

# NORTH CAROLINA REGISTER

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January 4, 2021

<b>I. EXECUTIVE ORDERS</b>	
Executive Order No.180 .....	1429 – 1438
<b>II. IN ADDITION</b>	
Elections, State Board of - Limitation on Contributions.....	1439
Pharmacy, Board of – Narrow Therapeutic Index Drugs.....	1440
<b>III. PROPOSED RULES</b>	
<b>Commerce, Department of</b>	
Employment Security, Division of.....	1441 – 1443
<b>Justice, Department of</b>	
Sheriffs' Education and Training Standards Commission .....	1443 – 1447
<b>Public Safety, Department of</b>	
Private Protective Services Board.....	1447 – 1457
<b>Occupational Licensing Boards and Commissions</b>	
Nursing, Board of .....	1457 – 1461
Environmental Health Specialist Examiners, Board of.....	1461 – 1463
Social Work Certification and Licensure Board.....	1463 – 1465
<b>IV. APPROVED RULES.....</b>	<b>1466 – 1513</b>
<b>Insurance, Department of</b>	
Industrial Commission	
<b>Justice, Department of</b>	
Sheriffs' Education and Training Standards Commission	
<b>Labor, Department of</b>	
Department	
<b>Environmental Quality, Department of</b>	
Coastal Resources Commission	
<b>Education, State Board of</b>	
Education, State Board of	
<b>Occupational Licensing Boards and Commissions</b>	
Addictions Specialist Professional Practice Board	
<b>V. RULES REVIEW COMMISSION .....</b>	<b>1514 – 1520</b>
<b>VI. CONTESTED CASE DECISIONS</b>	
Index to ALJ Decisions.....	1521 – 1523

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2021 – December 2021

<b>FILING DEADLINES</b>			<b>NOTICE OF TEXT</b>		<b>PERMANENT RULE</b>			<b>TEMPORARY RULES</b>
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
35:13	01/04/21	12/08/20	01/19/21	03/05/21	03/22/21	04/15/21	05/01/21	10/01/21
35:14	01/15/21	12/21/20	01/30/21	03/16/21	03/22/21	04/15/21	05/01/21	10/12/21
35:15	02/01/21	01/08/21	02/16/21	04/05/21	04/20/21	05/20/21	06/01/21	10/29/21
35:16	02/15/21	01/25/21	03/02/21	04/16/21	04/20/21	05/20/21	06/01/21	11/12/21
35:17	03/01/21	02/08/21	03/16/21	04/30/21	05/20/21	06/17/21	07/01/21	11/26/21
35:18	03/15/21	02/22/21	03/30/21	05/14/21	05/20/21	06/17/21	07/01/21	12/10/21
35:19	04/01/21	03/11/21	04/16/21	06/01/21	06/21/21	07/15/21	08/01/21	12/27/21
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35:22	05/17/21	04/26/21	06/01/21	07/16/21	07/20/21	08/19/21	09/01/21	02/11/22
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35:24	06/15/21	05/24/21	06/30/21	08/16/21	08/20/21	09/16/21	10/01/21	03/12/22
36:01	07/01/21	06/10/21	07/16/21	08/30/21	09/20/21	10/21/21	11/01/21	03/28/22
36:02	07/15/21	06/23/21	07/30/21	09/13/21	09/20/21	10/21/21	11/01/21	04/11/22
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36:07	10/01/21	09/10/21	10/16/21	11/30/21	12/20/21	01/20/22	02/01/22	06/28/22
36:08	10/15/21	09/24/21	10/30/21	12/14/21	12/20/21	01/20/22	02/01/22	07/12/22
36:09	11/01/21	10/11/21	11/16/21	01/03/22	01/20/22	02/17/22	03/01/22	07/29/22
36:10	11/15/21	10/22/21	11/30/21	01/14/22	01/20/22	02/17/22	03/01/22	08/12/22
36:11	12/01/21	11/05/21	12/16/21	01/31/22	02/21/22	03/17/22	04/01/22	08/28/22
36:12	12/15/21	11/22/21	12/30/21	02/14/22	02/21/22	03/17/22	04/01/22	09/11/22

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

## EXPLANATION OF THE PUBLICATION SCHEDULE

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

### GENERAL

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

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

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

### FILING DEADLINES

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

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

### NOTICE OF TEXT

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

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

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



# State of North Carolina

ROY COOPER  
GOVERNOR

November 23, 2020

**EXECUTIVE ORDER NO. 180**

**INCREASING FACE COVERING REQUIREMENTS TO PREVENT THE  
RAPID SPREAD OF COVID-19**

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

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

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

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

**WHEREAS**, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-173, and 176-177; and

**WHEREAS**, the undersigned has taken a science and data-driven approach to implementing public health measures to curb the spread of the virus and to restart the state's economy in a safe and effective way, which is in the best interests of all North Carolinians; and

**WHEREAS**, on September 30, 2020, the undersigned issued Executive Order No. 169, which transitioned the state into Phase 3 of its COVID-19 response; and

**WHEREAS**, concerning trends in COVID-19 metrics following the issuance of Executive Order No. 169 led the undersigned to extend the measures of Executive Order No. 169 under Executive Order Nos. 170 and 176, and based on those trends, Executive Order No. 176 reduced the mass gathering limit on indoor gatherings to control the documented spread of COVID-19 in social and in-home get-togethers; and

**WHEREAS**, since the issuance of Executive Orders Nos. 169, 170, and 176, COVID-19 continues to spread at a concerning rate nationally and in North Carolina; and

**WHEREAS**, as of the date of this Executive Order, the United States is experiencing a significant increase in COVID-19 case counts, currently averaging more than one thousand (1,000)

daily COVID-19 deaths (over a seven-day average), with more than a quarter of a million (250,000) American lives lost since the start of the pandemic; and

**WHEREAS**, the significant uptick in COVID-19 case counts across the nation, and the attendant strain on hospital capacity, has required other states and localities in recent days and weeks to impose or reimpose stricter measures on business operations, activities, and public and private gatherings; and

**WHEREAS**, in North Carolina in recent weeks, COVID-19 daily case counts have been at their highest point to-date since the onset of the pandemic; and

**WHEREAS**, in North Carolina there have been recent increases, compared to previous weeks' levels, in the percent of emergency department visits that are for COVID-19-like illnesses and in COVID-19-associated hospitalizations; and

**WHEREAS**, in North Carolina in recent weeks, COVID-19-associated hospitalizations have been at record highs, and daily deaths attributable to COVID-19 have been at or near record highs; and

**WHEREAS**, between November 1 and November 14, 2020, over one-half of North Carolina counties were experiencing "substantial (orange)" or "critical (red)" COVID-19 transmission, according to the County Alert System developed by the North Carolina Department of Health and Human Services' ("NCDHHS"), which evaluates a county's COVID-19 case counts, percent positives, and hospital capacity; and

**WHEREAS**, more than three hundred thirty-nine thousand (339,000) people in North Carolina have had COVID-19, and more than five thousand (5,000) people in North Carolina have died from the disease; and

**WHEREAS**, due to delays between exposure to the COVID-19 virus, the onset of symptoms, and hospitalizations, the accelerating case counts in the state signal potential challenges to come for the state's health care facilities and signal a high risk of increased COVID-19 morbidity and mortality in North Carolina; and

**WHEREAS**, decisive action is therefore necessary now to protect the lives of North Carolinians and to avoid unmanageable strain on the state's hospital capacity and other healthcare resources across the state in the near future; and

Face Coverings Required in All Public Indoor Settings

**WHEREAS**, Face Coverings are a low-cost and highly effective way of mitigating the spread of COVID-19, and, if adopted widely by all North Carolinians, may help to prevent further re-closures of the state's businesses and operations; and

**WHEREAS**, the U.S. Centers for Disease Control and Prevention ("CDC") has said as recently as November 20, 2020, that there is evidence for the effectiveness of Face Coverings; and

**WHEREAS**, the CDC has provided evidence of Face Coverings effectively blocking exhaled virus from an individual wearing a Face Covering, evidence of reduction in exposure to the virus for someone wearing a face covering, and evidence of the effectiveness of communities wearing Face Coverings; and

**WHEREAS**, examples of studies studying the effectiveness of face coverings include:

- One study found that states mandating use of Face Coverings in public had a greater decline in daily COVID-19 growth rates compared to states that did not. Lyu & Wehby, *Community Use Of Face Masks And COVID-19: Evidence From A Natural Experiment Of State Mandates In The US*, Health Affairs (June 16, 2020), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00818>.

- Another study found that that Face Coverings could reduce risk of infection by approximately 50% in non-health-care settings. Chu *et al.*, *Physical distancing, face masks, and eye protection to prevent person-to-person transmission of SARS-CoV-2 and COVID-19: a systematic review and meta-analysis*, The Lancet (June 1, 2020), [https://doi.org/10.1016/S0140-6736\(20\)31142-9](https://doi.org/10.1016/S0140-6736(20)31142-9).
- A third study showed that the widespread use of Face Coverings in April and May in New York and Italy significantly reduced the number of COVID-19 infections. Zhang *et al.*, *Identifying airborne transmission as the dominant route for the spread of COVID-19*, Proceedings of the National Academy of Science (June 30, 2020), <https://doi.org/10.1073/pnas.2009637117>.
- A fourth study found that the daily growth rate of COVID-19 cases fell by approximately 40% due to mandatory Face Covering requirements. Mitze *et al.*, *Face Masks Considerably Reduce COVID-19 Cases in Germany: A Synthetic Control Method Approach*, IZA Institute of Labor Economics: Discussion Paper Series (June 2020), <http://ftp.iza.org/dp13319.pdf>.
- A fifth study found that increasing universal masking by 15% could prevent the need for lockdowns and reduce associated losses of up to \$1 trillion nationally or about 5% of gross domestic product. Hatzius *et al.*, *Face Masks and GDP*, *Goldman Sachs Research* (June 29, 2020) <https://www.goldmansachs.com/insights/pages/face-masks-and-gdp.html>; and

These studies, and others, have shown the effectiveness of Face Coverings; and

**WHEREAS**, to mitigate the spread of COVID-19, particularly in indoor settings where the virus is transmitted more easily, the undersigned has determined that Face Coverings must be worn in all indoor public settings where other individuals may be present, regardless of one's perceived ability to maintain physical distance of at least six (6) feet; and

**WHEREAS**, businesses in North Carolina must do their part to “flatten the curve” of COVID-19 in North Carolina, by ensuring their employees and Guests wear Face Coverings at all times while on their premises, and by denying entry to those Guests who do not wear Face Coverings, unless an exception to the requirement applies; and

**WHEREAS**, Face Coverings should continue to be worn outdoors when it is not possible to consistently be physically distant, by at least six (6) feet, from non-household members; and

**WHEREAS**, all North Carolinians must follow the Mass Gathering limit as revised downward in Executive Order No. 176, and following this Mass Gathering limit — ten (10) people indoors and fifty (50) people outdoors — is critical for stemming the spread of disease in this state, because studies have shown significant spread of COVID-19 through indoor and outdoor family or social gatherings; and

Statutory Authority and Determinations

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

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

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

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

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

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

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

**WHEREAS**, although the NCDHHS County Alert system has identified certain counties as having higher levels of community transmission in recent data, the professionals delegated the responsibility to maintain the County Alert system have determined that every county has a dangerous rate of community transmission of the virus — reflected in every county in the state being rated at least at “significant (yellow)” risk; and

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

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

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

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

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

**WHEREAS**, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(2) authorizes the undersigned to prohibit and restrict the operation of offices, business

establishments, and other places to and from which people may travel or at which they may congregate; and

**WHEREAS**, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(3) authorizes the undersigned to restrict the possession, transportation, sale, purchase, and consumption of alcoholic beverages; and

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

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

**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 I. Strengthening the Face Covering Requirement.**

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

**Subsection I(A). Purpose.**

For the avoidance of doubt, Section I of this Executive Order is intended to add additional circumstances in which people are required to wear Face Coverings in public places, both indoors and outdoors. This Executive Order accomplishes this purpose by amending Executive Order No. 169 to eliminate certain circumstances where wearing a Face Covering – particularly indoors – had been excepted. The amendments in this Executive Order also authorize law enforcement to enforce Face Coverings against individuals who fail to wear a Face Covering outside the home without any applicable exception. Where a question might arise as to whether an individual who is able to wear a Face Covering in North Carolina is required to wear one in a certain context, this Executive Order seeks to promote the wearing of Face Coverings.

**Subsection I(B). Requiring Face Coverings Indoors Even if Other People Will Be More Than Six Feet Away.**

Sections 2.1 and 2.2 of Executive Order No. 169 are amended to read:

2.1. **Face Coverings Required In Public Places.**

- a. The undersigned enacts the following restriction on the movement of people in public places and restriction on the operation of offices, business establishments, schools, and other places where people may travel or congregate.
- b. For any place outside the home, including but not limited to businesses, schools, and other establishments and spaces:
  1. Face Coverings must be worn indoors if anyone else is in that space who is not a member of the same household.
  2. Face Coverings must be worn outdoors if it is not possible to consistently be physically distant by more than six (6) feet from non-household members.
- c. These requirements shall apply to all people at least five (5) years old, unless an exception applies. These requirements are recommended for all people over the age of two (2) years old.

- 2.2. **Restrictions for Specific Settings.** Section 3 of Executive Order No. 169 (as amended by Subsection I(C) of Executive Order No. 180) states a series of specific Face Covering requirements for certain types of businesses and establishments. These requirements are in addition to, and not in lieu of, the general restrictions stated above.

**Subsection I(C). Requiring Face Coverings if People Are Exercising.**

Section 2.4(d) of Executive Order No. 169 is removed.

The following provision is added to Section 2 of Executive Order No. 169:

- 2.4A. **Face Coverings and Exercise.** People must wear Face Coverings while exercising if they are either:
- Outdoors and within six (6) feet of someone who does not reside in the exercising person's household; or
  - Indoors and not within their own home.
- 2.4B. **Face Coverings for Professional or Collegiate Athletes Under a COVID-19 Health and Safety Protocol.** As an exception to the other provisions of this Section, Face Coverings are encouraged, but not required for professional or collegiate athletes if (1) they are strenuously exercising or recovering from exercise and (2) those athletes are training for or participating in a sport that is under the oversight of a league, association, or other organizer that required teams and players to follow a protocol for reducing risk from COVID-19. These athletes must wear Face Coverings, including on sidelines and in practice, at any time that they are not strenuously exercising or recovering from recent exercise.

**Subsection I(D). Creating an Enforceable Legal Duty for Individuals, as Well as Businesses, to Follow Face Covering Requirements.**

Section 2.5 of Executive Order No. 169 is removed.

Section 2.7 of Executive Order No. 169 is amended to read:

2.7. **Enforcement of Face Covering Requirements.**

If a person does not wear a Face Covering in a situation where a Face Covering is required under this Executive Order, and if an exception to the Face Covering requirement does not apply:

- a. Law enforcement officers may cite the people who failed to wear Face Coverings as required by Executive Order; and/or
- b. Law enforcement officers may cite a business or organization that failed to enforce the requirement to wear Face Coverings.

Further, if a business or organization does not allow entry to a worker or Guest because that person refuses to wear a Face Covering, and if that worker or Guest enters the premises and refuses to leave the premises, law enforcement personnel may enforce the trespassing laws and any other laws that the worker or Guest may violate.

Section 12.1 of Executive Order No. 169 is amended to read:

- 12.1. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.

**Subsection I(E). Face Covering Requirements in Particular Settings.**

***i. Child Care Facilities, Day Camps, and Overnight Camps***

Section 3.2(d) of Executive Order No. 163 (incorporated by Sections 3.3 and 3.4 of Executive Order No. 169) is amended to read:

- d. In Child Care Facilities, Day Camps, and Overnight Camps. Child care facilities, day camps, and overnight camps must have workers, all other adults, and children five (5) years or older on site wear Face Coverings, unless an exception applies.

***ii. Fitness and Physical Activity Facilities***

Section 3.5(b) of Executive Order No. 169 is amended to read:

- b. Face Coverings. All workers and Guests must wear Face Coverings when they are inside the establishment, regardless of whether they are exercising. The exceptions in Section 2.4 of Executive Order No. 169 (as amended by Executive Order No. 180) apply; however, the exception for people who are strenuously exercising was removed by Executive Order No. 180.

***iii. Government Operations***

Executive Order No. 169, Section 3.6, is amended to read:

- 3.6. Government Operations. Unless an exception applies, state government agencies headed by members of the Governor's Cabinet and the Governor's Office must have their on-site workers wear Face Coverings when they are indoors. In addition, unless an exception applies, these agencies must require Face Coverings for any outdoor work within six (6) feet of another person. State government agencies headed by members of the Governor's Cabinet and the Governor's Office must also follow the requirements for Retail Businesses established in this Executive Order unless necessary to complete that office's mission. All other state and local government agencies are strongly encouraged to adopt similar policies.

***iv. Museums and Aquariums***

Section 3.2(f) of Executive Order No. 163 (incorporated by Section 3.9 of Executive Order No. 169) is amended to read:

- l. In Museums and Aquariums. Unless an exception applies:
- Workers in museums and aquariums must wear Face Coverings when they are inside.
  - Workers in museums and aquariums must also wear Face Coverings if they are outside and within six (6) feet of another person.
  - In addition, Guests must wear Face Coverings.

***v. Parks***

The following sentence is added to Executive Order No. 169, Section 3.10, which is entitled "Parks":

Unless an exception applies, Face Coverings are required for all people in parks if they are either within six (6) feet of another person or are indoors.

***vi. Personal Care, Grooming, and Tattoo Businesses***

Section 3.2(c) of Executive Order No. 163 (incorporated by Section 3.11 of Executive Order No. 169) is amended to read:

- c. In Personal Care, Grooming, and Tattoo Businesses. Unless an exception applies:
- Personal Care, Grooming, and Tattoo Businesses must have workers wear Face Coverings at all times.
  - In addition, the business must have all Guests wear Face Coverings when they are inside the establishment, unless they are receiving a facial treatment, shave, or other services on a part of the head which the Face Covering covers or by which the Face Covering is secured.

**vii. Restaurants, Breweries, Distilleries, and Wineries**

Section 3.2(b) of Executive Order No. 163 (incorporated by Section 3.13 of Executive Order No. 169) is amended to read:

- b. In Restaurants. Unless an exception applies:
- Restaurants must have all workers wear Face Coverings.
  - In addition, these establishments must have all Guests wear Face Coverings (including at their table) when they are not actively drinking or eating.

The following sentence is added to the end of Section 3.13(a) of Executive Order No. 169:

Breweries, wineries, and distilleries are subject to the same restrictions as Restaurants under this Executive Order.

**viii. Retail Businesses**

Section 3.2(a) of Executive Order No. 163 (incorporated by Section 3.14 of Executive Order No. 169) is amended to read:

- a. In Retail Businesses. Unless an exception applies:
- Retail Businesses must have all workers wear Face Coverings.
  - In addition, Retail Businesses must have all Guests wear Face Coverings when they are inside the establishment.

The following provision is added to Section 6.2(a) of Executive Order No. 163 (incorporated by Section 3.14 of Executive Order No. 169):

- iv. Any Retail Business location with more than 15,000 square feet of interior space must, at each entrance open to the public, have a worker who is responsible for the Face Covering and Emergency Maximum Occupancy requirements established by Executive Orders. These workers may have other duties, but they must be close enough to the entrance that they can identify customers who enter without wearing Face Coverings and ensure that Guests wait outside if needed so that the Retail Business does not exceed Emergency Maximum Occupancy requirements.

**ix. Schools**

The following provision is added to Section 2 of Executive Order No. 169:

- 2.8. Schools. In all public school units, as defined by N.C. Gen. Stat. § 115C-5(7a), and all nonpublic schools covered by Article 39 of Chapter 115C of the General Statutes, all workers, teachers, guests, other adults and children five (5) years or older must wear Face Coverings both:
- When outdoors and within six (6) feet of another person, unless an exception applies;
  - When indoors, at all times, unless an exception applies.

**x.     *Transportation***

Section 3.2(f) of Executive Order No. 163 (incorporated into Executive Order No. 169 by Sections 3.15 of that Order) is amended to read:

- f.     **In Transportation.** All workers and riders on public or private transportation regulated by the State of North Carolina, as well as all people in North Carolina airports, bus and train stations or stops, must wear Face Coverings at all times, unless an exception applies. This provision does not apply to people traveling alone with household members or friends in their personal vehicles, but does apply to ride-shares, cabs, vans, and shuttles, even if the vehicles are privately owned. Guests may be removed from or denied entry to public transportation if they refuse to wear a Face Covering.

**xi.    *Workplaces in Agriculture, Construction, and Manufacturing***

Section 3.2(g) of Executive Order No. 163 (incorporated into Executive Order No. 169 by Sections 3.16 of that Order) is amended to read:

- g.     **In Certain High-Density Occupational Settings Where Social Distancing is Difficult.** Social distancing is inherently difficult where multiple workers are together in manufacturing settings, at construction sites, and in migrant farm, other farm, and agricultural settings. Therefore, in businesses or operations within North American Industry Classification System (NAICS) sectors 311 to 339 (manufacturing), 236 to 238 (construction), and 111, 112, 1151, and 1152 (agriculture), all workers not requiring a respiratory protection program must wear Face Coverings when they are either within six (6) feet of another person or indoors. Notwithstanding the above, workers may remove their Face Covering if an exception applies, if they become overheated, or if they eat and drink while working.

**Section II. No Local Restrictions on COVID-19 Testing Sites.**

The following subdivision is added to Section 7.3 of Executive Order No. 169:

- d.     **Local Restrictions Cannot Prevent COVID-19 Testing.** To ensure that COVID-19 testing is available to the maximum extent possible, and to create certainty and uniformity across the state for businesses and operations that are providing this valuable testing, the undersigned specifically prohibits all local prohibitions and restrictions that would prevent or restrict businesses or operations from providing COVID-19 testing or would prevent or restrict businesses or operations from advertising COVID-19 testing services that they are providing to the public. This preemption includes, but is not limited to, building permits, signage restrictions, and zoning requirements. However, the preemption provided by this Section is available only to COVID-19 testing sites that are operated in accordance with state and federal law and in cooperation with the North Carolina Department of Health and Human Services or a local public health department.

**Section III. Phase Three Executive Order Remains in Effect; Extended Through December 11, 2020.**

Executive Order No. 169 (which includes, for avoidance of doubt, those provisions of Executive Order No. 163 which were incorporated into and extended by Executive Order No. 169 and the amendments to Executive Order No. 169 made by Executive Order No. 176), remains in effect except as expressly set forth in this Executive Order and is hereby extended through the duration of this Executive Order, through December 11, 2020 at 5:00 pm.

**Section IV. No Private Right of Action.**

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

**Section V. Savings Clause.**

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

**Section VI. 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.

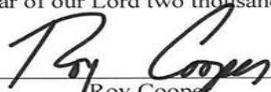
**Section VII. Enforcement.**

- A. Pursuant to N.C. Gen. Stat. § 166A-19.30(a)(2), the provisions of this Executive Order shall be enforced by state and local law enforcement officers.
- B. A violation of this Executive Order may be subject to prosecution pursuant to N.C. Gen. Stat. § 166A-19.30(d), and is punishable as a Class 2 misdemeanor in accordance with N.C. Gen. Stat. § 14-288.20A.
- C. Nothing in this Executive Order shall be construed to preempt or overrule a court order regarding an individual's conduct (e.g., a Domestic Violence Protection Order or similar orders limiting an individual's access to a particular place).

**Section VIII. Effective Date.**

This Executive Order is effective November 25, 2020, at 5:00 pm. This Executive Order shall remain in effect through 5:00 pm on December 11, 2020 unless this Executive Order is repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 23<sup>rd</sup> day of November in the year of our Lord two thousand and twenty.

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

ATTEST:

  
 \_\_\_\_\_  
 Elaine F. Marshall  
 Secretary of State





**NORTH CAROLINA**  
**STATE BOARD OF ELECTIONS**

*Mailing Address:*

P.O. Box 27255,  
Raleigh, NC 27611

(919) 814-0700 or  
(866) 522-4723

*Fax:* (919) 715-0135

**LIMITATION ON CONTRIBUTIONS**

Pursuant to N.C.G.S. § 163-278.13(b), this serves as notice that the contribution limit for North Carolina political campaigns found in N.C.G.S. § 163-278.13 subsections (a), (c) and (d) increased from five thousand four hundred dollars (\$5,400) to five thousand six hundred dollars (\$5,600), effective January 1, 2021. This change is based on the 2.8154% percent increase in the Consumer Price Index (all items – U.S. city average) from July 1, 2018 to July 1, 2020.

**NARROW THERAPEUTIC INDEX DRUGS DESIGNATED BY THE NORTH  
CAROLINA SECRETARY OF HUMAN RESOURCES**

Pursuant to N.C.G.S. §90-85.27(4a), this is a revised publication from the North Carolina Board of Pharmacy of narrow therapeutic index drugs designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board.

Carbamazepine: all oral dosage forms

Cyclosporine: all oral dosage forms

Digoxin: all oral dosage forms

Ethosuximide

Levothyroxine sodium tablets

Lithium (including all salts): all oral dosage forms

Phenytoin (including all salts): all oral dosage forms

Procainamide

Theophylline (including all salts): all oral dosage forms

Warfarin sodium tablets

Tacrolimus: all oral dosage forms

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

**TITLE 04 – DEPARTMENT OF COMMERCE**

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce - Division of Employment Security intends to adopt the rules cited as 04 NCAC 24D .0201, .0206, amend the rules cited as 04 NCAC 24D .0102, .0202, .0203; 24F .0304, and repeal the rules cited as 04 NCAC 24D .0103-.0106; and 24F .0303.

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://des.nc.gov/des-proposed-rules>

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

**Public Hearing:**

**Date:** January 19, 2021

**Time:** 10 a.m.

**Location:** Teleconference: +1 (888) 204-5984 Access Code: 3069171

**Reason for Proposed Action:** G.S. § 96-11.2 provides for the allocation of charges to base period employers on a quarterly basis. The rules are repealed, amended and adopted to correctly reflect the agency's business processes in accordance with the statutory requirement. The proposed repeal of Rules 24D .0103, 24D .0104, 24D .0105, 24D .0106 are in response to changes in DES's business processes of no longer accepting requests for noncharging from the employer to the list of potential charges, and compliance with G.S. § 96-11.2. Rule 24D .0102 is proposed for amendment to accurately reflect the information on the form that DES will use to notify the employer of potential benefit charges to its account. Rule 24D .0201 is proposed for adoption to set forth the notice requirements to employers of the quarterly list of charges to the employer's account. Rule 24D .0202 is proposed for amendment to notify the employers of the requirements for filing a protest to the list of charges to the employer's account. Rule 24D .0203 is proposed for amendment to set forth the grounds requirements for protesting the benefit charges to the employer's account. Rule 24D .0206 is proposed for adoption to establish consistency with Rule 24A .0106.

G.S. 96-4(q) provides for the manner in which the Board of Review shall conduct hearings to determine the rights, status, and liabilities of an employer. Rule 24F .0303 is proposed for repeal due to the changes in the scheduled tax hearings before the Board of Review as provided in Rule 24F .0304. Rule 24F .0304 is proposed for amendment to accurately reflect compliance with the statutory provision of G.S. 96-4(q), and to allow flexibility for

the hearings. The Rule is also proposed for amendment to provide notice to the parties of their rights to object to the venue of the hearing designated by the Board of Review and the manner in which to object to the designated venue.

**Comments may be submitted to:** Regina S. Adams, Rulemaking Coordinator, N.C. Department of Commerce, Division of Employment Security, Legal Services Section, P.O. Box 25903, Raleigh, NC 27611; phone (919) 707-1026; fax (919) 733-8745; email [DES.Rules@nccommerce.com](mailto:DES.Rules@nccommerce.com)

**Comment period ends:** March 5, 2021

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

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

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

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

**CHAPTER 24 - EMPLOYMENT SECURITY**

**SUBCHAPTER 24D - TAX ADMINISTRATION**

**SECTION .0100 – REQUESTS FOR NONCHARGING OF BENEFIT PAYMENTS**

**04 NCAC 24D .0102 NOTICE TO EMPLOYER OF POTENTIAL CHARGES**

(a) DES shall notify each employer in writing of potential charges to the employer's account. The notice shall contain the:

- (1) date of the notice;
- (2) claimant's name and social security number;
- (3) date the claimant's benefit year began;

- (4) claimant's weekly benefit amount and weekly earnings allowance;
- (5) employer's reporting number used to report wages for the claimant;
- (6) base period wages reported by the employer by calendar quarter and dollar amount;
- (7) employer's percentage of total base period wages reported;
- (8) maximum potential charge amount that can be applied to the employer's experience rating account if the claimant exhausts his or her benefits;
- (9) a statement containing the employer's right to protest the notice; and
- (10) ~~the time period within which a protest shall be filed pursuant to G.S. 96-15(b)(2); a statement containing the employer's right to notify the Division within 15 days of the mailing date of the notice if the claimant did not work for the employer or the wages are incorrect.~~

(b) DES shall provide notice of potential charges to the employer's account using the following forms, as applicable:

- (1) Notice of ~~Combined Wage Claim and Potential Charges to Your Account;~~
- (2) Notice of Unemployment Claim, Wages Reported and Potential Charges;
- (3) Notice of Initial Claim and Potential Charges to Reimbursable Employer;
- (4) Notice of Initial Claim and Potential Charges for Claimants on Temporary ~~Layoff; Layoff.~~
- (5) ~~Reversal of Previously Allowed Noncharging;~~
- (6) ~~Reversal of Previously Denied Noncharging;~~
- (7) ~~Administrative Determination Disallowing Noncharging; or~~
- (8) ~~List of Charges to Your Account.~~

Authority G.S. 96-4; 96-11.1; 96-11.2; 96-11.3; 96-11.4; 96-15.

**04 NCAC 24D .0103 REQUIREMENTS FOR REQUESTING NONCHARGING OF BENEFIT PAYMENTS**

Authority G.S. 150B-21.1.

**04 NCAC 24D .0104 TIME FOR FILING REQUESTS FOR NONCHARGING**

Authority G.S. 150B-21.1.

**04 NCAC 24D .0105 DETERMINATION ON REQUESTS FOR NONCHARGING**

Authority G.S. 150B-21.1.

**04 NCAC 24D .0106 APPEALING DENIAL OF REQUEST FOR NONCHARGING**

Authority G.S. 150B-21.1.

**SECTION .0200 - ACCOUNT CHARGE PROTESTS**

**04 NCAC 24D .0201 NOTICE OF EMPLOYER QUARTERLY CHARGES**

DES shall notify each employer in writing of the quarterly list of charges to the employer's Account using Form NC CLM 626-9 that shall contain the:

- (1) date of the notice;
- (2) charging quarter ending date;
- (3) employer's name and mailing address;
- (4) claimant's name and social security number;
- (5) date the claimant's benefit year began;
- (6) employer's reporting number used to report wages for the claimant;
- (7) benefit charges to the employer for each listed claimant; and
- (8) a statement containing the employer's right to protest the list of charges.

Authority G.S. 96-4; 96-11.3; 96-11.4; 96-1.5; 96-15.

**04 NCAC 24D .0202 REQUIREMENTS FOR FILING PROTESTS TO LIST OF CHARGES**

~~(a)~~ An employer who protests the benefit charges to its account shall make the protest in writing within ~~45~~ 30 days of the mailing date of ~~the notice of potential charges~~ Form NC CLM 626-9 to DES's Claims Unit in accordance with 04 NCAC 24A .0104(s), and shall list all grounds for the protest as prescribed under Rule .0203 of this Section.

~~(b) Any of the following forms, when completed with the information indicated in Paragraph (a) of this Rule, shall constitute compliance with this Rule:~~

- ~~(1) Notice of Initial Claim and Potential Charges to Your Account; and~~
- ~~(2) Notice of Combined Wage Claim and Potential Charges to Your Account.~~

Authority G.S. 96-4; 96-11.3; 96-11.4.

**04 NCAC 24D .0203 GROUNDS FOR PROTESTING LIST OF CHARGES**

An employer shall only file protests ~~for the following reasons:~~ for:

- (1) the reasons set forth in G.S. 96-11.3;
- ~~(1)(2)~~ clerical errors in the list of charges;
- ~~(2)(3)~~ charges resulting from individuals who were never employed by the employer; or
- ~~(3)(4)~~ the claimant has new separation from employment occurring between the date that the claimant's benefit year began and the last week ending date for which the claimant was paid benefits, and a base period employer did not have an opportunity to request noncharging on the subsequent separation.

Authority G.S. 96-4; 96-11.3; 96-11.4; 96-11.5.

**04 NCAC 24D .0206 TIME FOR FILING PROTESTS AND APPEALS**

The provisions of 04 NCAC 24A .0106 shall apply in determining the timeliness of protests and appeals.

Authority G.S. 96-4; 96-11.3; 96-11.4; 96-11.5.

**SUBCHAPTER 24F – BOARD OF REVIEW**

**SECTION .0300 – TAX LIABILITY HEARINGS**

**04 NCAC 24F .0303 TELEPHONE HEARINGS BEFORE THE BOARD OF REVIEW**

Authority G.S. 150B-21.1.

**04 NCAC 24F .0304 IN-PERSON HEARINGS**

~~(a) A party shall only request an in person hearing at the time the appeal is filed in writing, or by filing a written objection to the telephone conference call, received at least seven days before the scheduled hearing.~~

~~(a) Hearings shall be conducted in person by the Board of Review, or a Board designee, at the Office of the Board of Review in Raleigh, N.C.~~

~~(b) If travel is required to conduct the in person hearing, the objecting party shall travel to a location convenient to the non-objecting party, as determined by the Board of Review.~~

~~(b) Upon good cause, as defined in 04 NCAC 24A .0105(28), the Board of Review may designate alternate means of hearing.~~

~~(c) A party may object to the venue of hearing designated by the Board. The Board will consider such objection if it is filed with the Board within the 10 days of the issuance of a notice of hearing. The objection must be in writing and provide good cause as to the reason for a request in a change of venue.~~

Authority G.S. 96-4.

**TITLE 12 – DEPARTMENT OF JUSTICE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Sheriffs' Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 10B .0905, .0909 and .0915.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://ncdoj.gov/law-enforcement-training/sheriffs/all-commission-forms-publications/>

Proposed Effective Date: May 1, 2021

**Public Hearing:**

Date: January 21, 2021

Time: 10:00 a.m.

Location: 1700 Tryon Park Drive, Raleigh, NC

**Reason for Proposed Action:**

12NCAC 10B .0905: Updates/corrects the requirements for Detention Officer Instructor Certification.

12NCAC 10B .0909: Updates/corrects the requirements for Limited Lecturer Instructor Certification.

12NCAC 10B .0915: Updates/corrects the requirements for Telecommunicator Instructor Certification.

Detention Officer and Telecommunicator Instructor Certifications are contingent on General Instructor Certification which is issued by and maintained with the Criminal Justice Education and Training Standards Commission.

Comments may be submitted to: Diane Konopka, P.O. Box 629, Raleigh, NC 27602; email dkonopka@ncdoj.gov

Comment period ends: March 5, 2021

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

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

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

**CHAPTER 10 - SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

**SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

**SECTION .0900 - MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS**

**12 NCAC 10B .0905 TERMS AND CONDITIONS OF DETENTION OFFICER INSTRUCTOR CERTIFICATION**

(a) An applicant meeting the requirements for certification as a Detention Officer Instructor shall serve a probationary period. ~~The probationary period shall be set to expire concurrently with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission.~~ The expiration dates of any existing commission-issued Probationary General Detention Officer Instructor Certifications shall be set to expire concurrently

with the expiration of the instructors' General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than one year, then the eight hours of instruction shall be waived for this shortened term and Full General Detention Officer Instructor Certification shall be issued provided all other conditions for Full status as set out in Paragraph (b) of this Section are met. If the applicant has a Full General Instructor certification with no expiration date, the expiration date for the Probationary Detention Officer Instructor Certification shall be set for a period of one year from date of issue.

(b) The probationary instructor shall be awarded full Detention Officer Instructor Certification at the end of the probationary period if the instructors certification required in 12 NCAC 10B .0904(a)(2).0904(a) remains valid, and that the instructor through application, submits to the Division either:

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours as specified in Paragraph (e) of this Rule in a basic commission-certified Detention Officer Certification ~~Course~~ Course, or in a commission recognized Detention Officer In-Service Course, during his/her probationary year; or
- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-certified Detention Officer Certification Course. Such evaluation shall be certified on a commission Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of eight hours in a commission-certified Detention Officer Certification Course during his/her probationary year.

(c) The expiration dates of any existing commission-issued Full General Detention Officer Instructor Certifications shall be set to expire concurrently with the expiration of the instructors' Probationary General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date shall be less than three years, then the 12 hours of instruction shall be waived for this shortened term and Full General Detention Officer Instructor Certification shall be renewed. If the applicant has a Full General Instructor Certification with no expiration date, the expiration date for the Full Detention Officer Instructor Certification shall be set for a period of three years from the date of issue. Full Detention Officer Instructor Certification is continuous so long as the instructor's certification required in 12 NCAC 10B .0904(a)(2) .0904(a) remains valid, and that the instructor submits to the Division every three years a renewal application which includes either:

- (1) a favorable recommendation from a school director accompanied by certification on a

commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of 12 hours as specified in Paragraph (e) of this Rule in a commission-certified Detention Officer Certification ~~Course~~ Course, or in a commission recognized Detention Officer In-Service Course, during the previous ~~two~~ three year period. The date full Instructor Certification is originally issued shall be the anniversary date from which each ~~two~~ three year period is figured; or

- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on a minimum 12 hours, on-site classroom observation of the instructor in a commission-certified Detention Officer Certification Course.

(d) In the event a General Detention Officer Instructor Certification (either Probationary or Full) is terminated for failure to have been satisfactorily evaluated for 12 hours of instruction in a Detention Officer Certification Course, the individual may re-apply for certification meeting the initial conditions for such certification, but must also provide documentation that he/she has audited the number of hours of instruction that he/she failed to teach in a delivery of an certified Detention Officer Certification Course.

(e) An Instructor Evaluation Form records a rating of instructional ability, student participation, and presentation of the lesson plan consistent with the requirements for successfully completing the Criminal Justice Instructor Training as set out in 12 NCAC 09B .0209.

- (1) Instructional ability includes the instructor's:
  - (A) voice quality (projection, articulation, speech rate);
  - (B) verbal skill (fluency and clarity);
  - (C) physical appearance and mannerisms (attire, posture, body language, eye contact, movement);
  - (D) personal qualities of the instructor (knowledge, self-confidence, tact, enthusiasm, sensitivity); and
  - (E) selection and use of training aids (use of writing surface and other aids, effective use of multimedia, transparencies, and slides, relates aids to objectives, and use of aids when scheduled).
- (2) Student participation includes the instructor's:
  - (A) use of questions to stimulate and encourage discussion and response to student questions;
  - (B) ability to stimulate and encourage class participation, maintain the students attention and engagement of all students effectively;
  - (C) organization in the arrangement of the classroom for maximum effect, ensuring all training tools/items are

- ready when needed, and presentation for the class lesson; and
- (D) exercise of control and discipline of the students to maintain proper behavior and orderliness in the classroom, ability to remain in control during classroom discussions and handle of class disruptions and problems.
- (3) Presentation of lesson plan includes the instructor's:
  - (A) full coverage of the lesson plan;
  - (B) presentation of information in logical sequence;
  - (C) timing of presentation to allow for sufficient time for questions and discussion;
  - (D) transition of subjects with continuous progression and development of lesson;
  - (E) emphasis of key points and frequent summarization of topics to entire lesson or course and use of vivid examples to clarify the subjects; and
  - (F) frequent establishment of relevance of the topics to entire lesson or course and use of vivid examples to clarify the subjects; and
  - (G) consistency of presentation in following the lesson plan.

(f) Individuals may, for just cause, be granted an extension to successfully teach the required minimum number of hours instruction on a one-time basis only not to exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from fulfilling the teaching requirement.

Authority G.S. 17E-4.

**12 NCAC 10B .0909 TERMS AND CONDITIONS OF A LIMITED LECTURER CERTIFICATION**

(a) An applicant meeting the requirements for certification as a Limited Lecturer shall serve a probationary period. The expiration dates of any existing commission-issued Limited Lecturer Certifications, where the individual holds instructor certification under the North Carolina Criminal Justice Education and Training Standards Commission, shall be set to expire concurrently with the other instructor certification(s) issued by the North Carolina Criminal Justice Education and Training Standards Commission. In the event such instructor does not hold instructor certification under the North Carolina Criminal Justice Education and Training Standards Commission, but holds another instructor certification(s) issued through this Commission, the expiration date shall be set to expire concurrently with the other instructor certification(s) issued by this Commission. Where the instructor holds no certification through either Commission, certification as a Limited Lecturer shall remain effective for 12 months from the date of issuance. The lecturer shall apply for Full Limited Lecturer

Certification at or before the expiration date. If the time-period before the expiration date is less than one year, then the four hours of instruction shall be waived for this shortened term and Full Limited Lecturer Certification shall be issued provided all other conditions for Full status as set out in this Section are met.

(b) The probationary instructor shall be eligible for full Limited Lecturer status at the end of the probationary period if the instructor, through application, submits to the Commission:

- (1) documentation on a commission Form LL1 of at least four hours of instruction occurring within the probationary period in an area of the instructor's expertise related to each topic for which Limited Lecturer Certification was granted; and
- (2) documentation that all other certifications required in 12 NCAC 10B .0908 remain valid.

(c) The expiration dates of any existing commission-issued Full Limited Lecturer Certifications shall be set to expire concurrently with the expiration of the corresponding instructors' certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. In the event such instructor does not hold instructor certification under the North Carolina Criminal Justice Education and Training Standards Commission, but holds another instructor certification(s) issued through this Commission, the expiration date shall be set to expire concurrently with the other instructor certification(s) issued by this Commission. The lecturer shall apply for recertification at or before the expiration date. If the time period before the expiration date is less than three years, then the six hours of instruction shall be waived for this shortened term and Full Limited Lecturer Instructor Certification will be renewed provided all other conditions for Full status as set out in Subparagraph (2) of this Paragraph are met. Full Limited Lecturer Certification shall be continuous so long as the lecturer submits to the Division every ~~two~~ three years:

- (1) documentation on a commission Form LL1 of at least six hours of instruction occurring within the three-year certification period in an area of the instructor's expertise related to each topic for which Limited Lecturer Certification was granted; and
- (2) a renewal application to include documentation that all other certifications required in 12 NCAC 10B .0908 remain valid.

(d) In the event a Limited Lecturer Instructor Certification (either Probationary or Full) is terminated for failure to have provided documentation of the minimum number of hours of instruction occurring within the respective certification periods in an area of the instructor's expertise related to each topic for which Limited Lecturer Certification was granted, the individual may re-apply for certification meeting the initial conditions for such certification, but must also provide documentation on a commission Form LL2 that he/she has audited the number of hours of instruction he/she failed to teach in the topic area for which Limited Lecturer Certification was granted in the respective area of expertise.

(e) Individuals may, for just cause, be granted an extension to successfully teach the required minimum number of hours instruction on a one-time basis only not to exceed 12 months. For

purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from fulfilling the teaching requirement.

Authority G.S. 17E-4.

**12 NCAC 10B .0915 TERMS AND CONDITIONS OF TELECOMMUNICATOR INSTRUCTOR CERTIFICATION**

(a) An applicant meeting the requirements for certification as a Telecommunicator Instructor shall serve a probationary period. ~~The Telecommunicator Instructor Certification probationary period shall be set to automatically expire concurrently with the expiration of the instructor's General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission.~~ The expiration dates of any existing commission-issued Probationary General Telecommunicator Instructor Certifications shall be set to expire concurrently with the expiration of the ~~instructors,~~ instructor's Probationary General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than one year, then the eight hours of instruction shall be waived for this shortened term and Full General Telecommunicator Instructor Certification shall be issued provided all other conditions for Full status as set out in Paragraph (b) of this Rule are met. If the applicant has a Full General Instructor Certification with no expiration date for the Probationary Telecommunicator Officer Instructor Certification shall be set for one year from date of issue.

(b) The probationary instructor shall be awarded full Telecommunicator Instructor Certification at the end of the probationary period if the instructor's certification required in 12 NCAC 10B ~~.0914(a)(2)~~ .0914(a) remains valid, and that the instructor through application, submits to the Division either:

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of eight hours as specified in Paragraph (e) of this Rule in a commission-certified Telecommunicator Certification ~~Course~~ Course, or in a commission recognized Telecommunicator In-Service Training Course during his/her probationary year; or
- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-certified Telecommunicator Certification Course. Such evaluation shall be certified on a commission Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of eight hours in a commission-certified Telecommunicator Certification Course during his/her probationary year.

(c) The expiration dates of any existing commission-issued Full General Telecommunicator Instructor Certifications shall be set to expire concurrently with the expiration of the instructors' Probationary General Instructor Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission. If the time-period before the expiration date is less than three years, then the 12 hours of instruction shall be waived for this shortened term and Full General Telecommunicator Instructor Certification shall be renewed. If the applicant has a General Instructor Certification with no expiration date, the expiration date for the Full Telecommunicator Officer Instructor Certification shall be set for three years from the date of issue. Full Telecommunicator Instructor Certification is continuous so long as the instructor's certification required in 12 NCAC 10B ~~.0904(a)(2)~~ .0904(a) remains valid, and that the instructor submits to the Division every three years a renewal application and either:

- (1) a favorable recommendation from a school director accompanied by certification on a commission Instructor Evaluation Form that the instructor satisfactorily taught a minimum of 12 hours as specified in Paragraph (e) of this Rule in a commission-certified Telecommunicator Certification ~~Course~~ Course, or a commission recognized Telecommunicator In-Service Training Course during the previous ~~two year~~ three year period. The date full Instructor Certification is originally issued is the anniversary date from which each three year period is figured; or
- (2) an acceptable written evaluation as specified in Paragraph (e) of this Rule by a commission member or staff member based on a minimum 12 hours, on-site classroom observation of the instructor in a commission-certified Telecommunicator Certification Course.

(d) In the event a General Telecommunicator Instructor Certification (either Probationary or Full) is terminated for failure to have been evaluated for the required minimum number of hours of instruction in a Telecommunicator Certification Course, the individual may re-apply for certification meeting the initial conditions for such certification, but must also provide documentation that he/she has audited the number of hours of instruction that he/she failed to teach in a delivery of a certified Telecommunicator Certification Course.

(e) An Instructor Evaluation Form records a rating of instructional ability, student participation, and presentation of the lesson plan consistent with the requirements for successfully completing the Criminal Justice Instructor Training as set out in 12 NCAC 09B .0209.

- (1) Instructional ability includes the instructor's:
  - (A) voice quality (projection, articulation, speech rate);
  - (B) verbal skill (fluency and clarity);
  - (C) physical appearance and mannerisms (attire, posture, body language, eye contact, movement);
  - (D) personal qualities of the instructor (knowledge, self-confidence, tact, enthusiasm, sensitivity); and

(E) selection and use of training aids (use of writing surface and other aids, effective use of multimedia, transparencies, and slides, relates aids to objectives, and use of aids when scheduled).

- (2) Student participation includes the instructor's:
  - (A) use of questions to stimulate and encourage discussion and response to student questions;
  - (B) ability to stimulate and encourage class participation, maintain the students attention and engagement of all students effectively;
  - (C) organization in the arrangement of the classroom for maximum effect, ensuring all training tools/items are ready when needed, and presentation for the class lesson; and
  - (D) exercise of control and discipline of the students to maintain proper behavior and orderliness in the classroom, ability to remain in control during classroom discussions and handle of class disruptions and problems.

- (3) Presentation of lesson plan includes the instructor's:
  - (A) full coverage of the lesson plan;
  - (B) presentation of information in logical sequence;
  - (C) timing of presentation to allow for sufficient time for questions and discussion;
  - (D) transition of subjects with continuous progression and development of lesson;
  - (E) emphasis of key points and frequent summarization of topics to reinforce learning;
  - (F) frequent establishment of relevance of the topics to entire lesson or course and use of vivid examples to clarify the subjects; and
  - (G) consistency of presentation in following the lesson plan.

(f) Individuals may, for just cause, be granted an extension to successfully teach the required minimum number of hours instruction on a one-time basis only not to exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from fulfilling the teaching requirement.

Authority G.S. 17E-4.

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to adopt the rule cited as 14B NCAC 16 .0708 and amend the rules cited as 14B NCAC 16 .0105, .0110, .0113, .0201, .0203, .0204, .0404, .0405, .0602, .0701, .0703, .0707, .0801, .0807, .0808, .0902, .1203, .1301, and .1407.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://www.ncdps.gov/about-dps/boards-commissions/private-protective-services-board>

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

**Public Hearing:**  
**Date:** January 19, 2021  
**Time:** 2:00 p.m.

**Location:** Virtual Meeting: Via WebEx number (access code); 180 377 2325 Meeting password: Z5chTNw43 (95 249486 from a telephone)

**Reason for Proposed Action:** One amendment makes a contractor of services liable for acts of a subcontractor (.0105) and another amends the reporting requirement rule (.0110) to add "subcontractor." Six rules are amended to allow for LiveScan submission of fingerprints. One amendment adds an exclusion of experience while unregistered (.0204). Two rule amendments clarify the report requirement for PIs and the PI badge display requirement. One amendment (.0703) removes "moral turpitude" following the legislature's repeal of its use as a grounds for denial, supervision or revocation. .0703 has language deleted which is restored in new .0708 and the title of .0808 is amended to reflect the correct type permit.

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

**Comment period ends:** March 5, 2021

**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 16 - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

14B NCAC 16 .0105 PROHIBITED ACTS AND ADDITIONAL RESPONSIBILITIES

(a) In addition to the prohibited acts set forth elsewhere in these Rules and in Chapter 74C of the General Statutes, any licensee, trainee, registrant, or firearms trainer who does any of the following may have his or her license, trainee permit, registration, or firearms trainer certificate revoked or suspended:

- (1) Displays or causes or allows to be displayed, or has in his or her possession any cancelled, revoked, suspended, fictitious, or fraudulently altered license, trainee permit, registration identification card, or firearms trainer certificate, or any document simulating, purporting to be, or purporting to have been issued as a license, trainee permit, registration identification card, or firearms trainer certificate;
- (2) Lends his or her license, trainee permit, registration identification card, or firearms trainer certificate to any person or allows the use thereof by another;
- (3) Displays or represents any license, trainee permit, registration identification card, or firearms trainer certificate not issued to him or her as being his or her license, trainee permit, registration identification card, or firearms trainer certificate; or
- (4) Includes in any advertisement a statement that implies official state authorized certification or approval other than this statement: "Licensed by the Private Protective Services Board of the State of North Carolina." Licensees must include their license number.

(b) In addition to the prohibited acts set forth elsewhere in these Rules and in Chapter 74C of the General Statutes, it shall be grounds for application denial or license or registration suspension or revocation for an applicant, licensee, trainee, registrant, or trainer to make any false statement or give any false information to a third party in connection with any criminal history record check provided to the Board.

(c) Any licensee that subcontracts private protective service duties to another remains responsible, and liable, under Chapter 74C and these Rules for any violation.

Authority G.S. 74C-5; 74C-8.1; 74C-12; 74C-16.

14B NCAC 16 .0110 REPORTING REQUIREMENTS

(a) If any registrant trainee, certificate holder, employee, subcontractor, or any other person providing private protective services on behalf of a licensee is charged with any criminal offense that would constitute grounds to deny, suspend, or revoke a ~~license, registration, or permit, registration~~ or certificate under this Chapter, the ~~licensee, registrant, or certificate holder~~ licensee shall ~~self-report~~ report the criminal charge to the Board either in person or by telephone no later than the first business day following knowledge of the charge. The ~~licensee, registrant, or certificate holder~~ licensee shall provide a copy of the charging document and a written explanation to the Board within five business days.

(b) If any licensee, trainee, registrant, or certificate holder is charged with any criminal offense that would constitute grounds to deny, suspend, or revoke a ~~license~~ license, registration, or certificate under this Chapter, the licensee, trainee, registrant, or certificate holder shall self-report the criminal charge to the Board either in person or by telephone no later than the first business day following the charge. The licensee, trainee, registrant, or certificate holder shall provide a copy of the charging document and a written explanation to the Board within five business days.

(c) If a licensee, trainee, registrant, or certificate holder discharges a firearm while engaged in the private protective services business, the licensee shall notify the Board either in person or by telephone no later than the first business day following the incident. The licensee shall also file a written report to the Board within five business days of the incident. In the report, the licensee shall state the name of the individual who discharged the firearm, the type of weapon discharged, the location of the incident, the law enforcement agency investigating the incident, the events leading to the discharge of the firearm, and any bodily injuries occurring from the incident. This Rule shall not apply to a weapon that is discharged during a training course that has been approved by the Board.

Authority G.S. 74C-5.

14B NCAC 16 .0113 INVOLVEMENT IN ADMINISTRATIVE HEARING

All licensees, registrants, trainees, and trainers shall report to the Board any administrative proceeding commenced against him or her that involves any potential revocation or suspension of, or other disciplinary action against, any private protective service license, permit, certification, or registration that he or she holds in another state. The Board must receive written notice of any such administrative proceeding within 30 days of the date the licensee, registrant, or trainer is notified of the administrative proceeding.

Authority G.S. 74C-5; 74C-12.

SECTION .0200 - LICENSES: TRAINEE PERMITS

14B NCAC 16 .0201 APPLICATION FOR LICENSES AND TRAINEE PERMITS

(a) Each applicant for a license or trainee permit shall submit an online application on the website provided by the Board. The online application shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
- (2) one head and shoulders digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;
- (3) upload online a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
- (4) the applicant's non-refundable application fee, along with a four dollar (\$4.00) convenience fee and credit card transaction fee;
- (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board; and
- (6) an Equifax credit check run within 30 days of the license application submission date, which will be submitted to the Board's investigator during the application process.

(b) Applications for trainee permits shall be accompanied by a notarized statement on a form provided by the Board and signed by the applicant and his or her prospective supervisor, stating that the trainee applicant shall at all times work with and under the direct supervision of that supervisor and the form shall be uploaded as part of the online application process.

(c) Private investigator trainees applying for a license shall make available for inspection a log of experience on a form provided by the Board.

(d) Each applicant must upload evidence of high school graduation either by diploma, G.E.D. certificate, or other proof.

(e) Each applicant for a license shall meet personally with a Board investigator, the Screening Committee, the Director, or another Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74C and the administrative rules in this Chapter during the personal meeting. The applicant shall sign a form provided by the Board indicating that he or she has reviewed G.S. 74C and the administrative rules in this Chapter with the Board's representative. During a national or State declared state of emergency that restricts or prohibits travel, the personal meeting requirement may be waived if requested by the applicant in lieu of alternative means of communication.

Authority G.S. 74C-2; 74C-5; 74C-8; 74C-8.1; 74C-12.

**14B NCAC 16 .0203 RENEWAL OR RE-ISSUE OF LICENSES AND TRAINEE PERMITS**

(a) Each applicant for renewal of a license or trainee permit shall submit an online renewal application on the website provided by the Board. This online application shall be submitted not less than 30 days prior to expiration of the applicant's current license or trainee permit and shall be accompanied by:

- (1) one head and shoulders digital color photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;
- (2) upload online a statement of the result of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 24 months;
- (3) the applicant's renewal fee, along with a four dollar (\$4.00) convenience fee and credit card transaction fee; and
- (4) for license applicants, proof of liability insurance as set out in G.S. 74C-10(e).

(b) If a licensee has maintained a license at least two years and then allows the license to expire, the license may be re-issued if application is made within three years of the expiration date and the following documentation is submitted to the Board:

- (1) an online Application For Reinstatement of an Expired License;
- (2) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
- (3) one head and shoulders digital color photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;
- (4) upload online a statement of the result of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
- (5) the applicant's non-refundable application fee, along with a four dollar (\$4.00) convenience fee and credit card transaction fee;
- (6) proof of liability insurance as set out in G.S. 74C-10(e); and
- (7) payment to the State Bureau of Investigations to cover the cost of criminal record checks performed by the State Bureau of Investigation, with payment to be paid online through the Board's online application process.

(c) A member of the armed forces whose license is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the license renewal fee and complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

Authority G.S. 74C-5; 74C-8; 74C-8.1; 74C-9.

**14B NCAC 16 .0204 DETERMINATION OF EXPERIENCE**

(a) Experience requirements shall be determined as follows:

- (1) one year experience = 1,000 hours;
- (2) two years experience = 2,000 hours;
- (3) three years experience = 3,000 hours.

(b) Applicants shall make available upon Board request written documentation to verify experience.

(c) When applying for a license, registration, or trainee permit, the Board shall not consider any experience claimed by the applicant if:

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

(d) The Board may consider formal classroom training that is directly related to the private protective services industry. The Board may grant one half hour of credit for each hour of formal classroom training, but shall grant no more than 200 hours. Paragraph (c) of this Rule is to be considered in addition to any other formal training credits. No credit shall be given for formal training required pursuant to these Rules.

Authority G.S. 74C-5; 74C-8.

**SECTION .0400 - PRIVATE INVESTIGATOR: ELECTRONIC COUNTERMEASURES**

**14B NCAC 16 .0404 REPORTS**

(a) ~~Private~~ In addition to the requirements in G.S. 74C-12(a)(20), private investigators shall make and offer to each client a written report containing the findings and details of the investigation within 30 days after the completion of the investigation for which the client has paid the investigator for the services. The licensee shall retain a copy of the written report.

(b) Descriptive reports, chronological reports, cover letters, and itemized invoices to the client shall be personally signed by a licensee. The file copy shall reflect the names of all participating employees and a description of the work performed by each one. These documents shall be retained by the licensee who signed the report.

Authority G.S. 74C-5.

**14B NCAC 16 .0405 PRIVATE INVESTIGATOR'S USE OF A BADGE**

While engaged in his or her official duties, a private investigator shall be allowed to carry, possess, and display the badge set forth in this Rule. The badge shall be a duplicate of the badge shown below except for the licensee's name and license number. The badge shall be gold with dark blue lettering. Any deviation from this design shall be deemed an unauthorized badge and may constitute a violation of G.S. 74C-12(a) and this Rule. The badge shall be ~~displayed~~ carried in a folding pocket case with the badge displayed on one side of the case and the private investigator's pocket credential issued by the Board displayed on the opposite side of the case. In no instance may the badge be displayed, even in a case, openly on the breast pocket, the belt, a neck lanyard, or any other open carry or possession.



Authority G.S. 74C-5(12).

**SECTION .0600 - PSYCHOLOGICAL STRESS EVALUATOR (P.S.E.)**

**14B NCAC 16 .0602 P.S.E. EXAMINATION REQUIREMENTS**

P.S.E. licensees shall comply with the requirements of Rule .0503 of this Chapter. In addition, P.S.E. examinations shall be conducted by the examiner in the presence of the examinee and with the examinee's knowledge that he or she is being examined. Examination by telephone or any other method that is not in person is prohibited.

Authority G.S. 74C-5.

**SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)**

**14B NCAC 16 .0701 APPLICATION FOR UNARMED SECURITY GUARD REGISTRATION**

(a) Each employer or his or her designee shall submit an online application for the registration of each employee to the Board. This online submission shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of classifiable fingerprints on an applicant

- (2) fingerprint card that shall be mailed separately to the Board's office;
- (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;
- (3) upload online a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 48 months;
- (4) the applicant's non-refundable registration fee, along with a four dollar (\$4.00) convenience fee and credit card transaction fee;
- (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
- (6) one original signed SBI release of information form that shall be uploaded online with the original mailed to the Board's administrative office;
- (7) a statement signed by a certified trainer that the applicant has completed the training requirements of Rule .0707 of this Section if applicable; and
- (8) a completed affidavit form and public notice statement form.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and the completed affidavit form and shall retain a copy of the application, including the affidavit, in the guard's personnel file in the employer's office.

(c) The applicant's copy of the application and completed affidavit form shall serve as a temporary registration card that shall be carried by the applicant when he or she is working within the scope of his or her employment and shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) A copy of the statement required by Subparagraph (a)(7) of this Rule shall be retained by the licensee in the individual applicant's personnel file in the employer's office.

*Authority G.S. 74C-5; 74C-8.1; 74C-11.*

**14B NCAC 16 .0703 MINIMUM STANDARDS FOR UNARMED SECURITY GUARD REGISTRATION**

An applicant for registration shall:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States or a resident alien;
- (3) be of good moral character and temperate habits. Any of the following within the last five years shall be prima facie evidence that the applicant does not have good moral character or

temperate habits: conviction by any local, state, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage, conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking and/or entering, burglary, ~~larceny, any offense involving moral turpitude; or larceny,~~ or a history of addiction to alcohol or a narcotic drug. For the purposes of this Rule, "conviction" means and includes the entry of a plea of guilty, plea of no contest, or a verdict rendered in open court by a judge or jury;

- (4) not have been judicially declared incompetent or not have been involuntarily committed to an institution for treatment of mental illness. When an individual has been treated and found to have been restored, the Board will consider this evidence and determine whether the applicant meets the requirements of this Rule; and
- (5) not have had a revocation of a registration.

*Authority G.S. 74C-5; 74C-12(a)(19).*

**14B NCAC 16 .0707 TRAINING REQUIREMENTS FOR UNARMED SECURITY GUARDS**

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

- (1) The Security Officer in North Carolina -- (minimum of one hour);
- (2) Legal Issues for Security Officers -- (minimum of three hours);
- (3) Emergency Response -- (minimum of three hours);
- (4) Communications -- (minimum of two hours);
- (5) Patrol Procedures -- (minimum of three hours);
- (6) Note Taking and Report Writing -- (minimum of three hours); and
- (7) Department -- (minimum of one hour).

A minimum of four hours of classroom instruction shall be completed within 20 calendar days of any security guard, including probationary, being placed on a duty station. These four hours shall include the instruction on The Security Officer in North Carolina and Legal Issues for Security Officers.

~~(b) Licensees shall submit to the Director the name of the certified unarmed security guard trainer who will be conducting the unarmed security guard training.~~

~~(e)(b)~~ Training shall be conducted by a Board certified unarmed security guard trainer. A Board created lesson plan covering the training requirements in Paragraph (a) of this Rule shall be made available by the Board to each trainer. The Board may approve other media training materials that deliver the training requirements of Paragraph (a) of this Rule.

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

- (1) The training is presented by a Board certified unarmed security officer trainer.
- (2) Each student is given a copy of the unarmed security guard training manual to use for the duration of the 16 hour training course.
- (3) The technology used allows the trainer to see the students and the students to see the trainer in real time during the training.
- (4) All students in each classroom are able to see and read the screen or monitor, and they must be able to hear and understand the audio presentation. All monitors used in each classroom must be at least 32 inches wide.
- (5) The technology used is of sufficient quality so that the training audio and video is delivered smoothly and without interruption.
- (6) Each student is taught to use the audio and video equipment in the classroom prior to the start of the 16 hour unarmed security officer training course.
- (7) The total number of students receiving the remote training at one time does not exceed 35 students.
- (8) Any additional training beyond the Board mandated training in the unarmed security guard training manual is taught either before or after the 16 hour unarmed security officer training.
- (9) The Director is notified five days prior to training of the location of each classroom, name, and location of the certified trainer, and the number of students who will be present.
- (10) The sponsoring agency allows the Director or the Director's designee access via computer of the training during the time that it is taking place.

Authority G.S. 74C-5; 74C-11; 74C-13(m).

**14B NCAC 16 .0708 TRAINER NAME TO BE SUBMITTED TO DIRECTOR**

Licensees shall submit to the Director the name of the certified unarmed security guard trainer who will be conducting the unarmed security guard training.

Authority G.S. 74C-5; 74C-13(m).

**SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

**14B NCAC 16 .0801 APPLICATION/ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT**

(a) Each armed security guard employer or his or her designee shall submit an online application for the registration of each armed security guard applicant to the Board. This online submission shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
- (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;
- (3) upload online a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
- (4) the applicant's non-refundable registration fee, along with a four dollar (\$4.00) convenience fee and credit card transaction fee;
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of this Section;
- (6) a certification by the applicant that he or she is at least 21 years of age;
- (7) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board; and
- (8) a completed affidavit form and public notice statement form.

(b) The employer of each applicant for registration shall give the applicant a copy of the online application, the completed affidavit form, and proof of completion of a Board approved firearms course and shall retain a copy of the application, including affidavit and proof of course completion, in the guard's personnel file in the employer's office.

(c) The applicant's copy of the application, affidavit, and proof of completion of a Board approved firearms course shall serve as a temporary registration card that shall be carried by the applicant when he or she is working within the scope of his or her employment and shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) Applications submitted without proof of completion of a Board approved firearms training course shall not serve as temporary registration cards.

(e) The provisions of Paragraphs (a), (b), and (c) of this Rule also apply to any employee whose employment is terminated within 30 days of employment.

Authority G.S. 74C-5; 74C-9; 74C-13.

**14B NCAC 16 .0807 TRAINING REQUIREMENTS FOR ARMED SECURITY GUARDS**

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in Rule .0707 of this Chapter.

(b) Private investigator licensees applying for an armed security guard firearm registration permit shall first complete a four-hour training course consisting of the courses set forth in Rule .0707(a)(1) and (2) of this Chapter and all additional training requirements set forth in that Rule.

(c) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including familiarity with rules and regulations relating to armed security guards (minimum of four hours);
- (2) handgun safety, including range firing procedures (minimum of one hour);
- (3) handgun operation and maintenance (minimum of three hours);
- (4) handgun fundamentals (minimum of eight hours); and
- (5) night firing (minimum of four hours).

Subparagraph (c)(2), "operation" under Subparagraph (c)(3), and Subparagraph (c)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(d) Applicants for an armed security guard firearm registration permit shall attain a score of at least 80 percent accuracy on a firearms range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office. For rifle qualification all shots shall be located on the target. Should a student fail to attain a score of 80 percent accuracy, the student may be given ~~three~~ two additional attempts to qualify on the course of fire the student did not pass. Failure to meet the qualification after three attempts shall require the student to repeat the entire basic training course for armed security guards. All additional attempts must take place within 20 days of the completion of the initial 20 hour course.

(e) All armed security guard training required by this Chapter shall be administered by a certified trainer and shall be completed no more than ~~90~~ 180 days prior to the date of issuance of the armed security guard firearm registration permit.

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

(g) No more than six new or renewal armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training for armed security guards.

(h) Applicants for re-certification of an armed security guard firearm registration permit shall complete a basic recertification training course for armed security guards that consists of at least

four hours of classroom instruction and is a review of the requirements set forth in Subparagraphs (c)(1) through (c)(5) of this Rule. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of an armed security guard firearm registration permit shall also complete the requirements of Paragraph (d) of this Rule.

(i) An armed guard registered with one company may be registered with a second company. The registration shall be considered "dual." The registration with the second company shall expire at the same time that the registration expires with the first company. An updated application shall be required to be submitted by the applicant, along with the digital photograph, updated criminal records checks, and a forty dollar (\$40.00) registration fee. If the guard will be carrying a firearm of the same make, model, and caliber, then no additional firearms training shall be required. The licensee shall submit a letter stating the guard will be carrying the same make and model firearm. If the guard will be carrying a firearm of a different make and model, the licensee shall submit a letter to the Board advising of the make, model, and caliber of the firearm the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course.

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

- (1) legal limitations on the use of shotgun (minimum of one hour);
- (2) shotgun safety, including range firing procedures (minimum of one hour);
- (3) shotgun operation and maintenance (minimum of one hour);
- (4) shotgun fundamentals (minimum of two hours); and
- (5) night firing (minimum of one hour).

Subparagraph (j)(2), "operation" under Subparagraph (j)(3), and Subparagraph (j)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(k) An applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraph (j) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(l) Applicants for shotgun recertification shall complete one hour of classroom training covering the topics set forth in Paragraph (j) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(m) To be authorized to carry a rifle in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c), and (d) of this Rule, 16 hours of classroom training which shall include the following:

- (1) legal limitations on the use of rifles (minimum of one hour);

- (2) rifle safety, including range firing procedures (minimum of one hour);
- (3) rifle operation and maintenance (minimum of two hours);
- (4) rifle fundamentals (minimum of ten hours); and
- (5) night firing (minimum two hours).

Subparagraph (m)(2), "operation" under Subparagraph (m)(3), and Subparagraph (m)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(n) The applicant shall pass a skills course that tests each basic rifle skill and the test of each skill shall be completed within three attempts.

(o) An applicant may take the additional rifle training at a time after the initial training in this Rule. If the rifle training is completed at a later time, the rifle certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraphs (m) and (n) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a rifle range qualification course adopted by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(p) Applicants for rifle recertification shall complete an additional one hour of classroom training covering the topics set forth in Paragraph (m) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(q) Upon written request, an applicant for an armed security guard firearm registration permit who possesses a current firearms trainer certificate shall be given a firearms registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with the applicant's duty firearms as set forth in Paragraph (d) of this Rule.

(r) An armed security guard is required to qualify annually both for day and night firing with his or her duty handgun, shotgun, and rifle, if applicable. If the security guard fails to qualify on any course of fire, the security guard shall not carry the firearm until such time as he or she meets the qualification requirements. Upon failure to qualify, the firearm instructor shall notify the security guard that he or she is no longer authorized to carry the firearm and the firearm instructor shall notify the employer and the Private Protective Services Board staff on the next business day.

(s) A firearm training certificate of an armed security guard remains valid even if the guard leaves the employment of one company for the employment of another. The range qualifications shall remain valid if the guard will be carrying a firearm of the same make, model, and caliber and no additional firearms training shall be required. The licensee shall submit a letter stating the guard will be carrying the same make and model firearm. If the guard will be carrying a firearm of a different make and model, the licensee shall submit a letter to the Board advising of the make, model, and caliber of the firearm the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course. However, nothing herein shall extend the period of time the qualification is valid.

Authority G.S. 74C-5; 74C-9; 74C-13.

**14B NCAC 16 .0808 CONCEALED WEAPONS HANDGUN**

(a) The Board does not have the authority to issue a Concealed Carry Permit. However, a ~~licensee-trainer, or registrant licensee, trainee, registrant, or firearms trainer~~ who has complied with all provisions of G.S. 14, Article 54B and applicable rules adopted by the N.C. Criminal Justice Education and Training Standards Commission pursuant thereto and has been issued a current concealed handgun permit by a Sheriff may carry a concealed handgun after complying with the concealed handgun provisions for training and qualifications set forth in Paragraph (b) of this Rule.

(b) A licensee, trainee, registrant, or firearms trainer shall comply with each of the following requirements to carry a concealed handgun while engaged in a private protective services business:

- (1) Hold a current Armed Security Guard Registration Permit by complying with all requirements for armed registration as prescribed in this Section.
- (2) Complete standards set forth by the N.C. Criminal Justice Education and Training Standards Commission to include knowledge of North Carolina firearms laws including the limitation on concealed handgun possession on specified property and within certain buildings.

(c) Upon application to the Board, a licensee, trainee, registrant, or firearms trainer meeting the requirements of this Section shall be issued a concealed handgun endorsement to the current Armed Security Guard Registration Permit for the term of the Armed Security Guard Registration Permit without additional permit fees, but any additional training costs necessary to comply with this Section shall be borne directly by the applicant. The endorsement shall be renewed at the time of the Armed Security Guard Registration Permit renewal pursuant to this Rule on payment of the armed security guard registration renewal fee and proof of possession of a current Concealed Handgun Permit. There shall be no additional fee for the concealed handgun endorsement renewal.

Authority G.S. 74C-5; 74C-13.

**SECTION .0900 – TRAINER CERTIFICATE**

**14B NCAC 16 .0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE**

Each applicant for a firearms trainer certificate shall submit an online application to the Board. The application shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
- (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online submission

- and submitted by uploading online with the application submission;
- (3) upload online a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
- (5) the applicant's non-refundable application fee, along with a four dollar (\$4.00) convenience fee and credit card transaction fee;
- (6) evidence of the liability insurance required by G.S. 74C-10(e) if the applicant is not an employee of a licensee;
- ~~(6)~~(7) a certificate of successful completion of the training required by Rule .0901(a)(3) and (4) of this Section, stating the training was completed within 60 days of the submission of the application and uploaded online as part of the online application process; and
- ~~(7)~~(8) the actual cost charged to the Private Protective Services Board by the North Carolina Justice Academy to cover the cost of the firearms training course given by the N.C. Justice Academy and collected as part of the online application process by the Private Protective Services Board.

- (2) The sub-committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives or goals.
- (3) When the sub-committee completes its review, it shall report to the Training and Education Committee. The Training and Education Committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives and goals. The Training and Education Committee shall then report the findings with a recommendation of acceptance or denial to the Private Protective Services Board.
- (c) Upon receipt of the Training and Education Committee report, the Private Protective Services Board shall determine by majority vote if the course will be approved for continuing education credits. In making its determination, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives or goals.
- (d) Each approved course shall remain an approved course for four years from the date of approval by the Board, unless the course content changes or the course instructor changes.
- (e) Trainers and instructors shall receive continuing education credit of five hours for every actual teaching hour with an eight hour cap of continuing education credit every two years.
- (f) Colleges, universities, trade schools, and other degree granting institutions shall be granted standing approval when the institutions are accredited, certified, or approved by the Department of Public Instruction or by a similar agency in another state and the course is related to law, criminal justice, security profession, finance, ethics, forensics, crime prevention, and investigation. Approval is one credit hour per contact hour not to exceed eight credit hours.
- (g) Online courses shall be approved by the Board based on compliance with the standards set forth in Paragraph (a) of this Rule.

Authority G.S. 74C-5; 74C-8.1(a); 74C-13.

**SECTION .1200 – CONTINUING EDUCATION**

**14B NCAC 16 .1203 ACCREDITATION STANDARDS**

- (a) CE courses may obtain the approval of the Board by submitting the following information to the Board for consideration:
  - (1) the nature and purpose of the course;
  - (2) the course objectives or goals;
  - (3) the outline of the course, including the number of training hours for each segment; and
  - (4) the name of the instructor.
- (b) To determine if a course will receive approval from the Board, the Board shall complete the following review:
  - (1) The matter shall be referred to the Training and Education Committee for the appointment of a sub-committee that shall review the course under consideration. The sub-committee shall consist of at least two industry members of the Training and Education Committee. Other members of the sub-committee may be appointed at the discretion of the Training and Education Committee Chairman.

Authority G.S. 74C-5; 74C-22.

**SECTION .1300 – ARMORED CAR SERVICE GUARD REGISTRATION (UNARMED)**

**14B NCAC 16 .1301 APPLICATION FOR UNARMED ARMORED CAR SERVICE GUARD REGISTRATION**

- (a) Each armored car employer or his designee shall complete an online application form for the registration of each unarmed armored car service guard applicant to the Board. This online form shall be accompanied by:
  - (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
  - (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application

and submitted by uploading the photograph online with the application submission;

- (3) upload online a statement of the result of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 months;
- (4) the applicant's non-refundable registration fee, along with a four dollar (\$4.00) convenience fee and credit card transaction fee;
- (5) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
- (6) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .1307 of this Section, if applicable; and
- (7) a completed affidavit form and public notice statement form.

(b) The employer of each applicant for registration shall give the applicant a copy of the online application and completed affidavit and shall retain a copy of the application, including the affidavit, in the guard's personnel file in the employer's office.

(c) The applicant's copy of the application and completed affidavit form shall serve as a temporary registration card that shall be carried by the applicant when he or she is working is within the scope of his or her employment and shall be exhibited upon the request of any law enforcement officer or authorized representative of the Board.

(d) A copy of the statement specified in Subparagraph (a)(6) of this Rule shall be retained by the licensee in the individual applicant's personnel file in the employer's office.

Authority G.S. 74C-3; 74C-5; 74C-8.1(a).

**SECTION .1400 - ARMED ARMORED CAR SERVICE GUARDS FIREARM REGISTRATION PERMIT**

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

(a) Prior to applying, applicants for an armed armored car service guard firearm registration permit shall complete the basic training course for unarmed armored car service guards set forth in Rule .1307(a) of this Chapter. Private Investigator Licensees applying for an armed armored car service guard firearm registration permit shall complete a four hour training course consisting of blocks of instruction "The Security Officer in North Carolina" and "Legal Issues for Security Officers" as set forth in Rule .1307(a) of this Chapter. Private Investigator Licensees applying for an armed armored car service guard firearm registration permit are not required to complete the following training blocks found in the basic training course referenced in Rule .1307(a) of this Chapter: "Emergency Responses," "Department," "Armored Security Operations," and "Safe Driver Training." A Private Investigator Licensee applying for an armed armored car service guard firearm

registration permit shall meet all additional training requirements set forth in Rule .1307(a) of this Chapter as well as the training requirements set forth in this Rule.

(b) Applicants for an armed armored car service guard firearm registration permit shall complete a basic training course for armed security guards that consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including familiarity with rules relating to armed security guards -- (minimum of four hours);
- (2) handgun safety, including range firing procedures -- (minimum of one hour);
- (3) handgun operation and maintenance -- (minimum of three hours);
- (4) handgun fundamentals -- (minimum of eight hours); and
- (5) night firing -- (minimum of four hours).

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

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

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

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

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

(h) To be authorized to carry a standard 12 gauge shotgun in the performance of his or her duties as an armed armored car service guard, an applicant shall complete, in addition to the requirements

of Paragraphs (a), (b) and (c) of this Rule, four hours of classroom training that shall include the following:

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

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

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

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

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

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

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

Authority G.S. 74C-3; 74C-5; 74C-13.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Nursing intends to amend the rules cited as 21 NCAC 36 .0801-.0803, .0805-.0808, and .0810.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncbon.com

Proposed Effective Date: May 1, 2021

Public Hearing:

Date: January 22, 2021

Time: 1:00 pm

Location: via teleconference: 919.670.0362 Conf ID# 93838627#

Reason for Proposed Action:

21 NCAC 36 .0801: technical changes regarding wording; updates to General Statute references

21 NCAC 36 .0802: clarification regarding definition of scope of practice

21 NCAC 36 .0803: technical changes regarding wording

21 NCAC 36 .0805: addition of wording regarding approval to practice

21 NCAC 36 .0806: clarification regarding continuing competence requirements

21 NCAC 36 .0807: addition of language regarding national credentialing body; clarification regarding CE requirements

21 NCAC 36 .0808: technical changes regarding wording

21 NCAC 36 .0810: technical changes regarding wording

Comments may be submitted to: Angela Ellis, PO Box 2129 Raleigh NC 27602-2129, Raleigh, NC 27602-2129; email public.comment@ncbon.com

Comment period ends: March 5, 2021

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

SECTION .0800 - APPROVAL AND PRACTICE PARAMETERS FOR NURSE PRACTITIONERS

21 NCAC 36 .0801 DEFINITIONS

The following definitions apply to this Section:

- (1) "Approval to Practice" means authorization by the Joint Subcommittee of the Medical Board and the Board of Nursing for a nurse practitioner to ~~perform medical acts~~ practice within her or his area of educational preparation and certification under a collaborative practice agreement ~~(CPA)~~ with a ~~licensed~~ physician licensed by the Medical Board in accordance with this Section.
- (2) "Back-up Supervising Physician" means ~~the~~ a ~~licensed~~ physician licensed by the Medical Board who, by signing an agreement with the nurse practitioner and the primary supervising physician(s) shall provide supervision, collaboration, ~~consultation~~ consultation, and evaluation of medical acts by the nurse practitioner in accordance with the collaborative practice agreement when the ~~Primary Supervising Physician~~ primary supervising physician is not available. Back-up supervision shall be in compliance with the following:
- (a) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.
- (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.
- (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation and has a signed collaborative practice agreement with the nurse practitioner and the primary supervising physician may be a back-up supervising physician for a nurse practitioner in the non-training situation.
- (3) ~~"Board of Nursing"~~ "Board" means the North Carolina Board of Nursing.
- (4) "Collaborative practice agreement" means the arrangement for nurse practitioner-physician provides for continuous availability to each other for ongoing supervision, consultation, collaboration, ~~referral~~ referral, and evaluation of care provided by the nurse practitioner.
- (5) ~~"Disaster"~~ "Emergency" means a state of ~~disaster~~ emergency as defined in ~~G.S. 166A-4(1a)~~ G.S. 166A-19.3 and proclaimed by the Governor, or by the General ~~Assembly pursuant to G.S. 166A-6.~~ Assembly.
- (6) "Joint Subcommittee" means the subcommittee composed of members of the Board of ~~Nursing~~ and members of the Medical Board to whom responsibility is given by G.S. 90-8.2 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
- (7) "Medical Board" means the North Carolina Medical Board.
- (8) "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice:
- (a) American Nurses Credentialing Center (ANCC);
- (b) American Academy of Nurse Practitioners ~~(AANP);~~ National Certification Board (AANPCB);
- (c) American Association of Critical Care Nurses Certification Corporation (AACN);
- (d) National Certification Corporation of the Obstetric Gynecologic and Neonatal Nursing Specialties (NCC); and
- (e) the Pediatric Nursing Certification Board (PNCB).
- (9) "Nurse Practitioner" or "NP" means a ~~currently licensed~~ registered nurse who holds an active unencumbered license approved to ~~perform medical acts~~ practice consistent with the nurse's area of nurse practitioner academic educational preparation and national certification under an agreement with a ~~licensed~~ physician licensed by the Medical Board for ongoing supervision, consultation, ~~collaboration~~ collaboration, and evaluation of the medical acts performed. Such medical acts are in addition to those nursing acts performed by virtue of registered nurse (RN) licensure. The NP is held accountable under the RN license for those nursing acts that he or she may perform.
- (10) "Primary Supervising Physician" means ~~the licensed~~ a physician with an active unencumbered license with the Medical Board who shall provide ongoing supervision, collaboration, ~~consultation~~ consultation, and evaluation of the medical acts performed by the nurse practitioner as defined in the collaborative practice agreement. Supervision shall be in compliance with the following:
- (a) The primary supervising physician shall assure both Boards that the nurse practitioner is qualified to perform those medical acts described in the collaborative practice agreement.
- (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.
- (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training

situation may supervise a nurse practitioner in the non-training situation.

- (11) "Registration" means authorization ~~by the Medical Board and the Board of Nursing~~ for a registered nurse to use the title nurse practitioner in accordance with this Section.
- (12) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
- (13) "Volunteer Approval" means approval to practice consistent with this rule except without expectation of direct or indirect compensation or payment (monetary, in kind or otherwise) to the nurse practitioner.

Authority G.S. 90-8.1; 90-8.2; 90-18(14); 90-18.2; 90-171.20(4); 90-171.20(7); 90-171.23(b); 90-171.83.

**21 NCAC 36 .0802 SCOPE OF PRACTICE**

The nurse practitioner's scope of practice is defined by academic educational preparation and national certification and maintained competence. A nurse practitioner shall be held accountable by both Boards for the continuous and comprehensive management of a broad range of personal health services for which the nurse practitioner is educationally prepared and for which competency has been maintained, with physician supervision and collaboration as described in Rule .0810 of this Section. These services include but are not restricted to:

- (1) promotion and maintenance of health;
- (2) prevention of illness and disability;
- (3) diagnosing, treating and managing acute and chronic illnesses;
- (4) guidance and counseling for both individuals and families;
- (5) prescribing, ~~administering~~ administering, and dispensing therapeutic measures, tests, ~~procedures~~ procedures, and drugs;
- (6) planning for situations beyond the nurse practitioner's expertise, and consulting with and referring to other health care providers as appropriate; and
- (7) evaluating health outcomes.

Authority G.S. 90-18(14); 90-171.20(7); 90-171.23(b)(14).

**21 NCAC 36 .0803 NURSE PRACTITIONER REGISTRATION**

(a) The Board of Nursing shall register an applicant as a nurse practitioner who:

- (1) has an ~~unrestricted~~ active unencumbered license to practice as a registered nurse in North Carolina or compact state and, when applicable, an ~~unrestricted~~ active unencumbered approval, ~~registration~~ registration, or license as a nurse practitioner in another state, territory, or possession of the United States;

- (2) has successfully completed a nurse practitioner education program as outlined in Rule .0805 of this Section;
- (3) is certified as a nurse practitioner by a national credentialing body consistent with 21 NCAC 36 .0801(8); and
- (4) has supplied additional information necessary to evaluate the application as requested.

(b) ~~Beginning~~ Applicants who have graduated from a nurse practitioner program after January 1, 2005, new graduates of a nurse practitioner program, who are seeking first-time nurse practitioner registration ~~in North Carolina~~ shall:

- (1) hold a Master's or higher degree in Nursing or related field with primary focus on Nursing;
- (2) have successfully completed a graduate level nurse practitioner education program accredited by a national accrediting body; and
- (3) provide documentation of certification by a national credentialing body.

Authority G.S. 90-18(c)(13); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.83.

**21 NCAC 36 .0805 EDUCATION AND CERTIFICATION REQUIREMENTS FOR REGISTRATION AND APPROVAL AS A NURSE PRACTITIONER**

(a) A nurse practitioner applicant seeking with registration or first-time approval to practice after January 1, 2000, shall provide evidence of current certification or recertification as a nurse practitioner by a national credentialing body.

(b) A nurse practitioner applicant seeking registration or approval to practice who completed a nurse practitioner education program prior to December 31, 1999 shall provide evidence of successful completion of a course of education that contains a core curriculum including 400 contact hours of didactic education and 400 hours of preceptorship or supervised clinical experience. The core curriculum shall contain the following components:

- (1) health assessment and diagnostic reasoning including:
  - (A) historical data;
  - (B) physical examination data;
  - (C) organization of data base;
- (2) pharmacology;
- (3) pathophysiology;
- (4) clinical management of common health problems and diseases such as the following shall be evident in the nurse practitioner's academic program:
  - (A) respiratory system;
  - (B) cardiovascular system;
  - (C) gastrointestinal system;
  - (D) genitourinary system;
  - (E) integumentary system;
  - (F) hematologic and immune systems;
  - (G) endocrine system;
  - (H) musculoskeletal system;
  - (I) infectious diseases;
  - (J) nervous system;

- (K) behavioral, mental health and substance abuse problems;
- (5) clinical preventative services including health promotion and prevention of disease;
- (6) client education related to Subparagraph (b)(4)–(5) of this Rule; and
- (7) role development including legal, ethical, economical, health ~~policy~~ policy, and interdisciplinary collaboration issues.

(c) Nurse practitioner applicants exempt from components of the core curriculum requirements listed in Paragraph (b) of this Rule are:

- (1) Any nurse practitioner approved to practice in North Carolina prior to January 18, 1981, is permanently exempt from the core curriculum requirement.
- (2) A nurse practitioner certified by a national credentialing body prior to January 1, 1998, who also provides evidence of satisfying Subparagraph (b)(1)–(3) of this Rule shall be exempt from core curriculum requirements in Subparagraph (b)(4)–(7) of this Rule. Evidence of satisfying Subparagraph (b)(1)–(3) of this Rule shall include:
  - (A) a narrative of course content; and
  - (B) contact hours.

*Authority G.S. 90-18(14); 90-171.42.*

**21 NCAC 36 .0806 ANNUAL RENEWAL OF APPROVAL TO PRACTICE**

(a) Each registered nurse who is approved to practice as a nurse practitioner in this State shall annually renew each approval to practice with the Board of Nursing no later than the last day of the nurse practitioner's birth month by:

- (1) Maintaining current North Carolina RN license; ~~licensure or privilege to practice~~;
- (2) Maintaining certification as a nurse practitioner by a national credentialing body identified in Rule .0801(8) of this Section;
- (3) attesting to completion of continuing competence requirements, and submitting evidence of completion if requested by the Board, as specified in Rule .0807 of this Section;
- ~~(3)~~(4) Submitting the fee required in Rule .0813 of this Section; and
- ~~(4)~~(5) Completing the renewal application.

(b) If the nurse practitioner has not renewed by the last day of her or his birth month, the approval to practice as a nurse practitioner shall ~~lapse~~; expire.

*Authority G.S. 90-8.1; 90-8.2; 90-18(c)(14); 90-171.23(b)(14); 90-171.83.*

**21 NCAC 36 .0807 CONTINUING EDUCATION (CE)**

In order to maintain nurse practitioner approval to practice, the nurse practitioner shall maintain certification as a nurse practitioner by a national credentialing body identified in Rule

.0801(8) of this Section and earn 50 contact hours of continuing education each year beginning with the first renewal after initial approval to practice has been granted. At least 20 hours of the required 50 hours must be in the advanced practice nursing population focus of the NP role ~~those hours~~ for which approval has been granted by the American Nurses Credentialing Center (ANCC) or Accreditation Council on Continuing Medical Education (ACCME), other national credentialing bodies, or practice relevant courses in an institution of higher learning. Every nurse practitioner who prescribes controlled substances shall complete at least one hour of the total required continuing education (CE) hours annually consisting of CE designed specifically to address controlled substance prescribing practices, ~~signs of the abuse or misuse of controlled substances~~, and controlled substance prescribing for chronic pain management. CE that includes recognizing signs of the abuse or misuse of controlled substances, or non-opioid treatment options shall qualify for the purposes of this Rule. Documentation shall be maintained by the nurse practitioner for the previous five calendar years and made available upon request to either Board.

*Authority G.S. 90-5.1; 90-8.1; 90-8.2; 90-14(a)(15); 90-18(c)(14); 90-171.23(b)(14); 90-171.42; S.L. 2015-241, s. 12F.*

**21 NCAC 36 .0808 INACTIVE STATUS**

(a) Any nurse practitioner who wishes to place her or his approval to practice on an inactive status shall notify the Board of ~~Nursing~~ in writing.

(b) A nurse practitioner with an inactive approval to practice status shall not practice as a nurse practitioner.

(c) A nurse practitioner with an inactive approval to practice status who reapplies for approval to practice shall meet the qualifications for approval to practice in Rules .0803(a)(1), .0804(a) and (b), .0807, and .0810 of this Section and receive notification from the Board of ~~Nursing~~ of approval prior to beginning practice after the application is ~~approved by both Boards~~; approved.

(d) A nurse practitioner who has not practiced as a nurse practitioner in more than two years shall complete a nurse practitioner refresher course approved by the Board of ~~Nursing~~ in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and management of these conditions directly related to the nurse practitioner's area of academic education and national certification. A nurse practitioner refresher course participant shall be granted an approval to practice that is limited to clinical activities required by the refresher course.

*Authority G.S. 90-18(13); 90-18.2; 90-171.36; 90-171.83.*

**21 NCAC 36 .0810 QUALITY ASSURANCE STANDARDS FOR A COLLABORATIVE PRACTICE AGREEMENT**

The following are the quality assurance standards for a collaborative practice agreement:

- (1) Availability: The primary or back-up supervising physician(s) and the nurse practitioner shall be continuously available to

- each other for consultation by direct communication or telecommunication.
- (2) Collaborative Practice Agreement:
  - (a) shall be agreed ~~upon and upon, signed signed, and dated~~ by both the primary supervising physician and the nurse practitioner, and maintained in each practice site;
  - (b) shall be reviewed at least yearly. This review shall be acknowledged by a dated signature sheet, signed by both the primary supervising physician and the nurse practitioner, appended to the collaborative practice ~~agreement agreement~~ and available for inspection by members or agents of either Board;
  - (c) shall include the drugs, devices, medical treatments, ~~tests tests,~~ and procedures that may be prescribed, ~~ordered ordered,~~ and performed by the nurse practitioner consistent with Rule .0809 of this Section; and
  - (d) shall include a pre-determined plan for emergency services.
- (3) The nurse practitioner shall demonstrate the ability to perform medical acts as outlined in the collaborative practice agreement upon request by members or agents of either Board.
- (4) Quality Improvement Process.
  - (a) The primary supervising physician and the nurse practitioner shall develop a process for the ongoing review of the care provided in each practice site including a written plan for evaluating the quality of care provided for one or more frequently encountered clinical problems.
  - (b) This plan shall include a description of the clinical problem(s), an evaluation of the current treatment interventions, and if needed, a plan for improving outcomes within an identified time-frame.
  - (c) The quality improvement process shall include scheduled meetings between the primary supervising physician and the nurse practitioner at least every six months. Documentation for each meeting shall:
    - (i) identify clinical problems discussed, including progress toward improving outcomes as stated in Sub-item (4)(b) of this Rule, and recommendations, if any, for changes in treatment plan(s);

- (ii) be signed and dated by those who attended; and
  - (iii) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and primary supervising physician.
- (5) Nurse Practitioner-Physician Consultation. The following requirements establish the minimum standards for consultation between the nurse practitioner and primary supervising physician(s):
- (a) During the first six months of a collaborative practice agreement between a nurse practitioner and the primary supervising physician, there shall be monthly meetings for the first six months to discuss practice relevant clinical issues and quality improvement measures.
  - (b) Documentation of the meetings shall:
    - (i) identify clinical issues discussed and actions taken;
    - (ii) be signed and dated by those who attended; and
    - (iii) be available for review by members or agents of either Board for the previous five calendar years and be retained by both the nurse practitioner and primary supervising physician.

Authority G.S. 90-8.1; 90-8.2; 90-18(14); 90-18.2; 90-171.23(b)(14).

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CHAPTER 62 – BOARD OF ENVIRONMENTAL HEALTH SPECIALIST EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Environmental Health Specialist Examiners intends to amend the rules cited as 21 NCAC 62 .0407, and .0411.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://ncrehs.com/>

Proposed Effective Date: May 1, 2021

Public Hearing:

Date: January 29, 2021

Time: 10:00 a.m.

Location: Telephonic meeting due to Covid-19 restrictions. (712) 775-7031, access code 816685

**Reason for Proposed Action:** *Due to the serious and unforeseen threat to the public health and safety caused by COVID-19, the Governor of North Carolina issued Executive Order No. 116, declaring a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. Additional Executive Orders throughout the year have prohibited mass gatherings. COVID-19, a respiratory disease, spreads easily from person to person, can result in serious illness or death. The Board seeks to contribute towards social isolation efforts directed by the Federal and State Government and assist registrants who are unable to complete required training within the timelines outlined in 21 NCAC 62 .0407 and 21 NCAC 62 .0411.*

*Without this approach, some Environmental Health Specialists may be unable to meet the prescribed standards resulting in loss of their registration. In-person training and exams cannot occur during the State of Emergency. Exams must be completed in person, and testing sites will remain closed while stay in place orders are in effect, if not longer. In addition, the Board is working under the premises (1) over the last few weeks and into the coming months many, if not all, employers, have/will implement(ed) travel & training restrictions for an indefinite period of time, and (2) not all registrants have access to online or virtual training, thus they rely solely on in-person training.*

**Comments may be submitted to:** Donna Coffey, P.O. Box 238, Efland, NC 27243; phone (919) 304-1168; fax (919) 304-1165; email rehs.board@dhhs.nc.gov

**Comment period ends:** March 5, 2021

**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 .0400 - RULES OF OPERATION**

**21 NCAC 62 .0407 RENEWAL**

(a) Applications for renewal shall be filed with the Board on a form provided by the Board and available from the Board website at: [www.rsboard.com](http://www.rsboard.com) or from the Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630. The renewal form may also be generated by the Registered Sanitarian Training and Authorization (RSTAS) computer system at: <http://apps.bluelizard.com/RSTAS/>; <https://rstas.dhhs.state.nc.us/>.

(b) The renewal application shall be completed and signed by the applicant.

(c) Renewal fees shall be paid in accordance with Rule .0405(a)(5) of this Section. The renewal application shall be posted on the Board's website at [www.rsboard.com](http://www.rsboard.com) by October 1 of each year. The individual shall download and submit the application for renewal to the Board. Individuals may also contact the Board at the Division of Environmental Health, 1630 Mail Service Center, Raleigh, NC 27699-1630 for a copy.

(d) Registered environmental health specialists or registered environmental health specialists interns who fail to renew by December 31 shall be notified by the Board that their registration has expired and that they may not practice as a registered environmental health specialist or a registered environmental health specialists intern until they have met the requirements for renewal.

(e) Environmental health specialist interns and other persons applying for new registrations with the board shall take ~~An~~ an environmental health law course based on North Carolina laws and rules with at least 15 contact hours approved by the Board shall be completed within the first four years of the date of most recent registration by the Board. This timeframe shall be extended by one additional year for anyone whose fourth year occurs in 2020.

(f) Registered environmental health specialists ~~or~~ and registered environmental health specialists interns shall complete a minimum of 15 ~~instructional-clock~~ contact hours of continuing education acceptable to the Board each ~~year~~ year, except the 15 hours shall not be required for the year ending December 31, 2020. Continuing education acceptable to the Board includes:

- (1) the specialized training course required in Rule .0411 of this Section;
- (2) District Environmental Health Section Educational meetings;
- (3) professional association courses and educational meetings;
- (4) seminars or courses offered by the North Carolina State of Practice Committee;
- (5) completion of a ~~job-related~~ job-related course offered by a college or university accredited by the Council of Higher Education Accreditation with the hours credited for the year that the course is completed;
- (6) successful completion of a ~~job-related~~ job-related course offered by the Centers for Disease Control and Prevention, the Food and Drug Administration, or the Environmental Protection Agency;
- (7) other practice-related training which:

- (A) is technical in nature, related to the environment, environmental health or improving the practice of environmental health;
- (B) is relevant to the actual job being performed by the participants or applicant;
- (C) includes a method for determining the number of hours spent;
- (D) includes a method of documentation for verification of completion;
- (E) is available to all registered environmental health specialists and environmental health specialist interns; and
- (F) has been granted approval by the Board based on the above standards; and

(g) Registrations that have expired may be renewed within 12 months after expiration upon submittal of application and payment of the renewal fee. The applicant shall provide verification to the Board that continuing education clock hours were obtained during the year since the expiration to comply with the requirements of this Section. Registrations that have expired for more than 12 months may not be renewed.

(h) Interns that are no longer employed in the field of environmental health in North Carolina may not renew.

(i) A registered environmental health specialist or a registered environmental health specialist intern in good standing whose active military service has impaired their ability to obtain the continuing education requirements in Paragraph (f) of this Rule are exempt from the continuing education requirement if written orders from their military unit are provided to the Board. In addition, the renewal fee is waived for each calendar year the environmental health specialist is on active duty.

(j) A registered environmental health specialist or registered environmental health specialist intern who is disabled may request a variance in continuing education hours during the period of the disability. The Board may grant or deny requests for variance in continuing education hours based on a disabling condition on a case by case basis, taking into consideration the particular disabling condition involved and its effect on the registered environmental health specialist or registered environmental health specialist's specialist intern's ability to complete the required hours. In considering the request, the Board may require additional documentation substantiating any specified disability.

(k) A maximum of five ~~clock~~ contact hours of approved continuing education, that is in excess of the required 15 clock hours, may be applied toward the continuing education requirements for the following year. Up to five hours of approved continuing education completed in the year ending December 31, 2020 may be applied toward the continuing education requirements for the following year.

Authority G.S. 90A-57; 90A-63; ~~90A-67~~; 93B-15.

**21 NCAC 62 .0411 SPECIALIZED TRAINING**

Every applicant for registration as a registered environmental health specialist intern shall complete the course entitled "Orientation and Initial Internship Training for Environmental Health Interns" offered by the Division of Environmental Health at the centralized training site within ~~42~~ 18 months of registration as a registered environmental health specialist intern.

Authority G.S. 90A-50; ~~90A-51~~; 90A-53; 90A-57.

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**CHAPTER 63 - SOCIAL WORK CERTIFICATION AND LICENSURE BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Work Certification and Licensure Board intends to amend the rule cited as 21 NCAC 63 .0211.*

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

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

**Public Hearing:**

**Date:** February 5, 2021

**Time:** 2:00 p.m.

**Location:** Via Webex

<https://northcarolinasocialworkcertificationandlicensureboard.my.webex.com/northcarolinasocialworkcertificationandlicensureboard.my/j.php?MTID=m24fb74b385e386cf73950e54d3c6053>  
 Join by meeting number: Meeting number (access code):126 773 6098; meeting password: vTyvBZpV659 (88982978 from phones and video systems)

Tap to join from a mobile device (attendees only) +1-415-655-0001, 1267736098#88982978#US Toll

Some mobile devices may ask attendees to enter a numeric meeting password.

**Reason for Proposed Action:** *Allows licensees to increase amount of supervision via technology without Board preapproval.*

**Comments may be submitted to:** Elizabeth N. Pope, NC Social Work Certification and Licensure Board, 1207 S. Cox Street, Suite F, Asheboro, NC 27203; phone (336) 625-1679 ext. 226; fax (336) 625-4246; email [epope@ncswboard.org](mailto:epope@ncswboard.org)

**Comment period ends:** March 5, 2021

**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

**SECTION .0200 - CERTIFICATION**

**21 NCAC 63 .0211 WORK EXPERIENCE**

(a) Qualifications as required by G.S. ~~90B-7(d)(s)~~90B-7(d)(2) for the Licensed Clinical Social Worker (LCSW) credential:

- (1) Two years of post-MSW clinical social work experience shall mean 3,000 clock hours of work or employment for a fee or salary while engaged in the practice of clinical social work as defined in this Chapter. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six consecutive years. Practicum or internship experience gained as part of any educational program shall not be included. Pursuant to G.S. 93B-15.1(a), military applicants may receive credit for military occupational specialty experience obtained post MSW degree and deemed substantially equivalent to clinical social work practice as defined in this Chapter.
- (2) Appropriate supervision shall mean supervision by a MSW who is also a Licensed Clinical Social Worker and who is in good standing with the Board. A supervisor disciplined by any professional credentialing body or professional organization, or who has violated the provisions of an occupational licensing Board may not provide supervision to an associate licensee without the written permission of the Board. The Licensed Clinical Social Worker Associate's (LCSWA) clinical social work supervisor shall have an additional two years of clinical social work experience post LCSW licensure.
- (3) Appropriate supervision shall be that which is provided on a regular basis, conducted no less than once every two weeks, with at least one hour of supervision during every 30 hours of experience. A minimum of 100 hours of supervision is required. The clinical supervisor shall make the initial determination whether the applicant's work experience meets the definition of clinical social work in accordance with the rules of this Chapter. The Board shall

make the final determination whether or not the applicant's work experience meets the definition of clinical social work practice. Appropriate supervision may be individual or group supervision. Individual supervision shall mean one on one, face-to-face supervision by a MSW who is also a LCSW where the supervisor reviews and discusses clinical social work cases, reviews documentation, and provides evaluative comments and direction to the LCSWA. Group supervision shall mean face-to-face supervision provided by a MSW who is also a LCSW in a group setting, during which the supervisor reviews and discusses clinical social work cases, reviews documentation, and provides feedback and direction to each LCSWA in the group. A maximum of 25 hours of group supervision may be applied toward meeting the supervision requirements for the LCSW.

- (4) Unless otherwise preapproved by the Board, no more than ~~20~~ 50 hours of supervision may be provided through the use of technology. The clinical supervisor may seek approval by providing a written request to the Board. The request shall include the parties' information, including name, license number, and business address; and the circumstances for which the additional hours are needed. Approval of the request shall be determined on a case by case basis, based upon the circumstances provided in the request. All supervision provided through the use of technology shall be synchronous, involve visual and audio interactions throughout the entire session, and shall take place in such a manner as to maintain the confidentiality of the communication.

(b) Qualifications as required by G.S. 90B-7(e)(2) for the Certified Social Work Manager (CSWM) credential:

- (1) Two years of post social work degree experience shall mean 3,000 clock hours of employment for a salary while engaged in administrative social work duties including, policy and budgetary development and implementation, supervision and management, program evaluation, planning, and staff development. Such duties shall be carried out in an administrative setting where social work or other mental health services are delivered. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six consecutive years. Practicum or internship experience gained as part of any educational program shall not be included.
- (2) Appropriate supervision shall mean face-to-face supervision by a social work administrator certified or licensed by the Board who has a minimum of two years of administrative experience in a social work or mental health

setting. Appropriate supervision shall be that which is provided on a regular basis, conducted no less than once every two weeks throughout the applicant's two years of administrative social work experience. A minimum of 100 hours of supervision is required. A maximum of 50 hours of group supervision may be applied toward meeting the supervision requirements for the CSWM. No more than 20 hours of supervision may be provided through the use of

technology. All supervision provided through the use of technology shall be synchronous, involve visual and audio interaction throughout the entire session, and shall take place in such a manner as to maintain the confidentiality of the communication.

*Authority G. S. 90B-6; 90B-7.*

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**APPROVED RULES**

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

Rules approved by the Rules Review Commission at its meeting on November 19, 2020 Meeting.

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**INDUSTRIAL COMMISSION**

<u>Employer's Requirement to File First Report of Injury</u>	11 NCAC 23A .0104	34:14 NCR
<u>Electronic Filings with the Commission; How to File</u>	11 NCAC 23A .0108	34:20 NCR
<u>Contact Information</u>	11 NCAC 23A .0109	34:20 NCR
<u>Required Contact Information from Carriers</u>	11 NCAC 23A .0302	34:20 NCR
<u>Application for or Stipulation to Additional Medical Comp...</u>	11 NCAC 23A .0408	34:14 NCR
<u>Claims for Death Benefits</u>	11 NCAC 23A .0409*	34:14 NCR
<u>Agreements for Prompt Payment of Compensation</u>	11 NCAC 23A .0501	34:14 NCR
<u>Employee's Obligation to Report Earnings</u>	11 NCAC 23A .0903*	34:14 NCR
<u>Electronic Filings with the Commission, How to File</u>	11 NCAC 23B .0104*	34:20 NCR
<u>Contact Information</u>	11 NCAC 23B .0105*	34:20 NCR
<u>Notice by the Commission</u>	11 NCAC 23B .0106*	34:14 NCR
<u>Secure Leave Periods for Attorneys</u>	11 NCAC 23E .0104*	34:14 NCR
<u>Form 21 - Agreement for Compensation for Disability</u>	11 NCAC 23L .0101*	34:20 NCR
<u>Form 26 - Supplemental Agreement as to Payment of Compens...</u>	11 NCAC 23L .0102*	34:20 NCR
<u>Form 26A - Employer's Admission of Employee's Right to Pe...</u>	11 NCAC 23L .0103*	34:14 NCR
<u>Form 26A - Employer's Admission of Employee's Right to Pe...</u>	11 NCAC 23L .0103*	34:20 NCR
<u>Form T-42 - Application for Appointment of Guardian Ad Litem</u>	11 NCAC 23L .0105*	34:20 NCR

**SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Minimum Training Requirements</u>	12 NCAC 10B .2005	35:04 NCR
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**LABOR, DEPARTMENT OF**

<u>Tramway Requirements</u>	13 NCAC 15 .0205*	35:03 NCR
<u>Responsibility for Compliance</u>	13 NCAC 15 .0402*	35:03 NCR
<u>Elevator, Escalator, Dumbwaiter, and Special Equipment An...</u>	13 NCAC 15 .0702*	35:03 NCR
<u>Amusement Device Inspection Fee Schedule</u>	13 NCAC 15 .0703*	35:03 NCR
<u>Passenger Tramway Inspection Fee Schedule</u>	13 NCAC 15 .0705*	35:03 NCR

**COASTAL RESOURCES COMMISSION**

<u>Ocean Hazard Categories</u>	15A NCAC 07H .0301*	34:09 NCR
<u>Significance of the Ocean Hazard Category</u>	15A NCAC 07H .0302*	34:09 NCR
<u>Management Objective of Ocean Hazard Areas</u>	15A NCAC 07H .0303*	34:09 NCR
<u>AECs Within Ocean Hazard Areas</u>	15A NCAC 07H .0304	34:09 NCR
<u>General Identification and Description of Landforms</u>	15A NCAC 07H .0305	34:09 NCR
<u>General Use Standards for Ocean Hazard Areas</u>	15A NCAC 07H .0306*	34:09 NCR
<u>Specific Use Standards for Ocean Hazard Areas</u>	15A NCAC 07H .0308	34:09 NCR
<u>Use Standards for Ocean Hazard Areas: Exceptions</u>	15A NCAC 07H .0309	34:09 NCR
<u>Use Standards for Inlet Hazard Areas</u>	15A NCAC 07H .0310*	34:09 NCR
<u>Installation and Maintenance of Sand Fencing</u>	15A NCAC 07H .0311*	34:09 NCR

<u>Technical Standards for Beach Fill Projects</u>	15A NCAC 07H .0312	34:22 NCR
<b>EDUCATION, STATE BOARD OF</b>		
<u>Purchase of School Bus Equipment</u>	16 NCAC 06B .0112*	34:13 NCR
<u>School Violence Acts Defined and the Annual Report of The...</u>	16 NCAC 06E .0107*	34:13 NCR
<u>Dispute Resolution Process for Homeless Students - LEA Di...</u>	16 NCAC 06H .0115*	34:13 NCR
<u>Dispute Resolution Process for Homeless Students - State ...</u>	16 NCAC 06H .0116*	34:13 NCR
<u>Placement Procedures</u>	16 NCAC 06K .0104*	34:13 NCR
<u>Weapons Prohibited on School Property</u>	16 NCAC 06K .0105*	34:13 NCR

**ADDICTIONS SPECIALIST PROFESSIONAL PRACTICE BOARD**

<u>Background Investigation</u>	21 NCAC 68 .0216*	34:24 NCR
<u>Credentials by Endorsement or Reciprocity Based on Milita...</u>	21 NCAC 68 .0227*	34:24 NCR
<u>Substance Use Disorder Credential by Endorsement or Recip...</u>	21 NCAC 68 .0228*	34:24 NCR
<u>Types of Intervention</u>	21 NCAC 68 .0708*	34:24 NCR

*The following rules are subject to Legislative Review.*

**EDUCATION, STATE BOARD OF**

<u>Appropriate Use of State Tests</u>	16 NCAC 06D .0310*	34:13 NCR
<u>Accountability Annual Performance Standards</u>	16 NCAC 06G .0315*	34:13 NCR
<u>Charter Schools Financial Noncompliance - Impact of Finan...</u>	16 NCAC 06G .0505*	34:13 NCR
<u>Charter Schools Governance Noncompliance</u>	16 NCAC 06G .0506*	34:13 NCR
<u>Charter School Renewal Process</u>	16 NCAC 06G .0507*	34:13 NCR
<u>Planning Year for New Preliminary Charter Schools</u>	16 NCAC 06G .0509*	34:13 NCR
<u>Fast Track Replication of High Quality Charter Schools - ...</u>	16 NCAC 06G .0514*	34:13 NCR
<u>Alternative Charter School Designation Policy - Eligibility</u>	16 NCAC 06G .0518*	34:13 NCR
<u>Alternative Charter School Designation Policy - Applicati...</u>	16 NCAC 06G .0520*	34:13 NCR
<u>Alternative Charter School Designation Policy - Review an...</u>	16 NCAC 06G .0521*	34:13 NCR
<u>Alternative Charter School Designation Policy - Terminati...</u>	16 NCAC 06G .0522*	34:13 NCR
<u>Operations of Federal Programs</u>	16 NCAC 06H .0117*	34:13 NCR

**TITLE 11 - DEPARTMENT OF INSURANCE**

**11 NCAC 23A .0104 EMPLOYER'S REQUIREMENT TO FILE FIRST REPORT OF INJURY**

(a) The form required to be provided by G.S. 97-92(a) is the Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission. The Form 19 shall be used when the injury causes the employee to be absent from work for more than one day or when the charges for medical compensation exceed four thousand dollars (\$4,000). The Form 19 shall be filed with the Commission in accordance with Rule .0108(d) of this Section.

(b) The employer, carrier, or administrator shall provide the employee with a copy of the completed Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission, along with a blank Form 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent for use by the employee in making a claim.

*History Note: Authority G.S. 97-80(a); 97-92; Eff. March 15, 1995; Amended Eff. November 1, 2014; January 1, 2011; August 1, 2006; March 1, 2001; June 1, 2000; Recodified from 04 NCAC 10A .0104 Eff. June 1, 2018; Amended Eff. December 1, 2020.*

**11 NCAC 23A .0108 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE**

(a) All documents filed with the Commission in workers' compensation cases shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Any document filed with the Commission that requires contemporaneous payment of a processing fee pursuant to Rule 11 NCAC 23E .0203 shall not be deemed filed until the fee has been paid in full. The electronic filing requirements of this Rule shall not apply to employees or non-insured employers without legal representation. Employees

and non-insured employers without legal representation may file all documents with the Commission via the Commission's Electronic Document Filing Portal ("EDFP") or by sending the documents to the Clerk of the Industrial Commission via electronic mail (dockets@ic.nc.gov), facsimile, U.S. Mail, private courier service, or hand delivery.

(b) Except as set forth in Paragraphs (d) and (e) of this Rule, all documents required to be submitted electronically to the Commission shall be filed via EDFP. Information regarding how to use EDFP is available at <http://www.ic.nc.gov/training.html>. In the event EDFP is inoperable, all documents required to be filed via EDFP shall be transmitted to the Commission via electronic mail to [edfp@ic.nc.gov](mailto:edfp@ic.nc.gov). Documents required to be filed via EDFP that are sent to the Commission via electronic mail when EDFP is operable shall not be accepted for filing.

(c) Transcripts of depositions shall be filed with the Commission pursuant to this Rule by the court reporting service. Transcripts filed with the Commission shall have only one page of text per page and shall include all exhibits. The parties shall provide the Commission's court reporting service with the information necessary to effectuate filing of the deposition transcripts and attached exhibits via EDFP. If an exhibit to a deposition is in a form that makes submission of an electronic copy impracticable, counsel for the party offering the exhibit shall make arrangements with the Commission to facilitate the submission of the exhibit. Condensed transcripts and paper copies of deposition transcripts shall not be accepted for filing.

(d) A Form 19 shall be filed as the first report of injury (FROI) via electronic data interchange (EDI), except in claims involving non-insured employers, in claims for lung disease, in claims with multiple employers or multiple carriers, or in claims with six-character IC file numbers, in which case the Form 19 shall be filed electronically via EDFP or as otherwise permitted pursuant to Paragraph (a) of this Rule. Information regarding how to register for and use EDI is available at [www.ncicedi.info](http://www.ncicedi.info).

(e) Documents to be filed with the Criminal Investigations & Employee Classification Division regarding fraud complaints shall be submitted electronically to [fraudcomplaints@ic.nc.gov](mailto:fraudcomplaints@ic.nc.gov). Documents to be filed with the Criminal Investigations & Employee Classification Division regarding employee misclassification shall be submitted electronically to [emp.classification@ic.nc.gov](mailto:emp.classification@ic.nc.gov). Safety rules to be filed with the Commission under 11 NCAC 23A .0411 shall be submitted electronically to [safety@ic.nc.gov](mailto:safety@ic.nc.gov).

(f) A self-insured employer, carrier or guaranty association, third-party administrator, court reporting service, medical provider, or law firm may apply to the Commission for an emergency temporary waiver of the electronic filing requirement set forth in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.

(g) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via EDFP, U.S. Mail, hand delivery, or any other means allowed by the Rules of Appellate Procedure or applicable statutes governing appeals from the General Courts of Justice. Notwithstanding the foregoing, employees and non-insured employers without legal

representation may file all documents with the Commission as provided in Paragraph (a) of this Rule.

*History Note: Authority G.S. 97-80; 97-81; 97-86; Eff. February 1, 2016; Amended Eff. February 1, 2017; Recodified from 04 NCAC 10A .0108 Eff. June 1, 2018; Amended Eff. December 1, 2018; Amended Eff. March 1, 2021.*

**11 NCAC 23A .0109 CONTACT INFORMATION**

(a) "Contact information" for purposes of this Rule shall include telephone number, facsimile number, email address, and mailing address.

(b) All attorneys of record with matters before the Commission shall inform the Commission of any change in the attorney's contact information via the Commission's Electronic Document Filing Portal ("EDFP").

(c) All unrepresented persons or entities with matters before the Commission shall inform the Commission upon any change to their contact information in the following manner:

- (1) All employees who are not represented by counsel shall inform the Commission of any change in contact information by filing a written notice via EDFP, email to [forms@ic.nc.gov](mailto:forms@ic.nc.gov), facsimile, U.S. Mail, private courier service, or hand delivery.
- (2) All non-insured employers that are not represented by counsel shall inform the Commission of any change in contact information by filing a written notice via EDFP, email to [dockets@ic.nc.gov](mailto:dockets@ic.nc.gov), facsimile, U.S. Mail, private courier service, or hand delivery.

*History Note: Authority G.S. 97-80; Eff. January 1, 2019; Amended Eff. March 1, 2021.*

**11 NCAC 23A .0302 REQUIRED CONTACT INFORMATION FROM CARRIERS**

All insurance carriers, third party administrators, and self-insured employers shall designate a primary contact person for workers' compensation issues in North Carolina and shall maintain and provide annually on July 1 to the Director of Claims Administration of the Commission via the Commission's Electronic Document Filing Portal ("EDFP") the primary contact person's current contact information, including direct telephone and facsimile numbers, mailing addresses, and email addresses. Contact information shall be updated within 30 days of any change.

*History Note: Authority G.S. 97-80(a); 97-94; Eff. January 1, 2011; Amended Eff. November 1, 2014; Recodified from 04 NCAC 10A .0302 Eff. June 1, 2018; Amended Eff. December 1, 2018; Amended Eff. March 1, 2021.*

**11 NCAC 23A .0408 APPLICATION FOR OR STIPULATION TO ADDITIONAL MEDICAL COMPENSATION**

(a) An employee may file an application for additional medical compensation with the Office of the Executive Secretary for an order for payment of additional medical compensation within two years of the date of the last payment of medical or indemnity compensation, whichever occurs last. An application may be made on a Form 18M Employee's Application for Additional Medical Compensation or by written request. In the alternative, an employee may file an application for additional medical compensation by filing a Form 33 Request that Claim be Assigned for Hearing with the Commission pursuant to Rule .0602 of this Subchapter.

(b) Upon receipt of a Form 18M Employee's Application for Additional Medical Compensation or a written request, the Commission shall notify the employer, carrier, or administrator that the claim has been received by providing a copy of the Form 18M Employee's Application for Additional Medical Compensation or the written request. Within 30 days, the employer, carrier, or administrator may send to the Commission and the employee's attorney of record or the employee, if unrepresented, a written statement as to whether the request is accepted or denied. If the request is denied, the employer, carrier, or administrator may state in writing the grounds for the denial and shall attach any supporting documentation to the statement of denial.

(c) The parties may, by agreement or stipulation consistent with the Workers' Compensation Act, provide for additional medical compensation.

(d) This Rule applies to injuries occurring on or after July 5, 1994.

*History Note: Authority G.S. 97-25.1; 97-80(a); Eff. March 15, 1995; Amended Eff. November 1, 2014; June 1, 2000; Recodified from 04 NCAC 10A .0408 Eff. June 1, 2018; Amended Eff. December 1, 2020.*

**11 NCAC 23A .0409 CLAIMS FOR DEATH BENEFITS**

(a) An employer shall notify the Commission of the occurrence of a death resulting from an injury or occupational disease allegedly arising out of and in the course of employment by filing a Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission within five days of knowledge of the death.

(b) An employer, carrier, or administrator shall conduct an investigation to determine the names and addresses of decedent's potential beneficiaries under G.S. 97-38 and identify them on the Form 29 Supplemental Report for Fatal Accidents. The Form 29 Supplemental Report for Fatal Accidents shall be filed with the Commission within 45 days of notification of a death or allegation of death resulting from an injury or occupational disease arising out of and in the course of employment.

(c) If the employer, carrier, or administrator disputes that an employee's death is compensable or denies it has liability for the claim, the employer, carrier, or administrator shall notify the Commission on a Form 61 Denial of Workers' Compensation Claim. When the employer, carrier, or administrator denies

liability for a claim involving an employee's death, the employer, carrier, or administrator shall send the form to all known potential beneficiaries, their attorneys of record, if any, all health care providers that have submitted bills to the employer, carrier, or administrator, and the Commission.

(d) If the employer, carrier, or administrator accepts liability for a claim involving an employee's death and there are no issues necessitating a hearing for determination of beneficiaries or their respective rights, the parties shall submit either a Form 30 Agreement for Compensation for Death as set forth in Rule .0501 of this Subchapter or a proposed Opinion and Award.

(e) If the parties submit a Form 30 Agreement for Compensation for Death, the agreement shall be filed in accordance with Rule .0108 of this Subchapter with the following:

- (1) a stipulation as to average weekly wage;
- (2) any affidavits regarding dependents;
- (3) the employee's death certificate;
- (4) a Form 29 Supplemental Report for Fatal Accidents;
- (5) a Form 42 Application for Appointment of Guardian ad Litem, if any beneficiary is a minor or incompetent;
- (6) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
- (7) a funeral bill or stipulation as to payment of the funeral benefit;
- (8) a Form 30D Award Approving Agreement for Compensation for Death; and
- (9) an affidavit or itemized statement in support of an award of attorney's fees if an attorney is seeking fees for representation of one or more beneficiaries.

(f) If the parties seek a written Opinion and Award from the Commission regarding the payment of death benefits in lieu of submitting a Form 30 Agreement for Compensation for Death, the parties shall file, in accordance with Rule .0108 of this Subchapter, a proposed Opinion and Award with the following:

- (1) a stipulation regarding all jurisdictional matters;
- (2) the decedent's name, social security number, employer, insurance carrier or servicing agent, and the date of the injury giving rise to this claim;
- (3) a stipulation as to average weekly wage;
- (4) any affidavits regarding dependents;
- (5) the employee's death certificate;
- (6) a Form 29 Supplemental Report for Fatal Accidents;
- (7) a Form 42 Application for Appointment of Guardian ad Litem, if any beneficiary is a minor or incompetent;
- (8) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
- (9) medical records, if any;
- (10) a statement of payment of medical expenses incurred, if any;
- (11) a funeral bill or stipulation as to payment of the funeral benefit; and

(12) an affidavit or itemized statement in support of an award of attorney's fees if an attorney is seeking fees for representation of one or more beneficiaries.

(g) If an issue exists as to whether a person is a beneficiary pursuant to G.S. 97-38 or if any other disputed issue exists in an accepted claim, the employer, carrier, administrator, potential beneficiary, or any person asserting a claim for benefits may request a hearing by filing a Form 33 Request that Claim be Assigned for Hearing in accordance with Rule .0602 of this Subchapter.

(h) Upon approval by the Commission of a Form 30 Agreement for Compensation for Death or upon the issuance of a final order of the Commission directing payment of death benefits pursuant to G.S. 97-38, payment shall be made by the employer, carrier, or administrator directly to the beneficiaries, with the following exceptions:

- (1) any applicable award of attorney's fees shall be paid directly to the attorney; and
- (2) benefits due to a minor or incompetent.

(i) In all cases involving minors and incompetent persons who are potential beneficiaries, a guardian ad litem shall be appointed pursuant to Rule .0604 of this Subchapter.

(j) Any benefits due to a minor pursuant to G.S. 97-38 shall be paid directly to the minor's parent, legal guardian, or legal custodian, if the minor remains in the physical custody of such person, or another person if ordered by the Commission for good cause shown. The benefits shall be for the exclusive use and benefit of the minor. When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.

(k) The Commission shall order that the benefits for an incompetent beneficiary shall be paid to the person or entity authorized to receive funds on behalf of the beneficiary pursuant to a federal or state court order, or to the Clerk of Court in the county in which the beneficiary resides, for the beneficiary's exclusive use and benefit.

(l) Upon a change in circumstances, any interested party may request that the Commission amend the terms of any award with respect to a minor or incompetent person to direct payment to another party on behalf of the minor or incompetent person.

(m) In the case of benefits commuted to present value, only those sums that have not accrued at the time of the approval of a Form 30 Agreement for Compensation for Death or entry of a final order of the Commission directing payment of death benefits pursuant to G.S. 97-38 are subject to commutation pursuant to Rule .0406 of this Subchapter.

*History Note:* Authority G.S. 97-38; 97-39; 97-80(a); Eff. June 1, 2000; Amended Eff. November 1, 2014; January 2, 2011; Recodified from 04 NCAC 10A .0409 Eff. June 1, 2018; Amended Eff. December 1, 2020.

**11 NCAC 23A .0501 AGREEMENTS FOR PROMPT PAYMENT OF COMPENSATION**

(a) To facilitate the payment of compensation within the time prescribed in G.S. 97-18, the Commission shall accept memoranda of agreement on Commission forms. These forms include the Form 21 Agreement for Compensation for Disability,

Form 26 Supplemental Agreement as to Payment of Compensation, Form 26A Employer's Admission of Employee's Right to Permanent Partial Disability, Form 26D Agreement for Payment of Unpaid Compensation in Unrelated Death Cases, and Form 30 Agreement for Compensation for Death.

(b) No agreement for permanent disability shall be approved until the relevant medical and vocational records, including a job description if the employee has permanent work restrictions and has returned to work for the employer of injury, known to exist in the case have been filed with the Commission. When requested by the Commission, the parties shall file any additional documentation necessary to determine whether the employee is receiving the disability compensation to which he or she is entitled and that an employee qualifying for disability compensation under G.S. 97-29 or G.S. 97-30, and G.S. 97-31 has the benefit of the more favorable remedy.

(c) After the employer, carrier, or administrator has received a memorandum of agreement that has been signed by the employee and the employee's attorney of record, if any, the employer, carrier, or administrator shall submit the memorandum of agreement within 20 days to the Commission for review and approval. Agreements conforming to the provisions of the Workers' Compensation Act shall be approved by the Commission and a copy returned to the employer, carrier, or administrator, and a copy sent to the employee.

(d) Upon submission to the Commission of the executed agreement, the employer, carrier, administrator, or the attorney of record, if any, shall provide the employee, beneficiary, or attorney of record, if any, with a copy of the executed agreement that was submitted to the Commission.

(e) All memoranda of agreement for cases that are calendared for hearing before a Commissioner or Deputy Commissioner shall be addressed to that Commissioner or Deputy Commissioner, and filed in accordance with Rule .0108 of this Subchapter. Before a case is calendared, or once a case has been continued or removed, or after the filing of an Opinion and Award, all memoranda of agreement shall be addressed to the Claims Section of the Commission, and filed in accordance with Rule .0108 of this Subchapter.

*History Note:* Authority G.S. 97-18; 97-80(a); 97-82; Eff. January 1, 1990; Amended Eff. November 1, 2014; August 1, 2006; Recodified from 04 NCAC 10A .0501 Eff. June 1, 2018; Amended Eff. December 1, 2020.

**11 NCAC 23A .0903 EMPLOYEE'S OBLIGATION TO REPORT EARNINGS**

(a) A self-insured employer, carrier, or third-party administrator may require the employee who has filed a claim and is receiving wage loss benefits under G.S. 97-29 or G.S. 97-30 to complete a Form 90 Report of Earnings when reasonably necessary but not more than once every six months.

(b) The Form 90 Report of Earnings shall be sent to the employee by certified mail, return receipt requested, and shall include a self-addressed stamped envelope for the return of the form. When the employee is represented by an attorney, the Form 90 Report of Earnings shall be sent only to the attorney for the employee and shall be sent by any method of transmission that provides proof of

receipt, including electronic mail, facsimile, or certified mail, return receipt requested.

(c) The employee shall complete and return the Form 90 Report of Earnings within 15 days after receipt of a Form 90 Report of Earnings. If the employee fails to complete and return the Form 90 Report of Earnings within 30 days of receipt of the form, the self-insured employer, carrier, or third-party administrator may seek to suspend compensation being paid pursuant to G.S. 97-29 by filing a Form 24 Application to Terminate or Suspend Payment of Compensation, as allowed by G.S. 97-18.1 and Rule .0404 of this Subchapter.

(d) If compensation is suspended pursuant to Paragraph (c) of this Rule and the employee subsequently completes and returns the Form 90 Report of Earnings, the self-insured employer, carrier, or third-party administrator shall reinstate payment of compensation to the employee with back payment. However, if the Form 90 Report of Earnings does not indicate continuing eligibility for disability compensation, the self-insured employer, carrier, or third-party administrator is not required to reinstate payment of compensation. If the Form 90 Report of Earnings indicates continuing eligibility for temporary partial disability compensation, the self-insured employer, carrier, or third-party administrator shall make payment of compensation pursuant to G.S. 97-30 with back payment within 14 days of receipt of documentation establishing the amount of compensation due. If payment of compensation is not reinstated following submission of the completed Form 90 Report of Earnings and the employee claims entitlement to ongoing disability compensation, the employee may seek reinstatement by filing a Form 23 Application to Reinstate Payment of Disability Compensation or Form 33 Request that Claim be Assigned for Hearing.

*History Note: Authority G.S. 97-80(a); Eff. June 1, 2000; Amended Eff. November 1, 2014; August 1, 2006; Recodified from 04 NCAC 10A .0903 Eff. June 1, 2018; Amended Eff. December 1, 2020.*

**11 NCAC 23B .0104 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE**

(a) All filings to the Commission in tort claims shall be submitted electronically in accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing. Plaintiffs without legal representation may file all documents with the Office of the Clerk of the Commission via the Commission's Electronic Document Filing Portal ("EDFP") or by sending the documents to the Clerk of the Industrial Commission via electronic mail (dockets@ic.nc.gov), facsimile, U.S. Mail, private courier service, or hand delivery.

(b) Information regarding how to use EDFP is available at <http://www.ic.nc.gov/training.html>. In the event EDFP is inoperable, all documents required to be filed via EDFP shall be transmitted to the Commission via electronic mail to edfp@ic.nc.gov. Documents required to be filed via EDFP that are sent to the Commission via electronic mail when EDFP is operable shall not be accepted for filing.

(c) Any party may apply to the Commission for an emergency temporary waiver of the electronic filing requirement set forth in

Paragraph (a) of this Rule if it is unable to comply because of temporary technical problems or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.

(d) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via EDFP, U.S. Mail, hand delivery, or any other means allowed by the Rules of Appellate Procedure or applicable statutes governing appeals from the General Courts of Justice. Notwithstanding the foregoing, plaintiffs without legal representation may file all documents with the Commission as provided in Paragraph (a) of this Rule.

*History Note: Authority G.S. 143-291; 143-293; 143-297; 143-300; Eff. May 1, 2000; Amended Eff. July 1, 2014; Recodified from 04 NCAC 10B .0104 Eff. June 1, 2018; Amended Eff. March 1, 2021; March 1, 2019.*

**11 NCAC 23B .0105 CONTACT INFORMATION**

(a) "Contact information" for purposes of this Rule shall include telephone number, facsimile number, email address, and mailing address.

(b) All persons or entities without legal representation who have matters pending before the Commission shall inform the Commission of any change in contact information by filing a written notice via the Commission's Electronic Document Filing Portal ("EDFP"), email to [contactinfo@ic.nc.gov](mailto:contactinfo@ic.nc.gov), facsimile, U.S. Mail, private courier service, or hand delivery.

(c) A plaintiff without legal representation who was an inmate in the North Carolina Division of Adult Corrections at the time of filing his or her tort claim, shall, within 30 days of release, provide the Commission with written notice of his or her post-release contact information in any manner authorized in Paragraph (b) of this Rule. Following the initial written notice of post-release contact information, the previously incarcerated plaintiff shall continue to inform the Commission of all changes in contact information in accordance with Paragraph (b) of this Rule.

(d) All attorneys of record with matters before the Commission shall inform the Commission in writing of any change in the attorney's or the represented party's contact information via EDFP.

*History Note: Authority G.S. 143-291; 143-300; Eff. March 1, 2019; Amended Eff. March 1, 2021.*

**11 NCAC 23B .0106 NOTICE BY THE COMMISSION**

(a) If service is provided by electronic mail, "receipt of such notice" pursuant to G.S. 143-292 and "receipt of the decision and order" of the Full Commission pursuant to G.S. 143-293 is complete one hour after it is sent by the Commission, provided that:

- (1) notice sent after 5:00 p.m. shall be complete at 8:00 a.m. the following State business day; and
- (2) notice sent by electronic mail that is not readable by the recipient is not complete.

Within five State business days of receipt of an unreadable document, the receiving party shall notify the Commission of the unreadability of the document.

(b) If service is provided by electronic mail, notice of orders or other documents issued pursuant to G.S. 143-296 is complete in accordance with the same provisions set forth in Paragraph (a) of this Rule.

*History Note: Authority G.S. 143-300; Eff. December 1, 2020.*

**11 NCAC 23E .0104 SECURE LEAVE PERIODS FOR ATTORNEYS**

(a) Any attorney may request one or more secure leave periods each year as provided in this Rule.

(b) For the purpose of this Paragraph only, a "secure leave period" is defined as a partial calendar week or a complete calendar week. Within a calendar year, an attorney is entitled to obtain secure leave periods totaling up to 15 business days for any purpose.

(c) For the purpose of this Paragraph only, a "secure leave period" is defined as a complete calendar week. Within a 24-week period surrounding the birth or adoption of an attorney's child, that attorney is entitled to have the benefit of up to 12 additional secure leave periods.

(d) To request a secure leave period, an attorney shall file a written request, by letter or motion, containing the information required by Paragraph (e) of this Rule with the Office of the Chair within the time period provided in Paragraph (f) of this Rule. Upon such filing, the Chair shall review the request. If the request is made pursuant to Paragraph (b) or Paragraph (c) of this Rule and the request complies with Paragraphs (e) and (f) of this Rule, the Chair shall issue a letter allowing the requested secure leave period. The attorney shall not be required to appear at any trial, hearing, deposition, or other proceeding before the Commission during a secure leave period that is allowed.

(e) The request shall contain the following information:

- (1) the attorney's name, mailing address, telephone number, email address, and state bar number;
- (2) the date(s) for which secure leave is being requested;
- (3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule;
- (4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering, or interfering with the disposition of any matter in any pending action or proceeding;
- (5) a statement that no action or proceeding in which the attorney has entered an appearance

has been scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the designated secure leave period; and

(6) for secure leave requests that arise under Paragraph (c) of this Rule, the expected birth date or adoption date of the child.

(f) The request shall be filed:

- (1) no later than 90 days before the beginning of the secure leave period; and
- (2) before any trial, hearing, deposition, or other matter has been scheduled, peremptorily set, or noticed for a time during the designated secure leave period.

(g) The Chair may, as set forth in Rule .0301 of this Subchapter, make exception to the 15-day aggregate limit set forth in Paragraph (b) of this Rule, the requirement set forth in Subparagraph (e)(5) of this Rule, and the limitations set forth in Paragraph (f) of this Rule. An attorney requesting that the Chair make an exception under this Paragraph shall inform the Chair of all known actions or proceedings involving that attorney that are scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the requested secure leave period. The attorney also shall provide notice to all opposing parties or, if represented, opposing counsel of record in all cases subject to the jurisdiction of the Industrial Commission of the beginning and ending dates of the requested secure leave period and of all known actions or proceedings involving that attorney that are scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the requested secure leave period.

(h) After a secure leave period has been allowed pursuant to this Rule, if any trial, hearing, or other proceeding is scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the Deputy Commissioner or Chair of the Full Commission panel before which the matter was calendared or set, and serve on all parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon receipt, the proceeding shall be rescheduled for a time that is not within the attorney's secure leave period.

(i) After a secure leave period has been allowed pursuant to this Rule, if any deposition is noticed for a time during the secure leave period, the attorney shall serve on the party that noticed the deposition a copy of the letter allowing the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period.

*History Note: Authority G.S. 97-80(a); Eff. July 1, 2014; Recodified from 04 NCAC 10E .0104 Eff. June 1, 2018; Amended Eff. December 1, 2020.*

**11 NCAC 23L .0101 FORM 21 – AGREEMENT FOR COMPENSATION FOR DISABILITY**

(a) The parties to a workers' compensation claim shall use the following Form 21, Agreement for Compensation for Disability, for agreements regarding disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with Rule 11 NCAC 23A .0501, where applicable. The Form 21, Agreement for Compensation for Disability, shall read as follows:

**APPROVED RULES**

North Carolina Industrial Commission  
Agreement for Compensation for Disability  
(G.S. 97-82)

IC File # \_\_\_\_\_  
Emp. Code # \_\_\_\_\_  
Carrier Code # \_\_\_\_\_  
Carrier File # \_\_\_\_\_

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

\_\_\_\_\_  
Employee's Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Home Telephone Work Telephone  
Last 4 digits of Social Security Number: \_\_\_\_\_ Sex:  M  F Date of Birth: \_\_\_\_\_

\_\_\_\_\_  
Employer's Name Telephone Number

\_\_\_\_\_  
Employer's Address City State Zip

\_\_\_\_\_  
Insurance Carrier

\_\_\_\_\_  
Carrier's Address City State Zip

\_\_\_\_\_  
Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree And Stipulate As Follows:

1. All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and \_\_\_\_\_ is the carrier/administrator for the employer.
2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on or by \_\_\_\_\_.
3. The injury by accident or occupational disease resulted in the following injuries: \_\_\_\_\_.
4. The employee  was/  was not paid for the entire day when the injury occurred.
5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$\_\_\_\_\_, subject to verification unless otherwise agreed upon in Item 9 below.
6. Disability resulting from the injury or occupational disease began on \_\_\_\_\_.
7. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$\_\_\_\_\_ per week beginning \_\_\_\_\_, and continuing for \_\_\_\_\_ weeks.
8. The employee  has /  has not returned to work for \_\_\_\_\_ on \_\_\_\_\_, at an average weekly wage of \$\_\_\_\_\_.
9. State any further matters agreed upon, including disfigurement, permanent partial, or temporary partial disability: \_\_\_\_\_.
10. If applicable, the Second Injury Fund Assessment is \$\_\_\_\_\_. Check  is  is not attached.
11. The date of this agreement is \_\_\_\_\_. Date of first payment: \_\_\_\_\_ Amount: \_\_\_\_\_.

\_\_\_\_\_  
Name Of Employer Signature Title

\_\_\_\_\_  
Name Of Carrier / Administrator Signature Title

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Page 2 of this form.

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**APPROVED RULES**

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Signature of Employee

Address

Signature of Employee's Attorney

Address

North Carolina Industrial Commission  
The Foregoing Agreement Is Hereby Approved:

Claims Examiner

Date

Attorney's Fee Approved

- Check Box If No Attorney Retained.
- Check Box If Employee Is In Managed Care.

**IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS**

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

**IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS**

If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

**IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS**

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must file an application for additional medical compensation pursuant to G.S. 97-25.1 within two years, or your right to these benefits may be lost. An application for additional medical compensation may be made on a Form 18M Employee's Application for Additional Medical Compensation or by written request. In the alternative, an employee may file an application for additional medical compensation by filing a Form 33 Request that Claim be Assigned for Hearing pursuant to 11 NCAC 23A .0602. All Industrial Commission forms are available at <https://www.ic.nc.gov/forms.html>.

**IMPORTANT NOTICE TO EMPLOYER**

The employee must be provided a copy of the form when the agreement is signed by the employee. Pursuant to Rule 11 NCAC 23A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission. The employer or carrier/administrator shall file a Form 28B, Report of Compensation and Medical Compensation Paid, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

**NEED ASSISTANCE?**

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 21  
3/2021

Self-Insured Employer or Carrier, File via Electronic Document Filing Portal ("EDFP"):

<https://www.ic.nc.gov/docfiling.html>

Contact Information:

NCIC- Claims Administration

Telephone: (919) 807-2502

Helpline: (800) 688-8349

Website: <https://www.ic.nc.gov>

(b) The copy of the form described in Paragraph (a) of this Rule can be accessed at <https://www.ic.nc.gov/forms/form21.pdf>. The form may be reproduced only in the format available at <https://www.ic.nc.gov/forms/form21.pdf> and may not be altered or amended in any way.

*History Note: Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77; Eff. November 1, 2014; Recodified from 04 NCAC 10L .0101 Eff. June 1, 2018; Amended Eff. March 1, 2021.*

**11 NCAC 23L .0102 FORM 26 – SUPPLEMENTAL AGREEMENT AS TO PAYMENT OF COMPENSATION**

(a) If the parties to a workers' compensation claim have previously entered into an approved agreement on a Form 21, Agreement for Compensation for Disability, or a Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, they shall use the following Form 26, Supplemental Agreement as to Payment of Compensation, for agreements regarding subsequent additional disability and payment of compensation pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with Rule 11 NCAC 23A .0501, where applicable. The Form 26, Supplemental Agreement as to Payment of Compensation, shall read as follows:

North Carolina Industrial Commission  
Supplemental Agreement as to Payment  
of Compensation (G.S. §97-82)

IC File # \_\_\_\_\_  
Emp. Code # \_\_\_\_\_  
Carrier Code # \_\_\_\_\_  
Carrier File # \_\_\_\_\_

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

\_\_\_\_\_  
Employee's Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

Home Telephone \_\_\_\_\_ Work Telephone \_\_\_\_\_  
Last 4 digits of Social Security Number: \_\_\_\_\_ Sex:  M  F Date of Birth: \_\_\_\_\_

\_\_\_\_\_  
Employer's Name Telephone Number

\_\_\_\_\_  
Employer's Address City State Zip

\_\_\_\_\_  
Insurance Carrier

\_\_\_\_\_  
Carrier's Address City State Zip

\_\_\_\_\_  
Carrier's Telephone Number Carrier's Fax Number

We, The Undersigned, Do Hereby Agree and Stipulate As Follows:

1. Date of injury: \_\_\_\_\_.
2. The employee  returned to work /  was rated on \_\_\_\_\_ (date), at a weekly wage of \$\_\_\_\_\_.
3. The employee became totally disabled on \_\_\_\_\_.
4. Employee's average weekly wage  was reduced /  was increased on \_\_\_\_\_, from \$\_\_\_\_\_ per week to \$\_\_\_\_\_ per week.
5. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate of \$\_\_\_\_\_ per week. Beginning \_\_\_\_\_, and continuing for \_\_\_\_\_ weeks. The type of disability compensation is \_\_\_\_\_.

**APPROVED RULES**

6. State any further matters agreed upon, including disfigurement or temporary partial disability:  
\_\_\_\_\_.

7. The date of this agreement is \_\_\_\_\_.

Name Of Employer	Signature	Title
Name Of Carrier/Administrator	Signature	Title

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Page 2 of this form.

Signature of Employee	Address
Signature of Employee's Attorney	Address

Check box if no attorney retained.

North Carolina Industrial Commission  
The Foregoing Agreement Is Hereby Approved:

Claims Examiner	Date
-----------------	------

Attorney's fee approved

**IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS**  
Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

**IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS**  
If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

**IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS**  
If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must file an application for additional medical compensation pursuant to G.S. 97-25.1 within two years, or your right to these benefits may be lost. An application for additional medical compensation may be made on a Form 18M Employee's Application for Additional Medical Compensation or by written request. In the alternative, an employee may file an application for additional medical compensation by filing a Form 33 Request that Claim be Assigned for Hearing pursuant to 11 NCAC 23A .0602. All Industrial Commission forms are available at <https://www.ic.nc.gov/forms.html>.

**IMPORTANT NOTICE TO EMPLOYER**  
This form shall be used only to supplement Form 21, *Agreement for Compensation for Disability* (G.S. 97-82), or an award in cases in which subsequent conditions require a modification of a former agreement or award. The employee must be provided a copy of the form when the agreement is signed by the employee. Pursuant to Rule 11 NCAC 23A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission. The employer or carrier/administrator shall file a Form 28B, *Report of Compensation and Medical Compensation Paid*, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

**NEED ASSISTANCE?**

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26  
3/2021  
Self-Insured Employer or Carrier, File via Electronic Document Filing Portal ("EDFP"):

<https://www.ic.nc.gov/docfiling.html>

Contact Information:  
NCIC- Claims Administration  
Telephone: (919) 807-2502  
Helpline: (800) 688-8349  
Website: <https://www.ic.nc.gov>

(b) The copy of the form described in Paragraph (a) of this Rule can be accessed at <https://www.ic.nc.gov/forms/form26.pdf>. The form may be reproduced only in the format available at <https://www.ic.nc.gov/forms/form26.pdf> and may not be altered or amended in any way.

*History Note: Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77; Eff. November 1, 2014; Recodified from 04 NCAC 10L .0102 Eff. June 1, 2018; Amended Eff. March 1, 2021.*

**11 NCAC 23L .0103 FORM 26A – EMPLOYER'S ADMISSION OF EMPLOYEE'S RIGHT TO PERMANENT PARTIAL DISABILITY (EFFECTIVE DECEMBER 1, 2020)**

(a) The parties to a workers' compensation claim shall use the following Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, for agreements regarding the employee's entitlement to and the employer's payment of compensation for permanent partial disability pursuant to G.S. 97-31. Additional issues agreed upon by the parties, such as election of payment of temporary partial disability pursuant to G.S. 97-30, may also be included on the form. This form is necessary to comply with Rule 11 NCAC 23A .0501, where applicable. The Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, shall read as follows:

North Carolina Industrial Commission  
Employer's Admission of Employee's Right to Permanent Partial Disability  
(G.S. 97-31)

IC File # \_\_\_\_\_  
Emp. Code # \_\_\_\_\_  
Carrier Code # \_\_\_\_\_  
Carrier File # \_\_\_\_\_  
Employer FEIN \_\_\_\_\_

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

\_\_\_\_\_  
Employee's Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Home Telephone Work Telephone

\_\_\_\_\_  
Social Security Number: \_\_\_\_\_ Sex:  M  F Date of Birth: \_\_\_\_\_

\_\_\_\_\_  
Employer's Name Telephone Number

\_\_\_\_\_  
Employer's Address City State Zip

\_\_\_\_\_  
Insurance Carrier

\_\_\_\_\_  
Carrier's Address City State Zip

\_\_\_\_\_  
Carrier's Telephone Number Carrier's Fax Number

WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

**APPROVED RULES**

1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and \_\_\_\_\_ is the Carrier/Administrator for the Employer.
  2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on \_\_\_\_\_.
  3. The injury by accident or occupational disease resulted in the following injuries: \_\_\_\_\_.
  4. The employee  was  was not paid for the 7 day waiting period.  
If not, was salary continued?  yes  no. Was employee paid for the date of injury?  yes  no
  5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$\_\_\_\_\_. This results in a weekly compensation rate of \$\_\_\_\_\_.
  6. The employee  has  has not returned full time to work for \_\_\_\_\_ on \_\_\_\_\_, at an average weekly wage of \$\_\_\_\_\_.
  7. Claimant was released  with permanent restrictions  without permanent restrictions. If claimant was released with permanent restrictions and has returned to work for the employer of injury, attach a job description if known to exist.
  8. Permanent partial disability compensation will be paid to the injured worker as follows:  
\_\_\_\_ weeks of compensation at rate of \$\_\_\_\_\_ per week for \_\_\_\_% rating to \_\_\_\_\_ (body part)  
\_\_\_\_ weeks of compensation at rate of \$\_\_\_\_\_ per week for \_\_\_\_% rating to \_\_\_\_\_ (body part)  
\_\_\_\_ weeks of compensation at rate of \$\_\_\_\_\_ per week for \_\_\_\_% rating to \_\_\_\_\_ (body part)  
Total amount of permanent partial disability compensation is \$\_\_\_\_\_. Date of first payment:\_\_\_\_\_.
  9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial disability, waiting period or other: \_\_\_\_\_.
  10. An overpayment is claimed in the amount of \$\_\_\_\_\_. Overpayment was calculated as follows:\_\_\_\_\_.
- If overpayment claimed, a Form 28B, Report of Compensation and Medical Compensation Paid, is attached.  yes  no
11. If applicable, the Second Injury Fund Assessment is \$\_\_\_\_\_. A check  is  is not included.

The undersigned hereby certify that the material medical and vocational records related to the injury, including any job description known to exist if the employee has permanent restrictions and has returned to work for the employer of injury, have been provided to the employee or the employee's attorney and have been filed with the Industrial Commission for consideration pursuant to G.S. 97-82(a) and Rule 11 NCAC 23A .0501.

Name Of Employer	Signature	Title	Date		
Name Of Carrier/Administrator	Signature	Direct Phone Number	Email Address	Title	Date

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Page 3 of this form.

Signature of Employee	Address	Email Address	Date
Signature of Employee's Attorney	Address	Email Address	Date

Check box if no attorney retained.

North Carolina Industrial Commission  
The Foregoing Agreement Is Hereby Approved:

Claims Examiner	Date
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Attorney's fee approved

**IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS**  
Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

**IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS**  
If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

**IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS**

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M, Employee's Application for Additional Medical Compensation (G.S. 97-25.1), available at <http://www.ic.nc.gov/forms.html>.

**IMPORTANT NOTICE TO EMPLOYER**

The employee must be provided a copy when the agreement is signed by the employee. Pursuant to Rule 11 NCAC 23A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, Report of Compensation and Medical Compensation Paid, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

**NEED ASSISTANCE?**

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26A  
12/2020

Self-Insured Employer or Carrier Mail to:  
NCIC - Claims Administration  
4335 Mail Service Center  
Raleigh, North Carolina 27699-4335  
Main Telephone: (919) 807-2500  
Helpline: (800) 688-8349  
Website: <http://www.ic.nc.gov/>

(b) A copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/forms/form26a.pdf>. The form may be reproduced only in the format available at <http://www.ic.nc.gov/forms/form26a.pdf> and may not be altered or amended in any way.

*History Note: Authority G.S. 97-30; 97-31; 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77; Eff. November 1, 2014; Recodified from 04 NCAC 10L .0103 Eff. June 1, 2018; Amended Eff. December 1, 2020.*

**11 NCAC 23L .0103 FORM 26A – EMPLOYER'S ADMISSION OF EMPLOYEE'S RIGHT TO PERMANENT PARTIAL DISABILITY (EFFECTIVE MARCH 1, 2021)**

(a) The parties to a workers' compensation claim shall use the following Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, for agreements regarding the employee's entitlement to and the employer's payment of compensation for permanent partial disability pursuant to G.S. 97-31. Additional issues agreed upon by the parties, such as election of payment of temporary partial disability pursuant to G.S. 97-30, may also be included on the form. This form is necessary to comply with Rule 11 NCAC 23A .0501, where applicable. The Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, shall read as follows:

North Carolina Industrial Commission  
Employer's Admission of Employee's Right to Permanent Partial Disability  
(G.S. 97-31)

IC File # \_\_\_\_\_  
Emp. Code # \_\_\_\_\_  
Carrier Code # \_\_\_\_\_  
Carrier File # \_\_\_\_\_

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

**APPROVED RULES**

\_\_\_\_\_  
Employee's Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Home Telephone Work Telephone  
Last 4 digits of Social Security Number: \_\_\_\_\_ Sex:  M  F Date of Birth: \_\_\_\_\_

\_\_\_\_\_  
Employer's Name Telephone Number

\_\_\_\_\_  
Employer's Address City State Zip

\_\_\_\_\_  
Insurance Carrier

\_\_\_\_\_  
Carrier's Address City State Zip

\_\_\_\_\_  
Carrier's Telephone Number Carrier's Fax Number

**WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:**

1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and \_\_\_\_\_ is the Carrier/Administrator for the Employer.
  2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on \_\_\_\_\_.
  3. The injury by accident or occupational disease resulted in the following injuries:  
\_\_\_\_\_  
4. The employee  was  was not paid for the 7 day waiting period.  
If not, was salary continued?  yes  no. Was employee paid for the date of injury?  yes  no
  5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$\_\_\_\_\_. This results in a weekly compensation rate of \$\_\_\_\_\_.
  6. The employee  has  has not returned full time to work for \_\_\_\_\_ on \_\_\_\_\_, at an average weekly wage of \$\_\_\_\_\_.
  7. Claimant was released  with permanent restrictions  without permanent restrictions. If claimant was released with permanent restrictions and has returned to work for the employer of injury, attach a job description if known to exist.
  8. Permanent partial disability compensation will be paid to the injured worker as follows:  
\_\_\_\_ weeks of compensation at rate of \$\_\_\_\_\_ per week for \_\_\_\_% rating to \_\_\_\_\_ (body part)  
\_\_\_\_ weeks of compensation at rate of \$\_\_\_\_\_ per week for \_\_\_\_% rating to \_\_\_\_\_ (body part)  
\_\_\_\_ weeks of compensation at rate of \$\_\_\_\_\_ per week for \_\_\_\_% rating to \_\_\_\_\_ (body part)  
Total amount of permanent partial disability compensation is \$\_\_\_\_\_. Date of first payment:\_\_\_\_\_.
  9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial disability, waiting period or other: \_\_\_\_\_.
  10. An overpayment is claimed in the amount of \$\_\_\_\_\_. Overpayment was calculated as follows:\_\_\_\_\_.
- If overpayment claimed, a Form 28B, Report of Compensation and Medical Compensation Paid, is attached.  yes  no
11. If applicable, the Second Injury Fund Assessment is \$\_\_\_\_\_. A check  is  is not included.

The undersigned hereby certify that the material medical and vocational records related to the injury, including any job description known to exist if the employee has permanent restrictions and has returned to work for the employer of injury, have been provided to the employee or the employee's attorney and have been filed with the Industrial Commission for consideration pursuant to G.S. 97-82(a) and Rule 11 NCAC 23A .0501.

\_\_\_\_\_  
Name Of Employer Signature Title Date

\_\_\_\_\_  
Name Of Carrier/Administrator Signature Direct Phone Number Email Address Title Date

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**APPROVED RULES**

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By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Page 3 of this form.

Signature of Employee	Address	Email Address	Date
Signature of Employee's Attorney	Address	Email Address	Date

Check box if no attorney retained.

North Carolina Industrial Commission  
The Foregoing Agreement Is Hereby Approved:

Claims Examiner	Date

Attorney's fee approved

**IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS**

Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

**IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS**

If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

**IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS**

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must file an application for additional medical compensation pursuant to G.S. 97-25.1 within two years, or your right to these benefits may be lost. An application for additional medical compensation may be made on a Form 18M Employee's Application for Additional Medical Compensation or by written request. In the alternative, an employee may file an application for additional medical compensation by filing a Form 33 Request that Claim be Assigned for Hearing pursuant to 11 NCAC 23A .0602. All Industrial Commission forms are available at <https://www.ic.nc.gov/forms.html>.

**IMPORTANT NOTICE TO EMPLOYER**

The employee must be provided a copy of the form when the agreement is signed by the employee. Pursuant to Rule 11 NCAC 23A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission. The employer or carrier/administrator shall file a Form 28B, Report of Compensation and Medical Compensation Paid, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

**NEED ASSISTANCE?**

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26A  
3/2021

Self-Insured Employer or Carrier, File via Electronic Document Filing Portal ("EDFP"):

<https://www.ic.nc.gov/docfiling.html>

Contact Information:

NCIC- Claims Administration

Telephone: (919) 807-2502

Helpline: (800) 688-8349

Website: <https://www.ic.nc.gov>

(b) A copy of the form described in Paragraph (a) of this Rule can be accessed at <https://www.ic.nc.gov/forms/form26a.pdf>. The form may be reproduced only in the format available at <https://www.ic.nc.gov/forms/form26a.pdf> and may not be altered or amended in any way.

History Note: Authority G.S. 97-30; 97-31; 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77; Eff. November 1, 2014; Recodified from 04 NCAC 10L .0103 Eff. June 1, 2018; Amended Eff. December 1, 2020; Amended Eff. March 1, 2021.

11 NCAC 23L .0105 FORM T-42 – APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM

(a) Persons seeking to appear on behalf of an infant or incompetent shall apply on a Form T-42, Application for Appointment of Guardian Ad Litem, in accordance with Rule 11 NCAC 23B .0203. The Form T-42, Application for Appointment of Guardian Ad Litem, shall read as follows:

North Carolina Industrial Commission
IC File # TA- \_\_\_\_\_
Application for Appointment of Guardian Ad Litem
The use of this Form is required under Rule 11 NCAC 23B .0203

\_\_\_\_\_ Plaintiff(s) v. \_\_\_\_\_ Defendant(s)

To the North Carolina Industrial Commission:

The undersigned \_\_\_\_\_ respectfully shows unto the North Carolina Industrial Commission that \_\_\_\_\_ is an \_\_ infant or \_\_ incompetent without general or testamentary guardian in this State, and that by reason thereof can bring an action only by a guardian ad litem; that the infant or incompetent has a cause of action against the defendants on account of the following matter and things:

The undersigned is a reputable person closely connected with the infant or incompetent having the relationship with the infant or incompetent as follows: \_\_\_\_\_

Wherefore, the undersigned prays the Commission that a fit and proper person be appointed Guardian Ad Litem for the infant or incompetent for the purpose of bringing on his or her behalf an action as above set out.

Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_

(Please complete page 2 of form)

Order Appointing Guardian Ad Litem

It appearing to the North Carolina Industrial Commission from the above application that \_\_\_\_\_ is an \_\_ infant or \_\_ incompetent having no general or testamentary guardian within this State and that said infant or incompetent appears to have a good cause of action against the defendant(s); and it further appearing to the Commission after due inquiry that \_\_\_\_\_ is a fit and proper person to be appointed guardian ad litem for the infant or incompetent for the purpose of bringing this action on his or her behalf;

It is therefore ordered that \_\_\_\_\_ be and is hereby appointed guardian ad litem of \_\_\_\_\_ to bring action on his or her behalf.

This \_\_\_\_\_ day of \_\_\_\_\_.

Commissioner, Deputy Commissioner, or Executive Secretary

Please type or print:

Full name and address of minor or incompetent:

Birth date of minor: \_\_\_\_\_

Full name and address of proposed guardian ad litem:

Important Information for Parties

Parties should take notice of the provisions set forth in Rule 11 NCAC 23B .0203.

11 NCAC 23B .0203      Infants and Incompetents

(a) Persons seeking to appear on behalf of an infant or incompetent, in accordance with G.S. 1A-1, Rule 17, shall apply on a Form T-42 Application for Appointment of Guardian ad Litem. The Commission shall appoint a fit and proper person as guardian ad litem, if the Commission determines it to be in the best interest of the minor or incompetent. The Commission shall appoint the guardian ad litem only after due inquiry as to the fitness of the person to be appointed.

(b) The Commission may assess a fee to be paid to an attorney who serves as a guardian ad litem for actual services rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent as part of the costs.

**ATTORNEYS:** File via Electronic Document Filing Portal (“EDFP”)

<https://www.ic.nc.gov/docfiling.html>

**UNREPRESENTED PLAINTIFFS:** File via EDPF, <https://www.ic.nc.gov/docfiling.html> OR

Mail to: Industrial Commission Clerk’s Office, 1236 Mail Service Center, Raleigh NC 27699-1236 OR

File via hand delivery: Business days from 8 a.m. – 5 p.m., Dobbs Building, 6<sup>th</sup> floor, 430 N. Salisbury Street, Raleigh NC 27603 OR Fax to (919) 715-0282 OR Email to [dockets@ic.nc.gov](mailto:dockets@ic.nc.gov).

FORM T-42

(b) A copy of the form described in Paragraph (a) of this Rule can be accessed at <https://www.ic.nc.gov/forms/formt-42.pdf>. The form shall be reproduced only in the format available at <https://www.ic.nc.gov/forms/formt-42.pdf> and shall not be altered or amended in any way.

*History Note: Authority G.S. 143-291; 143-295; 143-300;*

*Eff. March 1, 2019;*

*Amended Eff. March 1, 2021.*

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**TITLE 12 - DEPARTMENT OF JUSTICE**

**12 NCAC 10B .2005      MINIMUM TRAINING REQUIREMENTS**

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy or a lesson plan for any of the topic areas developed by another entity such as a different law enforcement agency or training provider. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training and as described in 12 NCAC 09B .0209. Lesson plans shall be designed to be delivered in hourly increments. A student who completes the training shall receive the number of credits that correspond to the number of hours assigned to the course, regardless of the amount of time the student spends completing the course, where each hour of instruction shall be worth one credit (e.g., "Legal Update" is designed to be delivered in four hours and will yield four credits). With the exception of Firearms Training and Requalification, successful completion of training shall be demonstrated by passing tests as developed by the delivering agency or as written by the North Carolina Justice Academy. A written test comprised of at least five questions per hour of training shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic. A student shall pass each test by achieving 70 percent correct answers. Firearms Training and Requalification shall be demonstrated qualification with a firearm as set out in Section .2100 of this Subchapter.

(b) The in-service training for topic areas of the Sheriff's or Department Head's choosing required by this Rule shall either:

- (1) meet the requirements of Paragraph (a) of this Rule; or
  - (2) be delivered pursuant to National Certification Programs administered by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) completed during the mandated in-service year to satisfy these topics in part or in whole. It is not required that this IADLEST training be written in the Instructional Systems Design (ISD) format or delivered by a Commission certified instructor.
- (c) The 2020 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:
- (1) 2020 Legal Update;
  - (2) 2020 Long-Term Effects of Childhood Adversity;
  - (3) 2020 The Signs Within: Suicide Prevention Education and Awareness;
  - (4) 2020 Career Survival: Training and Standards Issues;
  - (5) 2020 Communication Strategies When Encountering Persons Who are Deaf or Hard of Hearing;
  - (6) 2020 Armed/Unarmed Security/Company Police: Understanding Their Roles and Authority;
  - (7) 2020 Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
  - (8) Any topic areas of the Sheriff's choosing.

(d) The 2020 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:

- (1) 2020 Overcoming Negativity in the Detention Center;
  - (2) 2020 Documenting the Incident Refresher;
  - (3) 2020 The Signs Within: Suicide Prevention Education and Awareness
  - (4) 2020 Career Survival: Training and Standards Issues;
  - (5) 2020 Recognizing Signs of Assaultive Behavior; and
  - (6) Any topic areas of the Sheriff's or Department Head's choosing.
- (e) The 2020 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:
- (1) 2020 Suicide Callers;
  - (2) 2020 Overcoming Negativity in the Communications Center;
  - (3) 2020 Processing Calls/Quality Assurance;
  - (4) 2020 Responding to Domestic Violence Callers;
  - (5) 2020 Career Survival: Training and Standards Issues; and
  - (6) Any topic areas of the Sheriff's or Department Head's choosing.
- (f) The 2021 Law Enforcement In-Service Training Program requires 24 credits of training and successful completion in the following topic areas:
- (1) 2021 Legal Update;
  - (2) 2021 Continue to Make a Difference: Positive Engagement Stories and Studies;
  - (3) 2021 School Safety and Responding to School Incidents;
  - (4) 2021 Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
  - (5) Any topic areas of the Sheriff's choosing.
- (g) The 2021 Detention Officer In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:
- (1) 2021 Detention Legal Updates;
  - (2) 2021 Followership: Being an Influential Employee;
  - (3) 2021 Inmate Mental Health; and
  - (4) Any topic areas of the Sheriff's or Department Head's choosing.
- (h) The 2021 Telecommunicator In-Service Training Program requires 16 credits of training and successful completion in the following topic areas:
- (1) 2021 Followership: Being an Influential Employee;
  - (2) 2021 Critical Thinking for Telecommunicators;
  - (3) 2021 Crisis Negotiations; and
  - (4) Any topic areas of the Sheriff's or Department Head's choosing.

*History Note: Authority G.S. 17E-4; 17E-7; Eff. January 1, 2007; Amended Eff. January 1, 2018; January 1, 2017; January 1, 2016; January 1, 2015; February 1, 2014; January 1, 2013; February*

*1, 2012; January 1, 2011; January 1, 2010; January 1, 2009; January 1, 2008; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018; Amended Eff. January 1, 2021; January 1, 2020; August 1, 2019; January 1, 2019.*

**TITLE 13 - DEPARTMENT OF LABOR**

**13 NCAC 15 .0205 TRAMWAY REQUIREMENTS**

(a) The rules of this Chapter shall control when any conflict exists between these Rules and the American National Standards Institute (ANSI) standards that are incorporated by reference herein.

(b) The construction, operation, and maintenance of all passenger tramways shall conform to the ANSI B77.1, Passenger Ropeways-Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors, which is hereby incorporated by reference, including subsequent amendments and editions.

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

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

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

*History Note: Authority G.S. 95-120; Eff. August 1, 1987; Amended Eff. December 1, 2004; May 1, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5, 2016; Amended Eff. December 1, 2020.*

**13 NCAC 15 .0402 RESPONSIBILITY FOR COMPLIANCE**

(a) Every owner, operator, manufacturer, or designer of an amusement device shall comply with the rules of this Section.

(b) Designers and manufacturers of amusement devices shall follow the procedures of the ASTM F1159 – Standard Practice for Design of Amusement Rides and Devices that are Outside the Purview of Other F24 Design Standards, which is hereby incorporated by reference, including all subsequent amendments and editions.

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

(d) Owners of amusement devices shall follow the procedures of ASTM F770 – Standard Practice for Ownership, Operation, Maintenance, and Inspection of Amusement Rides and Devices,

which is hereby incorporated by reference, including all subsequent amendments and additions.

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

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

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

*History Note: Authority G.S. 95-111.4; Eff. August 1, 1987; Amended Eff. December 1, 2004; June 1, 1992; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5, 2016;*

*Amended Eff. December 1, 2020.*

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

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

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

*History Note: Authority G.S. 95-107; 95-110.5(20); Temporary Adoption Eff. October 17, 2001; Eff. July 1, 2003; Amended Eff. September 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5, 2016; Amended Eff. December 1, 2020.*

**13 NCAC 15 .0703 AMUSEMENT DEVICE INSPECTION FEE SCHEDULE**

Inspection fees for amusement devices shall be as follows:

	Equipment	Unit Fee	Inspection Required
(1)	Inflatables	\$100.00	Annually
(2)	Rock Walls, portable	\$100.00	Annually
(3)	Kiddie Rides (48 inch maximum height restriction)	\$100.00	Every setup, except in permanent parks, which shall be inspected annually
(4)	Go Karts	\$50.00	Every setup, except in permanent parks, which shall be inspected annually
(5)	Go Kart Tracks	\$100.00	Every setup, except in permanent parks, which shall be inspected annually
(6)	Major Rides (any ride not otherwise listed herein)	\$100.00	Every setup, Except in permanent parks, which shall be inspected annually
(7)	Roller Coasters	\$250.00	Annually
(8)	Simulators, portable	\$100.00	Every setup
(9)	Simulators, stationary	\$100.00	Annually
(10)	Amusement Trains on fixed guidance systems, excluding steam engine locomotives	\$100.00	Annually
(11)	Waterslides	\$150.00	Annually

*History Note: Authority G.S. 95-107; 95-111.4(19); Temporary Adoption Eff. October 17, 2001; Eff. July 1, 2003; Amended Eff. April 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5, 2016; Amended Eff. January 1, 2021.*

**13 NCAC 15 .0705 PASSENGER TRAMWAY  
INSPECTION FEE SCHEDULE**

Inspection fees for all passenger tramway devices shall be one hundred thirty-seven dollars (\$137.00).

*History Note: Authority G.S. 95-107; 95-120(9); 95-121; Emergency Adoption Eff. September 19, 2005; Emergency Adoption Expired Eff. January 1, 2006; Eff. May 1, 2006; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 5, 2016; Amended Eff. January 1, 2021.*

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6a); 113A-113(b)(6b); 113A-113(b)(6d); 113A-124; Eff. September 9, 1977; Amended Eff. October 1, 1992; Readopted Eff. December 1, 2020.*

**15A NCAC 07H .0303 MANAGEMENT OBJECTIVE OF OCEAN HAZARD AREAS**

(a) The CRC recognizes that absolute safety from the destructive forces of the Atlantic Ocean shoreline is an impossibility for development located adjacent to the coast. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of structures and by care taken in prevention of damage to natural protective features particularly primary and frontal dunes. Therefore, it is the CRC's objective that development in ocean hazard areas shall be sited to minimize danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.

(b) The rules set forth in this Section shall further the goals set out in G.S. 113A-102(b), to minimize losses to life and property resulting from storms and long-term erosion, prevent encroachment of permanent structures on public beach areas, preserve the natural ecological conditions of the barrier dune and beach systems, and reduce the public costs of development within ocean hazard areas, and protect common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

*History Note: Authority G.S. 113A-107(b); 113A-113(b)(6) a.; 113A-113(b)(6) b.; 113A-113(b)(6)d.; 113A-124; Eff. September 9, 1977; Amended Eff. October 1, 1992; December 1, 1991; September 1, 1985; February 2, 1981; Readopted Eff. December 1, 2020.*

**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

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

**15A NCAC 07H .0301 OCEAN HAZARD CATEGORIES**

The Ocean Hazard categories of AECs encompass the natural hazard areas along the Atlantic Ocean shoreline where, because of their vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could endanger life or property. Ocean hazard areas include beaches, frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions may subject the area to erosion or flood damage.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6a); 113A-113(b)(6b); 113A-113(b)(6d); 113A-124; Eff. September 9, 1977; Readopted Eff. December 1, 2020.*

**15A NCAC 07H .0302 SIGNIFICANCE OF THE OCEAN HAZARD CATEGORY**

(a) Hazards associated with ocean shorelines are due to the constant forces exerted by waves, winds, and currents upon the unstable sands that form the shore. During storms, these forces are intensified and can cause changes in the bordering landforms and to structures located on them. Ocean hazard area property is in the ownership of a large number of private individuals as well as several public agencies and is used by a vast number of visitors to the coast. Ocean hazard areas are critical due to both the severity of the hazards and the intensity of interest in these areas.

(b) The location and form of the various hazard area landforms, in particular the beaches, dunes, and inlets, are in a permanent state of flux, responding to meteorologically induced changes in the wave climate. For this reason, the siting of development on and near these landforms shall be subject to the provisions in this Section in order to avoid their loss or damage. The flexible nature of these landforms presents hazards to development situated immediately on them and offers protection to the land, water, and structures located landward of them. The value of each landform lies in the particular role it plays in affording protection to life and property. Development shall not diminish the energy dissipation and sand storage capacities of the landforms essential to the maintenance of the landforms' protective function.

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. 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). 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).

*History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124; Eff. September 9, 1977; Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985; Temporary Amendment Eff. October 10, 1996; Amended Eff. April 1, 1997; Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997; Temporary Amendment Eff. October 22, 1997; Amended Eff. April 1, 2020; July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013; January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998; Readopted Eff. December 1, 2020.*

**15A NCAC 07H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS**

- (a) This Paragraph describes natural and man-made features that are found within the ocean hazard area of environmental concern.
- (1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:
    - (A) the growth of vegetation occurs; or
    - (B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.
  - (2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.
  - (3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. Primary dunes extend landward to the lowest elevation in the depression behind that same mound of sand commonly referred to as the "dune trough".
  - (4) Frontal Dunes. The frontal dune is the first mound of sand located landward of ocean beaches that has stable and natural vegetation present.
  - (5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant

flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. Planted vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable and natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on-ground observations or by aerial photographic interpretation.

- (6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of project construction shall be defined as the "static vegetation line". The "onset of project construction" shall be defined as the date sediment placement begins, with the exception of projects completed prior to the original effective date of this Rule, in which case the award of the contract date will be considered the onset of construction. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal

Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd in September 1999 caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

- (7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A "large-scale beach fill project" shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers.
- (8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.
- (9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(3) of this Section. In areas designated pursuant to Rule .0304(3)(b) of this Section, the Division of Coastal Management shall establish a measurement line by:
  - (A) determining the average distance the pre-storm vegetation line receded at the closest vegetated site adjacent to the area designated by the Commission as the unvegetated beach AEC; and
  - (B) mapping a line equal to the average recession determination in Part (A) of this Subparagraph, measured in a landward direction from the first line of stable and natural vegetation line on the most recent pre-storm aerial photography in the area designated as an unvegetated beach AEC.
- (10) Development Line. The line established in accordance with 15A NCAC 07J .1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have development lines approved by the CRC, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of Rule .0306(a)(2) of this Section.

(b) For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined in 15A NCAC 07I .0500, an identifiable land area within which the ocean hazard areas occur. This designated notice area shall include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*  
*Eff. September 9, 1977;*  
*Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;*  
*Temporary Amendment Eff. October 10, 1996;*  
*Amended Eff. January 1, 1997;*  
*Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*  
*Temporary Amendment Eff. October 22, 1997;*  
*Amended Eff. April 1, 2020; April 1, 2016; April 1, 2008; August 1, 2002; August 1, 1998;*  
*Readopted Eff. December 1, 2020.*

**15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS**

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.
- (3) In no case shall a development line be created or established on State-owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.
- (4) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
  - (A) The total square footage of heated or air-conditioned living space;
  - (B) The total square footage of parking elevated above ground level; and
  - (C) The total square footage of non-heated or non-air-conditioned areas elevated

- above ground level, excluding attic space that is not designed to be load-bearing.
- Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.
- (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:
- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
  - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
  - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
  - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
  - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
  - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
  - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
  - (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
  - (I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
  - (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
  - (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
  - (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:
    - (i) the structure was originally constructed prior to August 11, 2009;
    - (ii) the structure as replaced does not exceed the original footprint or square footage;
    - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;

- (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and
- (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed, the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.
- (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
- (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
- (9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (11) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.
- (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception shall apply to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries of the large-scale beach fill project. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:
  - (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;
  - (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;
  - (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an

average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;

- (D) With the exception of swimming pools, the development defined in Rule .0309(a) of this Section shall be allowed oceanward of the static vegetation line; and
- (E) Development shall not be eligible for the exception defined in Rule .0309(b) of this Section.

(b) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.

(d) Development shall comply with minimum lot size and set back requirements established by local regulations.

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. The acknowledgement shall state that the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures shall require permit approval. Structures relocated with public funds shall comply with the

applicable setback line and other applicable AEC rules. Structures, including septic tanks and other essential accessories, relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location. Septic tanks shall not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*

*Eff. September 9, 1977;*

*Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;*

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*Amended Eff. March 1, 1992;*

*RRC Objection due to ambiguity Eff. May 21, 1992;*

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*RRC Objection due to ambiguity Eff. May 18, 1995;*

*Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;*

*Temporary Amendment Eff. January 3, 2013;*

*Amended Eff. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013;*

*Readopted Eff. December 1, 2020.*

**15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS**

(a) Ocean Shoreline Erosion Control Activities:

(1) Use Standards Applicable to all Erosion Control Activities:

(A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.

(B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.

- (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
- (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.
- (E) Project construction shall be timed to minimize adverse effects on biological activity.
- (F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- (G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
  - (i) the erosion control structure is necessary to protect a bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
  - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
  - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
- (H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
  - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;
  - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
  - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
  - (iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
  - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
  - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
  - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
  - (iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and
  - (v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining

- properties and on public access to and use of the beach.
- (J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
    - (i) the structure will not be enlarged beyond the dimensions set out in the permit;
    - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
    - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
  - (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
  - (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened
  - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.
  - (D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
  - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.
  - (F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.
- when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

- (G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project, or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:
- (i) a building and its septic system shall be considered separate structures,
  - (ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.
- (H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:
- (i) has been issued an active CAMA permit, where necessary, approving such project; or
  - (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
  - (iii) has received a favorable economic evaluation report on a federal project; or
  - (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.
- If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.
- (I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale

- beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.
  - (K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
  - (L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.
  - (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
  - (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.
  - (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
    - (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
    - (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
    - (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
    - (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
    - (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Establishment and Stabilization.
    - (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.
    - (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
    - (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.
    - (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
    - (5) No new dunes shall be created in inlet hazard areas.
    - (6) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.
    - (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.
  - (c) Structural Accessways:
    - (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that

entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.

- (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:
  - (A) The accessway is exclusively for pedestrian use;
  - (B) The accessway is a maximum of six feet in width;
  - (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the dune. Where this is deemed by the Division of Coastal Management to be impossible due to any more restrictive local, state, and/or federal building requirements, the structure shall touch the dune only to the necessary; and
  - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are not prohibited provided all other applicable standards of this Rule are met.
- (4) In order to preserve the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.
- (5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in Rule .0309(a) of this Section.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this Section and 15A NCAC 07J .0210 shall comply with the following standards:

- (1) In order to avoid danger to life and property, all development shall be designed and placed so as

to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
- (4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124; Eff. June 1, 1979; Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989; Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989; RRC Objection Eff. November 19, 1992 due to ambiguity; RRC Objection Eff. January 21, 1993 due to ambiguity; Amended Eff. March 1, 1993; December 28, 1992; RRC Objection Eff. March 16, 1995 due to ambiguity; Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995; Temporary Amendment Eff. July 3, 2000; May 22, 2000; Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1, 2002; Readopted Eff. December 1, 2020.*

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

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

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand, or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet;

- (4) beach accessways consistent with Rule .0308(c) of this Section;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands consistent with Section .1900 of this Subchapter;
- (8) sand fences; and
- (9) swimming pools.

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

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude placement of permanent substantial structures on lots existing as of June 1, 1979, buildings shall be permitted seaward of the applicable setback line in ocean erodible areas and State Ports Inlet Management Areas, but not inlet hazard areas or unvegetated beach areas, if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line or static vegetation line, whichever is applicable;
- (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Section.
  - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
  - (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
  - (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean

and is located landward of a paved public street or highway currently in use. In those cases concrete, asphalt, or turfstone may also be used;

- (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent building. When the geometry or orientation of a lot precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

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

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

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

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

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

- (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.

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

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

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

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

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124; Eff. February 2, 1981; Amended Eff. April 1, 2020; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987; Readopted Eff. December 1, 2020.*

**15A NCAC 07H .0310 USE STANDARDS FOR INLET HAZARD AREAS**

(a) Inlet Hazard Areas of Environmental Concern as defined by Rule .0304 of this Section are subject to inlet migration, rapid and severe changes in watercourses, flooding and strong tides. Due to this extremely hazardous nature of the Inlet Hazard Areas, all development within these areas shall be permitted in accordance with the following standards:

- (1) All development in the inlet hazard area shall be set back from the first line of stable natural vegetation a distance equal to the setback required in the adjacent ocean hazard area;
- (2) Permanent structures shall be permitted at a density of no more than one commercial or residential unit per 15,000 square feet of land area on lots subdivided or created after July 23, 1981;
- (3) Only residential structures of four units or less or non-residential structures of less than 5,000 square feet total floor area shall be allowed within the inlet hazard area, except that access roads to those areas and maintenance and replacement of existing bridges shall be allowed;
- (4) Established common-law and statutory public rights of access to the public trust lands and waters in Inlet Hazard Areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways;
- (5) All other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the Inlet Hazard Areas.

(b) The inlet hazard area setback requirements shall not apply to the types of development exempted from the ocean setback rules in 15A NCAC 07H .0309(a), nor, to the types of development listed in 15A NCAC 07H .0309(c).

(c) In addition to the types of development excepted under Rule .0309 of this Section, small scale development that does not induce further growth in the Inlet Hazard Area, such as the construction of single-family piers and small scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated Inlet Hazard Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 07K .0203.

*History Note: Authority G.S. 113A-107; 113A-113(b); 113A-124; Eff. December 1, 1981; Emergency Rule Eff. September 11, 1981, for a period of 120 days to expire on January 8, 1982;*

*Temporary Amendment Eff. October 30, 1981, for a period of 70 days to expire on January 8, 1982;  
Amended Eff. April 1, 1999; April 1, 1996; December 1, 1992;  
December 1, 1991; March 1, 1988;  
Readopted Eff. December 1, 2020.*

**15A NCAC 07H .0311 INSTALLATION AND MAINTENANCE OF SAND FENCING**

- (a) Sand fencing may only be installed for the purpose of building sand dunes by trapping windblown sand, for the protection of the dune(s) and vegetation (planted or existing).
- (b) Sand fencing shall not impede existing public access to the beach, recreational use of the beach, or emergency vehicle access. Sand fencing shall not be installed in a manner that impedes or restricts established common law and statutory rights of public access and use of public trust lands and waters.
- (c) Sand fencing shall not be installed in a manner that impedes, traps or otherwise endangers sea turtles, sea turtle nests or sea turtle hatchlings. CAMA permit applications for sand fencing shall be subject to review by the Wildlife Resources Commission and the U.S. Fish and Wildlife Service in order to determine whether or not the proposed design or installation will have an adverse impact on sea turtles or other threatened or endangered species.
- (d) Non-functioning, damaged, or unsecured sand fencing shall be removed by the property owner.
- (e) Sand fencing shall not be placed on the wet sand beach area.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6);  
Eff. August 1, 2002;  
Readopted Eff. December 1, 2020.*

**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 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:
  - (a) Characterization of the recipient beach is not required for the placement of sediment directly from and completely confined to a maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system;
  - (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 topographic and bathymetric surveying of the recipient beach shall be conducted to determine the beach profile. Topographic and bathymetric surveying shall occur along a minimum of five shore-perpendicular transects evenly spaced throughout the entire project area. 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);
- (d) No fewer than 13 sediment samples shall be taken along each beach profile 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. 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 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;
  - (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 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
  - (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) 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 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;
    - (c) Seafloor surveys shall measure elevation and capture acoustic imagery of the seafloor. Measurement of seafloor elevation shall cover 100 percent 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. Seafloor imaging without an elevation component (e.g. sidescan sonar or similar technologies) shall also cover 100 percent of each borrow site and be performed in accordance with US Army Corps of Engineers standards for navigation and dredging. 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. 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. For offshore dredged material disposal sites, only one set of imagery without elevation is required. Sonar imaging of the seafloor without elevation is not required for borrow sites completely confined to maintained navigation channels, 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. 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, 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;
- (e) 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 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;

- (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) 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) 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) 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 compatibility 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) 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 designated 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) Sediment 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 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) section of beach.

*History Note: 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; Eff. February 1, 2007; Amended Eff. August 1, 2014; September 1, 2013; April 1, 2008; Readopted Eff. December 1, 2020.*

**TITLE 16 – STATE BOARD OF EDUCATION**

**16 NCAC 06B. 0112 PURCHASE OF SCHOOL BUSES AND EQUIPMENT**

Local education agencies shall purchase school buses from the statewide term contracts approved by the Secretary of Administration under G.S. 143-49 and shall purchase school bus

brake pads, brake shoes, and brake hardware that have the same specifications as the original equipment.

*History Note: Authority G.S. 115C-12; 115C-249; 115C-249.1; 115C-522; Eff. December 1, 2020.*

**16 NCAC 06D .0310 APPROPRIATE USE OF STATE TESTS**

Secure tests as defined in Rule .0307(b) of this Section developed by the State of North Carolina as part of the Annual Testing Program shall not be used for purposes other than to measure reading proficiency at the beginning of grade three, end-of-grade progress for grades three through eight, end-of-course competencies, and competencies in English, mathematics, reading, and science at the end of grade 11 as tested in the ACT, and competencies in mathematics, reading, and information location at the end grade 12 as tested in ACT WorkKeys.

*History Note: Authority G.S. 115C-12(9d)a.; 115C-83.15; 115C-174.11(c); Emergency Adoption Eff. August 20, 2019; Eff. Pending Legislative Review.*

**16 NCAC 06E .0107 SCHOOL VIOLENCE ACTS DEFINED AND THE ANNUAL REPORT OF THESE CRIMES**

(a) Local Education Agencies (LEAs) shall report the following crimes and offenses within five school days to the Department of Public Instruction:

- (1) Homicide as defined in G.S. 14-17 and 14-18;
- (2) Assault resulting in serious personal injury as defined in G.S. 14-32.4;
- (3) Assault involving the use of a weapon as defined in G.S. 14-32 through 14-34.10;
- (4) Rape as defined in G.S. 14-27.21 through 14-27.25;
- (5) Sexual offense as defined in G.S. 14-27.26 through 14-27.30;
- (6) Sexual activity, battery, contact and penetration under pretext of medical treatment as defined in G.S. 14-31 through 33;
- (7) Kidnapping as defined in G.S. 14-39;
- (8) Robbery with a dangerous weapon as defined in G.S. 14-87;
- (9) Indecent liberties with a minor as defined in G.S. 14-202.1, 14-202.2 and 14-202.4;
- (10) Assault with a firearm or powerful explosive as defined in G.S. 14-34 through 14-34.10 and 14-49 through 14-50.1;
- (11) Robbery with a firearm or dangerous explosive as defined in G.S. 14-87;
- (12) Willfully burning a school building as defined in G.S. 14-60;
- (13) Making bomb threats or engaging in bomb hoaxes as defined in G.S. 14-69.2;
- (14) Assault on school officials, employees, and volunteers as defined in G.S. 14-33(c)(6);

- (15) Possession of a controlled substance in violation of the law as defined in G.S. 90-86 through 90-113.8;
- (16) Possession of a weapon on campus or other educational property in violation of G.S. 14-269.2;
- (17) Unlawful, underage sales, purchase, provision, possession, or consumption of alcoholic beverages as defined in G.S. 18B-302;
- (18) Assault as defined in G.S. 14-33 but not resulting in an injury as severe as defined in G.S. 14-32.4;
- (19) Fighting, or affray as defined in G.S. 14-33;
- (20) Gang activity as defined in G.S. 14-50.17, 14-50.19 and 14-50.20;
- (21) Robbery as defined in G.S. 14-87, but without the use of a dangerous weapon;
- (22) Extortion as defined in G.S. 14-118.4;
- (23) Communicating threats in violation of G.S. 14-277.1;
- (24) Possession or use of tobacco products as defined in G.S. 14-313;
- (25) Property damage as defined in G.S. 115C-398;
- (26) Bullying or harassing behavior prohibited under policies adopted under G.S. 115C-407.16;
- (27) Cyberbullying as defined in G.S. 14-458.1 and 14-458.2;
- (28) Verbal harassment as defined in G.S. 115C-407.15;
- (29) Sexual harassment as defined in G.S. 115C-335.5; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e;
- (30) Discrimination as defined in Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681-1688; Americans with Disabilities Act, 42 U.S.C. 12101.

(b) These offenses shall be reported when they occur under the following conditions and circumstances:

- (1) on school property, defined as any public school building, bus, public school campus, grounds, recreational area, or athletic field in the charge of the principal; or
- (2) off school property on a school-sponsored field trip.

*History Note: G.S. 115C-12(18), (21); 115C-288(g); Emergency Adoption Eff. August 20, 2019; Eff. December 1, 2020.*

**16 NCAC 06G .0315 ACCOUNTABILITY ANNUAL PERFORMANCE STANDARDS**

(a) All students enrolled in a public school unit (PSU) in grades 3 through 8 or in high school courses in which an end-of-course (EOC) assessment is administered shall participate in the State

Annual Testing Program. PSUs shall report to the North Carolina Department of Public Instruction (NCDPI) test results for:

- (1) beginning of grade 3 reading proficiency
- (2) grades 3 through 8 end-of-grade (EOG) English language arts/reading and mathematics;
- (3) grades 5 and 8 EOG science;
- (4) grade 10 EOC English II;
- (5) grade 11 EOC assessments in NC Math 1, NC Math 3, and EOC Biology;
- (6) grade 11 ACT; and
- (7) grade 12 Career and Technical Education Concentrators and WorkKeys.

(b) PSUs shall administer the tests in the Annual Testing Program in accordance with the rules in this Subchapter and the Elementary and Secondary Education Act of 1965 (ESEA), Pub. L. 89-10, 79 Stat. 27, amended by the Every Student Succeeds Act (ESSA), Pub. L. No. 114-95, 129 Stat. 1802 (2015), and the regulations adopted thereunder.

(c) All students entitled to testing accommodations shall participate in the State Annual Testing Program using one of the following assessments as required by the student's accommodation:

- (1) The standard test administration with or without accommodations, or
- (2) An alternate assessment with or without accommodations.

(d) "Students entitled to testing accommodations" for purposes of this Chapter shall mean:

- (1) students with Individualized Education Programs (IEPs) created under the Individuals with Disabilities Education Act, 33 U.S.C. 1414, and regulations adopted pursuant to that Act;
- (2) students with a plan created under 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 as implemented through 34 C.F.R. 104.44, and other regulations adopted pursuant to that Act;
- (3) students with documented transitory impairments with actual or expected duration of six months or less that affect their ability to demonstrate their knowledge on standard test administrations without accommodation as determined by the LEA; and
- (4) students who score below Level 5.0 Bridging on the reading domain of the WIDA Screener/ACCESS for ELLs®.

*History Note:* G.S. 115C-12; 115C-105.35; 115C-83.15; 115C-174.11(c); 115C-288.66(11); 115C-218.65; 116-239.8(b)(14);  
*Emergency Adoption Eff. August 20, 2019;*  
*Eff. Pending Legislative Review.*

**16 NCAC 06G .0505 CHARTER SCHOOLS  
 FINANCIAL NONCOMPLIANCE – IMPACT OF  
 FINANCIAL NONCOMPLIANCE**

(a) There are three stages of financial noncompliance under which a charter school may be placed: cautionary, probationary, and disciplinary.

(b) The presence of any one of the following financial conditions shall result in a charter school being assigned a noncompliance status:

- (1) if the charter school fails to report financial, personnel or student data within 10 days of the required or agreed-upon reporting date or does not submit accurate data ;
- (2) if the charter school fails to respond to a specific financial, personnel, or student information request for information or data from the Department of Public Instruction by the required reporting date;
- (3) if the charter school fails to submit the required audited financial statements to the North Carolina Department of State Treasurer's Local Government Commission, as prescribed by G.S. 115C-218.30 and G.S. 115C-447.
- (4) if the charter school shows signs of financial insolvency or weakness, including a decline in student membership based on evaluation of financial statements by an accountant;
- (5) if the Office of State Treasurer receives a "non-sufficient funds (NSF)" notification during the course of cash certification processing;
- (6) if the charter school receives a material audit finding in its annual independent financial statement audit which indicates a violation of State law, a violation of any of the conditions or procedures set forth in its Charter, a failure to meet generally accepted accounting practices and principles, including sound fiscal management in accordance with G.S. 115C-218.95 and remains unresolved; or
- (7) if the charter school's staff fails to attend required financial training.

(c) For these warning conditions, the school's access to the cash management system may be revoked if necessary to prevent the expenditure of funds in violation of the standards in Subparagraph (b)(6) of this Rule until the exception is corrected. Decisions to place a school in Cautionary, Probationary, or Disciplinary status will be based on the evidence of how likely the financial problems of the school are to force the school into an unplanned and unorganized closure if corrective actions are not implemented. Any combination of the above violations may result in a decision to move the charter school to Financial Disciplinary Status without first being held in either the Cautionary or Probationary status. Should a charter school have repeated violations of the same or similar non-compliance condition, the charter school may be moved to Financial Disciplinary Status.

(d) This policy does not preclude the State Board of Education from taking any action with regards to a charter school if so warranted, regardless of the charter school's financial noncompliance status.

(e) The stages of financial noncompliance are as follows:

- (1) Level 1: Financial Cautionary Status: A charter school may receive a notification of Financial Cautionary Status for any of the above conditions. The school shall remain in cautionary status for a minimum of 30 calendar days from the date of notification, and during that time must correct the exception(s) that caused the financial warning(s) if applicable. When the exception(s) is corrected as prescribed in the notification of noncompliance by NCDPI, the school will be notified of removal from cautionary status.
- (2) Level 2: Financial Probationary Status: A charter school may receive a notification of Financial Probationary Status for any of the above conditions. The school will be placed in Financial Probationary Status, if the school fails to correct the exception(s) during the 30 calendar days cautionary period, unless otherwise stated in the initial notification of noncompliance. The school remains in probationary status for a minimum of 30 calendar days from the date of notification, and during that time must correct the exceptions that caused the financial warnings if applicable. When all of the exceptions have been corrected, the school will be notified of removal from probationary status. While in probationary status, state funds for the school may be allotted on a monthly basis until the exceptions that caused the financial warnings are corrected. Failure to resolve the exceptions may result in the school being placed on Financial Disciplinary Status, referred to the Charter School Advisory Board and/or to the State Board of Education for further action.
- (3) Level 3: Financial Disciplinary Status: The school will be placed in Financial Disciplinary Status, if the school fails to correct all of the exceptions during the established timeframe. Any of the financial conditions noted in this policy, or combination thereof, may result in the charter school being placed on Financial Noncompliance Disciplinary status without the benefit of being first held in either the Cautionary or Probationary status. Also, should a charter school have repeat violations of the same or similar non-compliance condition, the charter school may be moved to Financial Disciplinary Status without the benefit of completing either the Cautionary or Probationary status periods.

(f) When in Disciplinary status, the school shall address all of the exceptions that caused the financial noncompliance within 10 business days from the date of notification or otherwise stated. State funds for the school may be allotted on a monthly basis until the exceptions causing the noncompliance are corrected. When all of the exceptions have been corrected, the school will be notified

of removal from disciplinary status. Failure to resolve the exceptions will result in the school being referred to the Charter School Advisory Board or to the State Board of Education for further action.

*History Note: Authority G.S. 115C-12(5); 115C-218, 115C-218.15, 115C-218.30, 115C-218.95; 115C-408; Emergency Adoption Eff. August 20, 2019; Eff. Pending Legislative Review.*

**16 NCAC 06G .0506 CHARTER SCHOOLS GOVERNANCE NONCOMPLIANCE**

(a) There are three stages of Governance Noncompliance: Governance Cautionary Status, Governance Probationary Status, and Governance Disciplinary Status. The State Board of Education shall place a charter school within a governance non-compliance status based on substantial evidence of any one of the following governance warning conditions. The status imposed shall be based on the degree to which the non-compliance reflects the charter school board's neglect of its corporate obligations.

- (1) Failure of the board to conduct meetings in accordance with schedule in the bylaws or the approved charter application and failure to adopt and follow policies regarding the operation of the charter school including Personnel, Disciplinary, and Parental Grievance policies.
- (2) Failure to show progress towards the educational and organizational goals described in the approved charter school application.
- (3) Failure to maintain minimum student enrollment stated in the charter application or approved waiver to operate under the minimum of 80 students.
- (4) Bylaws violations including, failure to follow the Open Meetings Law, failure to maintain Public Records, failure to implement a Conflict of Interest Policy, failure to adhere to rules of Parliamentary Procedure.
- (5) Charter Agreement violations including, failure to follow State or federal laws, failure to meet the health and safety standards required in G.S. 115C-218.75, failure to make adequate academic progress as described in the charter application, failure to comply with State testing and accountability statutes and rules in this Chapter, and failure to supply all reports and documentation as requested by the Office of Charter Schools to ensure legal compliance with General Statutes, State Board of Education rules in this Chapter, and the Charter Agreement.
- (6) Failure to maintain certification of at least 50 percent of teachers in all grades pursuant to G.S. 115C-218.90 from December 31 of each year through the end of the school calendar year.

(b) The stages of noncompliance are as follows:

- (1) Level 1: Governance Cautionary Status: Upon receiving a governance warning for any of the above conditions, the charter school will be placed on Governance Cautionary Status. The school remains in cautionary status for 30 calendar days and during that time must correct the exception that caused the warning. When the 30 calendar days have ended and the exception is corrected, the governance warning will be removed and the school will be removed from cautionary status. Failure to correct the exception during the 30 calendar days cautionary period constitutes a second governance warning and the school will be placed on Governance Probationary Status.
  - (2) Level 2: Governance Probationary Status: The school remains on Governance Probationary Status for 30 calendar days and during that time must correct the exceptions that caused all of the governance warnings. When the 30 calendar days have ended and the exception is corrected, the governance warning will be removed and the school will be removed from probationary status. Failure to correct the exception during the 30 calendar days probationary period constitutes a third governance warning and the school will be placed on Governance Noncompliance Status.
  - (3) Level 3: Governance Noncompliance Status: The school remains on Governance Noncompliance Status for 10 calendar days. When in Noncompliance Status, the school is expected to correct all of the exceptions that caused the governance warnings within 10 calendar days. State funds for the school may be allotted on a monthly basis until the exceptions that caused all of the governance warnings are corrected. A School placed in Governance Noncompliance Status may be referred to the Charter Schools Advisory Board for appropriate inquiry and action as determined by the State Board of Education.
- (b) The charter holder shall provide the following information in the Self-Study on the form, available on the Office of Charter School's website:
    - (1) school name;
    - (2) school mailing address;
    - (3) primary contact person, including name, title, phone number, fax number, email address, and dated signature;
    - (4) contact information for the board of directors' chairperson, including name, term of office, mailing address, phone number, fax number, email address, and dated signature;
    - (5) a letter signed by the Board Chairperson stating the charter holder's intent to seek charter renewal;
    - (6) school mission statement as stated in the original or amended charter application;
    - (7) if applicable, revised school mission statement approved by the State Board of Education;
    - (8) a narrative statement not to exceed two pages explaining how the school is fulfilling the State Board approved mission statement;
    - (9) five goals the charter holder has for the school during the next five years, including at least one academic goal, one financial goal, and one operational goal;
    - (10) the name of or a description of the curriculum design currently used by the school;
    - (11) a summary of instructional methodology or instructional techniques utilized used at the school;
    - (12) the names of evaluation instruments, other than State-mandated tests, used to assess student performance, including descriptions of those assessments; and
    - (13) a narrative statement explaining how the school uses student data to improve student learning and to raise the academic performance of all students.
  - (c) All pages of the Self-Study shall be numbered consecutively and include a table of contents.
  - (d) No font smaller than 12 point shall be used in the typed report.
  - (e) Any charter school seeking renewal may use help from outside the school to complete the Self-Study report.

*History Note Authority G.S. 115C-12; 115C-218, 115C-218.15, 115C-218.30, 115C-218.95; Emergency Adoption Eff. August 20, 2019; Eff. Pending Legislative Review.*

**16 NCAC 06G .0507 CHARTER SCHOOLS RENEWAL PROCESS**

(a) To request renewal of a charter, a charter school shall submit a Self-Study form. The North Carolina State Board of Education shall review the Self-Study form and other available information, including information obtained through public records requests, when determining whether the charter school is meeting the standards in G.S. 115C-218.6, the academic goals and mission in the approved charter application, and is operating in accordance with the financial and governance standards in this Subchapter.

*History Note: Authority G.S. 115C-12; 115C-218(a)(6), 115C-218.6; 115C-218.95; Eff. Pending Legislative Review.*

**16 NCAC 06G .0509 PLANNING YEAR FOR NEW PRELIMINARY CHARTER SCHOOLS**

(a) All nonprofit boards eligible to receive a charter for the first time shall participate in a year-long planning program prior to the charter school's opening for students. During this planning year, directors from nonprofit boards holding charters shall attend meetings conducted by consultants from the Office of Charter Schools regarding the following topics: school opening plans, staff development, finance, governance, board training, marketing, statutes and rules governing operation of the school,

securing a school site, and hiring a school administrator. Final approval of the charter shall be contingent upon the nonprofit board attending the planning meetings, acquisition of a facility, and commitments from parents or guardians to enroll students that comprise at least 75 percent of the projected enrollment.

(b) The State Board of Education may accelerate the mandatory planning year for a charter applicant that meets the following requirements:

- (1) agrees to participate in the planning year while the charter application is being reviewed without any guarantee of charter award; and
- (2) demonstrates that there is a facility identified by the applicant that is feasible for opening on an accelerated schedule.

(c) The State Board shall also consider the presence or absence of evidence of the following factors in making its determination of whether to accelerate a planning year:

- (1) whether the mission and educational program outlined in the nonprofit board's application will provide parents and students with different educational opportunities than are currently available in the area;
- (2) whether local, state, or national nonprofit partnerships have committed to assisting the school;
- (3) whether the school will contribute to potential for economic and educational development of the region;
- (4) whether an organization that has experience in creating public schools is mentoring the applicant;
- (5) whether obstacles to educational reform efforts leave chartering as an available option;
- (6) whether an existing charter school board has agreed to mentor the applicant;
- (7) whether the nonprofit corporation has existed for more than two years; and
- (8) whether the proposed board has previously operated or currently operates a public charter school.

(d) An applicant requesting acceleration shall submit the request to the State Board of Education prior to the application due date for consideration.

*History Note: Authority G.S. 115C-12; 115C-218; 115C-218.1; 115C-218.5(b);  
Emergency Adoption Eff. August 20, 2019;  
Eff. Pending Legislative Review.*

**16 NCAC 06G .0514 FAST TRACK REPLICATION OF HIGH QUALITY CHARTER SCHOOLS – GENERAL REQUIREMENTS**

(a) In addition to the specific requirements set forth in Rules .0512 and .0513 of this Section, the State Board of Education ("SBE") may impose additional requirements in the review, application, and approval process as allowed by G.S. 115C-218(c) to assure that a "fast-tracked" charter school has at least the same probability of success as a charter that completes the planning process in Rule .0509 of this Section.

(b) In addition to considering evidence of student growth, proficiency, and financial audits in the applicant's other schools, the SBE may consider any other relevant factors in determining whether to grant a fast-track replication request, including the following:

- (1) the needs of the particular geographical area proposed to be served by the replicated model;
- (2) the ability of the non-profit corporation board to manage additional schools;
- (3) the abilities and strengths of the non-profit corporation board that seeks to employ the EMO or CMO; and
- (4) the community support for the replicated model.

(c) In determining the needs of the particular geographical area, the SBE shall consider whether there are similar charter school options in the geographical area and capacity data for the county's public schools. In determining the community support of the replicated model, the SBE shall consider community survey data, community letters of support, and any other evidence the applicant chooses to present.

*History Note: Authority G.S. 115C-218.3;  
Emergency Rule Eff. August 20, 2019;  
Eff. Pending Legislative Review.*

**16 NCAC 06G .0518 ALTERNATIVE CHARTER SCHOOL – ELIGIBILITY**

(a) The following definitions apply for purposes of rules in this Chapter:

- (1) "Student at risk" means a child enrolled in a public school who, due to circumstances such as an unstable home life, poor socio-economic background, and other factors, either enter or continue in school from a disadvantaged standpoint, at least in relation to other students who are not burdened with such circumstances. *Hoke County Board of Education v. State*, 358 N.C. 605 at 632 n.13, 599 S.E.2d 365 at 387 n.13 (2004).
- (2) "Dropout" means any student who leaves school for any reason before graduation or completion of a program of studies without transferring to another elementary or secondary school.

(b) A charter school that desires to be designated an "alternative school" for purposes of determining and reporting school and student achievement and growth in accordance with G.S. 115C-83.15, 83.16 and 83.17 shall include the request in the charter school application or request for amendment to an approved application.

(c) The charter school application or request for amendment to be an alternative school shall state that the charter school will include grades 9-12, and that at least 75 percent of the school's population in grades 9-12 will be "students at risk" of academic failure.

(d) The charter school application or request for amendment shall also state that the charter school will meet one or more of the following indicators:

- (1) the students shall either be released from a juvenile justice facility within the last year, or otherwise be subject to and participating in the juvenile justice court;
- (2) the students shall be currently served by a treatment facility licensed pursuant to Chapter 122C of the General Statutes, or have been discharged from such a facility within the last year;
- (3) the students shall be currently under suspension for more than 10 days from a public or private school; or
- (4) the students shall be high-school dropouts as defined in Subparagraph (a)(2) of this Rule; or be "Student Chronic Absentee(s)" as defined in 16 NCAC 06E .0106.

*History Note: Authority G.S. 115C-12(24), 115C-218(a)(2); 115C-105.46; 115C-218.85(a)(3);  
Emergency Adoption Eff. August 20, 2019;  
Eff. Pending Legislative Review.*

**16 NCAC 06G .0520 ALTERNATIVE CHARTER SCHOOL – APPLICATION APPROVAL**

- (a) The Charter School Advisory Board ("CSAB") shall establish a timeline, available on the Office of Charter School's webpage, for the submission of applications for alternative charter schools and for the review and approval of applications.
- (b) The CSAB shall develop an application template, available on the Office of Charter School's website, to be used for applicants for alternative charter school designation.
- (c) The Office of Charter Schools ("OCS") will first review the alternative charter school application for completeness, give the applicant five days to provide missing information, and will then submit all complete applications to the CSAB for its review.
- (d) The CSAB shall review complete applications and make recommendations to the State Board of Education.
- (e) The State Board of Education's approval of alternative charter school designation is valid for three years from the effective date of the approval, which effective date will be set forth in the approval document.

*History Note: Authority G.S. 115C-12(24); 115C-218(a)(2); 115C-218.2;  
Emergency Adoption Eff. August 20, 2019;  
Eff. Pending Legislative Review.*

**16 NCAC 06G .0521 ALTERNATIVE CHARTER SCHOOL – REVIEW AND RENEWAL OF DESIGNATION**

- (a) The Charter School Advisory Board ("CSAB") shall review each alternative charter school every three years to determine if the school shall continue with its alternative charter school designation. In its review the CSAB shall utilize the criteria set forth in Rule .0519 of this Section. The CSAB shall also evaluate the school's academic progress and compare the goals the school set in its application in Rule .0519(6) of this Section for academic achievement for its student population to its students' actual academic achievements.

- (b) If the review shows that the school continues to meet eligibility criteria in Rule .0518 of this Section, is achieving its academic goals, and is in compliance with Chapter 115C, Article 14A of the General Statutes and the rules in this Section, the CSAB shall recommend the school to the State Board of Education for final approval for another three-year designation.

*History Note: Authority G.S. 115C-12(24); 115C-218(a)(2);  
Emergency Adoption Eff. August 20, 2019;  
Eff. Pending Legislative Review.*

**16 NCAC 06G .0522 ALTERNATIVE CHARTER SCHOOL – TERMINATION OF DESIGNATION**

- (a) If at any time it appears the school is not meeting the criteria for designation as an alternative charter school under Rule .0518 of this Section, or is otherwise not in compliance with State or federal laws the Charter School Advisory Board ("CSAB") may:

- (1) direct the Office of Charter Schools or the Department of Public Instruction to investigate the school; or
- (2) direct the school to appear before the CSAB and respond to questions.

- (b) In the event the CSAB finds an alternative charter school is in violation of the terms of its charter or no longer meets the eligibility criteria in Rule .0518 of this Section, the CSAB may recommend the State Board of Education ("SBE") terminate the alternative school designation.

*History Note: Authority G.S. 115C-12(24); 115C-218(a)(2); 115C-218(b)(10)(c); 115C-218.95;  
Emergency Adoption Eff. August 20, 2019;  
Eff. Pending Legislative Review.*

**16 NCAC 06H .0115 DISPUTE RESOLUTION PROCESS FOR HOMELESS STUDENTS – LEA DISPUTE RESOLUTION PROCESS**

- (a) Each LEA shall develop and implement an LEA dispute resolution process for parents, guardians, or unaccompanied youth who have complaints about eligibility, school selection, or enrollment to file an appeal to the local liaison upon registering, or attempting to register, the child or youth at the school where enrollment is sought. For purposes of this process, the phrase "school where enrollment is sought" may be either the school of origin or the school located in the attendance zone of the child or youth's temporary residence. Enrollment shall be deemed to include attending classes and participating fully in all school activities, as required by 42 USC 11434a(1). The LEA shall publish the LEA dispute resolution process on its website or in any school unit publication that sets forth the rules, procedures, and standards for students or parents. The LEA dispute resolution process shall provide that:

- (1) the parent, guardian, or unaccompanied youth may initiate the dispute resolution process with the local liaison at the school where enrollment is sought or at the local liaison's office;
- (2) faculty and staff of the school who know about the complaint must refer the parent, guardian, or unaccompanied youth to the local liaison;

- (3) the local liaison shall carry out the LEA dispute resolution process within 15 school business days, or 30 calendar days, whichever is less;
  - (4) the LEA official(s) responsible for making the final LEA decision shall be identified in the local policy;
  - (5) the LEA shall enroll the child or youth immediately as required by 42 USC 11432 in the school where enrollment is sought pending resolution of any complaint between the school or LEA and the parent, guardian, or unaccompanied youth over school enrollment;
  - (6) the LEA shall provide the student with all services for which the student is eligible and shall permit the student to participate in school activities while the dispute is being resolved;
  - (7) the LEA shall, within one school business day, provide the parent, guardian, or unaccompanied youth with a statement of rights and procedures, written in a language, manner, and form they understand, to the extent the LEA deems practicable, that informs them of:
    - (A) contact information including telephone number, e-mail address, and physical address of the local liaison and of the State Coordinator for homeless education, with a description of their roles;
    - (B) the right to notify the local liaison, within two school business days of the school's decision, of the parent's, guardian's, or unaccompanied youth's intent to appeal the decision and the right to receive notice of the appeal procedure, including the timeline and process for making the initial appeal and any subsequent appeals available under LEA policy. This process must allow for requests for appeals to be made orally or in writing and must identify the LEA official(s) who makes the final LEA decision;
    - (C) a form that parents, guardians, or unaccompanied youth can understand, complete, and submit to the local liaison to formally initiate the appeal and any subsequent appeals available under LEA policy;
    - (D) the right to appeal, or request an extension of time to appeal, the final LEA decision to the State Coordinator within three school business days of receipt of the final LEA decision;
    - (E) the right to enroll immediately in the school located in the attendance zone of the child or youth's temporary residence or remain in the school of origin with transportation provided by the LEA pending resolution of the dispute, if such transportation is requested by the parent, guardian, or local liaison on behalf of the youth;
- (F) notice that the right to enroll includes the right to fully participate in all school activities;
  - (G) the right to obtain assistance of advocates or attorneys; and
  - (H) the right to provide supporting written or oral documentation during the appeals process.
- (b) Each LEA shall appoint a local liaison for identifying homeless students. The local liaison shall:
- (1) ensure that when parents, guardians, or unaccompanied youth initiate the dispute resolution process, all parties comply with the process and that the appellants are provided with the information required by Paragraph (a) of this Rule;
  - (2) ensure that each homeless child or youth who files a dispute about enrollment or whose parent or guardian files such a dispute is enrolled immediately in the school pending resolution of the dispute;
  - (3) communicate the LEA dispute resolution process to parents, guardians, and unaccompanied youth; and
  - (4) inform the LEA superintendent, other school officials participating in the LEA dispute resolution process, and the State Coordinator of the dispute no more than two school business days after the parent, guardian, or unaccompanied youth has initiated the dispute resolution process.
- (c) The State Coordinator shall train the local liaisons to carry out and mediate the dispute resolution process and to ensure that each school and the LEA meets the requirements of the McKinney-Vento Act as amended by the Every Student Succeeds Act of 2015, as set forth in 42 U.S.C. 11431 et seq.

*History Note: Authority G.S. 115C-12; 115C-366; 42 U.S.C. 11431; 42 U.S.C. 11432; Emergency Adoption Eff. August 20, 2019; Eff. December 1, 2020.*

**16 NCAC 06H .0116 DISPUTE RESOLUTION PROCESS FOR HOMELESS STUDENTS – STATE APPEALS PROCESS**

- (a) Any parent, guardian, or unaccompanied youth who is not satisfied with the final LEA decision regarding enrollment may appeal the decision, within three school business days after the final LEA decision or within the period of any extension granted, to the State Coordinator through an oral or written appeal to the State Coordinator, including:
- (1) the name of the person making the appeal and, if available, his or her physical address, e-mail address, and telephone number;
  - (2) the relationship or connection of the person to the child in question;

- (3) the name of the school system and the school in question;
- (4) the federal requirement alleged to have been violated;
- (5) how the requirement has been violated; and
- (6) the relief the person is seeking.

(b) If the State Coordinator receives an appeal that is missing information listed in Paragraph (a) of this Rule, the State Coordinator shall contact the person making the appeal and the local liaison, explain the deficiency, and offer the person an opportunity to provide the missing information.

(c) Upon request of the State Coordinator, the local liaison shall provide the State Coordinator with the record of the complaint, the LEA's actions, and other documents. If the matter involves more than one LEA, then the local liaisons shall cooperate to provide the State Coordinator with a complete record. The local liaison or liaisons shall provide the complete record within three school business days following the State Coordinator's request.

(d) The State Coordinator shall provide the LEA and the parent, guardian, or unaccompanied youth with the opportunity to respond to the LEA decision and to provide any additional evidence he or she deems relevant within three school business days.

(e) The State Coordinator shall issue a final written decision to the parent, guardian, or unaccompanied youth and the LEA involved within 10 school business days following receipt of the documents and information described with Paragraphs (a), (b), (c) and (d) of this Rule.

(f) The State Coordinator's decision shall include:

- (1) a summary of the issue appealed;
- (2) the federal requirement at issue; and
- (3) a description of the State Coordinator's decision in a manner and form the parent, guardian, or unaccompanied youth understand, and, to the extent practicable as determined by the State Coordinator, provided in a language that the parent, guardian, or unaccompanied youth can understand, including further steps that the LEA or parent, guardian, or unaccompanied youth are required to take.

(g) Nothing contained in this Rule shall prohibit the State Coordinator from investigating whether the parent, guardian, or unaccompanied youth knowingly and voluntarily entered into any agreement affecting his or her rights under McKinney-Vento Act as amended by the Every Student Succeeds Act of 2015. If the State Coordinator determines that the parent, guardian, or unaccompanied youth did not knowingly and voluntarily enter into the agreement, then the State Coordinator may void the agreement and enter a decision consistent with the applicable facts and State or federal law, as set forth in 42 U.S.C. 11431 et seq.

*History Note: Authority G.S. 115C-12; 115C-366; 42 U.S.C. 11431; 42 U.S.C. 11432; Emergency Adoption Eff. August 20, 2019; Eff. December 1, 2020.*

**16 NCAC 06H .0117 OPERATION OF FEDERAL PROGRAMS**

Participants in federal education programs administered by the Department of Public Instruction shall be subject to the enforcement mechanisms authorized under 2 CFR Part 200, which is hereby incorporated by reference, including subsequent editions and amendments. The CFRs may be accessed at no cost at [ecfr.gov](http://ecfr.gov).

*History Note: Authority G.S. 115C-12; 115C-263; 115C-264; 115C-409; Emergency Adoption Eff. August 20, 2019; Eff. Pending Legislative Review.*

**16 NCAC 06K .0104 PLACEMENT PROCEDURES**

(a) For purposes of this Section, "State residential school(s)" means the North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf, or the Governor Morehead School for the Blind.

(b) Education Services for the Deaf and Blind (ESDB) is the division within the Department of Public Instruction responsible for managing the administration of the State residential schools.

(c) All contact concerning possible admission to a State residential school must be initiated by the local education agency (LEA), as defined in G.S. 115C-106.3(11), or local school public school unit, as defined in G.S. 115C-5(7a), where the student seeking admission to a residential school is domiciled or that the student attends.

(d) The student's Individual Education Program (IEP) team established under the 2004 Individuals with Disabilities Education Improvement Act, 20 U.S.C. 1400, et seq., as amended, and federal regulations adopted under that Act, shall permit the ESDB to:

- (1) participate in discussions and decisions about the least restrictive environment for student in accordance with G.S. 115C-107.2(b)(2);
- (2) review any information or documents that the LEA or local public school unit, submits in support of its request for admission; and
- (3) observe the student referred in multiple settings, including the student's classroom, cafeteria, and a non-structured settings.

(e) If the student's IEP team decides that residential school placement is the least restrictive environment for the student, the ESDB shall admit the student.

*History Note: Authority G.S. 115C-12; 115C-107.2; 115C-150.13; Emergency Adoption Eff. August 20, 2019; Eff. December 1, 2020.*

**16 NCAC 06K .0105 WEAPONS PROHIBITED ON SCHOOL PROPERTY**

(a) No employee or other person shall carry, or engage another person to carry, whether openly or concealed, an unauthorized weapon as defined in Paragraph (b) of this Rule, on to residential school property at any time, except as authorized by Paragraph (d) this Rule.

(b) "Unauthorized weapon" is defined as any weapon listed in G.S. 14-269.2(b) through (e).

(c) "Residential school property" is defined as any building, bus, school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by the North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf, or the Governor Morehead School for the Blind.

(d) This Rule shall not apply to weapons or persons listed in G.S. 14-269.2(g)(1), (1a), (2), and (7).

(e) Any employee who is aware that an unauthorized weapon has been carried onto residential school property must immediately notify the school director.

- (1) Violation of this Rule may subject the employee to disciplinary action up to and including dismissal.
- (2) The school director shall immediately report violations of this Rule to law enforcement.

*History Note: Authority G.S. 14-269; 14-269.2;115C-12; 115C-150.11;*

*Emergency Adoption Eff. August 20, 2019;*

*Eff. December 1, 2020.*

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

**CHAPTER 68 - ADDICTIONS SPECIALIST PROFESSIONAL PRACTICE BOARD**

**21 NCAC 68 .0216 BACKGROUND INVESTIGATION**

(a) Every applicant for Registration pursuant to Article 5C of Chapter 90 of the General Statutes shall complete a fingerprint background check and accompanying release of information meeting the standards set by the State Bureau of Investigation and obtained within 60 days of the date the applicant submits all the prerequisites for his or her credential.

(b) The applicant shall provide any additional information regarding any pending charge or conviction as requested by the Board.

(c) An applicant shall submit a verified statement listing all criminal convictions received by the applicant, subsequent to the date of the application. Failure to make full and accurate disclosure shall be grounds for immediate application denial or other disciplinary action applicable to registration, certification, or licensure pursuant to G.S. 90-113.44.

*History Note: Authority G.S. 90-113.30; 90-113.31; 90-113.33; 90-113.40; 90-113.41A; 90-113.44;*

*Temporary Adoption Eff. May 15, 2002;*

*Temporary Adoption Eff. July 1, 2002;*

*Eff. April 1, 2003;*

*Amended Eff. January 1, 2010;*

*Readopted Eff. December 1, 2020.*

**21 NCAC 68 .0227 CREDENTIAL BY ENDORSEMENT OR RECIPROcity BASED ON MILITARY SERVICE**

(a) Applicants for a substance use disorder professional credential by endorsement or reciprocity based on military service shall have their training honored automatically pursuant to the standards of the International Certification and Reciprocity Consortium (IC&RC). Applicants shall apply for a credential by using the Board's credentialing software, Learning Builder, and submit to the Board:

- (1) a reciprocity application form prescribed by the IC&RC and provided by the Board as found at its website: [www.ncsappb.org](http://www.ncsappb.org) that shall be found accompanying the reciprocity information on the website;
- (2) written evidence demonstrating that the applicant has been awarded a military occupational specialty as a substance abuse professional and that the applicant has engaged in practice as a substance use disorder professional for at least 1,500 clinical hours per year during at least two of the five years preceding the date of application; and
- (3) a statement disclosing and explaining the commission of any act set out in G.S. 90-113.46A, any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.

(b) All information required shall be received by the Board office.

(c) All applicants shall submit to the Board an electronic copy of the applicant's fingerprints as described on the Board's website.

*History Note: Authority G.S. 90-113.31A(14); 90-113.33; 90-113.38; 90-113.39; 90-113.46; 90-113.46A; 93B-15.1;*

*Eff. August 1, 2015;*

*Readopted Eff. December 1, 2020.*

**21 NCAC 68 .0228 SUBSTANCE USE DISORDER CREDENTIAL BY ENDORSEMENT OR RECIPROcity BASED ON STATUS AS MILITARY SPOUSE**

(a) Applicants for a substance use disorder credential by endorsement or reciprocity based on their status as a military spouse shall have their training honored automatically pursuant to the standards of the International Certification and Reciprocity Consortium (IC&RC). Applicants shall apply for a credential by using the Board's credentialing software, Learning Builder, and submit to the Board:

- (1) a reciprocity application form prescribed by the IC&RC and provided by the Board as found at its website: <http://www.ncsappb.org> that shall be found accompanying the reciprocity information on the website;
- (2) written evidence demonstrating that the applicant is married to an active member of the U.S. military and that such applicant:
  - (A) holds a current substance use disorder credential from another jurisdiction whose standards for the credential are

- substantially equivalent to or greater than those required for the credential described in G.S. 90, Article 5C, this Chapter, and is the subject of the application; and
- (B) has engaged in practice as a substance use disorder professional demonstrating the scope of practice as defined by G.S. 90-113.31B for at least 1,500 hours per year during at least two of the five years preceding the date of application; and
- (3) a statement disclosing and explaining the commission of an act set out in G.S. 90-113.46A, any disciplinary actions, investigations, malpractice claims, state or federal agency complaints, judgments, settlements, or criminal charges.

- (b) All information required shall be received by the Board office.
- (c) All applicants shall submit to the Board an electronic copy of the applicant's fingerprints as described on the Board's website.

*History Note:* Authority G.S. 90-113.31A(14); 90-113.31B; 90-113.33; 90-113.38; 90-113.39; 90-113.46; 90-113.46A; 93B-15.1;

*Eff. August 1, 2015;*

*Readopted Eff. December 1, 2020.*

**21 NCAC 68 .0708 TYPES OF INTERVENTION**

*History Note:* Authority G.S. 90-113.30; 90-113.39; 90-113.40;

*Eff. August 1, 1996;*

*Repealed Eff. December 1, 2020.*

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**RULES REVIEW COMMISSION**

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*This Section contains information for the meeting of the Rules Review Commission January 21, 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  
Randy Overton

**Appointed by House**

Anna Baird Choi (1st Vice Chair)  
Andrew P. Atkins (2nd Vice Chair)  
Paul Powell  
Garth Dunklin

**COMMISSION COUNSEL**

Amber Cronk May	984-236-1936
Amanda Reeder	984-236-1939
Ashley Snyder	984-236-1941

**RULES REVIEW COMMISSION MEETING DATES**

January 21, 2021	February 18, 2021
March 18, 2021	April 15, 2021

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**AGENDA**

**RULES REVIEW COMMISSION**

**THURSDAY, JANUARY 21, 2021 9:00 A.M.**

**1711 New Hope Church Rd., Raleigh, NC 27609**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
  - A. Board of Agriculture – 02 NCAC 61 .0112 (May)
  - B. Environmental Management Commission – 15A NCAC 02I .0101, .0102, .0103, .0104, .0105, .0106, .0203, .0301, .0302, .0402, .0501, .0502, .0503, .0504, .0601, .0602, and .0603 (May)
  - C. State Board of Education - 16 NCAC 06B .0114 (Snyder)
  - D. State Board of Education - 16 NCAC 06D .0307, .0308, .0311; 06E .0204, .0206; 06G .0508 (Snyder)
  - E. State Board of Education – 16 NCAC 06D .0309 (Snyder)
  - F. Department of Transportation – 19A NCAC 02E .0204, .0206, .0225 (May)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between November 23, 2020 through December 21, 2020
  - Child Care Commission (May)
  - DHHS - Division of Health Service Regulation (Reeder)
  - Alcoholic Beverage Control Commission (Reeder)
  - Department of Public Safety (Reeder)
  - Wildlife Resources Commission (Reeder)
  - Marine Fisheries Commission (Reeder)
  - Department of The Secretary of State (Reeder)
  - Board of Barber Examiners (Reeder)
  - Medical Board (Reeder)
  - Board of Pharmacy (Snyder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review

- VII. Review of the 2021 State Medical Facilities Plan
- VIII. Commission Business
  - Style Guide Review
  - Next meeting: Thursday, February 18, 2021

**Commission Review  
Log of Permanent Rule Filings  
November 23, 2020 through December 21, 2020**

**CHILD CARE COMMISSION**

The rules in Chapter 9 are child care rules and include definitions (.0100); general provisions related to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age and developmentally appropriate environments for centers (.0500); safety requirements for child care centers (.0600); staff qualifications (.0700); health standards for children (.0800); nutrition standards (.0900); transportation standards (.1000); continuing education and professional development (.1100); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.2000); religious-sponsored child care center requirements (.2100); administrative actions and civil penalties (.2200); forms (.2300); child care for mildly ill children (.2400); care for school-age children (.2500); child care for children who are medically fragile (.2600); criminal records checks (.2700); voluntary rated licenses (.2800); developmental day services (.2900); NC pre-kindergarten services (.3000); and care for school-age children during state of emergency(.3100).

<u>Definitions</u>	10A	NCAC	09	.0102
Amend*				
<u>Application for a License for a Child Care Facility</u>	10A	NCAC	09	.0302
Amend*				
<u>Temporary Licenses for Centers</u>	10A	NCAC	09	.0403
Amend*				
<u>Safe Environment</u>	10A	NCAC	09	.0601
Amend*				
<u>Safe Sleep Practices</u>	10A	NCAC	09	.0606
Amend*				
<u>Emergency Preparedness and Response in Child Care Centers</u>	10A	NCAC	09	.0607
Amend*				
<u>Health Standards for Child Care Providers, Substitute Pro...</u>	10A	NCAC	09	.0701
Amend*				
<u>Staff/Child Ratios for Centers</u>	10A	NCAC	09	.0713
Amend*				
<u>Application for Enrollment</u>	10A	NCAC	09	.0801
Amend*				
<u>Emergency Medical Care</u>	10A	NCAC	09	.0802
Amend*				
<u>On-Going Training and Professional Development</u>	10A	NCAC	09	.1103
Amend*				
<u>Documentation of On-Going Training and Professional Devel...</u>	10A	NCAC	09	.1106
Amend*				
<u>Outdoor Space</u>	10A	NCAC	09	.1402
Amend*				
<u>Activities Involving Water in Child Care Centers</u>	10A	NCAC	09	.1403
Amend*				
<u>Application for a License for a Family Child Care Home</u>	10A	NCAC	09	.1702

Amend*				
<u>On-Going Requirements for Family Child Care Home Operators</u>	10A	NCAC	09	.1703
Amend*				
<u>Nutrition Standards</u>	10A	NCAC	09	.1706
Amend*				
<u>Building Requirements</u>	10A	NCAC	09	.1707
Amend*				
<u>Emergency Preparedness and Response</u>	10A	NCAC	09	.1714
Amend*				
<u>Requirements for Daily Operations</u>	10A	NCAC	09	.1718
Amend*				
<u>Requirements for Records</u>	10A	NCAC	09	.1721
Amend*				
<u>Safe Sleep Practices</u>	10A	NCAC	09	.1724
Amend*				
<u>Additional Caregiver and Substitute Provider Qualifications</u>	10A	NCAC	09	.1729
Amend*				
<u>Activities Involving Water</u>	10A	NCAC	09	.1730
Amend*				
<u>Provisional Child Care Facility License or Provisional No...</u>	10A	NCAC	09	.2204
Amend*				
<u>Suspension</u>	10A	NCAC	09	.2206
Amend*				
<u>Revocation of a Child Care Facility License or an Order t...</u>	10A	NCAC	09	.2209
Amend*				
<u>Child Care Center Records Retention</u>	10A	NCAC	09	.2318
Amend*				
<u>Staff Qualifications</u>	10A	NCAC	09	.2408
Amend*				
<u>Children's Activities</u>	10A	NCAC	09	.2410
Amend*				
<u>Activities: Off-Premises</u>	10A	NCAC	09	.2509
Amend*				
<u>Criminal History Record Check Requirements for Child Care...</u>	10A	NCAC	09	.2703
Amend*				
<u>Enhanced Space Requirements</u>	10A	NCAC	09	.2809
Amend*				
<u>Enhanced Program Standards for Child Care Centers</u>	10A	NCAC	09	.2817
Amend*				
<u>Staff Qualifications</u>	10A	NCAC	09	.2903
Amend*				
<u>NC Pre-K Teacher Education, Licensure and Credentials</u>	10A	NCAC	09	.3012
Amend*				

**HHS - HEALTH SERVICE REGULATION, DIVISION OF**

The rules in Subchapter 14E concern certifications of Clinics for Abortion including certification procedure (.0100); minimum standards for construction and equipment (.0200); governing authority (.0300); and medical staff (.0400).

<u>Approval</u>	10A	NCAC	14E	.0105
Readopt with Changes*				
<u>Medications and Anesthesia</u>	10A	NCAC	14E	.0312
Readopt with Changes*				

Food Service 10A NCAC 14E .0316  
 Readopt with Changes\*

**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

The rules in Subchapter 15A concern organization rules: policies and procedures including general provisions (.0100); structure (.0200); publications, records, copies (.0300); rule-making (.0400); emergency rules (.0500); declaratory rulings (.0600); personnel policies: commission (.0700); adjudication: contested cases (.0800); fiscal rules for local boards (.0900); local abc board: personnel policies (.1000); local abc boards: relationship with state commission (.1100); openings and discontinuance of stores (.1200); storage and distribution of spirituous liquors: commercial transportation (.1300); purchase of alcoholic beverages by local boards (.1400); pricing of spirituous liquor (.1500); warehouse storage of spirituous liquors (.1600); retail sales of alcoholic beverages (.1700); purchase transportation permits for individuals and mixed beverages permittees (.1800); sales of liquor to mixed beverages permittees (.1900); local board training (.2000); distillery permit holders' sale of spirituous liquor distilled on premises to visitors of the distillery for consumption off the premises (.2100); special one-time permits (.2200); and homemade wine and malt beverage events (.2300).

Direct Shipments 14B NCAC 15A .1304  
 Amend\*

Transportation Between ABC Boards 14B NCAC 15A .1305  
 Adopt\*

Special Orders 14B NCAC 15A .1403  
 Amend\*

Purchase-Transportation Permits 14B NCAC 15A .1706  
 Repeal\*

Purchase-Transportation Permits for Wine and Liquor 14B NCAC 15A .1801  
 Amend\*

Distillery Record-Keeping 14B NCAC 15A .2103  
 Repeal\*

Distillery Issued Purchase-Transportation Permits 14B NCAC 15A .2104  
 Adopt\*

The rules in Subchapter 15C concern industry members, retail/industry member relationships, ship chandlers, air carriers, and fuel alcohol including definitions and application procedures (.0100); product approvals, listing procedures and product lists (.0200); packaging and labeling of malt beverages and wine (.0300); standards of identity for wine containers (.0400); general provisions for industry members (.0500); sales and deliveries of malt beverages and wine (.0600); alcoholic beverages, retailer/industry member relationship and trade practices (.0700); ships chandler's permit (.0800); distillers and representatives (.0900); air carriers (.1000); fuel alcohol permits (.1100); administrative action by commission (.1200); and special event permits (.1300).

Sales and Purchase Restrictions: Records 14B NCAC 15C .0602  
 Amend\*

Malt Beverage and Wine Shipments to Military Bases 14B NCAC 15C .0607  
 Amend\*

**PUBLIC SAFETY, DEPARTMENT OF**

The rules in Chapter 19 concern the statewide sexual assault evidence collection kit tracking system.

The rules in Subchapter 19A concern general provisions.

Scope 14B NCAC 19A .0101  
 Adopt\*

Definitions 14B NCAC 19A .0102  
 Adopt\*

System Administrator Designation 14B NCAC 19A .0103  
 Adopt\*

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**RULES REVIEW COMMISSION**

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<u>Covered Entity System Access; Local Administrators</u> Adopt*	14B	NCAC	19A	.0104
The rules in Subchapter 19B concern covered entity tracking requirements.				
<u>System Compatibility for Kits</u> Adopt*	14B	NCAC	19B	.0101
<u>Medical Service Providers</u> Adopt*	14B	NCAC	19B	.0102
<u>Law Enforcement Agencies</u> Adopt*	14B	NCAC	19B	.0103
<u>Law Enforcement Support Services</u> Adopt*	14B	NCAC	19B	.0104
<u>Forensic Laboratories</u> Adopt*	14B	NCAC	19B	.0105
<u>Previously Untested Kits</u> Adopt*	14B	NCAC	19B	.0106
<u>Victim Notification for Kits Collected Prior to October 1...</u> Adopt*	14B	NCAC	19B	.0107
The rules in Subchapter 19C concern compliance and sanctions.				
<u>Compliance and Sanctions</u> Adopt*	14B	NCAC	19C	.0101
<b>WILDLIFE RESOURCES COMMISSION</b>				
The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.				
The rules in Subchapter 10B are hunting and trapping rules and cover general hunting and wildlife provisions (.0100), hunting specific animals (.0200), trapping (.0300), and tagging furs (.0400).				
<u>Sale of Live Foxes and Coyotes to Controlled Fox Hunting ...</u> Readopt with Changes*	15A	NCAC	10B	.0409
The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).				
<u>Clay County</u> Amend*	15A	NCAC	10F	.0308
<u>Stanly County</u> Amend*	15A	NCAC	10F	.0317
<u>Burke County</u> Amend*	15A	NCAC	10F	.0323
The rules in Subchapter 10H concern activities regulated by the Commission including controlled hunting preserves for domestically raised game birds (.0100), holding wildlife in captivity (.0300), commercial trout ponds (.0400), fish propagation (.0700), falconry (.0800), game bird propagators (.0900), taxidermy (.1000), furbearer propagation (.1100), controlled fox hunting preserves (.1200), and reptiles and amphibians (.1300).				
<u>Definitions and General Requirements</u> Readopt with Changes*	15A	NCAC	10H	.1201
<u>Establishment and Operation</u> Readopt with Changes*	15A	NCAC	10H	.1202
<u>Quality of Foxes and Coyotes Released</u>	15A	NCAC	10H	.1203

Readopt with Changes*				
<u>Records Required</u>	15A	NCAC	10H	.1204
Readopt with Changes*				
<u>Hunting License Required</u>	15A	NCAC	10H	.1205
Readopt with Changes*				
<u>Minimum Standards for Care of Foxes and Coyotes</u>	15A	NCAC	10H	.1206
Readopt with Changes*				
<u>License Revocation and Enforcement</u>	15A	NCAC	10H	.1207
Readopt with Changes*				

**MARINE FISHERIES COMMISSION**

The rules in Chapter 18 cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D). The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration mechanical purification facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants, meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); primitive camps (.3500); rules governing the sanitation of resident camps (.3600); and private drinking water well sampling (.3800).

<u>Definitions</u>	15A	NCAC	18A	.3401
Readopt with Changes*				
<u>Bacteriological Limits for Swimming Areas</u>	15A	NCAC	18A	.3402
Readopt with Changes*				
<u>Public Notice of Increased Health Risks in Swimming Areas</u>	15A	NCAC	18A	.3403
Readopt with Changes*				
<u>Swimming Advisories for Point Source Discharges into Swim...</u>	15A	NCAC	18A	.3404
Readopt with Changes*				
<u>Rescinding a Pending Swimming Advisory or Swimming Advisory</u>	15A	NCAC	18A	.3405
Readopt with Changes*				
<u>Destruction of Signs</u>	15A	NCAC	18A	.3406
Readopt/Repeal*				
<u>Applicability of Rules</u>	15A	NCAC	18A	.3407
Readopt/Repeal*				

**SECRETARY OF STATE, DEPARTMENT OF THE**

The rules in Subchapter 6A concern recodified rules of the securities division including general provisions (.1100); exemptions (.1200); registration of securities (.1300); registration of dealers and salesmen (.1400); miscellaneous provisions (.1500); registration of investment advisers and investment adviser representatives (.1700); miscellaneous provisions - investment advisers (.1800); invest NC exemption (crowdfunding); (.2000); and rules for local public offerings (LPO) (.2100).

<u>Sunset Provision</u>	18	NCAC	06A	.2120
Amend*				

**BARBER EXAMINERS, BOARD OF**

The rules in Subchapter 06F concern barber schools.

Waiver of Requirements During Disaster or Emergency 21 NCAC 06F .0128  
Adopt\*

The rules in Subchapter 6N establish fees and provide for the use of various forms.

Form Bar-1 21 NCAC 06N .0102  
Amend\*

Form Bar-10 21 NCAC 06N .0111  
Amend\*

**MEDICAL BOARD**

The rules in Subchapter 32S regulate physician assistants including physician assistant registration (.0200).

Prescriptive Authority 21 NCAC 32S .0212  
Amend\*

**PHARMACY, BOARD OF**

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); compounding (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

COVID-19 Drug Preservation Rule 21 NCAC 46 .1819  
Adopt\*

**CONTESTED CASE DECISIONS**

*This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: [oah.clerks@oah.nc.gov](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 Bawtinheimer  
Tenisha Jacobs  
Michael Byrne  
Karlene Turrentine

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>Published</u>			
20	BLC	00366	9/28/2020	North Carolina Landscape Contractors Licensing Board	v.	Jason Lee Atkins and Natural Choice Contracting LLC f/k/a ALM Contracting LLC	Ward
20	CTY	00292	9/18/2020	Mohamad Kodaimati	v.	Town of Mint Hill	Malherbe
19	DOJ	05371	9/22/2020; 9/23/2020	William Donald Britt	v.	NC Sheriffs Education and Training Standards Commission	Lassiter
19	DOJ	06179	9/11/2020	Donald Ray McGlamery	v.	NC Sheriffs Education and Training Standards Commission	May
19	DOJ	06469	9/11/2020	Paul J Eagle	v.	North Carolina Sheriffs Education and Training Standards Commission	May
19	DOJ	06638	9/23/2020	Scott McCoy	v.	NC Sheriffs Education and Training Standards Commission	Sutton
19	DOJ	06927	9/14/2020	Jacqueline Deneen Coefield	v.	North Carolina Criminal Justice Education and Training Standards Commission	Ward
20	DOJ	00518	9/9/2020	Alicia Micole Smith	v.	NC Criminal Justice Education and Training Standards Commission	Bawtinheimer
20	DOJ	00742	9/10/2020	David Scott Sutton Jr.	v.	NC Criminal Justice Education and Training Standards Commission	Bawtinheimer
20	DOJ	02155	9/16/2020	William Thomas Whiting	v.	NC Private Protective Services Board	Bawtinheimer
20	OSP	01463	9/28/2020	Velma Sharpe-Johnson	v.	NC Department of Public Instruction Eastern North Carolina School for the Deaf	Culpepper

**CONTESTED CASE DECISIONS**

				<u>Unpublished</u>			
20	ABC	02585	9/14/2020	NC Alcoholic Beverage Control Commission	v.	Vinayak Stores Inc T/A Triangle Food Mart	May
20	CPS	01750	9/1/2020	Tawanda S McKinney	v.	NC Crime Victims Compensation Commission	Mann
20	CPS	01834	9/9/2020	Clotene Freeman(for Husband) Michael Freeman	v.	Department of Public Safety Victims Services	Bawtinhimer
20	CPS	02330	9/15/2020	Russell C Rowe	v.	NC Department of Public Safety Victim Services	Overby
19	CSE	05959	9/15/2020	Alvin V Brookins	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Culpepper
19	CSE	06118	9/15/2020	Jason Addams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
19	CSE	06583	9/23/2020	Lamont Fagan	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
20	CSE	00323	9/2/2020	Douglas A Gibson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
20	CSE	01804	9/16/2020	Christopher R Santana	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	CSE	01833	9/10/2020	Jonathan F Hall	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
20	CSE	01911	9/8/2020	Teresa Myers	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Overby
20	CSE	02071	9/14/2020	Chris Newman	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Mann
20	CSE	02102	9/22/2020	Reginald J Lise	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Byrne
20	CSE	02348	9/15/2020	Frank J Rush	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	02369	9/15/2020	Olis Ray Bryant	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	02409	9/4/2020	Corshaun Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
20	CSE	02603	9/17/2020	Leonardo Chavez	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
20	CSE	02835	9/23/2020	Joe Nathan Sikes II	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer

**CONTESTED CASE DECISIONS**

20	CSE	02991	9/23/2020	James M Redmond	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
19	DCS	06464	9/21/2020	Crystal M Humphrey	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
19	DHR	06737	7/29/2020; 9/1/2020	Kenesha Lofton	v.	NC Department of Health Human Services	Jacobs; Lassiter
20	DHR	02051	9/25/2020	Christopher Hilliard	v.	Department of Health and Human Services	Byrne
20	DHR	02368	9/15/2020	Renee J Williams	v.	NC Dept of Health and Human Serv Div of Child Development and Early Ed	Lassiter
20	DHR	02386	9/11/2020	Tyra Whitaker	v.	NCDON (OAH)	Lassiter
20	DHR	02583	9/4/2020	Theddies Lewis Butler/Butler's Day Care Center	v.	Division of Child Development and Early Education	Lassiter
20	DHR	02628	9/10/2020	Kingshuk Roy Choudhury	v.	Orange County Board of County Commissioners	Jacobs
20	DHR	02916	9/23/2020	Micah Glenn Smith Sr	v.	DHHS	Lassiter
20	DOT	01985	9/1/2020	Trent Demond Bellamy	v.	NC Department of Transportation	Mann
20	EDC	02795	9/11/2020	Kinetic Minds Inc and Kinetic Minds Inspire LLC	v.	NC Department of Public Instruction	Byrne
20	INS	01520	9/4/2020	Mary Elizabeth Franklin Tanner	v.	North Carolina State Health Plan	Overby
20	INS	01658	9/15/2020	Lisa Bass	v.	North Carolina State Health Plan	Overby
20	MIS	01515	5/26/2020; 9/4/2020	Demetrius Marwin Holder	v.	Gaston County Sheriff's Dept Gaston County Police Department Gaston County Clerk of Superior Court	Malherbe
19	OSP	06219	9/3/2020	Lailtrice Graham Biteye	v.	Guilford County Department of Health and Human Services CWS	May
20	OSP	00418	9/18/2020	Laquannah N Hester	v.	North Carolina Department of Public Safety	Culpepper
20	SOS	00931	9/1/2020	Raleigh Police Memorial Foundation Inc	v.	NC Department of the Secretary of State, Charitable Solicitation Licensing Division	Mann
20	UNC	01561	9/1/2020	Lyndon Melvin Whitfield	v.	UNC Health Care Collections	Mann