow sites shall use a vertical sampling device no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no fewer than five evenly spaced cores or one core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system shall use no fewer than five evenly spaced vertical samples per channel or sediment basin, or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater. Two sets of sampling data (with at least one dredging event in between) from maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system system, or offshore dredged material disposal site (ODMDS) may be used to characterize material for subsequent nourishment events from those areas if the sampling results are

found to be compatible with Sub-Item (3)(a) of this Rule. ~~In submarine borrow sites other than maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system where water depths are no greater than 10 feet (3 meters), geophysical data of and below the seafloor are not required, and sediment sample spacing shall be no less than one core per six acres (grid spacing of 500 feet or 152 meters). Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth or expected dredge or excavation depths for pending permit applications. All sediment samples shall be integrated with geophysical data to constrain the surficial, horizontal and vertical extent of lithologic units and determine excavation volumes of compatible sediment as defined in Item (3) of this Rule; Because shallow submarine areas completely confined to a maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system can pose technical challenges and physical limitations for vertical sampling techniques, geophysical data of and below the seafloor may not be required in water depths less than 10 feet (3 meters), and shall be evaluated by the Division of Coastal Management on a case-by-case basis;~~

(f) ~~For offshore dredged material disposal sites, the grid spacing shall not exceed 2,000 feet (610 meters). Characterization of material deposited at offshore dredged material disposal sites after the initial characterization are not required if all of the material deposited complies with Sub-Item (3)(a) of this Rule as demonstrated by at least two sets of sampling data with at least one dredging event in between;~~

(g)(f) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category

shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography;

(h)(g) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core. Carbonate analysis is not required for sediment confined to maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system; and

(i)(h) All data used to characterize the borrow site shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.

(3) ~~The Division of Coastal Management shall determine sediment~~ Compliance with these sediment standards shall be certified by an individual licensed pursuant to Chapter 89C or 89E of the N.C. General Statutes. Sediment compatibility is determined according to the following criteria:

(a) Sediment completely confined to the permitted dredge depth of a maintained navigation channel or associated sediment deposition basins within the active nearshore, beach or inlet shoal system is considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;

(b) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five percent;

(c) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus 10 percent;

(d) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters and less than 76

millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five percent;

- (e) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and
  - (f) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.
- (4) Excavation and placement of sediment shall conform to the following criteria:
- (a) ~~Sediment excavation depths for all borrow sites shall not exceed the maximum depth of recovered core at each coring location;~~
  - (b)(a) In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during ~~times~~ any seasonal environmental moratoria designated by the Division of Coastal Management in consultation with other State and Federal ~~agencies.~~ Agencies, unless specifically approved by the Division of Coastal Management in consultation with other State and Federal agencies. The time limitations shall be established during the permitting process and shall be made known prior to permit issuance; and
  - (c)(b) ~~Sediment~~ The total sediments with a diameter greater than or equal to one inch (25.4 millimeters), and shell material with a diameter greater than or equal to three inches (76 millimeters) is considered incompatible if it has been placed on the beach during the beach fill project, is observed between MLW MTL and the frontal dune toe, and is in excess of twice the background value of material of the same size along any 50,000 square foot (4,645 square meter) 10,000 square feet section of beach, beach within the beach fill project boundaries. In the event that more than twice the background value

of incompatible material is placed on the beach, it shall be the permittee's responsibility to remove the incompatible material in coordination with the Division of Coastal Management and other State and Federal resource agencies.

Authority G.S. 113-229; 113A-102(b)(1); 113A-103(5)(a); 113A-107(a); 113A-113(b)(5) and (6); 113A-118; 113A-124.

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 46 – BOARD OF PHARMACY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to adopt the rule cited as 21 NCAC 46 .1819.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncbop.org/rulemakings.htm](http://www.ncbop.org/rulemakings.htm)

**Proposed Effective Date:** February 1, 2021

**Public Hearing:**

**Date:** December 16, 2020

**Time:** 10:00 a.m.

**Location:** *The public can participate on Teams at <https://tinyurl.com/y27ovmlt>, or may call 336-604-5350, conference ID 755 889 266#.*

**Reason for Proposed Action:** *On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. COVID-19 is respiratory disease that can result in serious illness or death. COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of COVID-19 begins, it is difficult to contain. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. The search for potential treatments for COVID-19 has caused shortages and threatens to cause further shortages in certain drugs. On March 24, 2020, the North Carolina State Health Director requested that the Medical Board, the Board of Nursing and the Board of Pharmacy adopt the COVID-19 Drug Preservation Rule in order to alleviate shortages and ensure that these drugs are available to patients who need them. This rule was adopted as an emergency and then a temporary rule. The State Health Director has requested that the rule be adopted as a permanent rule because the state of emergency and corresponding potential drug shortages now may potentially extend beyond the expiration of the temporary rule. The Board intends to repeal the rule upon the conclusion of the state of emergency. The State Health Director has determined that the State is unlikely to suffer future shortages of two of the drugs previously listed in the temporary and*

**PROPOSED RULES**

emergency rule, and that those drugs may be removed from the list, while the others should remain.

**Comments may be submitted to:** Jay Campbell, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517; fax (919) 246-1056; email ncboprulemaking@ncbop.org

**Comment period ends:** December 17, 2020 at 12:00 noon

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

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

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

**SECTION .1800 - PRESCRIPTIONS**

**21 NCAC 46 .1819 COVID-19 DRUG PRESERVATION RULE**

(a) The following drugs are "Restricted Drugs" as that term is used in this Rule:

- (1) Hydroxychloroquine;
- (2) Chloroquine;
- (3) Lopinavir-ritonavir;
- (4) Ribavirin;
- (5) Darunavir.

(b) A pharmacist shall fill or refill a prescription for a Restricted Drug only if that prescription bears a written diagnosis from the prescriber consistent with the evidence for its use.

(c) When a patient has been diagnosed with COVID-19, any prescription of a Restricted Drug for the treatment of COVID-19 shall:

- (1) Indicate on the prescription order that the patient has been diagnosed with COVID-19;
- (2) Be limited to no more than a 14-day supply; and
- (3) Not be refilled, unless a new prescription order is issued in conformance with this Rule, including not being refilled through an emergency prescription refill.

(d) A pharmacist shall not fill or refill a prescription for a Restricted Drug for the prevention of, or in anticipation of, the contraction of COVID-19 by someone who has not yet been diagnosed.

(e) A prescription for a Restricted Drug may be transmitted orally only if all information required by this Rule is provided to the pharmacy by the prescriber or the prescriber's agent, and that information is recorded in writing by the pharmacy, along with the identity of the prescriber or prescriber's agent transmitting the prescription.

(f) This Rule does not affect orders for administration to inpatients of health care facilities.

(g) This Rule does not apply to prescriptions for a Restricted Drug for a patient previously established on that particular Restricted Drug on or before March 10, 2020.

Authority G.S. 90-85.6; 90-85.26; 90-85.32.

**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 60<sup>th</sup> 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**

**SECTION .0100 - COMMUNICABLE DISEASE CONTROL**

**Rule-making Agency:** Commission for Public Health

**10A NCAC 41A .0107 REPORTING OF COVID-19 DIAGNOSTIC TEST RESULTS**

**Rule Citation:** 10A NCAC 41A .0107

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

**Effective Date:** September 25, 2020

- (1) "COVID-19 diagnostic test" means any nucleic acid or antigen test that identifies SARS-CoV-2, the virus that causes COVID-19.
- (2) "Electronic laboratory reporting" means the automated messaging of laboratory reports sent to the Division of Public Health using a machine-readable electronic communication protocol.
- (3) "Healthcare provider" means a healthcare provider as defined in G.S. 130A-476(g).
- (4) "Laboratory" means a facility that performs testing on specimens obtained from humans for the purpose of providing information for health assessment and for the diagnosis, prevention, or treatment of disease and is certified by the United States Department of Health and Human Services under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and implementing regulations. This definition includes a healthcare provider who performs testing in an on-site facility that meets these requirements.

**Findings Reviewed and Approved by the Codifier:** September 15, 2020

(b) Each person in charge of a laboratory providing diagnostic service in this State shall report the results of all COVID-19 diagnostic tests to the Division of Public Health using electronic laboratory reporting. For purposes of COVID-19, a novel coronavirus under Rule .0101(c)(1) of this Section, the required method of reporting set out in Rules .0101(c) and .0102(d)(3) of this Section shall not apply. The report shall include all of the elements required to be reported under the United States Department of Health and Human Services, laboratory data reporting guidance, which is hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at <https://www.hhs.gov/sites/default/files/covid-19-laboratory-data-reporting-guidance.pdf>.

**Reason for Action:** COVID-19, a novel coronavirus, was identified as the cause of an emerging infectious disease outbreak in December 2019 in Wuhan, Hubei Province, China. This novel coronavirus causes respiratory illness ranging in severity from mild illness to death. As of September 13, 2020, over 28,600,000 confirmed cases and 900,000 deaths had been reported from 216 countries, including the United States. The first U.S. case was reported in a traveler returning from Wuhan on January 21, 2020 in Washington State. As of September 13, over 6,400,000 cases and 190,000 deaths had been reported in the U.S., and over 180,000 cases and 3,000 deaths had been reported in North Carolina. The North Carolina Division of Public Health is working closely with the Centers for Disease Control and Prevention (CDC) to monitor and respond to this pandemic in North Carolina.

(c) The requirements set forth in Paragraph (b) of this Rule shall be considered met if a laboratory:

Due to the widespread community transmission of this serious, infectious disease, testing is occurring in non-traditional environments, such as community-based testing sites. For this reason, reporting requirements need to be extended to other types of healthcare providers potentially involved in testing, such as nurses, pharmacists, and dentists. It is also imperative that public health officials receive not only positive tests results, but also negative test results, to better understand the prevalence of the disease in North Carolina.

- (1) submits a COVID-19 Laboratory Data Automation Registration form to the Division of Public Health and acts in good faith to onboard to electronic laboratory reporting. This form shall be submitted within seven calendar days of the date the laboratory starts performing COVID-19 diagnostic testing and shall contain the following elements:

To address this, the legislature enacted S.L. 2020-4 Sec. 4.10(a)(1) and the State Health Director issued a Temporary Order, pursuant to her authority under G.S. 130A-141.1, requiring healthcare providers and laboratories to report all COVID-19 diagnostic test results, both positive and negative, effective July 7, 2020. An emergency rule is needed to replace the State Health Director's Temporary Order while temporary and eventually permanent rules are pursued. Immediate adoption of this emergency rule is required due to the serious and unforeseen threat posed to public health by this infectious disease.

**CHAPTER 41 - EPIDEMIOLOGY HEALTH**

**SUBCHAPTER 41A - COMMUNICABLE DISEASE CONTROL**

- (A) the name, address, phone number, and CLIA number of the laboratory;
- (B) the name, address, and phone number of the person in charge of the laboratory or that person's designee;
- (C) the type of test performed, testing capacity, and whether the laboratory will use a third-party laboratory to perform part or all of the testing; and
- (D) if the laboratory will use a third-party laboratory to perform part or all of the testing, the information in Subparagraphs (c)(1)(A)-(B) for the third-party laboratory; and

(2) until onboarding to electronic laboratory reporting is complete;

- (A) reports the results of positive COVID-19 diagnostic tests to the Division of Public Health, including all elements required in Paragraph (b) of this Rule, by secure telefax; and
- (B) reports the aggregate number of positive and negative nucleic acid COVID-19 diagnostic tests and the aggregate number of positive and negative antigen COVID-19 diagnostic tests per day to the Division of Public Health through an online survey.

(d) The requirements set forth in Paragraph (b) of this Rule shall be considered met if a laboratory that completes fewer than 50 total COVID-19 diagnostic tests per week submits results as set out in Subparagraph (c)(2) of this Rule.

(e) Healthcare providers who order COVID-19 diagnostic testing in this State shall:

(1) report the results of positive COVID-19 diagnostic tests by secure telefax to the local health director in the county or district where the patient resides. The report shall contain:

- (A) patient first and last name, date of birth, address, county of residence, phone number, sex, race, and ethnicity;
- (B) provider name, address, phone number, and NPI;
- (C) the specimen collection date, the test order date, and the test result date;
- (D) the test result; and
- (E) all other available elements required in Paragraph (b) of this Rule; and

(2) report the aggregate number of positive and negative nucleic acid COVID-19 diagnostic tests and the aggregate number of positive and negative antigen COVID-19 diagnostic tests per day to the Division of Public Health through an online survey.

(f) The requirements set forth in Paragraph (e) of this Rule shall be considered met if a healthcare provider:

- (1) verifies that the laboratory that receives the specimen for testing will report the test result in accordance with Paragraph (b) of this Rule; and
- (2) includes patient first and last name, date of birth, address, county of residence, phone number, sex, race, ethnicity, and specimen collection date on the lab order.

(g) The requirement for healthcare providers to report COVID-19 diagnostic test results, as set out in Paragraph (e) of this Rule, is separate from the requirement for physicians to report suspected infections of COVID-19, a novel coronavirus, including positive COVID-19 diagnostic test results, in accordance with G.S. 130A-135 and Rules .0101(a) and .0102(a) of this Section.

(h) Laboratories and healthcare providers who are required to report under this Rule shall report positive COVID-19 diagnostic test results immediately and negative COVID-19 diagnostic test results within 24 hours of receiving the result. Results reported to a local health department under this Rule shall be forwarded to the Division of Public Health within 24 hours of receipt by the local health department.

*History Note: Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141; 130A-141.1; S.L. 2020-4, s. 4.10(a)(1); P.L. 100-578; 42 C.F.R. 493;*

*Emergency Adoption Eff. September 25, 2020.*

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**Rule-making Agency:** *Commission for Public Health*

**Rule Citation:** *10A NCAC 41A .0212*

**Effective Date:** *September 25, 2020*

**Findings Reviewed and Approved by the Codifier:** *September 15, 2020*

**Reason for Action:** *COVID-19, a novel coronavirus, was identified as the cause of an emerging infectious disease outbreak in December 2019 in Wuhan, Hubei Province, China. This novel coronavirus causes respiratory illness ranging in severity from mild illness to death. As of September 13, 2020, over 28,600,000 confirmed cases and 900,000 deaths had been reported from 216 countries, including the United States. The first U.S. case was reported in a traveler returning from Wuhan on January 21, 2020 in Washington State. As of September 13, over 6,400,000 cases and 190,000 deaths had been reported in the U.S., and over 180,000 cases and 3,000 deaths had been reported in North Carolina. The North Carolina Division of Public Health is working closely with the Centers for Disease Control and Prevention (CDC) to monitor and respond to this pandemic in North Carolina.*

*On June 18, 2020, the NC Commission for Public Health received a petition for rulemaking from the North Carolina Board of Funeral Service, requesting that the Commission consider amending rule 10A NCAC 41A .0212 to set out the proper precautions to prevent infection in the handling and transportation of the bodies of persons infected with COVID-19 and require notification of those precautions. Pursuant to G.S.*

150B-20, the Commission fully considered and granted the petition at its meeting on August 5, 2020. However, the Commission did not approve the proposed rule language submitted with the petition and directed agency staff to revise the proposed rule language for consideration at a special meeting on September 15, 2020. Notice of this decision was provided in writing to the North Carolina Board of Funeral Service on August 5, 2020. On September 15, 2020, the Commission adopted the rule language submitted with this Findings of Need form.

It is imperative that this rule be quickly amended to address the need identified by the North Carolina Board of Funeral Service for communicable disease control measures to mitigate the risk of disease transmission in the handling and transportation of the bodies of persons infected with COVID-19. Immediate adoption of this emergency rule is required due to the serious and unforeseen threat posed to public health by this infectious disease.

**CHAPTER 41 - EPIDEMIOLOGY HEALTH**

**SUBCHAPTER 41A - COMMUNICABLE DISEASE CONTROL**

**SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES**

**10A NCAC 41A .0212 HANDLING AND TRANSPORTATION OF BODIES**

(a) Persons handling the body of any person who has died shall comply with the standard precautions for all patient care published by the United States Centers for Disease Control and Prevention, which are hereby incorporated by reference, including any subsequent amendments and editions, and available free of charge at: <https://www.cdc.gov/infectioncontrol/basics/standard-precautions.html>.

~~(a)~~(b) It shall be the duty of the ~~physician~~ physician, physician assistant, or nurse practitioner attending to any person who dies and is known to be infected with HIV, plague, ~~or~~ hepatitis B, B, or COVID-19 or any person who dies and is known or reasonably suspected to be infected with smallpox, rabies, severe acute respiratory syndrome (SARS), or Jakob-Creutzfeldt to provide ~~written~~ written, verbal, or electronic notification to ~~all~~ individuals handling the body of the proper precautions to prevent infection. This ~~written~~ written, verbal, or electronic notification shall be provided to the funeral service director, funeral service worker, or body transporter personnel at the time the body is removed from any hospital, nursing home, or other health care facility. When the patient dies in a location other than a health care facility, the ~~attending physician~~ physician, physician assistant, or nurse practitioner shall notify the funeral service director, funeral service worker, or body transporter personnel ~~verbally~~ of the precautions required as soon as the ~~physician~~ physician, physician assistant, or nurse practitioner becomes aware of the death. These precautions are noted in Paragraphs ~~(b)~~(d), (e), and ~~(e)~~ (f) of this

Rule. The duty to notify shall be considered met if performed by one of the following individuals: the physician, physician assistant, or nurse practitioner attending to the person who died or a designated representative of the physician, physician assistant, or nurse practitioner.

(c) It shall also be the duty of a medical examiner with jurisdiction pursuant to G.S. 130A-383 over the body of any person who dies and is known to be infected with COVID-19 to provide written, verbal, or electronic notification to the funeral service director, funeral service worker, or body transporter at the time the body is removed from medical examiner custody of the proper precautions to prevent infection. These precautions are noted in Paragraph (f) of this Rule. The duty to notify shall be considered met if performed by a designated representative of the medical examiner.

~~(b)~~(d) The body of any person who died and is known or reasonably suspected to be infected with smallpox or severe acute respiratory syndrome (SARS) or any person who died and is known to be infected with plague shall not be embalmed. The body shall be enclosed in a strong, tightly sealed outer case which will prevent leakage or escape of odors as soon as possible after death and before the body is removed from the hospital room, home, building, or other premises where the death occurred. This case shall not be reopened except with the consent of the local health director. Nothing in this Paragraph shall prohibit cremation.

~~(e)~~(e) Persons handling the body of any person who died and is known to be infected with HIV or hepatitis B or any person who died and is known or reasonably suspected to be infected with Jakob-Creutzfeldt or rabies shall be provided ~~written~~ written, verbal, or electronic notification to observe blood and body fluid precautions.

(f) Persons handling the body of any person who died and is known to be infected with COVID-19 shall be provided written, verbal, or electronic notification to observe the COVID-19 guidance for funeral home workers published by the United States Centers for Disease Control and Prevention, which is hereby incorporated by reference, including any subsequent amendments or editions, and available free of charge at: <https://www.cdc.gov/coronavirus/2019-ncov/community/funeral-faqs.html>.

*History Note: Authority G.S. 130A-144; 130A-146; Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Recodified from 15A NCAC 19A .0204 Eff. June 11, 1991; Temporary Amendment Eff. November 1, 2003; Amended Eff. April 1, 2004; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, ~~2018~~ 2018; Emergency Amendment Eff. September 25, 2020.*

**Note from the Codifier:** The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270<sup>th</sup> day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270<sup>th</sup> day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

**TITLE 04 – DEPARTMENT OF COMMERCE**

**Rule-making Agency:** Department of Commerce, Division of Employment Security

**Rule Citation:** 04 NCAC 24G .0104

**Effective Date:** September 25, 2020

**Date Approved by the Rules Review Commission:** September 17, 2020

**Reason for Action:** The temporary rule is needed because of a serious and unforeseen threat to the public health, safety, and welfare, a recent act of the U.S. Congress with the passage of the Families First Coronavirus Response Act. Pub. 1. No. 116-127, Division D 1402 (2020); Executive Order 118 issued by Governor Roy Cooper on March 17, 2020; and guidance from the U.S. Department of Labor in Unemployment Insurance Program Letter (UIPL) Nos. 16-20 (issued April 5, 2020); 13-20 (issued March 22, 2020) and 10-20 (issued March 12, 2020). On March 10, 2020, the Governor of North Carolina issued Executive Order No. 116 and declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of Coronavirus Disease 2019 (COVID-19), a respiratory disease that results from the coronavirus. On March 11, 2020, the World Health Organization declared the coronavirus an international pandemic. The World Health Organization, the Centers for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. On March 17, 2020, the Governor of North Carolina issued Executive Order No. 118 and directed the Secretary of Commerce and Assistant Secretary for the Division of Employment Security to ensure that individuals who are separated from employment, had hours reduced, or are prevented from working due to a medical condition caused by COVID-19 or due to communicable disease control measures are eligible for unemployment benefits to the maximum amount permitted by federal law. On March 18, 2020, the President of the United States signed the Families First Coronavirus Response Act (Pub. 1. 116-127). The legislation makes emergency supplemental appropriations in response to the spread of COVID-19, and includes the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) at Division D.

The Governor's Executive Order No. 121 ordered that all non-essential business and operations cease operating effective March 30, 2020. The employer entities ceased operations and laid off its employees pursuant to the Governor's Executive Order. Currently, the Governor is reopening the state's economy in phases and easing COVID-19 restrictions; the employer entities are slowly reopening and are recalling employees to return to

work. This rule is necessary for the determination of whether to continue unemployment benefits for individuals who refuse suitable work after being informed by the employer to return to work.

**CHAPTER 24 - EMPLOYMENT SECURITY**

**SUBCHAPTER 24G – UNEMPLOYMENT COMPENSATION DUE TO PUBLIC HEALTH EMERGENCY OR DISASTER DECLARATION**

**SECTION .0100 – UNEMPLOYMENT COMPENSATION DUE TO CORONAVIRUS AND COVID-19**

**04 NCAC 24G .0104      TEMPORARY COVID-19 SUITABLE WORK PROVISIONS**

For purposes of determining good cause in G.S. 96-14.11(b), a claimant who has refused suitable work for one of the following COVID-19 related reasons shall be deemed to have a legally sufficient reason for the refusal, and may continue to be eligible for unemployment benefits while the applicable requirement of the following is met:

- (1) A member of the claimant's household has been diagnosed with COVID-19 or the claimant is providing care for a immediate family, as defined in G.S. 96-1(b)(18), who has been diagnosed with COVID-19.
- (2) The claimant is high risk of severe illness from COVID-19 in accordance with the Centers for Disease Control and Prevention (CDC) guidelines. The CDC guidelines for COVID-19 Risk are incorporated by reference, including subsequent amendments or editions. This document may be accessed at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> at no cost.
- (3) The claimant is the primary caregiver of a child or person in the claimant's household who is unable to attend school that is closed for full-time instruction or the student is enrolled in virtual learning or another facility that has shut down as a direct result of the COVID-19 public health emergency, and the school or facility is required for the claimant to work. For purposes of this requirement, a facility is defined as a place that provides ongoing and constant care or attention to the child or other person bring cared for, for example, a daycare facility, assisted living facility, rehabilitation center, or nursing home.

- (4) The claimant has refused work in order to comply with travel, business operations, or mass gathering requirements set forth in a current executive order issued by the President of the United States, Governor of the State of North Carolina, or contained in an order issued by the North Carolina county or municipality in which the claimant resides.
- (5) The claimant presents clear and convincing evidence as defined in 04 NCAC 24A .0105(a)(17) that there is a risk to the claimant's health and safety due to a failure of the employer to comply with COVID-19 related statutes, executive orders, ordinances, and guidelines as set out by the CDC and Occupational Safety and Health Administration (OSHA). The OSHA guidelines for employers are incorporated by reference, including subsequent amendments or editions. This document may be accessed at <https://www.osha.gov/Publications/OSHA4045.pdf> at no cost. The CDC guidelines for employers are incorporated by reference, including subsequent amendments or editions. This document may be accessed at <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> at no cost. The employer's failure to adhere to the COVID-19 related statutes, executive orders, ordinances, and guidelines as set out by the CDC and OSHA shall constitute good cause for refusal of suitable work.

*History Note: Authority G.S. 96-2; 96-4; 96-14.11(b); 96-15(a);  
Emergency Adoption Eff. June 26, 2020;  
Temporary Adoption Eff. September 25, 2020.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Rule-making Agency:** *Wildlife Resources Commission*

**Rule Citation:** *15A NCAC 10D .0103*

**Effective Date:** *September 25, 2020*

**Date Approved by the Rules Review Commission:** *September 17, 2020*

**Reason for Action:** *G.S. 150B-21.1(a)(7)b. The primitive weapons season dates for deer on Nicholson Creek Game Land are incorrect in 15A NCAC 10D .0103. The temporary amendments are necessary so that the dates can be corrected before the upcoming primitive weapons season.*

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

**SUBCHAPTER 10D - GAME LANDS REGULATIONS**

**SECTION .0100 - GAME LANDS REGULATIONS**

**15A NCAC 10D .0103 HUNTING ON GAME LANDS**

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic or gates, or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts, or wire to a tree on any game land designated herein. This prohibition does not apply to lag-screw steps or portable stands that are removed after use with no metal remaining in or attached to the tree.

(d) Time and Manner of Taking. Hunting is allowed on game lands only during the open season for game animals and game birds, unless hunting is allowed by permit. Individual game lands or parts thereof may be closed to hunting or limited to specific dates by this Chapter. Persons shall hunt only with weapons lawful for the open game animal or game bird seasons. On managed waterfowl impoundments, persons shall:

- (1) not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates;
- (2) not hunt after 1:00 p.m. on such hunting dates;
- (3) not set decoys out prior to 4:00 a.m.;
- (4) remove decoys by 3:00 p.m. each day; and
- (5) not operate any vessel or vehicle powered by an internal combustion engine.

On designated youth waterfowl days, youths may hunt on managed waterfowl impoundments from ½ hour before sunrise to sunset. On designated veterans and military waterfowl days, veterans, as defined in 38 USC 101, and members of the Armed Forces on active duty, including members of the National Guard and Reserves on active duty other than for training, with valid credentials may hunt on game lands and impoundments not designated as permit-only areas from ½ hour before sunrise to sunset. Restrictions (1), (3), and (5) in this Paragraph shall apply. On waterfowl impoundments that have a posted "Scouting-only Zone," trapping during the trapping season and waterfowl hunting on designated waterfowl hunting days are the only activities allowed on the portion of the impoundment outside of the posted "Scouting-only Zone." No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal that has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the Commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods.

(e) Definitions:

- (1) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be

taken and dove hunting is limited to Mondays, Wednesdays, Saturdays, Thanksgiving Day, Christmas Day, and New Year's Days within the federally-announced season.

- (2) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays, Thanksgiving Day, Christmas Day, and New Year's Days, except for game lands in this Rule that specifically allow hunting on Tuesdays, Thursday, and Fridays. Falconry may also be practiced on Sundays. These "open days" also apply to either-sex deer hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.
- (3) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken on the open days of Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday during the open seasons.
- (f) Hunting with Dogs on Game Lands. Deer shall not be taken with the use of dogs on game lands in counties or parts of counties where taking deer with dogs is prohibited as described in 15A NCAC 10B .0109.
- (g) The listed seasons and restrictions apply in the following game lands:
  - (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan, and Stanly counties
    - (A) Six Days per Week Area
    - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter in that portion in Montgomery county, and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davidson, Davie, Rowan, and Stanly counties.
    - (C) On the Lick Creek Tract, deer and bear hunting is archery only.
  - (2) Alligator River Game Land in Tyrrell County
    - (A) Six Day per Week Area
    - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
    - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
  - (3) Angola Bay Game Land in Duplin and Pender counties
    - (A) Six Days per Week Area
  - (4) Bachelor Bay Game Land in Bertie, Martin, and Washington counties
    - (A) Six Days per Week Area
    - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (5) Bertie County Game Land in Bertie County
    - (A) Six Days per Week Area
    - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
    - (C) Target Shooting is prohibited.
  - (6) Bladen Lakes State Forest Game Land in Bladen County
    - (A) Three Days per Week Area
    - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
    - (C) Except for blackpowder firearms, rifles larger than .22 caliber rimfire shall not be used.
    - (D) On the Singletary Lake Tract, the use of dogs for hunting deer and bear is prohibited.
    - (E) Wild turkey hunting on the Singletary Lake Tract is by permit only.
    - (F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
    - (G) The use of dogs for pursuing or taking foxes shall be prohibited from February 15 through August 1.
  - (7) Brinkleyville Game Land in Halifax County
    - (A) Six Days per Week Area
    - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
    - (C) Horseback riding is prohibited.
    - (D) Target Shooting is prohibited.
  - (8) Brunswick County Game Land in Brunswick County
    - (A) Hunting is by permit only.
    - (B) The use of dogs for hunting deer is prohibited.
  - (9) Buckhorn Game Land in Orange County
    - (A) Hunting is by permit only.
    - (B) Horseback riding is prohibited.
  - (10) Buckridge Game Land in Tyrrell County.
    - (A) Three Days per Week Area
    - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season. If any of these days falls on a Tuesday, Friday or Saturday, bear hunting is allowed on those days.
- (D) Target shooting is prohibited.
- (11) Buffalo Cove Game Land in Caldwell and Wilkes Counties
  - (A) Six Days per Week Area
  - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving Day through the third Saturday after Thanksgiving. Deer of either sex may be taken with archery equipment on open days beginning the Saturday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving Day. Deer with visible antlers may be taken with archery equipment the Monday immediately following the closing of the Deer With Visible Antlers Season, as described in this Part, through January 1. Deer of either sex may be taken with blackpowder firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter.
  - (C) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
  - (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (12) Bullard and Branch Hunting Preserve Game Lands in Robeson County
  - (A) Three Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (13) Butner - Falls of Neuse Game Land in Durham, Granville, and Wake counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Waterfowl shall be taken only on:
    - (i) the opening and closing days of the applicable waterfowl seasons;
    - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
    - (iii) Tuesdays, Thursdays, and Saturdays of the applicable waterfowl seasons.
- On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
  - (D) Horseback riding is prohibited.
  - (E) Target shooting is prohibited.
  - (F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
  - (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
  - (H) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals. On designated bicycle riding areas, the use of bicycles is allowed from May 15 through August 31, and on Sundays only from September 1 through May 14.
  - (I) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
  - (J) Camping is allowed at any time in the designated Mountains-to-Sea Trail Camping Area and shall not exceed a maximum stay of two consecutive nights. Campfires are prohibited in this camping area.
- (14) Buxton Woods Game Land in Dare County:
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
  - (C) Target shooting is prohibited.
- (15) Cape Fear River Wetlands Game Land in Pender County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
  - (D) The use of dogs for hunting deer is prohibited on the portion of the game

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- land that is west of the Black River, north of Roan Island, east of Lyon Swamp Canal to Canetuck Road, and south of NC 210 to the Black River.
- (E) Target shooting is prohibited.
- (16) Carteret County Game Land in Carteret County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
- (C) The use of dogs for hunting deer is prohibited.
- (D) Bear hunting on the Salters Creek Tract is by permit only.
- (17) R. Wayne Bailey-Caswell Game Land in Caswell County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Wednesday thereafter.
- (C) Horseback riding is allowed only during June, July, and August, and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic and on those gated roads and trails that are posted for equestrian use. People age 16 or older horseback riding on this game land shall possess a Game Lands license.
- (D) The area encompassed by the following roads is permit-only for all quail and woodcock hunting, and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR 1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC 62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
- (E) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.
- (F) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
- (G) Target shooting is prohibited, except at the R. Wayne Bailey-Caswell Shooting Range.
- (18) Chatham Game Land in Chatham County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
- (C) Wild turkey hunting is by permit only.
- (D) Horseback riding is allowed only during June, July, and August; and on Sundays during the remainder of the year except during open turkey and deer seasons.
- (E) Target shooting is prohibited.
- (19) Chowan Game Land in Chowan County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- (20) Chowan Swamp Game Land in Bertie, Gates, and Hertford counties.
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear hunting is restricted to the first three hunting days during the November bear season and the first three hunting days during the second week of the December bear season except that portion of Chowan Swamp Game Land in Gates County that is east of Highway 158/13, south of Highway 158, west of Highway 32, and north of Catherine Creek and the Chowan River where the bear season is the same as the season dates for the Gates County bear season.
- (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (E) Horseback riding is prohibited except during May 16 through August 31 and on Sundays only September 1 through May 15 on those roads that are open to vehicular traffic and on those gated roads and trails posted for equestrian use.
- (F) Target shooting is prohibited.
- (21) Cold Mountain Game Land in Haywood County
- (A) Six Days per Week Area
- (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.

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- (C) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
- (22) Columbus County Game Land in Columbus County.
  - (A) Three Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Deer hunting on the Campbell Tract shall be by permit only.
- (23) Croatan Game Land in Carteret, Craven, and Jones counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Waterfowl shall be taken only on the following days:
    - (i) the opening and closing days of the applicable waterfowl seasons;
    - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
    - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
  - (D) Beginning on the first open waterfowl day in October through the end of all waterfowl seasons, waterfowl hunting from designated Disabled Sportsmen blinds on the Catfish Lake Waterfowl Impoundment is by permit only.
  - (E) Dove hunting is by permit only for the first two open days of dove season on posted areas. During the rest of dove season, no permit is required to hunt doves.
- (24) Currituck Banks Game Land in Currituck County
  - (A) Six Days per Week Area
  - (B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only from November 1 through the end of all waterfowl seasons.
  - (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not use a firearm.
  - (D) The boundary of the game land shall extend 5 yards from the edge of the marsh or shoreline.
  - (E) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
- (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (G) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers season.
- (25) Dan River Game Land in Rockingham County
  - (A) Three Days per Week Area
  - (B) Deer hunting is by permit only.
  - (C) Wild turkey hunting is by permit only.
  - (D) Horseback riding is prohibited except on those areas posted for equestrian use. People age 16 or older horseback riding on this game land must possess a Game Lands license.
  - (E) Target shooting is prohibited.
- (26) Dare Game Land in Dare and Hyde counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
  - (C) No hunting is allowed on posted parts of bombing range.
  - (D) The use and training of dogs is prohibited from March 1 through June 30.
- (27) Dover Bay Game Land in Craven County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers season.
- (28) DuPont State Forest Game Lands in Henderson and Transylvania counties
  - (A) Hunting is by permit only.
  - (B) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.
- (29) Elk Knob Game Land in Watauga County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
- (30) Embro Game Land in Halifax and Warren counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Horseback riding is prohibited.
  - (D) Target Shooting is prohibited.
- (31) Goose Creek Game Land in Beaufort and Pamlico counties
  - (A) Six Days per Week Area

- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
    - (i) the opening and closing days of the applicable waterfowl seasons;
    - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
    - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
  - (D) Beginning on the first open waterfowl season day in October through the end of all waterfowl seasons, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek, and Hobucken.
  - (E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.
  - (F) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
  - (G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 through January 1 and April 1 through May 15 to individuals that possess a valid hunting opportunity permit.
- (32) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
  - (C) Horseback riding is prohibited.
- (33) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) On that portion north of Big Macedonia Road, east of Makatoka Road, south of Little Macedonia Road, and west of Green Swamp Road, hunting and trapping is by permit only.
- (D) Pursuing or chasing deer or bear with dogs for the purposes of training or hunting is prohibited on that portion of the game land that is north of Big Macedonia Road, east of Makatoka Road, south of Little Macedonia Road, and west of Green Swamp Road.
- (34) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
    - (i) the opening and closing days of the applicable waterfowl seasons; and
    - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
    - (iii) Tuesdays and Saturdays of the applicable waterfowl season.
  - (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas designated and posted as camping areas.
  - (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season, except for that portion designated as bear sanctuary.
- (35) Harris Game Land in Chatham, Harnett, and Wake counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Waterfowl shall be taken only on the following days:
    - (i) Tuesdays, Fridays, and Saturdays of the applicable waterfowl seasons;
    - (ii) Thanksgiving, Christmas, and New Year's Days; and
    - (iii) the opening and closing days of the applicable waterfowl seasons.
  - (D) The use or construction of permanent hunting blinds shall be prohibited.
  - (E) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.

- (F) Target shooting is prohibited.
- (G) Horseback riding is prohibited.
- (36) Headwaters State Forest Game Land in Transylvania County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season
- (37) Hill Farm Game Land in Stokes County- hunting and trapping is by permit only.
- (38) Holly Shelter Game Land in Pender County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Waterfowl may be taken only on the following days:
    - (i) the opening and closing days of the applicable waterfowl seasons;
    - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
    - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
  - (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas designated and posted as camping areas.
  - (E) On that portion north of the Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, deer hunting and bear hunting are permit only.
  - (F) The use of dogs for hunting deer and bear is prohibited:
    - (i) all open days on that portion of the game land that is south of Baby Branch extending west to Stag Park Road, west of Shaw Road, north of Meeks Road extending west to Stag Park Road and east of Stag Park Road; and
    - (ii) on Tuesdays, Thursdays, and Fridays, with the exception of Thanksgiving, Christmas, and New Year's days, and except for the area north of Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, where the use of dogs for deer and bear hunting is by permit only.
- (G) Hunting and vehicular access on the Pender 4 Tract is restricted from September 1 to the last day of February and April 1 to May 15 to individuals that possess valid hunting opportunity permits, unless otherwise authorized by the Wildlife Resources Commission.
- (H) Hunters who possess a Disabled Access Permit may operate an All Terrain Vehicle on and within 100 yards of trails designated for Disabled Sportsman Access.
- (I) Target shooting is prohibited, except on the Holly Shelter Shooting Range.
- (J) Geocaching is restricted to closed days for taking bear, deer, turkey, and waterfowl.
- (39) Hyco Game land in Person County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Target shooting is prohibited.
- (40) J. Morgan Futch Game Land in Tyrrell County - hunting and trapping is by permit only.
- (41) Johns River Game Land in Burke County
  - (A) Hunting is by permit only.
  - (B) During permitted deer hunts, deer of either sex may be taken by permit holders.
  - (C) Entry on posted waterfowl impoundments is prohibited October 1 through March 31, except by lawful waterfowl hunting permit holders and only on those days written on the permits.
  - (D) The use or construction of permanent hunting blinds is prohibited.
  - (E) Camping and the presence of campers and tents in designated Hunter Camping Areas is limited to August 31 through the last day of February and March 31 through May 14.
- (42) Jordan Game Land in Chatham, Durham, Orange, and Wake counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Waterfowl may be taken only on:
    - (i) Mondays, Wednesdays, and Saturdays of the applicable waterfowl seasons;
    - (ii) Thanksgiving, Christmas, and New Year's Days; and

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- (iii) the opening and closing days of the applicable waterfowl seasons.
  - (D) Horseback riding is prohibited except on those areas posted as American Tobacco Trail and other areas posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July, and August, and on Sundays the remainder of the year except during open turkey and deer seasons. People age 16 or older who ride horseback on trails occurring entirely within the game land boundaries shall possess a Game Lands license.
  - (E) Target shooting is prohibited.
  - (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
  - (G) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (43) Juniper Creek Game Land in Brunswick and Columbus counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season.
  - (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (44) Kerr Scott Game Land in Wilkes County
- (A) Six Days per Week Area
  - (B) Use of centerfire rifles is prohibited.
  - (C) Use of blackpowder firearms, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season is prohibited.
  - (D) Tree stands shall not be left overnight; and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
  - (E) Deer of either sex may be taken on all open days of the applicable Deer With Visible Antlers season.
  - (F) Hunting on posted waterfowl impoundments is by permit only.
- (45) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Wild turkey hunting is by permit only.
  - (D) The use of dogs for hunting deer on the Godley Tract is prohibited.
  - (E) Waterfowl hunting on posted waterfowl impoundments is by permit only.
- (46) Lee Game Land in Lee County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Target shooting is prohibited.
- (47) Light Ground Pocosin Game Land in Pamlico County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (48) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (49) Lower Fishing Creek Game Land in Edgecombe and Halifax counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Horseback riding is prohibited.
  - (D) The use of dogs for hunting deer is prohibited.
  - (F) Target Shooting is prohibited.
- (50) Mayo Game Land in Person County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Waterfowl shall be taken only on:
    - (i) Tuesdays, Thursdays, and Saturdays applicable waterfowl seasons;
    - (ii) Christmas and New Year's Days; and
    - (iii) the opening and closing days of the applicable waterfowl seasons.
  - (D) Target shooting is prohibited.

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- (51) Mitchell River Game Land in Surry County
  - (A) Three Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Wednesday thereafter.
  - (C) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.
- (52) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain, and Transylvania counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
- (53) Needmore Game Land in Macon and Swain counties.
  - (A) Six Days per Week Area
  - (B) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15.
  - (C) On posted dove fields, dove hunting on the opening day of dove season is by permit only.
- (54) Neuse River Game Land in Craven County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Camping is allowed any time within 100 yards of the Neuse River on that portion of the game land that lies west of NC-43.
- (55) New Lake Game Land in Hyde and Tyrrell counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (56) Nicholson Creek Game Land in Hoke County
  - (A) Three Days per Week Area
  - (B) Deer of either sex may be taken with archery equipment on open hunting days from the Saturday on or nearest September 10 through the fourth Friday before Thanksgiving Day.
  - (C) Deer of either sex may be taken with blackpowder firearms on open hunting days beginning the fourth Saturday before Thanksgiving Day through the Wednesday of the second week thereafter.
- (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving Day through the third Saturday after Thanksgiving Day.
- (E) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (H) On Lake Upchurch, the following activities are prohibited:
  - (i) Operating any vessel or vehicle powered by an internal combustion engine; and
  - (ii) Swimming.
- (I) Target shooting is prohibited.
- (57) North River Game Land in Camden and Currituck counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
  - (D) Hunting on the posted waterfowl impoundment is by permit only.
- (58) Northwest River Marsh Game Land in Currituck County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (59) Pee Dee River Game Land in Anson, Montgomery, Richmond, and Stanly counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Use of centerfire rifles is prohibited in that portion in Anson and Richmond counties North of US-74.
  - (D) Target shooting is prohibited.
  - (E) Horseback riding is allowed only on roads opened to vehicular traffic and only during the following times:
    - (i) during June, July, and August; and
    - (ii) on Sundays during the other months or parts of months when deer and turkey seasons are closed.

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- (F) Pursuing or chasing deer or bear with dogs for the purposes of training or hunting shall be prohibited on that portion south of US-74.
- (60) Perkins Game Land in Davie County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited from November 1 through January 1.
- (D) Target Shooting is prohibited.
- (61) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga, and Yancey counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).
- (D) The use of bicycles shall be restricted to designated trails on the Linville River Tract (Burke County). Persons engaged in the act of hunting on the Linville River Tract during any open day of an applicable season for game birds or game animals shall be exempt from this restriction.
- (62) Pond Mountain Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
- (C) Horseback riding is prohibited except on designated trails from May 16 through August 31 and Sundays from September 1 through October 31. All horseback riding is prohibited from November 1 through May 15.
- (63) Pungo River Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (64) Rendezvous Mountain State Forest Game Land in Wilkes County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Wednesday thereafter.
- (C) Bear hunting is prohibited.
- (65) Rhodes Pond Game Land in Cumberland and Harnett counties
- (A) Hunting is by permit only.
- (B) Swimming is prohibited on the area.
- (66) Roanoke River Wetlands in Bertie, Halifax, Martin, and Northampton counties
- (A) Hunting and trapping is by Permit only.
- (B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.
- (C) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.
- (D) Target Shooting is prohibited.
- (67) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.
- (68) Robeson Game Land in Robeson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (69) Rockfish Creek Game Land in Hoke County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken with archery equipment on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving Day.
- (C) Deer of either sex may be taken with blackpowder firearms on open hunting days beginning the fourth Saturday before Thanksgiving Day through the Wednesday of the second week thereafter.
- (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving Day through the third Saturday after Thanksgiving Day.
- (E) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (H) Taking fox squirrels is prohibited.
- (I) Target shooting is prohibited.
- (70) Rocky Run Game Land in Onslow County - Hunting is by permit only.
- (71) Sampson Game Land in Sampson County
- (A) Three Days per Week Area

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- (72) Sandhills Game Land in Hoke, Moore, Richmond, and Scotland counties
- (A) Three Days per Week Area
  - (B) Hunting is prohibited on the J. Robert Gordon Field Trial Grounds from October 22 through March 31 except as follows:
    - (i) deer of either-sex may be taken with archery equipment on all the open days of the archery season through the fourth Friday before Thanksgiving Day; with blackpowder firearms and archery equipment all the open days of the blackpowder firearms season through the third Wednesday before Thanksgiving Day; and only deer with visible antlers may be taken with all legal weapons from the second Saturday before Thanksgiving Day through the Saturday following Thanksgiving Day;
    - (ii) dove may be taken all open days from the opening day of the dove season through the third Saturday thereafter;
    - (iii) squirrel (gray and fox) may be taken all the open days from the second Saturday before Thanksgiving Day through the Saturday following Thanksgiving Day;
    - (iv) rabbit may be taken all open days from the second Saturday preceding Thanksgiving Day through the Saturday following Thanksgiving Day;
    - (v) waterfowl may be taken on open days during any waterfowl season;
    - (vi) wild animals and wild birds may be taken as part of a Disabled Sportsmen Program Permit Hunt; and
    - (vii) raccoon and opossum may be taken on open days from sunrise Monday on or nearest October 15 through the last day of February.
  - (C) Target shooting is prohibited.
  - (D) The Deer With Visible Antlers season is the open hunting days from the second Saturday before Thanksgiving Day through the third Saturday after Thanksgiving Day except on the J. Robert Gordon Field Trial Grounds.
  - (E) The archery season is all open days from the Saturday on or nearest to Sept. 10 to the fourth Friday before Thanksgiving Day and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving Day through January 1. Deer of either sex may be taken with archery equipment on all open hunting days during the archery season, by permit during the Deer with Visible antlers season, and the blackpowder firearms season as stated in this Subparagraph. Only deer with visible antlers may be taken from the third Monday after Thanksgiving Day through January 1.
  - (F) Blackpowder firearms season is all the open days from the fourth Saturday preceding Thanksgiving Day through the Wednesday of the second week thereafter and, except on the J. Robert Gordon Field Trial Grounds, the third Monday after Thanksgiving Day through January 1. Deer of either sex may be taken with blackpowder firearms on all open hunting days during the blackpowder firearms season and by permit during the Deer With Visible Antlers season. Only deer with visible antlers may be taken from the third Monday after Thanksgiving Day through January 1.
  - (G) Either-sex deer hunting during the Deer With Visible Antlers Season is by permit only.
  - (H) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.
  - (I) Wild turkey hunting is by permit only.
  - (J) Horseback riding on field trial grounds from October 22 through March 31 is prohibited unless participating in authorized field trials.
  - (K) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and March 31 through May 14.
  - (L) Target shooting is prohibited, except at the John F. Lentz Hunter Education Complex.

- (73) Sandy Creek Game Land in Nash and Franklin Counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Horseback riding is prohibited.
  - (D) The use of dogs for hunting deer is prohibited.
  - (E) Target Shooting is prohibited.
- (74) Sandy Mush Game Land in Buncombe and Madison counties.
- (A) Three Days per Week Area
  - (B) Deer of either sex may be taken the first open Saturday of the applicable Deer with Visible Antlers season.
  - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
  - (D) Dogs shall only be trained on Mondays, Wednesdays, and Saturdays and only as allowed in 15A NCAC 10D .0102(f).
  - (E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.
  - (F) Target shooting is prohibited.
- (75) Second Creek Game Land in Rowan County- hunting is by permit only.
- (76) Shocco Creek Game Land in Franklin, Halifax, Nash, and Warren counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Horseback riding is prohibited.
  - (D) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
  - (E) Target Shooting is prohibited.
- (77) South Mountains Game Land in Burke, Cleveland, McDowell, and Rutherford counties
- (A) Six Days per Week Area
  - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving Day through the third Saturday after Thanksgiving. Deer of either sex may be taken with archery equipment on open days beginning the Saturday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving Day. Deer with visible antlers may be taken with archery equipment the Monday immediately following the closing of the Deer With Visible Antlers Season, as described in this Part, through January 1. Deer of either sex may be taken with blackpowder firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter.
- (C) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
  - (D) Horseback riding is prohibited except on designated trails during the following dates:
    - (i) January 2 through March 31;
    - (ii) May 16 through August 31;
    - (iii) Sundays only - April 1 through May 15; and
    - (iv) Sundays only - September 1 through January 1.
- (78) Stones Creek Game Land in Onslow County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) The use of dogs for hunting deer is prohibited on Mondays, Wednesdays, and Fridays.
  - (D) Swimming in all lakes is prohibited.
  - (E) Waterfowl on posted waterfowl impoundments may be taken only on the following days:
    - (i) the opening and closing days of the applicable waterfowl seasons;
    - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
    - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
  - (F) Target shooting is prohibited.
  - (G) Geocaching is restricted to closed days for taking bear, deer, turkey, and waterfowl.
- (79) Suggs Mill Pond Game Land in Bladen and Cumberland counties
- (A) Hunting and trapping is by permit only.
  - (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.

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- (C) Entry is prohibited on scheduled hunt or trapping days except for:
    - (i) hunters or trappers holding special hunt or trapping permits; and
    - (ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
  - (D) During the period of November 1 through January 31, except on Sundays, the use of vessels on Suggs Mill Pond Lake and Little Singletary Lake is limited to waterfowl hunting only by waterfowl hunters possessing a valid and current Hunting Opportunity Permit issued by the Wildlife Resources Commission pursuant to G.S. 113-264(d).
  - (E) During the period of November 1 through March 15, the use of vessels on managed waterfowl impoundments is limited to waterfowl hunting only by waterfowl hunters possessing a valid and current Hunting Opportunity Permit issued by the Wildlife Resources Commission pursuant to G.S. 113-264(d).
- (80) Sutton Lake Game Land in New Hanover and Brunswick counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
  - (C) Target shooting is prohibited.
- (81) Tar River Game Land in Edgecombe County
- (A) Hunting is by permit only
  - (B) Target Shooting is prohibited
- (82) Texas Plantation Game Land in Tyrrell County - hunting and trapping is by permit only.
- (83) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the first Friday thereafter.
  - (C) Horseback riding is prohibited.
- (84) Thurmond Chatham Game Land in Alleghany and Wilkes counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Horseback riding is prohibited except on designated trails May 16 through August 31, and all horseback riding is prohibited from September 1 through May 15. People age 16 or older horseback riding on this game land shall possess a Game Lands license.
- (D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.
- (85) Tillery game Land in Halifax County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) Horseback riding is prohibited.
  - (D) The use of dogs for hunting deer is prohibited.
  - (E) Wild turkey hunting is by permit only.
  - (F) Target Shooting is prohibited.
- (86) Toxaway Game Land in Jackson and Transylvania counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
  - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (87) Uwharrie Game Land in Davidson, Montgomery, and Randolph counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first open day of the applicable Deer With Visible Antlers Season through the second Friday thereafter.
  - (C) On the posted waterfowl impoundment, waterfowl may be taken only on the following days:
    - (i) the opening and closing days of the applicable waterfowl seasons;
    - (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
    - (iii) Mondays, Wednesdays and Saturdays of the applicable waterfowl seasons.
  - (D) Target shooting is prohibited, except at the Flintlock Valley Shooting Range.
- (88) Vance Game Land in Vance County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

- (C) The use of dogs, centerfire rifles, and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (89) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (90) Voice of America Game Land in Beaufort County
- (A) Hunting and trapping is by permit only.
- (B) Target Shooting is prohibited.
- (91) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's, and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October through the end of all waterfowl seasons, a permit is required for hunting posted waterfowl impoundments.
- (E) The Huggins Tract and Morton Tracts have the following restrictions:
- (i) access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit issued by the Wildlife Resources Commission pursuant to G.S. 113-264(d);
- (ii) hunting is by permit only; and
- (iii) the use of dogs for hunting deer is prohibited.
- (F) Wild turkey hunting is by permit only.
- (G) Target Shooting is prohibited.
- (92) Whitehall Plantation Game Land in Bladen and Pender counties
- (A) Hunting and trapping is by permit only.
- (B) Camping is restricted to September 1 through the last day of February and March 31 through May 14 in areas both designated and posted as camping areas.
- (C) Pursuing or chasing deer or bear with dogs for the purposes of training or hunting is prohibited on the Long Ridge Tract.
- (93) William H. Silver Game Land in Haywood County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first open Saturday of the applicable Deer With Visible Antlers Season.
- (h) On permitted type hunts, deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications shall be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill shall validate the kill and report the kill to a wildlife cooperater agent or by phone.
- (i) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
- (1) Bertie, Halifax and Martin counties—Roanoke River Wetlands;
- (2) Bertie County—Roanoke River National Wildlife Refuge;
- (3) Bladen County—Suggs Mill Pond Game Lands;
- (4) Burke County—John's River Waterfowl Refuge;
- (5) Dare County—Dare Game Lands (Those parts of bombing range posted against hunting);
- (6) Dare County—Roanoke Sound Marshes Game Lands; and
- (7) Henderson and Transylvania counties—DuPont State Forest Game Lands.
- (j) Access to Hunting Creek Swamp Waterfowl Refuge in Davie County requires written permission from the Commission. Written permission may be granted only when entry onto the Waterfowl Refuge will not compromise the primary purpose for establishing the Waterfowl Refuge and the person requesting entry can demonstrate a valid need or the person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.
- (k) Feral swine may be taken by licensed hunters during the open season for any game animal or game bird using any legal manner of take allowed during those seasons. Dogs may not be used to hunt feral swine except on game lands that allow the use of dogs

for hunting deer or bear, and during the applicable deer or bear season.

(l) Youth Waterfowl Day. On the day declared by the Commission to be Youth Waterfowl Day, youths may hunt on any game land and on any impoundment without a special hunt permit, including permit-only areas, except where prohibited in Paragraph (h) of this Rule.

(m) Veterans and Military Waterfowl Days. On the day declared by the Commission to be Veterans and Military Waterfowl Days, veterans, as defined in 38 USC 101, and members of the Armed Forces on active duty, including members of the National Guard and Reserves on active duty other than for training, with valid credentials may hunt on game lands and impoundments not designated as permit-only areas.

(n) Permit Hunt Opportunities for Disabled Sportsmen. The Commission may designate special hunts for participants of the disabled sportsman program by permit. The Commission may schedule these permit hunts during the closed season. Hunt dates and species to be taken shall be identified on each permit. If the hunt has a limited weapon choice, the allowed weapons shall be stated on each permit.

(o) As used in this Rule, horseback riding includes all equine species.

(p) When waterfowl hunting is authorized in this Rule on Christmas and New Years' Day and those days fall on Sundays, the open waterfowl hunting day shall be the following day.

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-296; 113-305; Eff. February 1, 1976; Temporary Amendment Eff. October 3, 1991; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; September 1, 1995; July 1, 1995; September 1, 1994; July 1, 1994; Temporary Amendment Eff. October 1, 1999; July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2002; July 1, 2001; Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003; Amended Eff. June 1, 2004 (this replaces the amendment approved by RRC on July 17, 2003); Amended Eff. August 1, 2018; August 1, 2017; August 1, 2016; May 1, 2015; August 1, 2014; January 1, 2013; August 1, 2012; August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; October 1, 2006; August 1, 2006; May 1, 2006; February 1, 2006; June 1, 2005; October 1, 2004; Temporary Amendment Eff. August 1, 2018; Amended Eff. August 1, 2020; ~~August 1, 2019~~; August 1, 2019; Temporary Amendment Eff. September 25, 2020.

**TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 48 – BOARD OF PHYSICAL THERAPY EXAMINERS**

**Rule-making Agency:** Board of Physical Therapy Examiners

**Rule Citation:** 21 NCAC 48D .0107, .0109, .0111; and 48E .0101

**Effective Date:** September 25, 2020

**Date Approved by the Rules Review Commission:** September 17, 2020

**Reason for Action:** On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The World Health Organization, the Center of Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. Section 16 of Executive Order No. 116 temporarily waives licensure requirements for healthcare providers licensed in other states, territories, and the District of Columbia. The North Carolina Board of Physical Therapy Examiners seeks to help increase the pool of qualified healthcare providers who can provide assistance with a COVID-19 outbreak by creating an expedited process by which physical therapists and physical therapist assistants can be licensed. Furthermore, qualified physical therapists and physical therapist assistants will be essential in the rehabilitation process for many persons recovering from the residual effects of COVID-19.

**SUBCHAPTER 48D - EXAMINATIONS**

**21 NCAC 48D .0107 PERSONS REFUSED EXAMINATION PERMISSION**

(a) The Board shall refuse permission to take the examination to any person who:

- (1) Does not meet the requirements as set forth in the Physical Therapy Practice Act;
- (2) Furnishes false information to the Board on the application; or
- (3) Fails to furnish personal background information as required by these Rules.

(b) The Board and Federation have authority to approve an applicant's exam eligibility. ~~eligibility and may delegate its authority to the Federation. Upon delegation of said authority, the~~ The Board shall approve exam eligibility for foreign-trained applicants. The Federation shall grant exam eligibility for all other applicants as set forth in National Physical Therapy Examination policies, which are available free of charge at the Board office and at [www.fsbpt.org](http://www.fsbpt.org).

~~(b)(c)~~ (c) Any applicant who is refused permission to take the examination shall be entitled to petition the Board for a contested case hearing pursuant to Subchapter 48G, Section .0500 of this Chapter.

(d) Any applicant who is refused permission to take the examination by the Federation has the option to appeal using the policies set forth in Paragraph (b) of this Rule.

History Note: Authority G.S. 90-270.92; 90-270.95; 90-270.97; ~~90-270.100~~; 90-270.103; Eff. February 1, 1976; Readopted Eff. September 30, 1977;

*Amended Eff. December 1, 2006; August 1, 2002; December 30, 1985;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018; 2018;*  
*Temporary Amendment Eff. September 25, 2020.*

**21 NCAC 48D .0109 RETAKING EXAMINATION**

(a) Arrangements for Retake. To retake the examination, the applicant shall notify the Board in writing, and pay the retake fee as specified in 21 NCAC 48F ~~.0102~~ .0102. The examination cost as set forth by the Federation (www.fsbpt.org) is hereby incorporated by reference and includes subsequent amendments and editions. ~~A copy of the retake application may be obtained from the Board's website at no charge.~~ If the Federation approves exam eligibility, the Federation shall administer the retake process according to NPTE policies, which may be found at www.fsbpt.org.

~~(b) Retake Examination. The Board shall administer a particular form of the examination to an applicant only one time.~~

~~(c)~~(b) Limitations. An applicant shall be limited to taking the examination the number of times allowed by the Federation as indicated on the Federation's website (www.fsbpt.org).

*History Note: Authority G.S. 90-270.92; 90-270.95; 90-270.97; 90-270.100;*  
*Emergency Regulation Eff. July 23, 1979, for a period of 120 days to expire on November 20, 1979;*  
*Made Permanent Eff. November 20, 1979;*  
*Amended Eff. February 1, 2015; February 1, 1996; November 1, 1993; August 1, 1988; May 1, 1988;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018; 2018;*  
*Temporary Amendment Eff. September 25, 2020.*

**21 NCAC 48D .0111 APPLICANTS WITH SPECIAL NEEDS**

Examination candidates who need special accommodations for the examination as a result of a medical or physical ~~dysfunction~~ disability shall file an Accommodation Request Form and supporting documentation with the ~~executive director~~ Executive Director at least 60 days before the examination date in order for the request to be considered by the Board. If the Federation grants

exam eligibility, the accommodation request shall be made pursuant to Federation testing accommodation policy, which may be found at www.fsbpt.org.

*History Note: Authority G.S. 90-270.92; P.L. 101-336; Eff. October 1, 1995;*  
*Amended Eff. February 1, 1996;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018; 2018;*  
*Temporary Amendment Eff. September 25, 2020.*

**SUBCHAPTER 48E - APPLICATION FOR LICENSURE**

**SECTION .0100 - REQUIREMENTS**

**21 NCAC 48E .0101 FILING APPLICATION AND BOARD DETERMINATION OF EXAM ELIGIBILITY**

(a) An applicant for licensure shall ensure that his or her credentials are filed with the ~~executive director~~ Executive Director in accordance with the rules of this Subchapter.

~~(b) To be considered for a desired examination date,~~ Applicants pursuant to G.S. 90-270.97 the applicant shall submit all application requirements to the ~~executive director~~ Executive Director at least 30 days prior to the examination.

(c) The Board shall not approve an application until the applicant has graduated as defined by 21 NCAC 48A .0105(6).

*History Note: Authority G.S. 90-270.92; 90-270.95; 90-270.98(b);*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 30, 1977;*  
*Amended Eff. May 1, 1988; December 30, 1985; October 28, 1979;*  
*Recodified Paragraph (c) to 21 NCAC 48C .0501 Eff. January 25, 1989;*  
*Amended Eff. July 1, 2013; August 1, 1998; February 1, 1996;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;*  
*Amended Eff. May 1, 2020; 2020;*  
*Temporary Amendment Eff. September 25, 2020.*

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**RULES REVIEW COMMISSION**

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*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 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS**

**Appointed by Senate**

Jeanette Doran (Chair)  
Robert A. Bryan, Jr.  
Margaret Currin  
Jeff Hyde  
W. Tommy Tucker, Sr.

**Appointed by House**

Anna Baird Choi (1st Vice Chair)  
Andrew P. Atkins (2nd Vice Chair)  
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**

November 19, 2020	December 17, 2020
January 21, 2021	February 18, 2021

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**RULES REVIEW COMMISSION MEETING**

**MINUTES**

**September 17, 2020**

The Rules Review Commission met on Thursday, September 17, 2020 in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx. The Commissioners held a WebEx meeting to ensure compliance with Executive Orders limiting mass gatherings, and to encourage social distancing. The meeting was conducted in accordance with the provisions of G.S. 166A-19.24.

Commissioners Jeff Hyde and Tommy Tucker were present in the Commission Room, and Commissioners present via teleconference were Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Randy Overton, and Paul Powell.

Staff members present were Commission Counsel Ashley Snyder and Amanda Reeder; and Julie Brincefield and Alex Burgos. Commission Counsel Amber Cronk May and Karlene Turrentine were present via WebEx.

The meeting was called to order at 9:01 a.m. with Chairman Hyde presiding.

The Chair read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearance of conflicts of interest.

**APPROVAL OF MINUTES**

The Chair asked for any discussion, comments, or corrections concerning the minutes of the August 20, 2020 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

The Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Follow-up matters for the State Board of Education Tabs F,G,H, and I.

**FOLLOW UP MATTERS**

**Crime Victims Compensation Commission**

14B NCAC 09 .0303 and .0304 - The agency is addressing the objections from the June meeting. No action was required by the Commission.

**Private Protective Services Board**

14B NCAC 16 .1001, .1002, .1003, .1207, .1304, and .1404 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

**Environmental Management Commission**

15A NCAC 02D .0530 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

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, .0531, .0532, .0533, .0534, .0535, .0536, .0537, .0538, .0539, .0541, .0542, .0543, .0544, and .0615 - The agency is addressing the technical change requests from the August meeting. No action was required by the Commission.

**Environmental Management Commission**

15A NCAC 02D .0932, .0960, .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, and .2615 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

15A NCAC 02D .0901, .0902, .0903, .0906, .0909, .0912, .0918, .0919, .0922, .0923, .0924, .0925, .0926, .0927, .0928, .0930, .0931, .0933, .0935, .0937, .0943, .0944, .0945, .0947, .0948, .0949, .0951, .0952, .0955, .0956, .0957, .0958, .0959, .0961, .0962, .0963, .0964, .0965, .0966, .0967, and .0968 - The agency is addressing the technical change requests from the August meeting. No action was required by the Commission.

**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, and .1680 - The agency is addressing the technical change requests from the August meeting. No action was required by the Commission.

**State Board of Education**

16 NCAC 06B .0111 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

Upon the call of the Chair, the Commission objected to 16 NCAC 06B .0112, .0113, and .0114 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

The Commission objected to 16 NCAC 06B .0112 for ambiguity. This Rule requires LEAs to purchase school buses “that meet the safety specifications listed in the request for bids for the statewide term contracts.” It is unclear to what the safety requirements are since they are not specified in the rule.

The Commission objected to 16 NCAC 06B .0113 for lack of statutory authority, clarity, and necessity. Licensure requirements for activity bus drivers are set in G.S. 20-218(a), making this Rule unnecessary.

Activity bus licensure requirements are explicitly governed by G.S. 20-218(a) under the authority of the DMV. The statutes provided in the history note allow the State Board of Education to regulate school buses and school bus drivers but make no mention of authority over activity buses. Activity buses are specifically referred to in other Education statutes. E.g. G.S. 115C-247; 115C-248; 115C-255. In DMV’s statutes, “school bus” and “school activity bus” are separate defined terms. No authority was provided for the State Board of Education to set licensure requirements for activity bus drivers.

The Commission also objected for lack of clarity because the term “school related activity” in Paragraphs (b) and (c) is not defined.

Additionally, the Commission objected to 16 NCAC 06B .0114 for lack of clarity and necessity. If the “vehicle inspection training and certification requirements” are “mandated by the Department of Public Instruction” and not the State Board of Education, it is unclear why this Rule is necessary. Further, it is unclear what the “vehicle inspection training and certification requirements” are or where those requirements can be found. It seems the standards are set by DPI, but it is further unclear whether that authority has been delegated by the State Board. The agency did not respond to follow-up technical change requests for this Rule to provide clarity in advance of the Commission meeting.

**State Board of Education**

16 NCAC 06C .0334, .0335, .0336, .0337, .0338, .0339, .0340, .0341, .0342, .0344, .0345, .0346, .0349, .0350, .0351., .0352, .0353, .0354, .0357, .0358, .0359, .0360, .0361, .0362, .0363, .0364, .0365, .0366, .0367, .0369, .0370, .0371, .0372, .0373, .0374, .0375, .0376, .0378, .0379, .0380, .0381, .0382, .0383, .0384, .0385, .0386, .0387, .0388, .0389, .0390, .0391, .0392, .0393, .0394, .0395, .0396, and .0397 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

16 NCAC 06C .0343, .0347, .0348, .0355, .0356, .0368, .0377, and .0701 were withdrawn at the request of the agency. No action was required by the Commission.

**State Board of Education**

Prior to the review of the rules from the State Board of Education 06G, Chairman Hyde recused himself and did not participate in any discussion or vote concerning these Rules because he is a member of two North Carolina Charter School Boards and the rules pertain to charters.

The Commission considered Subchapters 06D, 06E, and 06G separately.

Upon the call of the Chair, the Commission objected to 16 NCAC 06D .0211, .0212, .0307, .0308, .0309, .0310, and .0311 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

16 NCAC 06D .0313 was withdrawn at the request of the agency. No action was required by the Commission.

The Commission objected to 16 NCAC 06D .0211 for failure to comply with the APA, ambiguity, and lack of necessity. The rule refers to an “Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina.” In Item (1), the rule states the Invitation provides “the required procedures for submission, evaluation, and adoption of textbooks and a schedule for the process.” The Invitation also includes the “criteria used to evaluate textbooks presented for adoption for their conformity to the North Carolina Standard Course of Study.” These contents meet the definition of a “rule” in G.S. 150B-2(8a). Referring to the Invitation rather than stating its contents in rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the Invitation outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide these procedural requirements in rule also makes the process for submitting and evaluating textbooks unclear. Therefore, the Commission objected for failure to comply with the APA and ambiguity.

The Commission also objected to Item (2) for lack of necessity. Item (2) directs the General Counsel of the State Board to “review and approve” the Invitation. This statement concerns only the internal management of the agency and is therefore unnecessary. G.S. 150B-2(8a)(a).

The Commission objected to 16 NCAC 06D .0212 for failure to comply with the APA, ambiguity, and lack of necessity. The rule refers to an “Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina.” In Paragraph (b) the rule states “Publishers are required to follow the procedures set forth in the invitation. Failure to comply with all procedure, including stated deadlines, may result in disqualification.” Subparagraph (d)(3) states the Invitation includes the “procedure for reconsideration.” These procedures meet the definition of a “rule” in G.S. 150B-2(8a). Referring to the Invitation rather than stating its contents in rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the Invitation outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide these procedural requirements in rule also makes the process for submitting and evaluating textbooks unclear. Therefore, the Commission objected for failure to comply with the APA and ambiguity.

Additionally, the Commission objected to 16 NCAC 06D .0212(a) for lack of necessity because it repeats the requirements of G.S. 115C-94.

The Commission objected to 16 NCAC 06D .0307 for lack of necessity, clarity, and statutory authority. The Rule is unnecessary because it repeats portions of 16 NCAC 06D .0302, an existing permanent rule.

The Commission objected to Paragraph (f) for lack of statutory authority. The proposed rule requires LEAs to report scores on districtwide and statewide standardized tests “within thirty (30) days from generation of the score at the LEA level or receipt of the score and interpretive documentation from the NCDPI.” However, G.S. 115C-174.15 requires scores for local tests be provided within 30 days of administration.

16 NCAC 06D .0307 also contained unclear or undefined terms including “secure tests,” “improper administration,” and other unclear terms as set forth in the requests for technical changes. As a result, the Commission objected for lack of clarity.

The Commission objected to 16 NCAC 06D .0308 for lack of necessity and clarity. The proposed rule is unnecessary because it repeats 16 NCAC 06D .0303, an existing permanent rule. The rule is also unclear due to ambiguous or undefined terms including “accountability measures,” “North Carolina Testing Program,” “proper,” and “appropriate.”

The Commission objected to 16 NCAC 06D .0309 for lack of necessity, clarity, and statutory authority. The proposed rule is unnecessary and unclear because it repeats or conflicts with 16 NCAC 06D .0305, an existing permanent rule. The Commission further objected for lack of clarity due to unclear terms including “eligible students,” “alternative assessments,” “Occupational Course of Study,” “immediately,” and other unclear or undefined terms as detailed in the requests for technical changes.

Additionally, the Commission objected for lack of statutory authority to Paragraphs (d), (j), and (k). The agency did not provide, and Commission staff was not able to locate statutory authority for these Paragraphs.

The Commission objected to 16 NCAC 06D .0310 for lack of clarity. As written, it is unclear what purposes are “approved by the Division of Accountability Services and the State Board of Education” for use of State tests.

The Commission objected to 16 NCAC 06D .0311 for lack of necessity, clarity, and compliance with the APA. The proposed rule is unnecessary because it repeats portions of 16 NCAC 06D .0306, an existing permanent rule.

Additionally, the Commission objected to Paragraph (k) for lack of clarity and failure to comply with the APA. The rule requires teachers to provide instruction that “meets or exceeds the state-adopted curriculum standards.” The curriculum standards appear to be part of the “Standard Course of Study governed by G.S. 115C-81.5. The Commission is not aware of any authority for the Board to adopt curriculum standards outside the rulemaking process. Without the curriculum standards set in rule, the agency can amend the standards outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide these requirements in rule also makes the requirement for teachers to “provide instruction that meets or exceeds the state-adopted curriculum standards” unclear as written. Therefore, the Commission objected to (k) for failure to comply with the APA and lack of clarity.

The Commission further objected to 16 NCAC 06D .0311 for lack of clarity because it is unclear under what circumstances the rule applies. This Rule sets forth a “testing code of ethics,” but it is unclear whether the requirements of this Rule apply to all standardized tests, final exams, EOCs, or all tests. This Rule also contains unclear terms including “secure,” “immediately,” “proper,” “eligible students,” “fairly,” and other unclear or undefined terms as detailed in the requests for technical changes.

Apart from submission of a revised rule for 16 NCAC 06D .0310, the agency did not respond to technical change requests to clarify terms or questions of statutory authority in advance of the Commission meeting.

16 NCAC 06E .0204 and .0206 – The Commission objected to these Rules in August. The agency is in the process of repealing repetitive or conflicting existing permanent rules. No action was required of the Commission.

Upon the call of the Chair, the Commission objected to 16 NCAC 06E .0107 by roll-call vote, ayes - 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

The Commission objected to 16 NCAC 06E .0107 for failure to comply with the APA and ambiguity. In Paragraph (a), the rule requires the information listed in this Rule to be reported “in conformity with the State’s Uniform Education Reporting System (UERS).” The Commission is not aware of and the agency has not provided any authority exempting the UERS

from the rulemaking process. Referring to requirements outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the UERS outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. The reporting requirements are also unclear since those requirements are not set in rule. Therefore, the Commission objected for failure to comply with the APA and ambiguity.

The Commission also objected on clarity grounds because the rule requires LEAs to report crimes and offenses identified by statute to the State Board of Education, but the statutes listed in (a)(4), (a)(5), and the first statute in (a)(6) have been recodified. Additionally, (a)(21) lists G.S. 14-50.16, but that statute was repealed in 2017. As a result, the reporting requirements tied to these statutes are unclear as written.

Paragraph (b) is also unclear since it states “failure to follow reporting requirements under this provision may justify disciplinary action. . . .” As written, it is unclear when a failure to report will “justify disciplinary action.”

The agency did not respond to technical change requests to clarify terms or statutory references in advance of the Commission meeting.

First Vice-Chair Doran presided over the discussion and vote on the State Board of Education rules in Subchapter 06G.

Upon call of the First Vice Chair, 16 NCAC 06G .0504, .0510, .0511, .0512, .0513, .0514, .0515, .0516, .0523, and .0524 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Dunklin, Overton, Powell, and Tucker – 8. Voting in the negative: None.

Upon call of the First Vice-Chair, 16 NCAC 06G .0314, .0315, .0316, .0503, .0505, .0506, .0507, .0508, .0509, .0514, .0517, .0518, .0519, .0520, .0521, and .0522 were objected to by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Dunklin, Overton, Powell, and Tucker – 8. Voting in the negative: None.

The Commission objected to 16 NCAC 06G .0314 for lack of statutory authority and clarity. Based on the text of Paragraph (c), alternative schools are allowed to select an accountability model from the list in (c)(1)-(3). Subparagraph (c)(1) says, “Alternative schools can participate in School Performance Grades as defined by G.S. 115C-83.15...” (emphasis added). Subparagraphs (c)(2) and (c)(3) then provide alternative options to the “School Performance Grades” model in G.S. 115C-83.15. However, 115C-12(24) requires the State Board to evaluate alternative learning programs “through the application of the accountability system developed under G.S. 115C-83.15 and G.S. 115C-105.35.” The State Board is granted authority to modify the system in G.S. 115C-83.15, but the Commission has not found authority for the agency to provide different accountability models. Therefore, the Commission objected for lack of statutory authority.

Subparagraph (c)(3) allows an alternative school to propose its own accountability model subject to approval by the State Board of Education. The rule does not specify under what circumstances the alternative model may be approved or what factors the State Board will consider when evaluating the alternative model. Paragraph (d) is also unclear because it uses undefined terms including “significantly,” “appropriate,” and “eligible students.” Therefore, the Commission objected for lack of clarity.

The Commission objected to 16 NCAC 06G .0315 for lack of clarity because it is unclear whether this Rule applies to charter schools, alternative schools, or all public schools. The Rule is also unclear due to undefined terms including “eligible students,” “state assessment program,” “appropriate,” “alternative assessment,” and other undefined terms as listed in the requests for technical changes.

The agency did not respond to technical change requests for 16 NCAC 06G .0315 to clarify terms in advance of the Commission meeting.

The Commission objected to 16 NCAC 06G .0316 for failure to comply with the APA and ambiguity. Item (3) refers to “procedures stated in SBE Policy ADVS-002 (Appointments to Advisory Committees to the State Board of Education).” Referring to Board policy circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the policy outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Since the contents of this policy are not in rule, requiring compliance with procedures in the policy makes the requirements of this rule unclear. Therefore, the Commission objected for failure to comply with the APA and ambiguity.

The Commission also objected on grounds of ambiguity because it is unclear under what circumstances the agency will deem other issues “appropriate” for discussion in (1)(f) and which “field tests(s)/special studies” are being referenced in Item (2).

The Commission objected to 16 NCAC 06G .0503 for failure to comply with the APA and ambiguity. The Rule requires “eligible students” take State-required assessments mandated by law or “State Board of Education policy.” Requiring assessments in policy instead of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the policy outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to either list the required assessments in this Rule or cross-reference another rule listing the required assessments makes it unclear which assessments are mandated by the State Board of Education.

The Commission also objected for ambiguity because the rule does not define “eligible student,” making it unclear who is required to take these assessments. It is further unclear which “accountability measures” charter schools are required to follow as part of the “Every Student Succeeds Act Consolidated State Plan.” It is possible these are federal requirements that could be incorporated by reference in accordance with G.S. 150B-21.6, but since the agency has failed to do so here, the rule is ambiguous as written.

The Commission objected to 16 NCAC 06G .0505 for failure to comply with the APA and ambiguity. The rule provides that charter schools shall be placed on financial noncompliance status if a financial condition in (b)(1)-(6) occurs. Subparagraph (b)(1) refers to the “Uniform Education Reporting System (UERS)” which appears to set data reporting requirements. The Commission has not found an exemption from the APA for the UERS. Referring to requirements outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update the UERS outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. The reporting requirements for charter schools are also unclear since those requirements are not set in rule. As a result, the Commission objected for failure to comply with the APA and ambiguity.

The Commission also objected for ambiguity. Paragraph (c) states, “funds may be frozen...until the exception is corrected.” The rule does not clarify under what circumstances funds may or may not be frozen. The rule also does not specify how the agency determines which level of financial noncompliance in Paragraph (e) to assign a charter school. Additionally, the rule contains undefined terms including “financial insolvency or weakness” in (b)(3) and “immediately” in (c), (e)(3)(A), and (f).

The Commission objected to 16 NCAC 06G .0506 for ambiguity and failure to comply with the APA. In Paragraph (a), the rule provides that charter schools “may” be placed on governance noncompliance status if a condition in (a)(1)-(3) occurs. The rule does not clarify under what circumstances a condition in the list results in noncompliance status nor does it specify how the agency determines which level of noncompliance status in Paragraph (b) to assign a charter school.

Part (a)(3)(B) requires compliance with “Health and Safety Standards” and “State Board of Education Policy.” Referring to requirements established outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to update policies outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. These requirements are also unclear since those requirements are not set in rule. Therefore, the Commission objected to Part (a)(3)(B) for failure to comply with the APA and ambiguity.

Additionally, the Commission objected to the inclusion of several undefined terms or requirements including “failure to have a functioning board” in (a)(1); “regular meetings” in (a)(1); “inability to show progress” in (a)(2); and “immediately” in (b)(3), making the rule ambiguous.

The Commission objected to 16 NCAC 06G .0507 for lack of clarity. The rule governs the charter school renewal process, and the review is based upon “whether the charter is meeting expected academic, financial, and governance standards.” The agency’s responses in technical change requests indicate information not included in (b) is considered when reviewing a charter school renewal. Therefore, it is unclear what information is considered by the State Board when reviewing a renewal request.

Additionally, the academic standards referenced in 16 NCAC 06G .0507 are unclear. The financial standards are identified in Rule .0505 of this Section and the governance standards are identified in Rule .0506 of this Section. Based on technical change responses, the academic standards are set as part of the original charter application in G.S. 115C-218.1(b)(2). However, that that is not clear in the rule as submitted. Therefore, the Commission objected for lack of clarity.

The Commission objected to 16 NCAC 06G .0508 for failure to comply with the APA and numerous instances of ambiguity that make the rule as a whole difficult to understand.

The Commission objected to Subparagraph (a)(1) for referring to a fee established outside the rulemaking process. The definition of a “rule” in 150B-2(8a) specifically includes the establishment of a fee, meaning setting the dollar amount in the rule. Additionally, 115C-218.1(c) requires the State Board to adopt the application fee “in accordance with Article 2A of Chapter 150B.” Since the fee amount is established outside of rule, the Commission objected to Subparagraph (a)(1) for failure to comply with the APA and ambiguity since the amount of the fee is unknown.

The Commission also objected to Paragraph (a) for failure to comply with the APA and ambiguity. Subparagraph (a)(1) states, “Prior to each application round, the State Board of Education shall approve the application process, timeline, and non-refundable fee.” Establishing the application and timeline outside of rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this Rule would allow the agency to change the application process and timeline before each application round, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Subparagraphs (a)(2)-(4) refer back to the timeline and “application instructions” established outside the rulemaking process in (a)(1). Since the application process and timeline are established outside of rule, the requirements in Paragraph (a) are unclear and the Commission objected for failure to comply with the APA and ambiguity.

Parts (b)(1)(C) and (D) set application requirements that are ambiguous. It is unclear how applications are evaluated or what factors may be considered to determine whether an application “contains viable governance, business, and education plans.” It is also unclear what “other requirements” are required by the agency. Therefore, the Commission objected to Parts (b)(1)(C) and (D) for ambiguity.

Additionally, the Commission objected to Paragraph (c) for ambiguity for use of the following terms or phrases, which are undefined or unclear as written: “capability to provide comprehensive learning experiences” in (c)(2); “promotes innovation” in (c)(3)(B); “large,” “diverse” and “locally-based” in (c)(3)(D); “accurately” in (c)(3)(F); and “diverse learning environment” in (c)(3)(I). It is further unclear how Paragraph (c) interacts with G.S. 115C-218.5, which governs the State Board’s final approval of applications for charter schools. Therefore, the Commission objected to Paragraph (c) for ambiguity.

The Commission objected to 16 NCAC 06G .0509 for failure to comply with the APA and ambiguity. In (a), the rule requires completion of “all of the planning program requirements.” Incorporating or referring to requirements established outside the rulemaking process set forth in G.S. 150B-21.2 would allow the agency to change the requirements of the planning year outside the rulemaking process, changing the substance of this Rule without public notice, comment, or review by the Rules Review Commission. Additionally, Paragraph (a) requires a meeting about “policies and procedures.” It is unclear which policies and procedures the rule is referring to and whether these policies fall within the definition of a “rule.” Therefore, the Commission objected to Paragraph (a) for failure to comply with the APA and ambiguity.

The Commission also objected for lack of clarity due to undefined terms or phrases including: “clear and compelling need” in (b)(1); “exceptional need” in (b)(2); “unique mission” in (c)(1); “successful” in (b)(4); “obstacles to educational reform efforts” in (c)(5); “successful charter school board” in (c)(6); and “application due date” in (d).

The Commission objected to 16 NCAC 06G .0514 for lack of clarity. It is unclear under what circumstances the State Board of Education “may impose reasonable additional requirements” during review, application, and approval process of fast track replication of high-quality charters. It is also unclear what the additional requirements may be or how the State Board will determine what to require.

The Commission objected to 16 NCAC 06G .0517-.0522 for lack of statutory authority. Rules .0517-.0522 of this Section govern “alternative charter schools.” Alternative schools and charter schools are different types of public schools. Alternative schools are governed by G.S. 115C, Article 8C and Charter schools are governed by G.S. 115C, Article 14A. Alternative schools primarily serve at-risk students. It is unclear whether the Board has authority to regulate a school as both an alternative school and a charter school. Charter schools can emphasize serving at-risk students as provided in G.S. 115C-218(a)(2). It is unclear what statutory authority the agency has to regulate a charter school targeted toward at-risk students as both a charter school and an alternative school.

Statutes governing alternative schools refer to “local school administrative units.” Charter schools are generally exempt from statutes governing local school administrative units pursuant to G.S. 115C-218.10. Therefore, the Commission could not confirm statutory authority exists for Rules .0517-.0522 of this Section.

The Commission objected to 16 NCAC 06G .0517 for lack of necessity and clarity. The rule begins, “Unless otherwise prohibited by federal or state law...,” without referencing any federal laws or regulations in the body of the Rule or the history note. Therefore, the Commission is unsure which federal laws may apply and objects for lack of clarity.

The rule also states “The purpose of the following rules is to establish the criteria for eligibility and the procedures for applying for this designation [as an alternative school].” The criteria for eligibility and application requirements are included in Rules 16 NCAC 06G .0518 and .0519. This amounts to a general purpose statement and does not meet the definition of a “rule” in G.S. 150B-2(8a). Therefore, the Commission objected for lack of necessity.

The Commission objected to 16 NCAC 06G .0519 for failure to comply with the APA and ambiguity. Subparagraph (a)(2) refers to accountability options in the “Department of Public Instruction’s School Based Management and Accountability Program under 115C-105.20.” Referring to the “Management and Accountability Program” rather than stating the accountability options in rule circumvents the permanent rulemaking process set forth in G.S. 150B-21.2. As written, this allows the agency to amend the Program outside the rulemaking process, changing the substance of this Rule without public notice, comment, or RRC review. Failure to provide the options in rule also make the meaning of this Rule unclear. Therefore, the Commission objected for failure to comply with the APA and ambiguity.

The Commission also objected to Paragraph (b) for ambiguity for use of the undefined term “well-defined.”

Tom Ziko, General Counsel with the agency, addressed the Commission.

Prior to the review of the rules from the State Board of Education 06G, Chairman Hyde recused himself and did not participate in any discussion or vote concerning these Rules because he is a member of two North Carolina Charter School Boards and the rules pertain to charters.

Chairman Hyde resumed presiding over the meeting.

#### **State Board of Education**

16 NCAC 06H .0114 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

Upon the call of the Chair, the Commission objected to 16 NCAC 06H .0113, .0115, .0116, and .0117; 06K .0101, .0103, .0104, and .0105 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

The Commission objected to 16 NCAC 06H .0113 for lack of statutory authority, clarity, and necessity, as well as failure to comply with the APA. Specifically, in Subparagraph (a), the rule states that the meals shall be “consistent with the current edition of the Dietary Guidelines for Americans, Federal Regulations as approved for North Carolina and State Board of Education Policy on Nutrition Standards for School Meals.” The rule does not provide any additional information on the Dietary Guidelines, including how those guidelines are created, who created it, and where it can be found. The rule further does not address what federal regulations will apply, and it does not address who will approve them. Thus, this is unclear as written.

Additionally, in Subparagraph (a)(1), the agency refers to the “State Board Education Policy on Nutrition Standards for School Meals.” The Commission found that the agency cannot refer in rule to a policy that it created without violating the APA, as the policy can change without going through notice and comment, and the effect of the rule would change. Further, policies are not rules, as set forth in G.S. 150B-2(7a). Thus, as written, the rule violates the APA. In (b)(7), the rule refers to allowing foods found in the “Food Buying Guide for Child Nutrition Programs” with no additional information of what this is or who created it. The Commission found this standard to be ambiguous as written.

In (c)(1), the rule refers to meeting “meal pattern requirements specified by the US Department of Agriculture” but does not include what those requirements are, nor where they can be located. The Commission found this language to be ambiguous as written. Paragraph (d) of the rule states that the nutrition standards (presumably, meaning this Rule) must be implemented for all elementary schools no later than the first day of the 2008 school year. However, G.S. 115C-264.3 required achievement by the end of the 2009-2010 school year. The Commission found that the agency does not have authority of to set an earlier effective date than that required by statute. Further, as the deadline in this Paragraph passed 12 years ago, the Commission found that this language was also unnecessary.

In Paragraph (e), the rule says that the staff of DPI will review the nutrition standards and, “modify the standards as needed based on several criteria, including, but not limited to, current science, best practices in the food and beverage industry, and the availability and affordability of new foods and beverages.” The rule does not address what constitutes “current science” nor “best practices in the food and beverage industry.” Further, there is no indication on what the phrase “availability and affordability” mean in this Rule. Therefore, the Commission found that this language was ambiguous as written.

In Paragraph (h), the rule states that students with special nutritional needs “shall be exempt from the standards.” The Commission found it was unclear whether the intent of this Rule was to govern programs or individual students.

The Commission objected to 16 NCAC 06H .0115 for ambiguity. The Commission found that the Rule included several ambiguous terms, such as “official policy manual” in Paragraph (a), “understandable and uniform format” in Subparagraph (a)(7), and “brief” in Part (a)(7)(A). The agency did not respond to technical change requests to clarify these terms in advance of the Commission meeting.

The Commission objected to 16 NCAC 06H .0116 for ambiguity. The Commission found that the rule included several ambiguous terms, such as “other supporting documents” in Paragraph (c) and “understandable and uniform format” in Subparagraph (e)(3). The agency did not respond to technical change requests to clarify these terms in advance of the Commission meeting.

The Commission objected to 16 NCAC 06H .0117 for ambiguity and failure to comply with the APA. Specifically, the rule states that the Department shall reclaim or withhold funds for failure to comply with “state policies” until compliance occurs. The Commission found that the rule does not say what policies it is referring to and is therefore ambiguous as written. Further, the Commission found that even if the rule did name those policies, pursuant to the APA, policies cannot be used in a rule to control actions taken by the agency. Therefore, as written, the rule violates the APA.

The Commission objected to 16 NCAC 06K .0101 for ambiguity. Specifically, the Commission found the term “Education Services for Deaf and Blind Schools” was unclear, and that the agency did not seem to be setting any standards within the rule. The agency did not respond to technical change requests to clarify the term in advance of the Commission meeting.

The Commission objected to 16 NCAC 06K .0103 for lack of clarity and statutory authority. Specifically, the Commission found that the terms “Education Services for the Deaf and Blind,” “NC Standard Course of Study,” “Extended Course Standards,” and “Occupational Course of Study” unclear as written. Additionally, the rule provides that these courses will be used for subjects “when a standard is provided” but does not state when this will occur nor who will provide them. Therefore, the rule is ambiguous as written.

Further, the Commission found that G.S. 115C-85 requires the agency to adopt a standard course of study. The agency did not provide any authority for that adoption to be done outside of rulemaking. The Commission found that the agency lacked statutory authority to do so.

The Commission objected to 16 NCAC 06K .0104 for lack of statutory authority, clarity, and necessity. Specifically, the Commission found the following terms within the Rule to be ambiguous as written: “Education Services for the Deaf and Blind,” “Standard Course of Study,” “Occupational Course of Study,” and “Extended Content Standards.” The Rule does not state what these standards entail. Further, the Commission found that the agency provided no authority to establish these standards outside of rulemaking.

Paragraph (a) of the rule refers to being consistent with “federal regulations” but does not state which regulations it is referring to. The Commission found this language was ambiguous as written.

Further, the Commission found that the rule contains statements that are not regulating any matters, but appear to be asides or suggestions, such as in Paragraph (b), “It is important that the school representative has authority...”; in Paragraph (d), “(Schools should consider...)”; and in Paragraph (f), “[T]he EDSB school representative should take a copy”. As written, these phrases do not convey a mandate and therefore are not, “reasonably necessary to implement or interpret an act of the General Assembly” as required by G.S. 150B-21.9(a)(3).

The Commission objected to 16 NCAC 06K .0105 lack of clarity and statutory authority. Specifically, the Commission found the terms “unauthorized weapon” in Paragraph (a) to be unclear. Further, the rule defines “weapon” in Paragraph (b) to include a “BB gun, stun gun, air rifle, and air pistol.” However, G.S. 14-269.2, which is cited to by the agency in the rule, states that these are exempt from the definition of the term. The agency did not provide any authority to change the statutory definition, and the Commission found that the agency is without authority to do so.

In addition, in Part (c)(2)(B), the rule creates an exception for those individuals allowed to carry weapons on the premises. That list partially captures the list of exemptions in G.S. 14-269.2(g), but does not include all of those individuals. The agency did not provide any authority to change the statutory exemptions, and the Commission found that the agency is without authority to do so.

The agency did not respond to technical change requests to clarify these terms and questions of statutory authority in advance of the Commission meeting.

Danice Henderson with Kinetic Minds, LLC, addressed the Commission.

Eskabonna Henderson with Kinetic Minds, LLC, addressed the Commission.

### **LOG OF FILINGS (PERMANENT RULES)**

#### **Radiation Protection Commission**

10A NCAC 15 .1418 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

#### **Commission for Public Health 10A**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

#### **Criminal Justice Education and Training Standards Commission**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

#### **Coastal Resources Commission**

Upon the call of the Chair, the period of review was extended by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

#### **Wildlife Resources Commission**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

#### **Commission for Public Health 15A**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

#### **Board of Barber Examiners**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 8. Voting in the negative: None.

Prior to the review of the rules from the Board of Barber Examiners, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal advice on numerous issues to the Board.

#### **Board of Examiners of Fee-Based Practicing Pastoral Counselors**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

#### **Addictions Specialist Professional Practice Board**

Upon the call of the Chair, all rules except 21 NCAC 68 .0216, .0227, .0228, and .0708 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

The Commission objected to 21 NCAC 68 .0216 for lack of statutory authority. Paragraph (f) automatically subjects applicants to “sanctions” based on their criminal history. Depending on the crimes at issue, the rule requires applicants to wait a set number of years since the applicant has completed his or her sentence to be eligible for licensure.

G.S. 93B-8.1(b) prohibits occupational licensing boards from automatically denying licensure to an applicant based upon the applicant's criminal history. Instead, G.S. 93B-8.1(b1) requires occupational licensing boards to consider a list of factors prior to denying licensure. Additionally, the Board is required to make written findings and provide a copy of those findings to the applicant in order to deny an applicant licensure on the basis of his or her criminal history. Therefore, the Commission objected to the rule for lack of statutory authority.

The Commission objected to 21 NCAC 68 .0227 and .0228 for lack of statutory authority. Specifically, in .0227(a)(2) and .0228(a)(2), the Board states that applicants based on military service or status as a military spouse shall submit an application fee. Both rules list G.S. 93B-15.1 in their history notes. That statute was amended in 2017 to specifically forbid a licensing board from charging an application fee. Therefore, the requirement for these applicants to pay an application fee is beyond the statutory authority of the Board.

The Commission also objected to 21 NCAC 68 .0708 for lack statutory authority and necessity. Interventions in Article 3A hearings are already governed by G.S. 150B-38(f) and Rule 24 of the North Carolina Rules of Civil Procedure, making the contents of this Rule unnecessary. The rule also lacks statutory authority because the additional criteria added by the Board for permissive interventions in (b) are not contained in Rule 24. The agency has not provided authority to alter the requirements set in Rule 24.

**Building Code Council**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

**LOG OF FILINGS (TEMPORARY RULES)**

**Department of Commerce/Division of Employment Security**

04 NCAC 24G .0104 - Upon the call of the Chair, the rule was approved by roll-call vote, ayes 8, noes 1 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, and Powell – 8. Voting in the negative: Tucker - 1.

Regina Adams, with the agency, addressed the Commission.

**Wildlife Resources Commission**

15A NCAC 10D .0103 - Upon the call of the Chair, the rules was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

**Board of Physical Therapy Examiners**

21 NCAC 48D .0107, .0109, .0111; and 48E .0101 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Atkins, Bryan, Choi, Currin, Doran, Dunklin, Overton, Powell, and Tucker – 9. Voting in the negative: None.

21 NCAC 48B .0103 was withdrawn at the request of the agency. No action was required by the Commission.

**COMMISSION BUSINESS**

The Commission's Bylaws require that elections be held at the September meeting. The Commission waived its bylaws to allow the nomination of all candidates in one motion.

The following members were elected as officers:

Jeanette Doran was elected Chair.

Anna Choi was elected 1st Vice-Chair.

Andrew Atkins was elected 2nd Vice-Chair.

The meeting adjourned at 11:07 a.m.

The next regularly scheduled meeting of the Commission is Thursday, October 15, 2020 at 9:00 a.m.

\_\_\_\_\_  
Alexander Burgos, Paralegal

\_\_\_\_\_  
Minutes approved by the Rules Review Commission:  
Jeff Hyde, Chair

DRAFT

**Rules Review Commission Meeting September 17, 2020  
Held Via WebEx**

FirstName	LastName	Title	Company
Catherine	Rosfjord		
Mikel	mahalay	Mikel mahalay MD	sdigbvib
Jessica	Montie		NC DEQ DWM
Terry	Chappell		
Kirsten	Goshorn		law office
Lee	Cox	Chief	
Nadine	Pfeiffer	Rulemaking Coordinator	DHHS-DHSR
shane	smith	Branch Head	NC DHHS
Walker	Reagan	Rulemaking Coordinator	NC ABC Commission
dave	machado	Director	Office of Charter Schools
Dennis	Seavers	Executive Director	Board of Barber Examiners
Daniel	Krchnavek		
Jessica	Bullock		
Charminique	Williams	Rulemaking Coordinator	DOI
Alice	Isley		State of NC, DHHS
Robert	Cooke	Dr	NCFBPPC Board of Examiners
Kirby	Consier		
Scott	Shone		NCSLPH
Kirsten	Leloudis	Policy and Legal Specialist	DHHS
Christine	Ryan	General Counsel	DSHR
Carrie	Pickett	Rule Development Branch Engineer	DENR
Paris	Penny	Rulemaking Coordinator	DHHS
John	Barkley		
Larry	Michael		NC DOJ919
Virginia	Niehaus	Rulemaking Coordinator	DSHR
Thomas	Tomberlin		
Carl	Martin	Rulemaking Coordinator	DOI/Fire Marshall
Deanna	Townsend-Smith		
Burt	Jenkins	Chief Code Consultant	
Thomas	Ziko	Director of Board Operations and Policy	DPI
Bradley	Howard		
Carmella	Fair	Interim General Counsel	State Board of Education
LaTricia	Townsend	Chief, Wildlife Management Division	
Kathy	Arney	Rulemaking Coordinator	NCP Board
Claire	Porter		
Sherry	Thomas		
Les	Spell		NCBPTE
Tammy	Howard		Office of Charter Schools
Andrew	Sioberg	Director, EC Division	
Ashley	Baquero		Department of Public Instruction
Danice	Henderson	Program Director	Kinetic Minds, Inc.
Carrie	Ruhlman	Rule-making Coordinator	Wildlife Resources Commission
Joelle	Burleson	Rule-making Coordinator	DENR

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**RULES REVIEW COMMISSION**

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Deborah	Ragan	Rule-making Coordinator	NCP Board
Kevin	Harrison	Rule-making Coordinator	Wildlife Resources Commission
Eskabonna	Henderson	Director	Kinetic Minds, Inc.
Kim	Evans		
Jennifer	Everett	NC Board of PT Examiners Deputy Director	NC Board of PT Examiners
David	Gadd	Section Chief	NC DPI
Lou	Martin	Rule-making Coordinator	Department of Public Instruction
Regina	Adams	Rule-making Coordinator	Division of Employment Security

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**LIST OF APPROVED TEMPORARY RULES**

**September 17, 2020 Meeting**

**COMMERCE - EMPLOYMENT SECURITY, DIVISION OF**

Temporary COVID-19 Suitable Work Provisions 04 NCAC 24G .0104

**WILDLIFE RESOURCES COMMISSION**

Hunting on Game Lands 15A NCAC 10D .0103

**PHYSICAL THERAPY EXAMINERS, BOARD OF**

Persons Refused Examination Permission 21 NCAC 48D .0107

Retaking Examination 21 NCAC 48D .0109

Applicants With Special Needs 21 NCAC 48D .0111

Filing Application 21 NCAC 48E .0101

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**LIST OF APPROVED PERMANENT RULES**

**September 17, 2020 Meeting**

**RADIATION PROTECTION COMMISSION**

Records: Reports and Operating Requirements 10A NCAC 15 .1418

**PUBLIC HEALTH, COMMISSION FOR**

Newborn Screening 10A NCAC 42B .0102

Fees 10A NCAC 42B .0108

Submission Of Blood Specimens For Screening of Newborns 10A NCAC 43H .0314

**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

Minimum Standards for Criminal Justice Officers 12 NCAC 09B .0101

Responsibilities of the School Director 12 NCAC 09B .0202

Criminal Justice Instructor Training 12 NCAC 09B .0209

Certification of Instructors 12 NCAC 09B .0301

Criminal Justice Instructor Training Course 12 NCAC 09B .0410

Notification of Criminal Charges/Convictions 12 NCAC 09G .0302

Certification of Instructors 12 NCAC 09G .0307

Corrections Instructor Training Course 12 NCAC 09G .0313

Instructor Training 12 NCAC 09G .0414

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**PRIVATE PROTECTIVE SERVICES BOARD**

<u>Definitions</u>	14B NCAC	16	.1001
<u>Petition for Hearing/Application for Relief</u>	14B NCAC	16	.1002
<u>Processing Applications</u>	14B NCAC	16	.1003
<u>Credit for CE Courses</u>	14B NCAC	16	.1207
<u>Investigation for Unarmed Armored Car Service Guard Regis...</u>	14B NCAC	16	.1304
<u>Investigation/Armed Armored Car Service Guard Firearm Reg...</u>	14B NCAC	16	.1404

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Prevention of Significant Deterioration</u>	15A NCAC	02D	.0530
<u>Gasoline Truck Tanks and Vapor Collection Systems</u>	15A NCAC	02D	.0932
<u>Cargo Tank Leak Tester Report</u>	15A NCAC	02D	.0960
<u>Definitions</u>	15A NCAC	02D	.1401
<u>Applicability</u>	15A NCAC	02D	.1402
<u>Compliance Schedules</u>	15A NCAC	02D	.1403
<u>Recordkeeping: Reporting: Monitoring</u>	15A NCAC	02D	.1404
<u>Circumvention</u>	15A NCAC	02D	.1405
<u>Boilers and Indirect-Fired Process Heaters</u>	15A NCAC	02D	.1407
<u>Stationary Combustion Turbines</u>	15A NCAC	02D	.1408
<u>Stationary Internal Combustion Engines</u>	15A NCAC	02D	.1409
<u>Emissions Averaging</u>	15A NCAC	02D	.1410
<u>Seasonal Fuel Switching</u>	15A NCAC	02D	.1411
<u>Petition for Alternative Limitations</u>	15A NCAC	02D	.1412
<u>Sources not Otherwise Listed in this Section</u>	15A NCAC	02D	.1413
<u>Tune-Up Requirement</u>	15A NCAC	02D	.1414
<u>Test Methods and Procedures</u>	15A NCAC	02D	.1415
<u>New Electric Generating Units, Boilers, Combustion Turbin...</u>	15A NCAC	02D	.1418
<u>Large Internal Combustion Engines</u>	15A NCAC	02D	.1423
<u>Definitions</u>	15A NCAC	02D	.1701
<u>Applicability</u>	15A NCAC	02D	.1702
<u>Emission Standards</u>	15A NCAC	02D	.1703
<u>Test Methods and Procedures</u>	15A NCAC	02D	.1704
<u>Operational Standards</u>	15A NCAC	02D	.1705
<u>Compliance Provisions</u>	15A NCAC	02D	.1706
<u>Monitoring Provisions</u>	15A NCAC	02D	.1707
<u>Reporting Requirements</u>	15A NCAC	02D	.1708
<u>Recordkeeping Requirements</u>	15A NCAC	02D	.1709
<u>Compliance Schedule</u>	15A NCAC	02D	.1710
<u>Determination of Leak Tightness and Vapor Leaks</u>	15A NCAC	02D	.2615

**WILDLIFE RESOURCES COMMISSION**

<u>Dog Training and Field Trials</u>	15A NCAC	10B	.0114
<u>Totally Disabled License Eligibility</u>	15A NCAC	10G	.0601
<u>Records</u>	15A NCAC	10H	.1003
<u>Wildlife Conservation Land</u>	15A NCAC	10L	.0101
<u>Protection of Species on the Protected Animal List</u>	15A NCAC	10L	.0102

<u>Conservation of Priority Wildlife Habits</u>	15A NCAC	10L	.0103
<u>Wildlife Reserve</u>	15A NCAC	10L	.0104
 <b>PUBLIC HEALTH, COMMISSION FOR</b>			
<u>Definitions</u>	15A NCAC	18A	.2508
<u>Water Recreation Attractions</u>	15A NCAC	18A	.2543
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<u>School Bus Passengers</u>	16 NCAC	06B	.0111
<u>Definitions</u>	16 NCAC	06C	.0334
<u>NC Educator License for Area of Assignment</u>	16 NCAC	06C	.0335
<u>License Levels for a NC Educator License</u>	16 NCAC	06C	.0336
<u>Basic Entity Data to Apply for a NC Educator License</u>	16 NCAC	06C	.0337
<u>Licensure Transaction Checklist to Apply for a NC Educat...</u>	16 NCAC	06C	.0338
<u>Requirements to be Issued a Continuing Professional Licen...</u>	16 NCAC	06C	.0339
<u>Requirements to be Issued an Initial Professional License...</u>	16 NCAC	06C	.0340
<u>Requirements to be Issued a Residency License</u>	16 NCAC	06C	.0341
<u>Requirements to Add a Provisional Teaching Area to a Nort...</u>	16 NCAC	06C	.0342
<u>Requirements to be Issued a Provisional Student Services ...</u>	16 NCAC	06C	.0344
<u>Requirements to be Issued a Permit to Teach</u>	16 NCAC	06C	.0346
<u>Comparability for Out-of-State Licensure Exams</u>	16 NCAC	06C	.0349
<u>Duration of an Initial Professional License</u>	16 NCAC	06C	.0350
<u>Testing Requirements to Convert an Expired License</u>	16 NCAC	06C	.0351
<u>Testing Requirements to Convert a Lateral Entry License</u>	16 NCAC	06C	.0352
<u>Deadline for Licensure Testing Requirements</u>	16 NCAC	06C	.0353
<u>Effectiveness Data Requirements to Qualify for a Continui...</u>	16 NCAC	06C	.0354
<u>Teaching Experience Requirements to be Issued a NC Educat...</u>	16 NCAC	06C	.0355
<u>Requirements to be Issued an International Faculty License</u>	16 NCAC	06C	.0357
<u>Restrictions to be Issued an Alternative License</u>	16 NCAC	06C	.0358
<u>Restrictions for an Emergency License</u>	16 NCAC	06C	.0359
<u>Application Eligibility to be Issued a Lifetime License</u>	16 NCAC	06C	.0360
<u>Requirements for an Educator to be Placed on a Mandatory ...</u>	16 NCAC	06C	.0361
<u>Renewal Credit Requirements to Renew a Continuing Profess...</u>	16 NCAC	06C	.0362
<u>Renewal Credit Requirements to Renew a Continuing Profess...</u>	16 NCAC	06C	.0363
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<u>Procedure for Seeking Exception from Licensure Requirements</u>	16 NCAC	06C	.0378

<u>One-Year Extension Process for Coursework Requirements to...</u>	16 NCAC 06C .0379
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<u>Beginning Teacher Support Program Requirements</u>	16 NCAC 06C .0381
<u>Beginning Teacher Support Requirements</u>	16 NCAC 06C .0382
<u>Beginning Teacher Professional Development Plan</u>	16 NCAC 06C .0383
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<u>Standards that Determine Teacher Ratings</u>	16 NCAC 06C .0385
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<u>School Administrator Preparation Program Curriculum Requi...</u>	16 NCAC 06C .0387
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<u>Testing Requirements for Admission into an Educator Prepa...</u>	16 NCAC 06C .0392
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<u>Restrictions on the Authority of the State Board of Educa...</u>	16 NCAC 06C .0396
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<u>Management Organizations and Support Organizations</u>	16 NCAC 06G .0523
<u>Charter Schools Process for Assumption of Inadequately Pe...</u>	16 NCAC 06G .0524
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<u>Form Bar-3</u>	21 NCAC 06N .0104
<u>Form Bar-4</u>	21 NCAC 06N .0105
<u>Form Bar-5</u>	21 NCAC 06N .0106
<u>Form Bar-6</u>	21 NCAC 06N .0107
<u>Form Bar-8</u>	21 NCAC 06N .0109
<u>Form Bar-9</u>	21 NCAC 06N .0110
<u>Form Bar-11</u>	21 NCAC 06N .0112
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<u>Types</u>	21 NCAC 45 .0301
<u>Certification Renewal Form</u>	21 NCAC 45 .0401
<u>Reinstatement After Suspension</u>	21 NCAC 45 .0403

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<u>Verification</u>	21 NCAC 68 .0215
<u>Supervised Practicum for Criminal Justice Addictions Prof...</u>	21 NCAC 68 .0217
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<u>Applicant Hearing</u>	21 NCAC 68 .0221
<u>Ethics and Quality Assurance Inquiry</u>	21 NCAC 68 .0222
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<u>Credentialing Status Denied if Serving Sentence</u>	21 NCAC 68 .0224
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<u>Armed Services Extension for Credential</u>	21 NCAC 68 .0226
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<u>Application for Deemed Status by Professional Discipline</u>	21 NCAC 68 .0303
<u>Three-Year Standards Review of Deemed Status Standing</u>	21 NCAC 68 .0304
<u>Revocation of Credential When Change in Status</u>	21 NCAC 68 .0307
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<u>General Training Pre-Approval Guidelines</u>	21 NCAC 68 .0402
<u>In-Service Training Event</u>	21 NCAC 68 .0403
<u>Credit Denial or Limitation</u>	21 NCAC 68 .0404
<u>Sponsor Guidelines</u>	21 NCAC 68 .0405
<u>Procedures for Approval of Self-Study Courses</u>	21 NCAC 68 .0406
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<u>Non-Discrimination</u>	21 NCAC 68 .0502
<u>Competence</u>	21 NCAC 68 .0503
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<u>Remuneration</u>	21 NCAC 68 .0511
<u>Responsibilities of Supervisor to Supervisee</u>	21 NCAC 68 .0512
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<u>Complaint Procedures</u>	21 NCAC 68 .0602
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<u>Right to Hearing</u>	21 NCAC 68 .0702
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<u>Disqualification of Board Member</u>	21 NCAC 68 .0709

**BUILDING CODE COUNCIL**

<u>2018 NC Mechanical Code/Minimum Ventilation Rates</u>	Table 403.3.1.1
<u>2018 NC Energy Conservation Code/Application</u>	C401.2
<u>2018 NC Energy Conservation Code/Compliance</u>	R401.2
<u>2018 NC Residential Code/Appendices</u>	R102.5
<u>2018 NC Residential Code/Egress Door</u>	R311.2
<u>2018 NC Residential Code/Walkline</u>	R311.7.4
<u>2018 NC Residential Code/Winder Treads</u>	R311.7.5.2.1
<u>2018 NC Residential Code/Nosings</u>	R311.7.5.3
<u>2018 NC Residential Code/Height</u>	R312.1.2
<u>2018 NC Residential Code/Opening Limitations</u>	R313.1.3
<u>2018 NC Residential Code/Size and Height of Wood Studs</u>	Table R602.3(5)
<u>2018 NC Residential Code/Minimum Number of Full Height Ki...</u>	Table R602.7.5
<u>2018 NC Residential Code/Support by Steel Angle</u>	R703.8.2.1
<u>2018 NC Building Code/Minimum Number of Required Plumbing...</u>	2902.1
<u>2018 NC Building Code/Separate Facilities</u>	2902.2
<u>2018 NC Building Code/Small Occupancies</u>	2902.6
<u>2018 NC Plumbing Code/Minimum Number of Required Plumbing...</u>	Table 403.1
<u>2018 NC Plumbing Code/Separate Facilities</u>	403.2
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<u>2018 NC Fire Code/Fire Escape Stairs and Ladders</u>	1031.10
<u>2018 NC Existing Building Code/Marking</u>	405.6
<u>2018 NC Mechanical Code/Minimum Ventilation Rates</u>	Table 403.3.1.1
<u>2018 NC Energy Conservation Code/Application</u>	C401.2
<u>2018 NC Energy Conservation Code/Compliance</u>	R401.2
<u>2018 NC Residential Code/Appendices</u>	R102.5

<u>2018 NC Residential Code/Egress Door</u>	R311.2
<u>2018 NC Residential Code/Walkline</u>	R311.7.4
<u>2018 NC Residential Code/Winder Treads</u>	R311.7.5.2.1
<u>2018 NC Residential Code/Nosings</u>	R311.7.5.3
<u>2018 NC Residential Code/Height</u>	R312.1.2
<u>2018 NC Residential Code/Opening Limitations</u>	R313.1.3
<u>2018 NC Residential Code/Size and Height of Wood Studs</u>	Table R602.3(5)
<u>2018 NC Residential Code/Minimum Number of Full Height Ki...</u>	Table R602.7.5
<u>2018 NC Residential Code/Support by Steel Angle</u>	R703.8.2.1
<u>2018 NC Building Code/Minimum Number of Required Plumbing...</u>	2902.1
<u>2018 NC Building Code/Separate Facilities</u>	2902.2
<u>2018 NC Building Code/Small Occupancies</u>	2902.6
<u>2018 NC Plumbing Code/Minimum Number of Required Plumbing...</u>	Table 403.1
<u>2018 NC Plumbing Code/Separate Facilities</u>	403.2
<u>2018 NC Plumbing Code/Small Occupancies</u>	410.2
<u>2018 NC Fire Code/Fire Escape Stairs and Ladders</u>	1031.10
<u>2018 NC Existing Building Code/Marking</u>	405.6

**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](mailto: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 Bawtinhimer  
Tenisha Jacobs

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>Published</u>			
19	DOJ	06923	8/28/2020	Scott Thomas Pitts	v.	North Carolina Criminal Justice Education and Training Standards Commission	Sutton
20	DOJ	01467	8/31/2020	Trent Lackey	v.	North Carolina Sheriffs Education and Training Standards Commission	Sutton
19	DST	06915	8/6/2020	Dr. Robin P Gardner	v.	State of North Carolina Department of State Treasurer, Retirement Systems Division	Byrne
20	EHR	01275	8/19/2020	William C Hiatt	v.	NC Department of Environmental Quality Division of Water Resources	Sutton
20	INS	01234	8/3/2020	Scott R Lassiter	v.	North Carolina State Health Care Plan for Teachers and State Employees	Bawtinhimer
19	WTO	07049	8/27/2020	Travis Clarke	v.	North Carolina Water Treatment Facility Operators Certification Board	Byrne
				<u>Unpublished</u>			
20	ABC	02228	8/4/2020	NC Alcoholic Beverage Control Commission	v.	Moefo Inc T/A E Z Pass Tobacco and Vape	Lassiter
19	CSE	05908	8/14/2020	William Glasson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward

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19	CSE	05932	8/18/2020	Timothy James	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Culpepper
19	CSE	05966	8/18/2020	Robert R Abrams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Culpepper
19	CSE	06125	8/11/2020	Norman S Bowers	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
19	CSE	06362	8/14/2020	Robert Daniels	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	CSE	06590	8/21/2020	Richard E Stewart	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Lassiter
20	CSE	00138	8/13/2020	George Lorenzo Gilmore	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
20	CSE	01217	8/24/2020	Edward L Brooks	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	CSE	01429	8/3/2020	Corderro Antonio Cephas	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
20	CSE	01585	8/27/2020	Brian Iversen	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
20	CSE	01762	8/14/2020	Phillip Wynne Raulston	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
20	CSE	01832	8/10/2020	Mavin D Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	01912	8/11/2020	Larry Deron Smith(AR)	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
20	CSE	02007	8/31/2020	Raymond A Gibson Jr.	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	02229	8/12/2020	Antonio D Mock	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	02245	8/10/2020	Christopher T Charles	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Jacobs
20	CSE	02268	8/10/2020	Albert Bracey Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Jacobs
19	DHR	06865	8/27/2020	Alpha Concord of Greensboro HAL-041-082	v.	NC Dept of Health and Human Services, Division of Health Service Regulation, AdultCare Licensure Section	Byrne
19	DHR	06866	8/27/2020	Alpha Concord Plantation HAL-080-027	v.	NC Dept of Health and Human Services, Division of Health Service Regulation Adult Care Licensure Section	Byrne

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20	DHR	01773	8/21/2020	Keira Hinson	v.	NC Department of Health and Human Services	Lassiter
20	DHR	02026	8/10/2020	Sanida Pajic Sabanija	v.	NC Department of Health and Human Services	Malherbe
20	DHR	02031	8/21/2020	Kids-R-Us Preschool & Childcare Center LLC Wendy Kaye Mitchell	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Mann
20	DHR	02690	8/28/2020	Sherrie Lewis Young	v.	North Carolina Division of Child Development & Early Education	Jacobs
20	DOJ	01468	8/26/2020	Steven C Whiteman	v.	North Carolina Sheriffs Education and Training Standards Commission	Sutton
20	DOT	02246	8/21/2020	Jameon Sheffield	v.	NC Department of Transportation	Mann
20	OSP	01071	8/11/2020; 8/20/2020	Yolanda Bullock	v.	North Carolina Department of Health and Human Services	Byrne
20	OSP	02329; 02347	8/10/2020	Richard Hilton Nowack	v.	NC Department of Public Safety; North Carolina Department of Public Safety	Ward
20	UNC	02159	8/21/2020	Teresa Truill	v.	University of North Carolina Hospitals	Mann