

NORTH CAROLINA REGISTER

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April 1, 2021

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NORTH CAROLINA REGISTER
Publication Schedule for January 2021 – December 2021

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
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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35:21	05/03/21	04/12/21	05/18/21	07/02/21	07/20/21	08/19/21	09/01/21	01/28/22
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
35:23	06/01/21	05/10/21	06/16/21	08/02/21	08/20/21	09/16/21	10/01/21	02/26/22
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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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36:06	09/15/21	08/24/21	09/30/21	11/15/21	11/22/21	12/16/21	01/01/22	06/12/22
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

February 24, 2021

EXECUTIVE ORDER NO. 195

**LIFTING THE MODIFIED STAY AT HOME ORDER AND EASING CERTAIN
RESTRICTIONS ON BUSINESSES AND GATHERINGS**

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, 176-177, 180-181, 183-185, and 188-193; 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 advance 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 then led the undersigned to implement further public health measures, including a more protective numerical limit on indoor gatherings, requiring Face Coverings in additional settings, requiring night-time closure to the public for certain businesses and activities, and directing that all North Carolinians stay at home, with exceptions, between the hours of 10:00 pm and 5:00 am every day; and

WHEREAS, these provisions are part of Executive Order No. 181 (the "Modified Stay at Home Order"), which was extended by Executive Order Nos. 188 and 189; and

WHEREAS, as discussed below, the state has since experienced improvement in its key COVID-19 metrics, relative to the previous month; and

WHEREAS, over the course of the pandemic, North Carolina's public health experts have gained enhanced knowledge of the COVID-19 virus, including a better understanding of what settings and activities pose the greatest risk of transmitting the virus, and what mitigation strategies are most effective to curb spread; and

WHEREAS, over the course of the pandemic, the state has also expanded its access to personal protective equipment and other necessary materials to better protect the population from the spread of COVID-19, and has increased its ability to test for and to trace the virus; and

WHEREAS, in recent months, the state has also mounted a robust vaccination effort, to distribute the state's allocated supply of vaccines authorized by the Food and Drug Administration ("FDA") to all people living in or spending significant time in North Carolina; and

WHEREAS, North Carolina is rapidly expanding its capacity to vaccinate individuals against COVID-19, and as of the date of this Executive Order, more than one million two hundred and forty thousand (1,240,000) people living or spending time in North Carolina have received their first dose of an FDA-authorized vaccine, with over seven hundred and four thousand (704,000) North Carolinians fully vaccinated; and

WHEREAS, in light of the above factors, the undersigned now desires to lift certain provisions of the Modified Stay at Home Order and to relax occupancy limitations and other requirements on certain businesses, as set forth herein; and

WHEREAS, however, because the state's key COVID-19 metrics remain at elevated levels, and because of the potential impact of the presence of new variants of the virus in North Carolina, which may be more transmissible and may result in increased disease severity, the lifting of restrictions necessarily must continue to be undertaken in a targeted and phased manner to best protect the health and safety of all North Carolinians, with particular caution given to loosening restrictions in high-risk settings; and

WHEREAS, by following this targeted and phased approach, the undersigned intends to reopen the state's economy as fully as possible, without sacrificing the state's progress in managing the pandemic; and

WHEREAS, it also remains critical that North Carolinians continue to exercise personal responsibility in protecting themselves and others from the spread of the COVID-19, including by wearing Face Coverings, maintaining social distancing, washing hands frequently, and operating and frequenting businesses in compliance with this and other Executive Orders; and

Improvements in Key COVID-19 Metrics

WHEREAS, over recent months in North Carolina, due to the measures taken to-date by the undersigned and due to the resilience and persistence of all North Carolinians, there have been improvements in the state's key COVID-19 metrics; and

WHEREAS, specifically, as of the date of this Executive Order, the state is experiencing declines in the past month in the percent of emergency department visits that are due to COVID-like illness, the number of COVID-19 daily diagnoses, the percent of total COVID-19 tests that are positive and the number of COVID-19-associated hospitalizations, relative to the peak severity of these metrics in January 2021; and

WHEREAS, despite these improvements, COVID-19 remains a serious threat to North Carolina communities, as evidenced by the fact that between January 31, 2021 and February 13, 2021, sixty-seven of North Carolina's one hundred counties were experiencing "substantial (orange)" or "critical (red)" COVID-19 community spread, 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 occupancy; and

WHEREAS, the percent of emergency department visits that are due to COVID-like illness, the number of new daily COVID-19 cases, the percent of total COVID-19 tests that are positive, the number of COVID-19 associated hospitalizations, and the number of daily deaths attributable to COVID-19 remain at elevated levels as compared to the onset of the pandemic and the most recent lows in summer 2020; and

WHEREAS, although North Carolinians should find cause for optimism in the measured progress to-date, COVID-19 continues to inflict an unprecedented toll on human life in North Carolina; and

WHEREAS, more than eight hundred forty-nine thousand (849,000) people in North Carolina have had COVID-19, and more than eleven thousand (11,000) people in North Carolina have died from the disease; and

Cautious Lifting of Certain Restrictions under North Carolina's Phased, "Dimmer Switch" Approach

WHEREAS, for the reasons set forth herein and in the undersigned's previous Executive Orders, restrictions have been imposed on businesses which were designed to limit the number and duration of contacts between people, particularly in settings in which people exert increased respiratory effort, that are indoors, that involve people being in close physical contact for an extended period of time (more than 15 minutes), that involve large numbers of people, are in settings in which it is difficult to wear Face Coverings consistently, or are in settings in which people are otherwise less likely to adhere to social distancing and other measures for reducing COVID-19 spread; and

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

WHEREAS, by using a phased reopening approach, North Carolina is endeavoring to manage the risk of COVID-19 exposure from a public health perspective in order to ensure that the state's health care providers have the resources and availability to protect people's lives while also allowing people to return to work and take part in activities that are integral parts of people's lives; and

WHEREAS, due to the continuing dangers posed by COVID-19, it remains necessary to maintain strict mitigation protocols to protect against transmission of the virus, including by limiting occupancy in businesses, requiring adherence to certain health and safety measures, and placing limits on social and in-home gatherings to ensure that spread of the virus is limited while reopening efforts continue; and

WHEREAS, the undersigned directs the phased reopening measures set forth in this Executive Order in consultation with NCDHHS; and

Lifting Certain Provisions of the Modified Stay at Home Order

WHEREAS, under the Modified Stay at Home Order, in response to dangerous spikes in COVID-19 case counts in North Carolina and attendant strain on the state's health care system occupancy, certain businesses were directed to close to the public between the hours of 10:00 pm and 5:00 am every day, and individuals were required to stay at home, with limited exceptions, during these night-time hours; and

WHEREAS, in light of the measured progress the state has achieved in its key COVID-19 metrics, the provisions of the Modified Stay at Home Order requiring night-time business closure, along with the provisions directing individuals to stay at home, may be lifted; and

WHEREAS, because Face Covering and Emergency Maximum Occupancy requirements are now a more accepted norm and many North Carolinians have exhibited a commitment to

wearing Face Coverings, it is no longer necessary to have Retail Businesses have a person stationed to check for Face Coverings and monitor store occupancy; and

Raising the Indoor and Outdoor Mass Gathering Limits

WHEREAS, to reduce the prevalence of COVID-19 spread linked to social and in-home gatherings, the undersigned previously reduced the mass gathering limits from twenty-five (25) to ten (10) individuals indoors; and

WHEREAS, in light of the measured progress the state has achieved in its key COVID-19 metrics, it is reasonable to raise the indoor mass gathering limit to twenty-five (25) persons, which will allow people to gather in larger numbers with friends and loved ones, while still adhering to Face Coverings and mitigation measures, as a strategy to limit the spread of COVID-19 transmission posed by large crowds; and

Increasing Occupancy Limits on Certain Businesses

WHEREAS, under the Modified Stay at Home Order, certain businesses were subject to reduced occupancy limits, among other health and safety measures; and

WHEREAS, in light of the measured progress the state has achieved in its key COVID-19 metrics, the current percentage occupancy limits on the above-referenced establishments can be incrementally raised to limits which will continue to reduce person-to-person contacts; and

WHEREAS, to guard against the heightened risk of transmission of COVID-19 when individuals gather in very large groups — particularly in indoor settings where the virus is more easily transmitted — it remains reasonable and necessary to set an upper limit on how many individuals can gather in a single setting at one time, and accordingly, the operation of the above-referenced businesses must be subject to a cap of two-hundred and fifty individuals indoors at one time; and

WHEREAS, larger venues have multiple entrances and exits and larger concourses, reducing crowding and allowing attendees to maintain adequate social distance from one another as they move around the venue, as well as the resources, staff, and capability to design, implement, and enforce enhanced health and safety measures for attendees; and

WHEREAS, accordingly, these larger venues can safely hold in excess of two-hundred and fifty people (250) indoors, at a capacity level which is a small fraction of the venue's total capacity, provided the large venue operates the event in compliance with all of the health and safety measures specified herein; and

Relaxing Restrictions on Late Night Sale and Service of Alcoholic Beverages

WHEREAS, in previous executive orders, and for the reasons set forth in those orders concerning the risks of increased transmission of COVID-19 when people consume alcohol and engage in behaviors more likely to transmit the virus, the undersigned restricted the sale and service of alcohol for onsite consumption during late-night hours; and

WHEREAS, in recognition of the economic impact on certain establishments as a result of these late-night restrictions, the undersigned also took measures to permit the sale of mixed beverages for off-premise consumption ("drinks to-go"), so that Bars and other impacted establishments could have an additional revenue opportunity which would otherwise not be afforded to them; and

WHEREAS, in light of the measured progress the state has achieved in its key COVID-19 metrics, the cut-off time on the sale and service of alcoholic beverages for on-site consumption can safely be extended from 9:00 pm to 11:00 pm; and

Certain Businesses Pose Greater Risks of COVID-19 Transmission and Loosening Restrictions
Must be Undertaken in a Cautious Manner

Indoor Areas of Bars

WHEREAS, in previous executive orders, the undersigned has ordered certain restrictions on Bars, as defined herein, closing indoor areas for on-site consumption, but allowing for the limited operation of Bars' outdoor areas, as well as enabling the sale of drinks to-go; and

WHEREAS, in Bars, people's risk of spreading COVID-19 is higher for many reasons, including because people traditionally engage in activities in Bars that result in increased respiratory effort, because people traditionally mingle in Bars and are in close physical contact for an extended period of time, and because people are less cautious when they drink alcoholic beverages; and

WHEREAS, across the country, as detailed in the undersigned's previous Executive Orders, COVID-19 spread has been repeatedly linked to Bars, and multiple studies and reports, as detailed in the undersigned's previous executive orders, have linked infection rates and super-spreader events to Bars; and

WHEREAS, these risks are mitigated, although not eliminated, in outdoor spaces where air circulates freely; and

WHEREAS, in light of the measured progress the state has achieved in its key COVID-19 metrics, the indoor areas of Bars can be cautiously and incrementally reopened, and the existing occupancy limits on the outdoor areas of Bars can be safely and incrementally raised, to limits which will continue to minimize person-to-person contacts and reduce the congregation of individuals; and

WHEREAS, due to the unique dangers posed by the indoor areas of Bars in particular, the occupancy limits on these areas of these establishments must necessarily be less than the occupancy limits on other businesses which do not pose the same health and safety risks; and

WHEREAS, it is prudent to continue to limit Bar operation by requiring that all Guests, as defined herein, be seated at tables and counters and by separating Guests so that different groups are socially distanced; 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)(1)(d) authorizes the undersigned to control the movement of persons within the emergency area; 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, and for the reasons and pursuant to the authority set forth above, **IT IS ORDERED**:

Section 1. Introduction.

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

1.1. Definitions.

- a. “Amusement Park” has the definition at N.C. Gen. Stat. § 95-111.3, except that it does not include waterslides as defined by N.C. Gen. Stat. § 95-111.3(h).
- b. “Amusement Transportation” means tour buses, tour trains, or other scenic and sightseeing transportation that is principally offered and used for amusement, regardless of whether such transportation is located in an Amusement Park.
- c. “Bars” means establishments that are not eating establishments or restaurants as defined in N.C. Gen. Stat. §§ 18B-1000(2) and 18B-1000(6), that have a permit to sell alcoholic beverages for onsite consumption under N.C. Gen. Stat. § 18B-1001, and that are principally engaged in the business of selling alcoholic beverages for onsite consumption.
- d. “Core Signage, Screening and Sanitation Requirements” are the following actions which establishments open to the public under the terms of this Executive Order must follow, namely:
 1. Post the Emergency Maximum Occupancy in a noticeable place.
 2. Post signage reminding Guests and workers about social distancing (staying at least six (6) feet away from others) and requesting that people who have been symptomatic with fever and/or cough not enter.
 3. Conduct daily symptom screening of workers, using a standard interview questionnaire of symptoms before workers enter the workplace.
 4. Immediately isolate and remove sick workers.
 5. Perform frequent and routine environmental cleaning and disinfection of high-touch areas with an EPA-approved disinfectant for SARS-CoV-2 (the virus that causes COVID-19).
- e. “Emergency Maximum Occupancy” means the maximum occupancy for a facility (or room within a facility, as applicable) under this Executive Order.
- f. “Face Covering” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears and fits snugly against the side of a person’s face. A Face Covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. Face Coverings are most effective when they fit snugly against a person’s face and have two (2) or more layers. This can be achieved by wearing a cloth Face Covering with two or more layers or by wearing one disposable mask underneath a cloth mask. A cloth Face Covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels. These Face Coverings are not intended for use by healthcare providers in the care of patients.

Based on recommendations from the CDC, face shields do not meet the requirements for Face Coverings.

- g. “Guest” means any attendee, customer, guest, member, patron, spectator, or other person lawfully on the property of another that does not own the property or work at the property.
- h. “N95 Respirator” means a Face Covering approved by the National Institute for Occupational Safety and Health (“NIOSH”) or a respirator from another country allowed by the Occupational Safety & Health Administration, the Food & Drug Administration, or the CDC. N95 respirators are not recommended for general public use or use in public settings, as they should be reserved for healthcare providers and other medical first responders in a health care setting. However, if worn, N95 respirators would meet both the Face Covering and Surgical Mask requirements of this Executive Order.
- i. “Personal Care, Grooming, and Tattoo Businesses” means businesses that (i) do not provide health care services; and (ii) either (1) have workers directly touch Guests or (2) have a piece of equipment (other than a touchscreen) repeatedly come into contact directly with Guests’ skin. This includes, but is not limited to, barber shops, beauty salons (including but not limited to waxing and hair removal centers), hair salons, nail salons, manicure or pedicure providers, tattoo businesses, tanning salons, and massage therapists.
- j. “Playground” means a recreation area for children equipped with playground equipment, including but not limited to soft contained play equipment, swings, seesaws, slides, stationary spring-mounted animal features, jungle gyms, rider-propelled merry-go-rounds, and trampolines.
- k. “Recommendations to Promote Social Distancing and Reduce Transmission” are defined in Subsection 1.4 below.
- l. “Restaurants” means permitted food establishments, under N.C. Gen. Stat. § 130A-248, and other establishments that both prepare and serve food. This includes, but is not limited to, restaurants, cafeterias, food halls, dining halls, food courts, and food kiosks. This includes not only free-standing locations but also locations within other businesses or facilities, including, but not limited to airports, shopping centers, educational institutions, or private or members-only clubs where food and beverages are permitted to be consumed on premises.
- m. “Retail Business” means any business in which Guests enter a space to purchase goods or services, including but not limited to grocery stores, convenience stores, large-format retail stores, pharmacies, banks, and ABC stores. This also includes, but is not limited to, (i) retail establishments operated by the state, its political subdivisions, or agencies thereof, and (ii) state agencies under the jurisdiction of the undersigned which have a public-facing component offering a service, such as the Division of Motor Vehicles, the North Carolina Department of Revenue, and shops in North Carolina Department of Natural and Cultural Resources facilities.
- n. “Surgical Mask” means American Society for Testing and Materials (“ASTM”) Level 1, 2, or 3 approved procedural and surgical masks.

1.2. **Exemptions.**

Worship, religious, and spiritual gatherings, funeral ceremonies, wedding ceremonies, and other activities constituting the exercise of First Amendment rights are exempt from all the requirements of this Executive Order, notwithstanding any other provision of this Executive Order.

The undersigned strongly urges that entities and individuals engaging in these exempted activities follow the Recommendations to Promote Social Distancing and Reduce Transmission,

wear and require Face Coverings, and avoid exceeding Emergency Maximum Occupancy in the places where they meet.

1.3. Structure of This Executive Order.

To control the spread of COVID-19 and protect lives during the State of Emergency, this Section lists restrictions on the operations of business establishments and other places to or from which people may travel or at which they may congregate. Businesses or operations within the scope of Sections 2 to 6 are prohibited from operating unless they follow all applicable restrictions stated in these sections.

In general, this Executive Order broadly requires Face Coverings outside the home, then lists a series of specific restrictions for certain kinds of businesses. Each affected type of business has a series of specific sanitation and safety measures listed in Section 3.

Most of these businesses must also follow restrictions on emergency maximum occupancy. In this Order, occupancy restrictions fall into two general types:

- The limit is fifty percent (50%) of fire capacity for fitness and physical activity facilities, museums, personal care businesses, restaurants, and retail businesses.
- The limit is thirty percent (30%) of fire capacity for bars, lounges, movie theaters and entertainment facilities, meeting spaces and conference centers, and venues or arenas.

Because indoor spaces have a higher risk of spread for COVID-19, indoor facilities in the 30%-occupancy category have additional limits. Most indoor facilities in the 30%-occupancy category may not exceed two hundred fifty (250) people per indoor room or indoor space. Indoor event venues with five thousand (5,000) or more seats may be excepted from the 250-person limit if they follow additional safety measures, but these facilities may not exceed fifteen percent (15%) of fire capacity.

Details about these restrictions are found below in Sections 2 to 6 of this Order. The specific provisions of Sections 2 to 6 take precedence over the general descriptions in the summary above.

1.4. General Recommendations.

All North Carolinians are strongly encouraged to follow the recommendations for reducing the spread of COVID-19 issued by NCDHHS. These recommendations include the following Recommendations to Promote Social Distancing and Reduce Transmission:

- a. Maintain at least six (6) feet social distancing from other individuals, with the exception of family or household members.
- b. Wear a Face Covering over the nose and mouth when leaving home and wear it inside all public settings such as grocery stores, pharmacies, or other retail or public-serving businesses. A Face Covering should also be worn outdoors when you cannot maintain at least six (6) feet distancing from other people with the exception of family or household members.
- c. Carry hand sanitizer with you when leaving home, and use it frequently.
- d. Wash hands using soap and water for at least twenty (20) seconds as frequently as possible.
- e. Regularly clean high-touch surfaces such as steering wheels, wallets, and phones.
- f. Avoid large gatherings.
- g. Stay at home if sick.

Section 2. Face Coverings.

For the avoidance of doubt, this Section generally requires North Carolinians to wear Face Coverings in public places, both indoors and outdoors. This Section also authorizes law enforcement to enforce Face Covering requirements 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.

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

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 this Executive Order 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.

2.3. **Employer Good Faith Obligation to Provide Face Coverings.** Employers who have workers who perform work outside of their home in North Carolina and have not already provided Face Coverings for their workers shall make good-faith efforts to provide a one-week supply of reusable Face Coverings or a new disposable Face Covering daily as soon as possible for workers to use at their place of employment. New Face Coverings should be provided during the work day if the worker's Face Covering becomes soiled, torn, or wet.

2.4. **Exceptions.** This Executive Order does not require Face Coverings for—and a Face Covering does not need to be worn by—a worker or Guest who:

- a. Should not wear a Face Covering due to any medical or behavioral condition or disability (including, but not limited to, any person who has trouble breathing, or is unconscious or incapacitated, or is otherwise unable to put on or remove the Face Covering without assistance);
- b. Is under five (5) years of age;
- c. Is actively eating or drinking;
- d. Is seeking to communicate with someone who is hearing-impaired in a way that requires the mouth to be visible;
- e. Is giving a speech for a broadcast or to an audience;
- f. Is working at home or is in a personal vehicle;
- g. Is temporarily removing his or her Face Covering to secure government or medical services or for identification purposes;
- h. Would be at risk from wearing a Face Covering at work, as determined by local, state, or federal regulations or workplace safety guidelines;
- i. Has found that his or her Face Covering is impeding visibility to operate equipment or a vehicle; or
- j. Is a child whose parent, guardian, or responsible person has been unable to place the Face Covering safely on the child's face.

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

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

2.5. **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.

However, people need not wear a Face Covering while exercising if:

- One of the exceptions stated in Subsection 2.4 applies;
- They have symptoms while strenuously exercising such as trouble breathing, dizziness, or lightheadedness;
- They are wearing equipment like a mouthguard or helmet and are having trouble breathing;
- They are doing any activity in which the Face Covering could become entangled and a choking hazard or impair vision in high risk activities such as gymnastics, cheerleading, or tumbling; or
- They are doing activities that may cause the Face Covering to become wet, like swimming or other activities in a pool, lake, water attraction, or similar body of water.

2.6. **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.

2.7. **How Businesses May Accommodate Exceptions.** If a Guest states that an exception applies, a business may choose to offer curbside service, provide home delivery, or use some other reasonable measure to deliver its goods or services.

2.8. **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.

2.9. **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.

Section 3. Restrictions on Certain Businesses and Operations.

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

- 3.1. **Amusement Parks.** Amusement Parks and Amusement Transportation may reopen and operate under the following restrictions:
- a. **Face Coverings.** All workers and Guests must wear Face Coverings when they are on premises or on transportation operated by the establishment.
 - b. **Capacity Restrictions.**
 1. **For the Facility As A Whole.** The operator must limit the total number of Guests in the establishment to fifty percent (50%) of the park's normal maximum occupancy.
 2. **Outdoor Spaces.** The facility must limit Guests to fifty percent (50%) of the stated fire capacity for each outdoor space controlled by the facility. For rooms or spaces without a stated fire capacity, the limit on Guests is twelve (12) per one thousand (1000) square feet, rounded up.
 3. **Indoor Spaces.** The facility must limit Guests to the lesser of the following limits.
 - a. Thirty percent (30%) of the stated fire capacity for each building, room, or other indoor space controlled by the facility. This limit applies separately to each room within a building. For rooms or spaces without a stated fire capacity, the limit on Guests is seven (7) per one thousand (1000) square feet, rounded up.
 - b. Two hundred fifty (250) Guests in any particular indoor room or other confined indoor space within the facility's premises.
 4. **On each Ride or on Amusement Transportation.** The operator must limit the number of Guests within each vehicle or car to either:
 - Have all the Guests within a vehicle or car be people who came into the ride loading area together as part of the same group of friends or family; or
 - Ensure six (6) feet of social distancing between each group of friends or family within the vehicle or car.
 - c. **Other Requirements.** The operator must:
 1. Spread out waiting lines for rides, amusements, and other areas where people may congregate or wait, with each group separated by six (6) feet.
 2. The operator must mark six (6) feet of spacing along the line and in waiting areas for rides and amusements and other areas where people may congregate or wait.
 3. Establish a Guest flow plan that limits people massing together throughout the park and when they are entering or exiting the park.
 4. Increase disinfection during high customer density times.
 5. Provide alcohol-based hand sanitizer (with at least 60% alcohol) at the entrance and at other areas throughout the premises as needed. Promote frequent use of hand-washing and hand sanitizer for workers and Guests.
 6. Disinfect shared objects and surfaces (such as game surfaces, safety bars, or harnesses) between uses.

7. Follow the restrictions set out in other Subsections of this Executive Order for any food, beverage, and retail service.
8. Follow the Core Signage, Screening and Sanitation Requirements as defined in this Executive Order.

3.2. **Bars, Night Spots, and Arenas.**

- a. This Subsection applies to the following:
 - Bars
 - Lounges (such as cigar bars and hookah lounges) in which tobacco or related products are consumed on premises
 - Auditoriums, amphitheaters, arenas, and other venues for live performances
 - Music halls, night clubs, or dance halls
 - Adult entertainment facilities
 - Spectator stands and viewing areas at a sporting facility, stadium, sporting complex, or speedway
- b. **Face Coverings.** Unless an exception applies:
 - Facilities covered by this Subsection must have all workers wear Face Coverings.
 - In addition, these establishments must have all Guests wear Face Coverings (including at a table or counter) when they are not actively drinking or eating.
- c. **Must Be Seated.** To limit the degree to which Guests at the facility may come into contact with one another and spread COVID-19, a facility covered by this Subsection is closed unless it is or becomes a seated establishment for Guests. Guests must be in seats except to enter, leave, use amenities, visit the restroom, and obtain food or drink.
- d. **Capacity Restrictions.** While this Executive Order is in effect, all open facilities covered by this Subsection must limit Guests in indoor and outdoor seating areas to Emergency Maximum Occupancy. Under this Executive Order, the Emergency Maximum Occupancy for a facility is the lowest number produced by applying the following tests.
 1. **Outdoor Spaces.** The facility must limit Guests to thirty percent (30%) of the stated fire capacity for each outdoor space controlled by the facility. For rooms or spaces without a stated fire capacity, the limit on Guests is seven (7) per one thousand (1000) square feet, rounded up.
 2. **Indoor Spaces.** The facility must limit Guests to the lesser of the following limits.
 - a. Thirty percent (30%) of the stated fire capacity for each building, room, or other indoor space controlled by the facility. This limit applies separately to each room within a building. For rooms or spaces without a stated fire capacity, the limit on Guests is seven (7) per one thousand (1000) square feet, rounded up.
 - b. Two hundred fifty (250) Guests in any particular indoor room or other confined indoor space within the facility's premises.
 3. The facility must limit the number of Guests in the space so that groups can stay six (6) feet apart.
 4. The facility must arrange the space so that Guests sitting at a counter or table are not within six (6) feet of any Guests sitting at another counter or table. Moreover, each group of Guests sitting at a counter should be separated from other groups by six (6) feet. Entertainers also must stay at least six (6) feet away from any Guest.

People sitting at a table need not be members of the same household and do not need to stay six (6) feet apart. Moreover, this Executive Order does not require waitstaff to stay six (6) feet away from Guests.

e. Interpretation of Capacity Restrictions in this Subsection.

1. Workers, entertainers, athletes, and any other support staff do not count toward the capacity limits stated in Subsection 3.2(d) immediately above.
2. Any facility that meets the definition of “Restaurant” in this Executive Order is covered by Subsection 3.13 of this Executive Order and not this Subsection.
3. Indoor and outdoor amenities (such as pool and billiards tables) may be open at facilities covered by this Subsection.
4. Nothing in this Executive Order prevents establishments from opening up or expanding outdoor seating areas, subject to applicable local and state regulations.
5. Any meeting or function held in a private room in a facility covered by this Subsection is covered by the capacity and other restrictions stated below in Subsection 3.8 of this Executive Order (“Movie Theaters, Meeting Spaces, and Entertainment Facilities”).

f. Additional Sanitation and Safety Restrictions. Facilities covered by this Subsection must:

1. Restrict late night service of alcoholic beverages as stated in Subsection 4.1 of this Executive Order.
2. Follow the restrictions set out in Subsection 3.13 of this Executive Order for any food or beverage service.
3. Mark six (6) feet of spacing in lines at high-traffic areas for Guests.
4. Promote frequent use of hand-washing and hand sanitizer for waitstaff and food service staff throughout the shift and upon reporting to work. Hand-washing must at least meet the requirements specified in the North Carolina Food Code Manual.
5. Provide alcohol-based hand sanitizer (with at least 60% alcohol) at the entrance and at other areas throughout the premises as needed. Promote frequent use of hand-washing and hand sanitizer for workers and Guests.
6. Increase disinfection during peak times or high Guest density times, and disinfect all shared objects (e.g., payment terminals, tables, countertops/bars, receipt trays, and reusable menus) between use.
7. Follow all applicable requirements in NCDHHS guidelines.
8. Follow the Core Signage, Screening and Sanitation Requirements as defined in this Executive Order.

3.3. Child Care Facilities.

- a. Face Coverings. Child care facilities must have workers, all other adults, and children five (5) years or older onsite wear Face Coverings, unless an exception applies.
- b. Child Care Facilities May Open and May Serve All Children. Child care facilities may open or reopen, and they may serve all children in North Carolina. All references to “covered children” in Executive Order Nos. 130 and 138 shall refer to all children.
- c. Requirements. Child care facilities that are open or reopened consistent with the Executive Order must abide by the following requirements:
 1. Follow all applicable NCDHHS guidelines.
 2. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order.
 3. Conduct a daily health screening on all individuals who are entering the building.
 4. Immediately isolate sick workers and children from the rest of the facility and send them home.

5. Have a plan to work with local health departments to identify close contacts of confirmed cases in the child care setting.
 - d. Before reopening, child care facilities shall submit to NCDHHS the Emergency Child Care Provider Application. NCDHHS must approve the Emergency Child Care Provider Application before the child care facility can reopen.
 - e. Relationship to Other Executive Orders. Subdivisions 3.3(b) and (c)(1) above completely replace Subsections 2(C) and 2(D) of Executive Order No. 130. Subsections 2(A)-(B) and 2(E)-(H) of Executive Order No. 130 and Section 3 of Executive Order No. 139 shall continue in effect as specified in Executive Order Nos. 152, 177, and 193, and any subsequent executive orders.
- 3.4. **Children's Day or Overnight Camps.**
- a. Children's day camps and overnight camps must have workers, all other adults, and children five (5) years or older onsite wear Face Coverings, unless an exception applies.
 - b. To the extent, if any, that day camps and overnight camps continue to operate during the effective period of this Executive Order, the requirements of Executive Order No. 141 (as amended) which are applicable to Day Camps and Overnight Camps in that Order shall continue to apply to those camps.
- 3.5. **Fitness and Physical Activity Facilities.**
- a. This Subsection applies to "Fitness and Physical Activity Facilities." defined as any of the following:
 - Exercise facilities (e.g., yoga studios, dance studios, ballrooms for dancing, martial arts facilities, gymnastics, indoor trampoline and rock climbing facilities)
 - Gyms
 - Fields of play, including but not limited to basketball courts, baseball fields, volleyball courts, racquetball courts, squash courts, hockey rinks, soccer fields, and tennis courts (with spectators, if any, limited as stated in Subsection 3.2 of this Executive Order)
 - Health clubs and fitness centers
 - Boxing clubs
 - Skating rinks
 - Bowling alleys
 - Golf courses and driving ranges
 - Golf ball hitting bays
 - Mini-golf courses
 - Go-cart tracks
 - The track for any speedway or raceway (with spectators, if any, limited as stated in Subsection 3.2 of this Executive Order)
 - Paintball, laser tag, and similar fields and arenas
 - Indoor Playgrounds
 - b. Face Coverings. All workers and Guests must wear Face Coverings when they are inside the establishment, regardless of whether they are exercising. When outdoors, workers and Guests must wear Face Coverings when they are within six (6) feet of someone who does not reside in the same household. The exceptions in Sections 2.4 and 2.5 of this Executive Order apply.
 - c. Capacity Restrictions.
 1. Indoor Areas. Fitness and Physical Activity Facilities must limit Guests in indoor areas to the lowest number produced by applying the following two tests:
 - a. Overall. Limit the number of Guests in the facility to fifty percent (50%) of stated fire capacity (or, for spaces without a stated fire

capacity, no more than twelve (12) Guests for every one thousand (1000) square feet of the location's total square footage, including the parts of the location that are not accessible to Guests).

- b. In Any Room. Limit the number of Guests in any given room of the facility so that everyone can stay six (6) feet apart.
 2. Outdoor Areas. Fitness and Physical Activity Facilities must limit Guests in outdoor areas to fifty percent (50%) of stated fire capacity (or, for spaces without a stated fire capacity, no more than twelve (12) Guests for every one thousand (1000) square feet).
 3. Games or Events with Spectators. The capacity restrictions for facilities in Subsection 3.2 above, not the capacity restrictions in Subsections 3.5(c)(1)-(2) above, apply to Fitness and Physical Activity Facilities whenever they host a game with spectators.
 - d. Social Distancing Measures.
 1. Spread Out Guests and Equipment. Operators of Fitness and Physical Activity Facilities must:
 - a. For activities involving Guests spread out among fixed equipment or lanes, tape off or move the equipment, or restrict access to lanes, so that the Guests conducting the exercise activity are at least six (6) feet apart.
 - b. For group classes or group activities, ensure that all Guests are spaced at least six (6) feet apart. Instructors may come within six (6) feet of students for brief periods of time (less than 15 minutes).
 2. Seating in Waiting Areas. For Guests waiting to take their turn in the activity, operators must space out any seating so that Guests can be socially distanced and stay six (6) feet apart from each other.
 - e. Other Requirements. Operators of Fitness and Physical Activity Facilities must:
 1. Promote frequent use of hand-washing and hand sanitizer for workers and Guests. Require workers to wash hands immediately upon reporting to work, after contact with Guests, after performing cleaning and disinfecting activities, and frequently throughout the day.
 2. Disinfect all shared equipment between users with an EPA-approved disinfectant for SARS-CoV-2 (the virus that causes COVID-19). Allow the disinfectant to sit for the adequate amount of time stated by the manufacturer. If Guests are to clean equipment, the establishment must provide instructions on how to properly disinfect equipment and on the adequate amount of time that the disinfectant must sit to be effective.
 3. Increase disinfection during peak times or high-population-density times.
 4. Mark six (6) feet of spacing in lines at point of sale and in other high-traffic areas for Guests.
 5. Post the Emergency Maximum Occupancy of any room or other enclosed space at the door to that space.
 6. Follow the restrictions set out in Sections 3.13 and 4.1 of this Executive Order for any food and beverage service.
 7. Follow the Core Signage, Screening and Sanitation Requirements as defined in this Executive Order.
 - 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 onsite 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.

3.7. **Health Care Settings.**

- a. **Surgical Masks in Long Term Care Facilities.** All workers in Long Term Care ("LTC") Facilities, including skilled nursing facilities ("SNF"), adult care homes ("ACH"), family care homes ("FCH"), mental health group homes, and intermediate care facilities for individuals with intellectual disabilities ("ICF-IID"), must wear Face Coverings while in the facility, and those Face Coverings must be Surgical Masks, as long as Surgical Mask supplies are available.
- b. **Other Health Care Settings.** Health care facilities other than LTC facilities must follow the Face Covering requirements in the CDC Infection Control Guidance for Healthcare Professionals about Coronavirus (COVID-19).
- c. **Other Requirements.** Additional requirements in health care settings can be found in Executive Order Nos. 130 and 139 and in the Secretarial Orders issued under Executive Order Nos. 152, 165, 177, and 193.

3.8. **Movie Theaters, Meeting Spaces, and Entertainment Facilities.**

- a. This Subsection applies to meeting spaces, meeting or reception venues, and any entertainment facilities that are not covered by another provision of this Section of this Executive Order, such as Subsection 3.2 (entitled "Bars, Night Spots, and Arenas") or Subsection 3.5 (entitled "Fitness and Physical Activity Facilities"). Facilities covered by this Subsection include, but are not limited to, the following types of businesses:
 - Movie theaters
 - Private rooms or other private meeting spaces in a hotel, conference center, meeting hall, or reception venue
 - Bingo parlors, including bingo sites operated by charitable organizations
 - Facilities where the purpose is to engage in games of cards, such as bridge
 - Gaming and business establishments which allow gaming activities (e.g., video games, arcade games, pinball machines or other computer, electronic or mechanical devices played for amusement)
- b. **Face Coverings.** All workers and Guests must wear Face Coverings when they are or may be within the facility. When outdoors, workers and Guests must wear Face Coverings when they are within six (6) feet of someone who does not reside in the same household.
- c. **Must Be Seated.** To limit the degree to which Guests at the facility may come into contact with one another and spread COVID-19, a facility covered by this Subsection is closed unless it is or becomes a seated establishment for Guests. Guests must be in seats except to play, enter, leave, use amenities, visit the restroom, and obtain food or drink.
- d. **Capacity Restrictions.** While this Executive Order is in effect, all open facilities covered by this Subsection must limit Guests in indoor and outdoor seating areas to Emergency Maximum Occupancy. Under this Executive Order, the Emergency Maximum Occupancy for a facility is the lowest number produced by applying the following tests.
 1. **Outdoor Spaces.** The facility must limit Guests to thirty percent (30%) of the stated fire capacity for each outdoor space controlled by the facility. For rooms or spaces without a stated fire capacity, the limit on Guests is seven (7) per one thousand (1000) square feet, rounded up.
 2. **Indoor Spaces.** The facility must limit Guests to the lesser of the following limits.

- a. Thirty percent (30%) of the stated fire capacity for each building, room, or other indoor space controlled by the facility. This limit applies separately to each room within a building. For rooms or spaces without a stated fire capacity, the limit on Guests is seven (7) per one thousand (1000) square feet, rounded up.
 - b. Two hundred fifty (250) Guests in any particular indoor room or other confined indoor space within the facility's premises.
3. The facility must limit the number of Guests in the space so that groups can stay six (6) feet apart.
 4. The facility must arrange the space so that Guests sitting at a counter or table are not within six (6) feet of any Guests sitting at another counter or table. Moreover, each group of Guests sitting at a counter should be separated from other groups by six (6) feet. Entertainers also must stay at least six (6) feet away from any Guest.

People sitting at a table need not be members of the same household and do not need to stay six (6) feet apart. Moreover, this Executive Order does not require waitstaff to stay six (6) feet away from Guests.

e. Interpretation of Capacity Restrictions in this Subsection.

1. Workers, entertainers, and support staff do not count toward the capacity limits stated in Subsection 3.8(d) immediately above.
2. Any facility that meets the definition of "Restaurant" in this Executive Order is covered by Subsection 3.13 of this Executive Order and not this Subsection.
3. Indoor and outdoor amenities (such as pool and billiards tables) may be open at facilities covered by this Subsection.
4. Nothing in this Executive Order prevents establishments from opening up or expanding outdoor seating areas, subject to applicable local and state regulations.
5. For hotels or other facilities where private meeting spaces are a portion of a larger facility that is not restricted by this Section of this Executive Order, the limits stated above are measured only for the portion of the facility composed of private meeting spaces.

f. Other Requirements. Facilities covered by this Subsection must:

1. Restrict late night service of alcoholic beverages as stated in Subsection 4.1 of this Executive Order.
2. Follow the restrictions set out in Subsection 3.13 of this Executive Order for any food or beverage service.
3. Mark six (6) feet of spacing in lines at point of sale and in other high-traffic areas for Guests.
4. Provide alcohol-based hand sanitizer (with at least 60% alcohol) at the entrance and at other areas throughout the premises as needed. Promote frequent use of hand-washing and hand sanitizer for workers and Guests.
5. Increase disinfection during peak times or high Guest density times, and disinfect all shared objects (e.g., payment terminals, tables, countertops/bars, receipt trays, condiment holders) between use.
6. Follow the Core Signage, Screening and Sanitation Requirements as defined in this Executive Order.

g. Gaming. This Executive Order does not order the closure of gaming establishments. However, nothing in this Executive Order shall be construed to authorize any gaming activity prohibited by Chapter 14 of the North Carolina General Statutes.

3.9. Museums and Aquariums.

a. Face Coverings. 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.
- b. Museums and aquariums may open. All operators of open museums or aquariums must meet the following requirements:
1. Limit the number of Guests in the museum or aquarium to fifty percent (50%) of stated fire capacity (or, for spaces without a stated fire capacity, no more than twelve (12) Guests for every one thousand (1000) square feet of the location's total square footage, including the parts of the location that are not accessible to Guests) and ensure Guests are able to social distance and remain six (6) feet away from groups other than those in their households.
 2. Restaurants located within museums and aquariums are subject to the Emergency Maximum Occupancy and other requirements on restaurants in Subsection 3.13 of this Executive Order.
 3. Post signage reminding Guests and workers about social distancing (staying at least six (6) feet away from others) and requesting that people who have been symptomatic with fever and/or cough not enter.
 4. Conduct daily symptom screening of workers, using a standard interview questionnaire of symptoms, before workers enter the workplace.
 5. Immediately isolate and remove sick workers.
 6. Perform frequent and routine environmental cleaning and disinfection of high-touch areas with an EPA-approved disinfectant for SARS-CoV-2 (the virus that causes COVID-19).

3.10. **Parks.**

- a. **Face Coverings.** 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.
- b. **Capacity Limits.** Parks must restrict each group of Guests to be no more than the Mass Gathering limit stated below in Subsection 5.1 of this Executive Order. Each group of people within an outdoor park, trail, or beach must be limited so that the group, counted on its own, does not exceed the Mass Gathering limit.
- c. **Requirements for Park Operators.** All operators of open public or private parks must meet the following requirements:
 1. Post signage reminding Guests and workers about social distancing (staying at least six (6) feet away from others) and requesting that people who have been symptomatic with fever and/or cough not enter.
 2. Conduct daily symptom screening of workers, using a standard interview questionnaire of symptoms, before workers enter the workplace.
 3. Immediately isolate and remove sick workers.
 4. Perform frequent and routine environmental cleaning and disinfection of high-touch areas with an EPA-approved disinfectant for SARS-CoV-2 (the virus that causes COVID-19).

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

- a. **Face Coverings.** 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.
- b. Personal Care, Grooming, and Tattoo Businesses May Open. During the effective period of this Executive Order, Personal Care, Grooming, and Tattoo Businesses may operate, but must be in compliance with this Section.
- c. Requirements. While this Executive Order is in effect, all open Personal Care, Grooming, and Tattoo Businesses must do all of the following:
1. Limit Guests inside the store to Emergency Maximum Occupancy. Under this Executive Order, the Emergency Maximum Occupancy for a Personal Care, Grooming, and Tattoo Business is the lowest number produced by applying the following two tests:
 - a. Limit the number of Guests in the store to fifty percent (50%) of stated fire capacity (or, for spaces without a stated fire capacity, no more than twelve (12) Guests for every one thousand (1000) square feet of the location's total square footage, including the parts of the location that are not accessible to Guests).
 - b. Limit the number of Guests in the store so that Guests can stay six (6) feet apart.
 2. Arrange seating so that groups of Guests are separated from one another by six (6) feet.
 3. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order, except for the requirement to have signage remind people about staying six (6) feet apart.
 4. Ensure that all equipment that comes into direct personal contact with Guests and all furniture in service areas (such as chairs, capes, and the shampooing area in a barber shop or salon) is completely cleaned and disinfected between each Guest.
 5. Mark six (6) feet of spacing in lines at point of sale and in other high-traffic areas for Guests, such as at cash registers and waiting areas.
- 3.12. **Pools.**
- a. Indoor and Outdoor Pools May Open. During the effective period of this Executive Order, indoor or outdoor pool facilities (whether stand-alone or part of other facilities) may operate, but must be in compliance with this Subsection.
- b. Requirements. While this Executive Order is in effect, all open pool facilities must do all of the following:
1. Limit the number of Guests in the pool to no more than 50% of maximum occupancy as determined by fire code (or, when fire code number is not known, thirty-three (33) Guests per one thousand (1000) square feet in deck areas, wading pools and splash pads), and a maximum occupancy in the water of ten (10) Guests per one thousand (1000) square feet. This Guest capacity is the Emergency Maximum Occupancy for the pool facility.
 2. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order.

- c. Establishments that are not Amusement Parks and offer waterslides over fifteen (15) feet in height must abide, for each waterslide, by the occupancy restrictions for pools stated in this Section.
- d. This Subsection applies only to shared pools in commercial settings or at residential complexes. It does not apply to family pools at people's homes.

3.13. Restaurants.

- a. Face Coverings. Unless an exception applies:
 - Restaurants must have all workers wear Face Coverings.
 - In addition, Restaurants must have all Guests wear Face Coverings (including at their table) when they are not actively drinking or eating.
- b. May Open for On-Premises Service. During the effective period of this Executive Order, Restaurants may allow on-premises consumption of food and beverages. Restaurants must meet the sanitation requirements of this Section even if they are open only for take-out or delivery service.
- c. Capacity Restrictions. While this Executive Order is in effect, all open Restaurants must limit Guests in indoor and outdoor seating areas to Emergency Maximum Occupancy. Under this Executive Order, the Emergency Maximum Occupancy for a restaurant is the lowest number produced by applying the following three tests:
 - 1. Limit the number of Guests in the restaurant to fifty percent (50%) of stated fire capacity. For rooms or spaces without a stated fire capacity, the limit on Guests is twelve (12) per one thousand (1000) square feet of the location's total square footage, including the parts of the location that are not accessible to Guests, rounded up.
 - 2. Limit the number of Guests in the space so that groups can stay six (6) feet apart.
 - 3. Arrange the Restaurant so that Guests sitting at a counter or table are not within six (6) feet of any Guests sitting at another counter or table. Moreover, each group of Guests sitting at a counter should be separated from other groups by six (6) feet. Entertainers also must stay at least six (6) feet away from any Guest.

People sitting at a table need not be members of the same household and do not need to stay six (6) feet apart. Moreover, this Executive Order does not require servers and wait staff to stay six (6) feet away from Guests.

- d. Interpretation of Capacity Restrictions in this Subsection.
 - 1. Workers, entertainers, athletes, and any other support staff do not count toward the capacity limits stated above.
 - 2. Indoor and outdoor amenities (such as pool and billiards tables) may be open at Restaurants.
 - 3. Nothing in this Executive Order prevents establishments from opening up or expanding outdoor seating areas, subject to applicable local and state regulations.
 - 4. Any meeting or function held in a private room in a Restaurant is covered by the capacity and other restrictions stated above in Subsection 3.8 of this Executive Order ("Movie Theaters, Meeting Spaces, and Entertainment Facilities").
- e. Additional Sanitation and Safety Restrictions. In addition, while this Executive Order is in effect, all open Restaurants must do all of the following:

1. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order, along with the following additional requirements:
2. Increase disinfection during peak times or high Guest density times, and disinfect all shared objects (e.g., dining tables, booths, counters, payment terminals, tables, countertops/bars, receipt trays, condiment holders, and reusable menus) between each use.
3. Promote frequent use of hand-washing and hand sanitizer for wait staff and food service staff throughout the shift and upon reporting to work. Hand-washing must at least meet the requirements specified in the North Carolina Food Code Manual.
4. Mark six (6) feet of spacing in lines at high-traffic areas for Guests, such as a cash register or place where Guests wait to be seated at their table.

f. Miscellaneous. A Restaurant that operates consistent with the terms of this Subsection of this Executive Order shall continue to be considered an “Essential Business” for the purpose of N.C. Sess. L. 2020-03, Sec. 4.14(a) to the extent that COVID-19-related claims are made against the restaurant.

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

3.14. **Retail Businesses.**

a. Face Coverings. 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.

b. Requirements for Retail Businesses. While this Executive Order is in effect, all open Retail Businesses must do all of the following.

1. Limit Guests inside the store to Emergency Maximum Occupancy. Under this Executive Order, the Emergency Maximum Occupancy for a Retail Business is the lowest number produced by applying the following two tests:
 - a. Limit the number of Guests in the store to fifty percent (50%) of stated fire capacity (or, for spaces without a stated fire capacity, no more than twelve (12) Guests for every one thousand (1000) square feet of the location’s total square footage, including the parts of the location that are not accessible to Guests).
 - b. Limit the number of Guests in the store so that everyone can stay six (6) feet apart.
2. Mark six (6) feet of spacing in lines at point of sale and in other high-traffic areas for Guests, such as at deli counters and near high-demand products.
3. Follow the Core Signage, Screening, and Sanitation Requirements as defined in this Executive Order.

3.15. **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.

3.16. Workplaces in Agriculture, Construction, and Manufacturing.

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 participating in 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 4. Overnight Restrictions.

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

4.1. Restrictions on Late Night Service of Alcoholic Beverages.

- a. Any businesses or organizations that sell or serve alcoholic beverages for onsite consumption shall cease the sale and service of alcoholic beverages for onsite consumption between 11:00 pm and 7:00 am. The agents or employees of establishments that are permitted to sell or serve alcoholic beverages for onsite consumption shall likewise not sell or serve alcoholic beverages for onsite consumption between 11:00 pm and 7:00 am.
- b. Businesses or organizations may not provide off-site table service, catering service or bartending service for the sale and consumption of alcoholic beverages between 11:00 pm and 7:00 am for the purposes of consumption at the premises where the alcoholic beverage is being served.
- c. Nothing in this Executive Order shall be interpreted to change the laws regarding the hours of sales for alcoholic beverages for off-premises consumption or authorize sale, service, possession, transportation, or consumption of alcoholic beverages at times or places where not previously allowed before this Executive Order was issued. This Subsection 4.1 also does not provide authority to reopen any facilities (or areas of facilities) that are closed by another provision of this Executive Order.

Section 5. Mass Gatherings.

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

- 5.1. **Prohibition.** Mass Gatherings are prohibited. "**Mass Gathering**" means an event or convening which is in a category not otherwise covered by this Executive Order, is not excepted by the following provisions of this Executive Order, and brings together more than twenty-five (25) people indoors or more than fifty (50) people outdoors at the same time in a single confined indoor or outdoor space. This includes parades, fairs, or festivals. In publicly accessible indoor facilities, the Mass Gathering limit applies per room of the facility.

At a park, beach, or trail, the outdoor Mass Gathering limit of fifty (50) people applies to each group of people that may gather together.

- 5.2. **Exceptions from Prohibition on Mass Gatherings.** Notwithstanding the Mass Gathering limit above:

- a. The prohibition on Mass Gatherings does not apply to any of the restricted businesses and operations identified in Section 3 of this Executive Order, except as specifically stated above, because in those situations, transmission of COVID-19 will be controlled through the measures specifically tailored for each situation listed in those Sections. The prohibition on Mass Gatherings and the capacity limits in Section 3 generally do not apply to educational institutions or government operations. The capacity limits in

Section 3.2 of this Executive Order, however, apply to educational institutions and government operations.

- b. The prohibition on Mass Gatherings does not include gatherings for health and safety, to look for and obtain goods and services, for work, or for receiving governmental services. A Mass Gathering does not include normal operations at airports, bus and train stations or stops, medical facilities, libraries, shopping malls, and shopping centers. However, in those settings, people must follow the Recommendations to Promote Social Distancing and Reduce Transmission as much as possible, and they should circulate within the space so that there is minimal contact between people.
- 5.3. **Drive-Ins.** Events are not prohibited Mass Gatherings if the participants all stay within their vehicle, such as at a drive-in movie theater. Drive-in events are also not subject to the capacity limitations specified herein in Sections 3 and 6 of this Executive Order, provided that all participants stay in their vehicle, except to enter, leave, use amenities, visit the restroom, and obtain food or drink.

Section 6. Additional Provisions for Larger Venues.

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

- 6.1. **Additional Capacity for Certain Events at Very Large Indoor Venues.** This Subsection applies to indoor facilities with seating capacity of five thousand (5,000) or more that are covered by Subsections 3.2 or 3.8 of this Executive Order, such as auditoriums, arenas, venues, spectator stands, and conference centers. These facilities may admit up to fifteen percent (15%) of stated fire capacity, regardless of the 250-person cap stated in Section 3 of this Executive Order, if the facility meets all the following conditions.
 - a. The facility complies with all restrictions in Subsection 3.2 or Subsection 3.8 of this Executive Order, other than the 250-person cap.
 - b. The facility implements the additional safety measures stated below in Subsection 6.2 of this Executive Order.
- 6.2. **Additional Restrictions for Large Events.** Indoor facilities with seating capacity greater than five thousand (5,000) and outdoor facilities with seating capacity greater than ten thousand (10,000) must take the following additional measures.
 - a. **Limiting Crowding in Concourses.** The facility operator must have staff direct or monitor the flow of Guests through common spaces to maintain social distancing as Guests enter the arena, leave the arena, or visit concession stands. The operator must also establish a guest flow plan that limits people massing together throughout the facility and when they are entering or exiting the facility.
 - b. **Socially Distanced Seating Required.** The establishment must use assigned seats as follows:
 - All events must be ticketed. No tickets shall be sold for “standing room only” or “general admission.”
 - The facility operator must, through the use of assigned seating, ensure that each group of Guests attending the event is actually physically separated by six (6) feet from each Guest in each other group.
 - This includes not only separating each Guest group horizontally within a row, but also separating Guest groups vertically between rows so that no person has someone from another group within six (6) feet in front or behind them.
 - The facility operator must have staff periodically monitor crowds to ensure that Guests do not take seats other than their assigned seats.

In this Subsection, a “group” of spectators means a set of friends or family members who bought tickets together and came into the event venue together.

Section 7. Miscellaneous Provisions.

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

- 7.1. **Statewide Standing Order for COVID-19 Testing.** In order to further protect the public health by providing greater access to COVID-19 testing, the undersigned orders the State Health Director, in addition to and in accordance with her powers set out in N.C. Gen. Stat. Chapter 130A, to issue any statewide standing order needed in her medical judgment that would allow individuals who meet NCDHHS criteria for testing to access and undergo testing for COVID-19, subject to the terms of the standing order. This standing order may continue for the duration of the State of Emergency.
- 7.2. **School and Health Officials to Continue Efforts.** NCDHHS, the North Carolina Department of Public Instruction, and the North Carolina State Board of Education are directed to continue to work together during this State of Emergency to maintain and implement measures to provide for the health, nutrition, safety, educational needs, and well-being of children being taught by remote learning.
- 7.3. **Effect on Local Emergency Management Orders.**
 - a. **Most of the Restrictions in This Executive Order Are Minimum Requirements, And Local Governments Can Impose Greater Restrictions.** The undersigned recognizes that the impact of COVID-19 has been and will likely continue to be different in different parts of North Carolina. Over the course of the COVID-19 emergency in North Carolina, COVID-19 outbreaks have occurred, at different times, in urban and rural areas; in coastal areas, the piedmont, and the mountains; and in a variety of employment and living settings. As such, the undersigned acknowledges that counties and cities may deem it necessary to adopt ordinances and issue state of emergency declarations which impose restrictions or prohibitions to the extent authorized under North Carolina law, such as on the activity of people and businesses, to a greater degree than in this Executive Order. To that end, nothing herein, except where specifically stated below in Subsections 7.3(b) and 7.3(c), is intended to limit or prohibit counties and cities in North Carolina from enacting ordinances and issuing state of emergency declarations which impose greater restrictions or prohibitions to the extent authorized under North Carolina law.
 - b. **Local Restrictions Cannot Restrict State or Federal Government Operations.** Notwithstanding Subsection 7.3(a) above, no county or city ordinance or declaration shall have the effect of restricting or prohibiting governmental operations of the State or the United States.
 - c. **Local Restrictions Cannot Set Different Retail Requirements.** Notwithstanding Subsection 7.3(a) above, in an effort to create uniformity across the state for Retail Businesses that may continue to operate, the undersigned amends all local prohibitions and restrictions imposed under any local state of emergency declarations to remove any language that sets a different maximum occupancy standard for Retail Businesses or otherwise directly conflicts with Section 6.2(a)(i) of Executive Order No. 163, which is incorporated into this Executive Order by Subsection 3.14 above. The undersigned also hereby prohibits during the pendency of this Executive Order the adoption of any prohibitions and restrictions under any local state of emergency declarations that set a different maximum occupancy standard for Retail Businesses or otherwise directly conflict with Section 6.2(a)(i) of Executive Order No. 163.
 - 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 NCDHHS or a local public health department.

- e. **Local Restrictions Cannot Prevent COVID-19 Vaccine Administration.** To ensure that COVID-19 vaccines are available to the maximum extent possible, and to create certainty and uniformity across the state for businesses and operations that are providing this valuable service, the undersigned specifically prohibits all local prohibitions and restrictions that would prevent or restrict businesses or operations from providing COVID-19 vaccines or would prevent or restrict businesses or operations from advertising COVID-19 vaccines 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 vaccination sites that are operated in accordance with state and federal law and in cooperation with the NCDHHS or a local public health department.

- 7.4. **Previous Executive Orders.** This Executive Order amends, restates, and replaces Executive Order Nos. 141, 153, 162, 163, 169, 170, 176, 180, 181, 188, and 189 in full, except where Subsection 3.4(b) of this Executive Order incorporates certain requirements of Executive Order No. 141. Those incorporated provisions of Executive Order No. 141 are extended for the duration of this Executive Order, including any extensions or amendments of this Executive Order.

Section 8. Extension of Price Gouging Period.

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

Pursuant to N.C. Gen. Stat. § 166A-19.23, the undersigned extends the prohibition against excessive pricing, as provided in N.C. Gen. Stat. §§ 75-37 and 75-38, from the issuance of Executive Order No. 116 through 5:00 pm on March 26, 2021.

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

Section 9. 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 10. 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 11. 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 12. Enforcement.

- 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.
- 12.2. 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. Local governments are specifically authorized and encouraged to adopt ordinances that provide law enforcement officials with flexibility to use civil, rather than criminal, penalties to enforce violations of this Executive Order.
- 12.3. 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 13. Effective Date.

This Executive Order is effective February 26, 2021, at 5:00 pm. This Executive Order shall remain in effect through 5:00 pm on March 26, 2021 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of the State of Emergency will automatically rescind this Executive Order.

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



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

February 24, 2021

EXECUTIVE ORDER NO. 196

DECLARATION OF STATE OF EMERGENCY

WHEREAS, severe storms during the night of February 15, 2021 produced an EF-3 tornado that touched down in Brunswick County; and

WHEREAS, the tornado led to the loss of life, the injury of residents, and severe property damage that threatens the well-being and health of residents of the State of North Carolina; and

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

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

WHEREAS, the impacts of this storm constitute a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

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

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

Section 1.

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in Brunswick County, due to the damages as a result of the impacts from the severe weather event.

For purposes of this Executive Order, the emergency area is Brunswick County ("the Emergency Area") as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b).

Section 2.

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

Section 3.

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety ("DPS"), or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

Secretary Hooks, or his designee, shall implement the Plan in coordination with the Secretary of the Department of Transportation, Eric Boyette.

Section 4.

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

Section 5.

I hereby authorize and direct the North Carolina Department of Transportation to utilize its resources to clear vegetative debris produced by the tornado and placed along the roadside of non-system roads.

Section 6.

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

Section 7.

I hereby order that this declaration 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 this; and (3) distributed to others as necessary to ensure proper implementation of this declaration.

Section 8.

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C. Gen. Stat. § 166A-19.30(c).

Section 9.

This Executive Order will not trigger the prohibitions against excessive pricing in the emergency area, notwithstanding the provisions of N.C. Gen. Stat. § 166A-19.23.

Section 10.

This Executive Order is effective immediately and shall remain in effect until rescinded.

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



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

February 26, 2021

EXECUTIVE ORDER NO. 197

**EXTENDING AND AMENDING CERTAIN TRANSPORTATION-RELATED
PROVISIONS IN PREVIOUS EXECUTIVE ORDERS**

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

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

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

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

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

WHEREAS, in responding to the COVID-19 pandemic, and for the purposes of protecting the health, safety and welfare of the people of North Carolina, the undersigned has issued Executive Order Nos. 116-122, 124-125, 129-131, 133-136, 138-144, 146-153, 155-157, 161-165, 169-173, 176-177, 180-181, 183-185, 188-193, and 195; and

WHEREAS, more than eight hundred and fifty-five thousand (855,000) people in North Carolina have had COVID-19, and more than eleven thousand one hundred (11,100) people in North Carolina have died from the disease; and

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

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

WHEREAS, the uninterrupted supply of fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas to residential and commercial establishments is an essential need of the public during the wintertime, and any interruption in the delivery of those fuels threatens the public welfare; and

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

WHEREAS, on February 17, 2021, the Federal Motor Carrier Safety Administration ("FMCSA") issued Expansion and Extension of the Modified Emergency Declaration No. 2020-002 to provide regulatory relief for commercial motor vehicle operations that provide direct assistance in support of emergency relief efforts related to COVID-19; and

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

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

WHEREAS, Executive Order No. 192, issued on January 27, 2021 extended the transportation related provisions in Executive Order Nos. 116, 119, 133, 140, 146, 150, 157, and 164; and

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

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

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

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

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

Section 1. Extensions

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

A. Executive Order Nos. 116 and 119.

1. Sections 3, 5 and 5.5 of Executive Order No. 119 (which were extended by Executive Order Nos. 133, 140, 146, 150, 157, 164 and reissued in No. 192) are hereby extended through May 31, 2021.
2. Section 5 of Executive Order No. 116 (which was amended by Section 6 of Executive Order No. 119, Section 1 of Executive Order No. 146, Section 1 of Executive Order No. 150, Section 1 of Executive Order No. 157, Section 1 of Executive Order No. 192 and extended by Executive Order Nos. 133, 140, 146, 150, 157, 164 and reissued in No. 192) is extended pursuant to N.C. Gen. Stat. § 166A-19.70(b) through May 31, 2021.

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

In order to ensure adequacy and location of supplies and resources to respond to COVID-19, DPS, in conjunction with the North Carolina Department of Transportation ("DOT"), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381 subject to the restrictions and limitations in this Executive Order, if the driver is transporting medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; vaccines, constituent products, and medical supplies and equipment including ancillary supplies/kits for the administration of vaccines, related to the prevention of COVID-19; and supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19, such as masks, gloves, hand sanitizer, soaps and disinfectants, essential fuels such as fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum gas to residential and commercial establishments, food, water, livestock, poultry, feed for livestock and poultry and other supplies and equipment in support of the Plan or other efforts to address the public health threat posed by COVID-19, through the duration of the State of Emergency or until further notice. Direct assistance does not include routine commercial deliveries, including mixed loads with a nominal quantity of qualifying emergency relief added to obtain the benefits of this Executive Order.

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

"This Executive Order is effective immediately and shall remain in effect until the end of the calendar day on May 31, 2021, or until rescinded or superseded by another applicable Executive Order."

B. Miscellaneous provisions. For avoidance of doubt:

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

Section 2. Distribution

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

Section 3. Effective Date

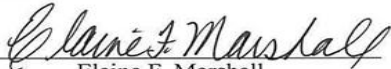
This Executive Order shall remain in effect until May 31, 2021 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

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



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

February 26, 2021

EXECUTIVE ORDER NO. 198

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

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

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

WHEREAS, on March 13, 2020, the President of the United States 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 of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, over the course of the pandemic, North Carolina's public health experts have gained enhanced knowledge of the COVID-19 virus, including a better understanding of what settings and activities pose the greatest risk of transmitting the virus, and what mitigation strategies are most effective to curb spread; and

WHEREAS, over the course of the pandemic, the state has also expanded its access to personal protective equipment and other necessary materials to better protect the population from the spread of COVID-19, and has increased its ability to test for and to trace the virus; and

WHEREAS, in recent months, the state has also mounted a robust vaccination effort, to distribute the state's allocated supply of vaccines authorized by the Food and Drug Administration ("FDA") to all North Carolinians; and

WHEREAS, despite the state's progress to-date, North Carolina's key COVID-19 metrics remain at elevated levels; and

WHEREAS, in light of the above factors, the undersigned issued Executive Order No. 195, on February 24, 2021, which lifted the provisions of Executive Order No. 181, as extended,

directing night-time business closure and an overnight stay-at-home order for North Carolinians, with exceptions, and eased occupancy restrictions on many businesses and venues; and

WHEREAS, certain limitations on Mass Gatherings (as that term is defined in Executive Order No. 195), businesses, and person-to-person contact are still necessary to address the public health risk posed by COVID-19; and

WHEREAS, Executive Order No. 195 increased the Mass Gathering limitation for certain circumstances from ten (10) to twenty-five (25) individuals indoors; and

WHEREAS, corporations may have shareholder meetings where twenty-five (25) or more shareholders seek to participate; and

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

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

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

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

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

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

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

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

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

WHEREAS, nonprofit corporations have sought guidance as to the interaction between the Mass Gathering restrictions and the North Carolina Nonprofit Corporation Act; and

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

WHEREAS, Executive Order No. 185, issued on January 4, 2021, extended the provisions in Executive Order Nos. 125 and 136 regarding remote shareholder and nonprofit meetings during the COVID-19 State of Emergency; and

WHEREAS, the provisions in these Executive Orders are set to expire unless the undersigned takes further action; and

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

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

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

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

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

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

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

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

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

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

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

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the authority set forth above and in Executive Order Nos. 125, 136, 149, 161, 173, and 185, **IT IS ORDERED**:

Section 1. Prior Executive Orders

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

Executive Order No. 125 is reissued and shall remain in full effect through until May 10, 2021.

Executive Order No. 136 is reissued and shall remain in full effect until May 10, 2021.

The Effective Date provisions of Executive Orders Nos. 125 and 136 are modified to be in effect through the above listed date.

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

Section 2. Savings Clause

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

Section 3. Effective Date

This Executive Order is effective immediately. This Executive Order shall remain in effect until May 10, 2021 unless repealed, replaced, or rescinded by another applicable Executive Order. An Executive Order rescinding the Declaration of a State of Emergency will automatically rescind this Executive Order.

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



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

February 26, 2021

EXECUTIVE ORDER NO. 199

NOTICE OF TERMINATION OF EXECUTIVE ORDER NO. 194

WHEREAS, on February 17, 2021, the State of North Carolina experienced a winter storm that was anticipated to cause widespread power outages; and

WHEREAS, Executive Order No. 194, *Declaration of a State of Emergency and Temporary Suspension of Motor Vehicle Regulations to Ensure Restoration of Utility Services*, was issued on February 17, 2021; and

WHEREAS, this emergency declaration and transportation waiver is no longer necessary.

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

Pursuant to N.C. Gen. Stat. § 166A-19.20(c) Executive Order No. 194 is hereby terminated immediately.

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



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

MARCH 1, 2021

EXECUTIVE ORDER NO. 200

REINSTATING WORK SEARCH REQUIREMENTS FOR UNEMPLOYMENT INSURANCE BENEFITS FOR NEW CLAIMANTS

WHEREAS, on March 10, 2020, the undersigned issued Exec. Order No. 116, 34 N.C. Reg. 1744-1749 (April 1, 2020), 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 ("Declaration of a State of Emergency"); and

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

WHEREAS, on March 13, 2020, the President of the United States 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, 169-177, 180-181, 183-185, 188-193, 195, and 197-198; and

WHEREAS, on March 17, 2020, with the concurrence of Council of State, the undersigned issued Exec. Order No. 118, 34 N.C. Reg. 1834-1838 (April 15, 2020), Sections 2 and 3 of which streamlined unemployment insurance requirements to ensure availability to the maximum extent allowed by federal law in response to COVID-19; and

WHEREAS, Executive Order No. 118 authorized the North Carolina Department of Commerce ("Department") to waive, or interpret flexibly, as appropriate, Work Search Requirements (as defined below) under N.C. Gen. Stat. § 96-14.9(b); and

WHEREAS, in recent weeks North Carolina has seen improvement in key COVID-19 metrics, including COVID-19 daily diagnoses, the percent of total COVID-19 tests that are positive, the number of emergency department visits that are due to COVID-like illnesses, and the number of COVID-19 associated hospitalizations; and

WHEREAS, the Department's Division of Employment Security has processed unemployment claims from more than 1.4 million North Carolinians since the start of the COVID-19 pandemic; and

WHEREAS, ensuring North Carolinians' safe and expeditious return to work improves livelihoods, supports healthy families, and strengthens our economy; and

WHEREAS, Work Search Requirements help facilitate rapid reemployment of unemployment insurance claimants; and

WHEREAS, Work Search Requirements prevent and reduce incidents of fraudulent unemployment insurance claims; and

WHEREAS, the Department's Division of Workforce Solutions and NCWorks Career Centers—North Carolina's eighty-nine (89) one-stop American Job Centers—provide reemployment services to jobseekers across the state; and

WHEREAS, the Division of Workforce Solutions and NCWorks Career Centers launched virtual reemployment services available in all one hundred (100) counties, including enhanced internet, telephone, and chat services, in order to support jobseekers virtually during the COVID-19 pandemic; and

WHEREAS, in reinstating the Work Search Requirements, it is necessary to permit the Department flexibility in interpreting those provisions that, because of the current health emergency and ongoing pandemic, would otherwise serve as barriers to access to essential benefits that are keeping families afloat and stimulating our economy; and

WHEREAS, limiting the reinstatement of Work Search Requirements to only New Claimants (as defined below) will provide clarity for jobseekers relying on critical benefits, ensure effective communication of Work Search Requirements, and afford the Department time to implement an efficient process to verify requirements are met given the increased number of claims being filed; and

WHEREAS, the undersigned recognizes the need to balance facilitating jobseekers' return to the workplace with reducing barriers to life-sustaining benefits; and

WHEREAS, the lack of internet access, transportation, electronic equipment or other means of communicating with the Department requires the Department to develop flexible and innovative solutions for individuals; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) ("CARES Act"), affords states flexibility to modify or suspend Work Search Requirements in response to the COVID-19 pandemic; and

WHEREAS, on December 27, 2020, the President signed the Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182 (2020), extending the provisions of the CARES Act listed above; and

WHEREAS, the undersigned has therefore determined that to cooperate and coordinate with the President's extension of benefits into 2021 and to balance the need to facilitate reemployment of North Carolinians while also reducing barriers to our most vulnerable communities, Work Search Requirements shall be reinstated for New Claimants; however, the Department shall interpret those provisions with flexibility to reduce barriers to individuals in need of benefits; and

Statutory Determinations and Authority

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

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

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

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.10(b)(4), the undersigned is authorized to “cooperate and coordinate” with the President of the United States and the heads of department and other agencies of the federal government; 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), during a Gubernatorially declared State of Emergency, the undersigned has the power to “give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Article”; and

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and for the reasons and pursuant to the authority set forth above and in Executive Order No. 118, **IT IS ORDERED:**

Section 1. Work Search Requirements Reinstated, with Flexibility, for New Claimants.

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

The Department, through the Secretary of Commerce, Assistant Secretary of Employment Security, and Assistant Secretary of Workforce Solutions, is directed to reinstate the work search requirements, set forth in N.C. Gen. Stat. § 96-14.9(b) (“Work Search Requirements”), as interpreted flexibly, for those unemployment insurance claimants who file on or after March 14, 2021 (“New Claimants”). New Claimants, as that term is used in this Executive Order, excludes claimants who are receiving unemployment insurance and who filed their claims prior to March 14, 2021. In reinstating Work Search Requirements for New Claimants, the Department is directed to remove potential barriers to, and ensure maximum ease for claimants in, fulfilling the requirements.

For avoidance of doubt, Executive Order No. 118 remains in effect for all existing claimants. This Executive Order replaces Section 3(a)(iii) of Executive Order No. 118 for New Claimants only. All other waivers or flexibilities permitted under Executive Order No. 118, other than the Work Search Requirements as reinstated herein, remain in effect for existing and New Claimants.

Section 2. Flexibility in Work Search Requirements for New Claimants.

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

To provide the necessary unemployment benefits to those affected by COVID-19, while ensuring that individuals are gradually and safely encouraged to seek employment opportunities, the Department is authorized to interpret flexibly the Work Search Requirements for New Claimants, as appropriate and consistent with Executive Order No. 118, which shall include the following:

- a) The Department shall interpret flexibly the requirements of N.C. Gen. Stat. § 96-14.9(e)(3), to account for burdens posed by COVID-19 which may affect one’s ability to secure job contacts;
- b) The Department shall communicate to New Claimants that they are required to maintain a record of work search activities as required by N.C. Gen. Stat. § 96-14.9(e)(4);
- c) The Department shall interpret flexibly the production of records requirements of N.C. Gen. Stat. § 96-14.9(e)(4), to account for barriers to communication, such as lack of internet connectivity, electronic equipment, or transportation, experienced by some New Claimants;
- d) The Department shall, as recommended by the United States Department of Labor, establish a comprehensive definition of acceptable work search activities that focus on rapid reemployment, which shall include additional work search activities to satisfy Work Search Requirements, such as virtual workshops and virtual networking opportunities; and

- e) For the foregoing reasons, the Department shall develop additional means to verify a claimant's Work Search Requirements, including but not limited to implementing training, policies, and procedures to enable staff to verify and document contact with potential employers by telephone or other remote mechanisms.

Section 3. Mandatory NCWorks Registration.

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

- A. As part of the work search requirement process, the Department shall create a process to assist and ensure that all New Claimants are registered with a jobseeker account in www.ncworks.gov, North Carolina's information technology portal for employment and training services. Jobseekers with accounts in www.ncworks.gov are provided access to labor market information, opportunities for training scholarships, and can apply for jobs online.
- B. The Department is directed to enhance staff training to assist New Claimants in creating a jobseeker account in www.ncworks.gov.

Section 4. 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 to 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 5. Distribution.

The undersigned hereby orders 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 State of North Carolina; and (3) distributed to others as necessary, including within the Department of Commerce Division of Employment Security to ensure proper implementation of this Executive Order.

Section 6. Effective Date.

This Executive Order is effective immediately and shall remain in effect until rescinded or superseded by another applicable Executive Order. An Executive Order rescinding the Declaration of 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 1st day of March in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

March 4, 2021

EXECUTIVE ORDER NO. 201

NOTICE OF TERMINATION OF EXECUTIVE ORDER NO. 178

WHEREAS, on November 12, 2020, the State of North Carolina experienced severe weather including heavy rainfall and flooding from the remnants of Tropical Storm Eta that caused significant damage; and

WHEREAS, Exec. Order No. 178, 35 N.C. Reg. 1343-1344 (Dec. 15, 2020), *Declaration of a State of Emergency*, was issued on November 13, 2020; and

WHEREAS, this emergency declaration is no longer necessary.

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

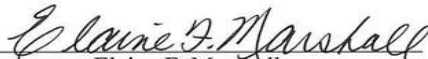
Pursuant to N.C. Gen. Stat. § 166A-19.20(c) Executive Order No. 178 is hereby terminated immediately.

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 4th day of March in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



**North Carolina Department of Labor
Division of Occupational Safety and Health
1101 Mail Service Center
Raleigh, NC 27699-1101**

(919) 707-7806

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

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

- Rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0201, to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts 1926 promulgated as of September 15, 2020, except as specifically described, and
- The *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically adopts subsequent amendments to certain parts of the *Code of Federal Regulations*, but Part 1926 is not included.

This update encompasses the following recent verbatim adoption:

- Occupational Safety and Health Standards, 29 CFR amendment to § 1926 – Cranes and Derricks in Construction: Railroad Roadway Work (85 FR 57109, September 15, 2020).

The final rule, published in the Federal Register on September 15, 2020 (85 FR 57109), revises the standard for cranes and derricks in construction to provide specific exemptions and clarifications with regard to the application of the standard to cranes and derricks used for railroad roadway work. These exemptions and clarifications recognize the unique equipment and circumstances in railroad roadway work and reflect the preemption of some OSHA requirements by regulations promulgated by the Federal Railroad Administration (FRA). The revised standard provides a clearer understanding of which regulatory requirements are applicable, resulting in a more effective regulatory program and ultimately improved safety. OSHA's final rule was effective November 16, 2020.

For additional information, please contact:

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

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

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

NORTH CAROLINA RATE BUREAU**PUBLIC NOTICE**

Notice is hereby given pursuant to North Carolina General Statute 58-36-120 that, on February 26, 2021, the North Carolina Rate Bureau made filings for an increase in insurance rates for two Mobile Home insurance policy programs (MH(C) and MH(F)) under its jurisdiction. Public notice of the filings is being published in two newspapers with statewide distribution and in the North Carolina Register. The Commissioner of Insurance may or may not schedule and conduct a hearing with respect to the filings. This information is being posted on the web sites of the North Carolina Rate Bureau and the North Carolina Department of Insurance. The filings only relate to Mobile Home insurance policies under the jurisdiction of the North Carolina Rate Bureau and do not affect Dwelling Fire and Extended Coverage or Homeowners insurance policies or rates not part of the Mobile Home policy programs.

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 08 – STATE BOARD OF ELECTIONS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Elections intends to adopt the rule cited as 08 NCAC 01 .0107.

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

Proposed Effective Date: September 1, 2021

Public Hearing:

Date: May 6, 2021

Time: 1:00 p.m.

Location:

<https://ncgov.webex.com/ncgov/onstage/g.php?MTID=edface2783fca19ab1cd21dad70e09f0b>

Reason for Proposed Action: *This new rule would clarify when a political party expires and the timeline for changing the registration of voters affiliated with expired political parties. A political party would cease its legal status as a recognized political party in the state when the State Board certifies the general election in which the political party failed to poll at least 2% for its candidate for Governor or for presidential electors. If the political party submits documentation by the date of state certification that it had a nominee on the ballot in at least 70% of states in the prior presidential election, it will not cease to be a political party. Voters registered with an expired political party would be changed to unaffiliated status as required by statute on the 20th day before the opening of the filing period for the next regularly scheduled election held after the political party was terminated. Currently, the filing period for municipal elections begins on July 2, 2021, so affected voters would be changed to unaffiliated status on June 12, 2021. However, this date is subject to change if the General Assembly moves election dates as a result of the delay in receiving census data. The statute requires rulemaking but this had not previously been done.*

Comments may be submitted to: Kelly Tornow, P.O. Box 27255, Raleigh, NC 27611-7255; email rules@ncsbe.gov

Comment period ends: June 1, 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 01 - DEPARTMENTAL RULES

08 NCAC 01 .0107 POLITICAL PARTY FORMATION, TERMINATION, AND REINSTATEMENT

(a) Pursuant to G.S. 163-97, a political party ceases to be a political party on the date the State Board certifies the general State election in which the political party failed to poll for its candidate for Governor, or for presidential electors, at least two percent of the entire vote cast in the State for Governor or for presidential electors. Any voter registration form received after that date by a county board of elections in which the applicant chooses to affiliate with an expired political party shall be registered as "unaffiliated," except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board of elections shall not change the registrant's political party affiliation.

(b) Notwithstanding Paragraph (a) of this Rule, a political party shall not cease to be a political party under G.S. 163-97 if it submits to the State Board of Elections by the date of the state canvass documentation that the group of voters had a candidate nominated by that group on the general election ballot of at least 70 percent of the states in the prior Presidential election.

(c) Voters affiliated with an expired political party shall be changed to "unaffiliated designation" as required by G.S. 163-97.1 on the 20th day before the opening of the candidate filing period for the next regularly scheduled election held after the date the political party failed to continue its legal status as provided in G.S. 163-97.

(d) The State Board shall order the county boards of elections to change the registration affiliation of all voters who are recorded on the registration books as being affiliated with an expired political party at 5:00 p.m. on the 20th day before the opening of the candidate filing period for the next regularly scheduled election held after the date of expiration. Upon making the change, the county board of elections shall send each affected

voter verification of the party change by mail in accordance with G.S. 163-82.17(b). However, an expired political party that submits to the State Board one of the following prior to noon on the twentieth day before the opening of the candidate filing period for the next regularly scheduled election held after the date of expiration shall not have its affiliated voters changed to "unaffiliated designation":

- (1) A successful petition under G.S. 163-96(a)(2). The political party shall comply with all other petition processes and deadlines in G.S. 163-96(a)(2), (b), and (c), including submitting the signatures to each county board of elections no later than 5:00 p.m. on the 15th day preceding the date the petitions are due to be filed with the State Board as provided in this Paragraph.
- (2) Documentation that the group of voters had a candidate nominated by that group on the general election ballot of at least 70 percent of the states in the prior Presidential election.

(c) For purposes of this Rule, "expired political party" means a party that failed to continue its legal status as provided in G.S. 163-97.

(d) Documentation required under G.S. 163-96(a)(3) for the creation of a political party and under Subparagraph (b)(2) of this Rule for the reinstatement of an expired political party shall include any official State or federal government source, including but not limited to, official election results or statistics from a state or federal government website or publication.

Authority G.S. 163-22; 163-97.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Elections intends to amend the rules cited as 08 NCAC 09 .0106, .0107, .0109 and repeal the rule cited as 08 NCAC 09 .0108.

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://www.ncsbe.gov/>

Proposed Effective Date: September 1, 2021

Public Hearing:

Date: May 6, 2021

Time: 1:00 p.m.

Location:

<https://ncgov.webex.com/ncgov/onstage/g.php?MTID=edface2783fca19ab1cd21dad70e09f0b>

Reason for Proposed Action: *This proposed amendment removes references to direct record electronic voting machines (DREs) which were decertified in 2020, clarifies the conduct of*

recounts, and details how the county board of elections makes determinations of voter intent in hand-to-eye recounts. It would codify the voter intent principles provided to the counties in Numbered Memo 2020-32.

Comments may be submitted to: Kelly Tornow, P.O. Box 27255, Raleigh, NC 27611-7255; email rules@ncsbe.gov

Comment period ends: June 1, 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 09 - CONDUCT OF VOTE RECOUNTS BY
COUNTY BOARDS OF ELECTIONS**

08 NCAC 09 .0106 GENERAL GUIDELINES

(a) Prior to each recount under G.S. 163-182.7, the county board of elections or State Board shall inform the political parties and candidates of the recount and describe to them the process of conducting recounts. A county board of elections shall notice the recount at least 48 hours prior to the start of the recount. The county board shall send notice by email to the county board's regular notice list, county party chairs, and the candidates in the contest subject to the recount.

(b) In the case of tie votes, the winner shall be determined by lot only in the case set out in G.S. 163-182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.

(c) During the conduct of recounts, ballots shall be counted in accordance with the principles in G.S. 163-182.1(a).

~~(d) In conducting recounts of direct record electronic machines and any other types of voting machines that require a county board member or designated official to reprint tapes and to read the~~

~~totals and another board member to record the totals for each candidate such recount shall be conducted by a bi-partisan team of four: two officials (one from each of the two parties having the largest number of registered voters in the state) reading and confirming the totals per machine and two officials (one from each of the two parties having the largest number of registered voters in the state) recording the results simultaneously.~~

~~(e)(d)~~ In conducting hand to eye recounts or recounts of paper ballots, a bi-partisan team of four shall be used: two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the results of the ballot, and two officials (one from each of the two parties in the State with the largest number of registered voters) each separately recording the tally of votes for each candidate on paper while stating aloud after each choice is read on the fifth tally for a particular candidate, the word "tally." If, after diligently seeking to fill the positions with voters affiliated with each of the two parties in the State with the largest number of registered voters, the county board still has an insufficient number of officials for the recount, the county board by a majority vote of its members, including at least one board member of each political party represented on the board, may appoint to the bi-partisan team an unaffiliated voter or voter affiliated with one of the other political parties. In no instance shall the county board appoint more than two members to a bi-partisan team who are unaffiliated or affiliated with one of the other political parties. Bi-partisan team members shall be registered voters in the county. County board members shall not serve on the bi-partisan team.

~~(f)(e)~~ The county board of elections shall conduct recounts only as follows:

- (1) the recount is mandatory under G.S. 163-182.7(b) or ~~(e); (c) or G.S. 163-182.7A;~~ or
- (2) the recount is not mandatory but the county board of elections or the State Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to complete the canvass a recount is necessary.

~~(g)(f)~~ A candidate shall have the right to call for a hand-eye recount ~~recount, as to elections conducted by optical scan systems~~ within 24 hours after a ~~mandatory or~~ discretionary recount in G.S. 163-182.7(a) or by noon on the next business day of the county board office, whichever is later, if the apparent winner is the apparent loser after the discretionary recount ~~first recount, unless human error resulted in the vote count change.~~ A candidate shall have the right to call for a hand-eye sample recount within 24 hours after a mandatory machine recount, pursuant to G.S. 163-182.7A.

~~(h)(g)~~ Any candidate shall have the right to file an election protest within 24 hours after a recount or by noon of the next business day of the county board office, whichever is ~~later.~~ later, if the protest relates to the conduct of the recount. Allegations unrelated to the recount may not be included in the protest.

~~(i)(h)~~ Recounts shall be performed in the presence of a quorum of county board members or in the presence of a bipartisan team of two county board members. Determinations of voter intent shall be made by at least a quorum of the board.

Authority G.S. 163-22; 163-182.7.

08 NCAC 09 .0107 RECOUNT OF OPTICAL SCAN BALLOTS FIRST RECOUNT

(a) In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all ballots that were originally counted by the optical scan equipment shall be counted again by machine. ~~the optical scan equipment producing another machine count. A "machine count" total is a ballot count produced by a voting system that uses machines.~~ All ballots that ~~are~~ were rejected for tabulation purposes by the machines ~~—commonly called "outstacked" or center bin ballots—~~ shall be recounted by a bi-partisan team of four in accordance with ~~08 NCAC 09. 0106(f).~~ 08 NCAC 09. 0106(e) or duplicated and counted by machine. Ballots accepted by the machines shall not be counted by hand, regardless of whether the ballot is marked, contains overvotes, or is blank.

(b) ~~When the first recount, including absentee and provisional ballot recount totals, has been completed, the board of elections shall determine if a second recount is necessary as follows:~~

(1) ~~Determine whether the first recount produces a change in the winner in accordance with the following:~~

(A) ~~If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount, by hand and eye, of all ballots; and~~

(B) ~~If the apparent winner after the initial balloting remains the apparent winner after the first recount, the county board shall proceed according to Subparagraph (2) of this Paragraph;~~

(2) ~~Determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount in accordance with the following:~~

(A) ~~If the machine totals from the initial balloting and the first recount are the same, no second recount is necessary; and~~

(B) ~~If the machine totals from the initial balloting and the first recount are not the same, the county board shall proceed according to Subparagraph (3) of this Paragraph;~~

(3) ~~Determine if the discrepancy in the machine total between the initial balloting and the first recount can be reconciled. The county board shall examine all outstacked or center bin ballots from the first recount, determine how each ballot shall be counted according to Rule .0106(e) of this Section, and reconcile the count with the machine count on the initial balloting in accordance with the following:~~

(A) ~~If this reconciliation produces the same machine total for the first recount as the machine total in the~~

~~initial balloting, no second recount is necessary; and~~
 (B) ~~If the reconciliation produces a different machine total for the first recount than the machine total in the initial balloting, the losing candidate is entitled to demand a second recount, by hand to eye, of all ballots.~~

Authority G.S. 163-22; 163-182.7.

08 NCAC 09 .0108 RECOUNT OF DIRECT RECORD ELECTRONIC VOTING MACHINES

Authority G.S. 163-22; 163-182.7.

08 NCAC 09 .0109 MANUAL HAND-TO-EYE RECOUNTS GUIDELINES FOR DETERMINING VOTER INTENT

(a) As provided in G.S. 163-182.1(a), voter intent is the governing standard when questions arise about how to adjudicate markings on a ballot. Questions about voter intent may arise during a hand-to-eye recount if a voter marks the ballot in an inappropriate manner, places marks in the wrong location on the ballot, or otherwise marks the ballot in a manner that causes the voter's choice to be in dispute. Determinations of voter intent shall be made by the county board. If the bipartisan team of four provided for in 08 NCAC 09. 0106(e) encounters a ballot that cannot be clearly identified as a vote for one candidate or another, the ballot must be set aside. During a hand-to-eye audit or recount, all ballots with a potential overvote or undervote shall be adjudicated by the county board at the conclusion of the tallying by the bipartisan team. If the subject to the recount was left blank—meaning there are no marks in the target or candidate area for the contest—the county board shall not need to determine voter intent and the ballot shall not be counted for any candidate in that contest.

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

- (1) "Target area" is the square or oval next to the candidate's name on the printed ballot;
- (2) "Candidate area" is the area between the lines separating candidate names, or the area that is clearly closer to one candidate's name than another, and includes the candidate's name and party affiliation, if listed.

(c) For any printed ballot that is to be counted hand-to-eye, the following guidelines shall be used in determining voter intent:

- (1) Any ballot that is properly marked in the target area for one candidate only shall be designated as a vote for that candidate.
- (2) If the names of all but one candidate are stricken through, the ballot shall be counted for the one candidate whose name was not stricken through.
- (3) If there are identical marks for two or more candidates, clarified by an additional or different mark or marks that appear to indicate support for one candidate, the ballot shall be

counted as a vote for the candidate with the additional or different marks.

(4) Any ballot that has any other mark or marks in the target area or candidate area for one candidate only, including circling the target area and/or the candidate's name or making a mark in or around the target area or candidate's name, provided no other candidate for that office is similarly marked, shall be counted as a vote for that candidate.

(5) Any ballot that has a mark or marks in the target area or candidate area for one candidate, which extends partially into one or more other target areas or candidate areas, shall be counted as a vote for the candidate so marked only if a majority of the mark is in that candidate's area or target area, it is readily apparent that the voter intended to vote for that candidate, and no other candidate is similarly marked.

(6) Marks extending across more than one candidate's area may be counted if the lines of the "x" or the bottom point of the check mark clearly lie inside the box or on top of the name or party affiliation or candidate area of one candidate, and no other candidate is similarly marked.

(7) Any ballot that has a mark in the target area or candidate area for one candidate, and on which other marks in the target areas or candidate areas for any other candidates have been partially erased, scratched out, or otherwise obliterated, shall be counted as a vote for the candidate for which the mark was not erased, scratched out, or otherwise obliterated, provided no other candidate is similarly marked.

(8) Any ballot that has a mark that is clearly next to (either before or after) a candidate's name, or across the name, shall be recognized as a mark for that candidate. Similarly, a mark between or over the "timing marks" of the ballot, that are clearly opposite or next to one candidate's name and not near another candidate's name, shall be recognized as a mark.

(9) A mark that is between or across more than one candidate's name, candidate area, or target area shall not be recognized as a vote.

(10) Any writing or comment on the ballot (other than a write-in) that clearly indicates the voter's support for one and only one candidate for the office, and that cannot be interpreted as a comment in favor of any other candidate in that election, shall be counted as a vote for that candidate.

(11) Any ballot that is marked for more than one candidate for the office shall be deemed an overvote and no vote shall be counted for that ballot item.

- (12) Any ballot on which there is no mark under the office, or any other mark or comment indicating support for a candidate for the office, is an undervote and shall not be counted as a vote for any candidate.
- (13) A mark that is clearly a negative or extraneous comment, or which indicates the voter's opposition to one or more candidates, shall be considered an undervote, provided the ballot is not so marked to indicate which candidate the voter supports.
- (14) If a substantial part of the candidate's name is crossed through or stricken out, the mark shall be considered an undervote and shall not be counted.

Examples of these guidelines applied to ballot markings are located in Numbered Memo 2020-32 on the State Board of Elections' website.

Authority G.S. 163-22; 163-182.7.

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Elections intends to amend the rule cited as 08 NCAC 20 .0101.

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

Proposed Effective Date: *September 1, 2021.*

Public Hearing:

Date: *May 6, 2021*

Time: *1:00 p.m.*

Location:

<https://ncgov.webex.com/ncgov/onstage/g.php?MTID=edface2783fca19ab1cd21dad70e09f0b>

Reason for Proposed Action: *This proposed amendment clarifies the number of precinct-specific observers permitted and how the lists of observers are to be submitted.*

Comments may be submitted to: *Kelly Tornow, P.O. Box 27255, Raleigh, NC 27611-7255; email rules@ncsbe.gov*

Comment period ends: *June 1, 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 20 - ELECTION OBSERVERS

08 NCAC 20 .0101 ELECTION OBSERVERS

(a) Observer Lists. The chair of each political party in a county may designate a total of two precinct-specific observers to attend each voting place on Election Day and each one-stop site during a primary or general election in accordance with this Rule. Alternate precinct-specific observers are not permitted. The county party chair may designate 10 additional at-large observers who may attend any voting place in the county. The list of observers for one-stop must designate the names of the observers who will be present on each day of early voting and, for precinct-specific observers, at each one-stop site. At-large observers may serve at any one-stop site. The chair of each State political party may designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State.

(b) Submission of Lists. The county party chair shall submit a written, signed list of county at-large observers to the county director of elections, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day. The county party chair shall submit a written, signed list of the observers appointed for each precinct to the chief judge of each precinct, with two copies provided to the chair of the county board of elections, prior to 10:00 a.m. on the fifth day prior to Election Day; the list may be delivered in care of the county director of elections. The county party chair shall submit the list of observers for one-stop before 10:00 a.m. on the fifth day before the observer is to observe. ~~The party chair may provide the list by facsimile or email provided the letters are signed.~~ The list of at-large observers to serve on Election Day may be amended prior to Election Day to substitute one or all of the at-large observers. The list of at-large observers who serve during early voting and the list of precinct-specific observers may not be amended after the submission deadline. The State party chair shall submit the written, signed list of State at-large observers by 10:00 a.m. on the fifth day prior to Election Day to the State Board, which shall disseminate the list to the county boards of elections. The list shall include the full name of each at-large observer and the county in which the observer is registered. Party chairs may provide the lists by facsimile or email provided the letters are signed. Scanned signatures are permissible.

(c) Observers at Voting Place. No more than two precinct-specific observers from each political party may be in the voting enclosure at any time. Only one at-large observer from each political party may be in the voting enclosure at any time, even if

no precinct-specific observers are present. All observers, whether precinct-specific or at-large, may be relieved after serving no less than four ~~hours.~~ hours; however, the total number of observers from each party per day cannot exceed three total observers: two precinct-specific observers and one county or State at-large observer. An observer may leave the voting place without having served for four hours, but the observer cannot be replaced by a new observer until at least four hours have passed since the first observer began serving. An observer who leaves the voting place for any reason may be prohibited by the chief judge from returning if the observer's return would cause a disruption in the voting enclosure.

(d) Observer Conduct. Observers in the voting enclosure are prohibited from engaging in certain activities. Observers who engage in prohibited conduct after receiving a warning may be required by the chief judge to leave the voting enclosure. Prohibited activities by observers include:

- (1) Wearing or distributing campaign material or electioneering;
- (2) Impeding or disrupting the voting process or speaking with voters or election assistants;
- (3) Interfering with the privacy of the voter, including positioning themselves in such a way that they can view confidential voter information on poll books or laptops or standing in such a way that they can view the contents of ballots inserted into a tabulator;
- (4) Using an electronic device to film or take photographs inside the voting enclosure;
- (5) Taking photographs, videos, or recording a voter without the consent of the voter and the chief judge;
- (6) Entering the voting booth area or attempting to view voted ballots;
- (7) Boarding a vehicle containing curbside voters; and
- (8) Providing voter assistance.

(e) Eligibility. No person who is a candidate on the ballot in a primary or general election may serve as an observer or runner in that primary or that general election. No person who serves as an observer or runner in a primary or general election may serve as a precinct official or one-stop election official in that primary or that general election.

(f) Observers for unaffiliated candidates. An unaffiliated candidate or the candidate's campaign manager may appoint two observers at each voting place as set forth in this Rule.

(g) The use of the term "chief judge" includes one-stop site managers.

Authority ~~G.S. 163A-741; 163A-821; 163A-1136; 163A-1137; 163-22; 163-45; 163-166.6; 163-166.7.~~

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Elections intends to adopt the rules cited as 08 NCAC 21 .0107, .0202, .0203, .0401, .0501 and amend the rules cited as 08 NCAC 21 .0102-.0104.

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

Proposed Effective Date: *September 1, 2021*

Public Hearing:

Date: *May 6, 2021*

Time: *1:00 p.m.*

Location:

<https://ncgov.webex.com/ncgov/onstage/g.php?MTID=edface2783fca19ab1cd21dad70e09f0b>

Reason for Proposed Action: *The rules relating to procedures for closing a committee and the certification of threshold largely reflect current agency practices and are being proposed for adoption to ensure agency compliance with Chapter 150B. Rules related to the examination/audit process and billboards reflect new agency standards. 08 NCAC 21 .0401 will set deadlines for treasurers to respond to questions or request for documents to aid program analysts in completing examinations/audits. In the past, failure of the committee treasurer to respond has resulted in significant delays. 08 NCAC 21 .0501 will provide clarity and consistency in what signs require a disclosure legend. Historically, the agency has not had a singular definition. Instead, the definition in the Campaign Finance Manual has varied based on physical characteristics and location.*

The State Board is also proposing amendments to 08 NCAC 21 .0102, .0103, .0104. These rules were adopted in 2020. In working with treasurers and representatives of Independent Expenditure Filers, it was determined that additional clarity is needed in terms of who is authorized to sign disclosure reports on behalf of an individual, person (corporation, business, etc.) or other entity.

Comments may be submitted to: *Kelly Tornow, P.O. Box 27255, Raleigh, NC 27611-7255; email rules@ncsbe.gov*

Comment period ends: *June 1, 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 21 – CAMPAIGN FINANCE

SECTION .0100 – FUNCTIONAL AREAS OF RESPONSIBILITY

08 NCAC 21 .0102 REPORTING OF INDEPENDENT EXPENDITURES

(a) Once an individual as defined in G.S. 163-278.6(55), person as defined in G.S. 163-278.6(72), or other entity required to report independent expenditures under G.S. 163-278.12(a) has made independent expenditures with a present actual or market value in excess of one hundred dollars (\$100.00) during an election as defined in G.S. 163-278.6(30), the individual, person, or entity shall report all independent expenditures, and any donations made to further independent expenditures, with the following board of elections:

- (1) if the district of the candidate or ballot issue supported or opposed is within one county, and the candidate is not running for a legislative, judicial, or district attorney office, the report shall be filed with the county board of elections; or
- (2) if the district of the candidate or ballot issue supported or opposed extends to more than one county, or the candidate is running for a legislative, judicial, or district attorney office, the report shall be filed with the State Board.

(b) An independent expenditure filer is the individual, person, or other entity making a reportable independent expenditure under G.S. 163-278.12(a). If the independent expenditure filer is an individual, the individual shall sign all reports. If the independent expenditure filer is a person or other entity, an authorized officer of the person or entity shall sign all reports.

(c) The independent expenditure filer shall file CRO-2210A Independent Expenditure Report Cover, CRO-2210B Donations to Further Independent Expenditures, and CRO-2210C Incurred Costs of Independent Expenditures available on the State Board's website unless the independent expenditure filer files reports electronically consistent with 08 NCAC 21 .0106. Independent expenditure reports filed with the county board of elections or the State Board shall include all of the following:

- (1) the independent expenditure filer's name and mailing address;
- (2) a phone number for the independent expenditure filer;
- (3) if the independent expenditure filer is an individual, the filer's principal occupation as defined in G.S. 163-278.11(a)(1);
- (4) if the independent expenditure filer is a person or entity, the principal place of business of the person or entity;
- (5) for each independent expenditure made:
 - (A) The name and mailing address of the payee;
 - (B) The amount paid;

- (C) The date the expenditure was incurred;
- (D) A description of the expenditure; and
- (E) The name of the candidate, candidates of an identified political party, or referendum supported or opposed by the independent expenditure;

(6) for each donation of more than one hundred dollars (\$100.00) that must be reported under G.S. 163-278.12(f):

- (A) the donor's name and mailing address;
- (B) if the donor is an individual, the donor's principal occupation as defined in G.S. 163-278.11(a)(1);
- (C) if the donor is a person or entity, the principal place of business of that person or entity;
- (D) the amount of the donation; and
- (E) the date of the donation; and

(7) a certification as to whether any expenditures reported were made in concert or cooperation with, or at the request or suggestion of, a candidate, a candidate campaign committee as defined in G.S. 163-278.38Z(3), a referendum committee, the agent of a candidate, the agent of a candidate campaign committee, or an agent of a referendum committee.

(d) An independent expenditure filer that makes expenditures with a present, actual, or market value in excess of five thousand dollars (\$5,000.00) during an election as defined in G.S. 163-278.6(30) shall file independent expenditure reports electronically consistent with 08 NCAC 21 .0106.

(e) For each independent expenditure report filed electronically, the individual or an authorized officer of the independent expenditure filer shall sign the Independent Expenditure Report Cover and the independent expenditure filer shall file the signed original in accordance with Paragraph (g) of this Rule with the board of elections identified in Paragraph (a) of this Rule.

(f) The independent expenditure filer shall complete and file forms within the time period set forth in G.S. 163-278.12(d). An independent expenditure filer that makes a reportable independent expenditure within 10 days of an election, and has not previously reported independent expenditures during the election the independent expenditure affects, shall file reports no later than the 10th day after independent expenditures exceed one hundred dollars (\$100.00). After the initial report, the independent expenditure filer shall continue to file independent expenditure reports according to the reporting schedule in G.S. 163-278.9 until the end of the election. The final report for a given election shall cover the period through the day of the election. If the independent expenditure filer makes independent expenditures in support of or in opposition to municipal candidates or municipal ballot issues, the independent expenditure filer shall report all independent expenditures according to the reporting schedule in Part 2 of Article 22A of Chapter 163 of the General Statutes.

(g) A report is considered filed either:

- (1) on the date it is received by hand-delivery during regular business hours at the county board of elections or State Board of Elections;

- (2) on the date it is postmarked by the United States Postal Services or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4; or
- (3) for an independent expenditure report filed electronically pursuant to Paragraph (d) of this Rule, on the date the completed report is emailed to the State Board of Elections at campaign.reporting@ncsbe.gov.

(h) A report that is missing any of the information in Paragraph (c) of this Rule shall not be considered filed in accordance with G.S. 163-278.12(d).

(i) An independent expenditure filer that makes an expenditure of five thousand dollars (\$5,000) or more or receives a donation of one thousand dollars (\$1,000) or more before an election but after the period covered by the last report due before that election, shall file a 48-hour report with the State Board or county board of elections using forms available on the State Board's website. An independent expenditure filer that makes a reportable independent expenditure within 10 days of an election, and has not previously reported independent expenditures during the election the independent expenditure affects, shall file 48-hour reports in accordance with this Paragraph. A 48-hour report shall be made using CRO-2210A Independent Expenditure Report Cover, CRO-2210B Donations to Further Independent Expenditures, and CRO-2210C Incurred Costs of Independent Expenditures. 48-hour reports may be filed by fax or email.

Authority G.S. 163-278.12; 163-278.21; 163-278.22.

08 NCAC 21 .0103 REPORTING OF SPECIAL CONTRIBUTIONS

(a) Once a person as defined in G.S. 163-278.6(72) or other entity required to report contributions under G.S. 163-278.12(b) has made contributions with a present, actual, or market value in excess of one hundred dollars (\$100.00) during an election as defined in G.S. 163-278.6(30), the person or entity shall report all contributions made, and any donations made to further contributions, with the following board of elections:

- (1) if the district of the candidate, committee, or ballot issue supported or opposed is within one county, and the candidate is not running for a legislative, judicial, or district attorney office, the report shall be filed with the county board of elections; or
- (2) if the district of the candidate, committee, or ballot issue supported or opposed extends to more than one county, or the candidate is running for a legislative, judicial, or district attorney office, the report shall be filed with the State Board.

(b) A special contributor is the person or other entity making a reportable contribution under G.S. 163-278.12(b). An authorized officer of the person or entity shall sign all reports.

(c) When reporting contributions, the special contributor shall file CRO-2215A Special Contributor Report Cover, CRO-2215B Donations to Further Contributions, and CRO-2215C Contributions to Registered Committees available on the State Board's website. Special contributor reports filed with the county

board of elections or the State Board of Elections shall include all of the following:

- (1) the special contributor's name and mailing address;
- (2) the special contributor's principal place of business;
- (3) for each contribution made;
 - (A) the name and mailing address of the recipient committee;
 - (B) the amount of the contribution;
 - (C) the date of the contribution; and
 - (D) for any in-kind contribution, a description of the expenditure;
- (4) for each donation of more than one hundred dollars (\$100.00) that must be reported under G.S. 163-278.12(f):
 - (A) the donor's name and mailing address;
 - (B) if the donor is an individual, the donor's principal occupation as defined in G.S. 163-2778.11(a)(1);
 - (D) if the donor is a person, the principal place of business of that person;
 - (E) the amount of the donation;
 - (F) the date of the donation;

(d) The special contributor shall complete and file forms within the time period set forth in G.S. 163-278.12(d). A special contributor that makes a reportable contribution within 10 days of an election, and has not previously reported contributions during that election, shall file reports no later than the 10th day after contributions exceed one hundred dollars (\$100.00). After the initial report, the special contributor shall continue to file special contributor reports according to the reporting schedule in G.S. 163-278.9 until the end of the election. The final report for a given election shall cover the period through the day of the election. If the special contributor makes contributions in support of or in opposition to municipal candidates or municipal ballot issues, the special contributor shall report all contributions according to the reporting schedule in Part 2 of Article 22A of Chapter 163 of the General Statutes.

(e) A report is considered filed either:

- (1) on the date it is received by hand-delivery during regular business hours at the county board of elections or State Board of Elections; or
- (2) on the date it is postmarked by the United States Postal Services or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4.

(f) A report that is missing any of the information in Paragraph (c) shall not be considered filed in accordance with G.S. 163-278.12(d).

(g) A special contributor that makes a contribution of five thousand dollars (\$5,000) or more or receives a donation of one thousand dollars (\$1,000) or more before an election but after the period covered by the last report due before that election, shall file a 48-hour report with the State Board or county board of elections using forms available on the State Board's website. A special contributor that makes a reportable contribution within 10 days of an election, and has not previously reported contributions during

that election, shall file 48-hour reports in accordance with this Paragraph. A 48-hour report shall be made using CRO-2215A Special Contributor Report Cover, CRO-2215B Donations to Further Contributions, and CRO-2215C Contributions to Registered Committees. 48-hour reports may be filed by fax or email.

Authority G.S. 163-278.12; 163-278.21; 163-278.22.

08 NCAC 21 .0104 REPORTING OF ELECTIONEERING COMMUNICATIONS

(a) Once an individual as defined in G.S. 163-278.6(55), person as defined in G.S. 163-278.6(72), or other entity required to report electioneering communications under G.S. 163-278.12C has incurred an expense for the direct cost of producing or airing electioneering communications with a present actual or market value aggregating in excess of five thousand dollars (\$5,000) during an election as defined in G.S. 163-278.6(8j), the individual, person, or entity shall report all electioneering communications, and any donations made to further electioneering communications, with the following board of elections:

- (1) if the district of the candidate referred to is within one county, and the candidate is not running for a legislative, judicial or district attorney office, the report shall be filed with the county board of elections; or
- (2) if the district of the candidate referred to extends to more than one county, or the candidate is running for a legislative, judicial or district attorney office, the report shall be filed with the State Board.

(b) For an individual required to report electioneering communications, the individual shall sign all reports. For a person or other entity required to report electioneering communications, an authorized officer of the person or entity shall sign all reports.

~~(b)(c)~~ The direct cost of producing or airing electioneering communications includes, but is not limited to, the cost of studio rental time; video or audio recording media; staff salaries; consultant fees; talent; airtime on broadcast, cable or satellite radio and television stations; and the charges for a broker to purchase the airtime.

~~(c)(d)~~ When reporting electioneering communications, the individual, person, or entity shall file CRO-2310 Electioneering Communications Report Cover, CRO-2320 Controlling/Directing Entity List; CRO-2330 Receipts for Electioneering Communications, and CRO-2340 Incurred Costs for Electioneering Communications available on the State Board's website. Electioneering Communication reports filed with the county board of elections or the State Board of Elections shall include all of the following:

- (1) the name and mailing address of the individual, person, or entity incurring the expense;
- (2) a phone number for the individual, person, or entity incurring the expense;
- (3) the name and mailing address of the custodian of the books and accounts of the individual, person, or entity incurring the expense;

- (4) if the expense is incurred by an individual, the individual's principal occupation as defined in G.S. 163-278.11(a);
- (5) if the expense is incurred by a person or entity, the principal place of business of the person or entity;
- (6) if an individual, person, or entity is sharing or exercising direction or control over the activities of the individual, person, or entity incurring the expense with regards to the electioneering communication:

- (A) the name and mailing address of the individual, person or entity sharing or exercising direction or control;
- (B) if an individual, the individual's principal occupation as defined in G.S. 163-278.11(a)(1); and
- (C) if a person or entity, the principal place of business of the person or entity;

- (7) for each electioneering communication reported:

- (A) the name and mailing address of each individual, person or entity paid to produce the electioneering communication;
- (B) the amount paid to each individual, person or entity to produce the electioneering communication;
- (C) the date of the electioneering communication;
- (D) a description of the electioneering communication, including any title; and
- (E) the name of the candidate or candidates referred to in the electioneering communication;

- (8) for each donation of more than one thousand dollars (\$1,000) during the reporting period made to further the electioneering communication:

- (A) the donor's name and mailing address;
- (B) if the donor is an individual, the individual's principal occupation as defined in G.S. 163-278.11(a)(1);
- (C) if the donor is a person or entity, the principal place of business of the person or entity;
- (D) the amount of the donation; and
- (E) the date of the donation.

~~(d)(e)~~ The individual, person, or entity required to report electioneering communications shall ~~complete and sign~~ file the forms within the time period set forth in G.S. 163-278.12C(b). After the initial report, the individual, person, or entity incurring the expense shall continue to file electioneering communications reports according to the reporting schedule in G.S. 163-278.9 until the end of the election. The final report for a given election shall cover the period through the day of the election.

~~(e)(f)~~ A report is considered filed either:

- (1) on the date it is received by hand-delivery during regular business hours at the county board of elections or State Board of Elections; or
- (2) on the date it is postmarked by the United States Postal Services or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4.

(g) A report that is missing any of the information in Paragraph (c) shall not be considered filed in accordance with G.S. 163-278.12C.

(h) A 48-hour report shall be filed with the State Board of Elections or county board of elections using forms provided by the State Board if an individual, person or entity that produces or airs an electioneering communication incurs an expense of five thousand dollars (\$5,000) or more or receives a donation of one thousand dollars (\$1,000) or more for making an electioneering communication before an election but after the period covered by the last report due before that election. A 48-hour report shall be made using CRO-2310 Electioneering Communications Report Cover, CRO-2320 Controlling/Directing Entity List, CRO-2330 Receipts for Electioneering Communications, and CRO-2340 Incurred Costs for Electioneering Communications. 48-hour reports may be filed by fax or email.

Authority G.S. 163-278.12C; 163-278.21; 163-278.22.

08 NCAC 21 .0107 ELECTRONIC SIGNATURE

Any political committee, referendum committee, or other filer authorized to submit reports, disclosures or certifications consistent with 08 NCAC 21 .0106 may use an electronic signature permissible under G.S. 66-58.5.

Authority G.S. 163-278.9; 163-278.21.

SECTION .0200 - NONCOMPLIANCE

08 NCAC 21 .0202 PROCEDURES FOR CLOSING A COMMITTEE

(a) A political committee may close and cease filing reports according to the schedules set forth in G.S. 163-278.9 or Article 22A, Part 2 if it stops receiving contributions or making expenditures and disposes of all assets and liabilities. In order to close, a political committee shall file all of the following with the board of elections:

- (1) a certification that the political committee intends to close and cease existence and that all assets have been disposed of and reported; and
- (2) a Final Report setting forth the information in G.S. 163-278.11 and covering the period since the last report filed under G.S. 163-278.9 or Article 22A, Part 2. The Final Report shall disclose no cash on hand at the end date of the reporting period; no outstanding loans, and no outstanding debts and obligations owed by the political committee.

(b) A political committee that qualifies under threshold in accordance with G.S. 163-278.10A shall only file a certification as described in Subparagraph (a)(1) of this Rule.

(c) A political committee shall file the certification and Final Report by filing forms available on the State Board of Elections website with the board of elections. The certification and Final Report are considered filed:

- (1) on the date received by hand-delivery during regular business hours at the board of elections;
- (2) on the date postmarked by the United States Postal Service or marked with an equivalent marking by a delivery service authorized by G.S. 1A-1, Rule 4.

(d) Notwithstanding Paragraph (c) of this Rule, a political committee required to file reports electronically pursuant to G.S. 163-278.9(i) shall complete and file a Final Report consistent with 08 NCAC 21 .0106. All other political committees may elect to file a Final Report consistent with 08 NCAC 21 .0106.

(e) The certification in Subparagraph (a)(1) of this Rule shall be filed within 15 calendar days of the Final Report.

(f) Upon receipt of the certification and Final Report, a political committee that is eligible to close shall be placed in "closed pending" status. A political committee that is closed pending is not required to file reports under G.S. 163-278.9 or Article 22A, Part 2. A political committee that is closed pending shall continue to preserve records consistent with G.S. 163-278.35. The political committee shall be closed after the board of elections completes a final examination of the political committee's reports and all potential prohibited transactions are resolved and all amended reports are filed. The State Board may order a committee closed that has not resolved potential prohibited transactions or filed amended reports.

(g) A candidate committee shall not close after the candidate supported files a notice of candidacy, or the candidate's name has been placed on the general election ballot pursuant to G.S. 163-122. A candidate committee may close after the candidate supported withdraws as a candidate pursuant to G.S. 163-106.4 or after the certificate of nomination or election is issued under G.S. 163-182.15.

(h) A political committee shall not close if:

- (1) the political committee has failed to file a report required by G.S. 163-278.9 or Article 22A, Part 2; or
- (2) the political committee has an unpaid penalty assessed under G.S. 163-278.34. A political committee may close after the State Board waives a penalty under G.S. 163-278.34;

(i) A closed or closed pending political committee may re-open at any time. A committee shall be re-opened upon receipt of an Organizational Report as described in G.S. 163-278.9(a)(1). A political committee shall be assigned the same ID Number issued by the board of elections upon re-opening.

Authority G.S. 163-278.6(74); 163-278.21.

08 NCAC 21 .0203 CERTIFICATION OF THRESHOLD

(a) A political committee that intends to stay within the threshold in G.S. 163-278.10A for a subsequent election cycle shall file a certification with the board of elections according to the following schedule:

- (1) for a candidate committee with an election cycle ending on December 31 of an odd-numbered year, by January 31 of the next even-numbered year.
- (2) for a candidate committee with an election cycle ending on December 31 of an even-numbered year, by January 31 of the next odd-numbered year.
- (3) for a political party committee or affiliated party committee with an election cycle ending on December 31 of an even-numbered year, by January 31 of the next odd-numbered year.

(b) A political committee that fails to file the certification by the due date in Paragraph (a) of this Rule, shall be responsible for filing all reports required in G.S. 163-278.9 or G.S. 163-278.40B, G.S. 163-278.40C, G.S. 163-278.40D or G.S. 163-278.40E for the subsequent election cycle.

Authority G.S. 163-278.10A; 163-278.21.

SECTION .0400 - EXAMINATIONS

08 NCAC 21 .0401 EXAMINATIONS BY STATE BOARD OF ELECTIONS

(a) After completing an examination of reports for a given period, State Board staff shall submit in writing to the treasurer any requests to inspect detailed accounts, requests to inspect bank records, including but not limited to checks or other written verifications of payment, or other questions related to a report's conformance to Article 22A, Article 22M or to the truth. If a candidate committee, a copy of the correspondence shall also be submitted in writing to the candidate. The treasurer or assistant treasurer shall respond with the requested records or written answers to questions within 15 business days. An extension of time may be granted for good cause. To obtain an extension of time, the treasurer or assistant treasurer shall submit the request in writing within 15 business days of receiving the request for records or written answers. For purposes of this Rule, good cause exists when:

- (1) there is a death in the family of the candidate, treasurer, assistant treasurer or custodian of books;
- (2) the candidate, treasurer, assistant treasurer or custodian of books, or someone in his or her family, is ill or hospitalized;
- (3) the candidate, treasurer, assistant treasurer or custodian of books is unable to provide a timely response due to a state-declared natural disaster;
- (4) there is any change in the name, address or email address of the treasurer within 10 calendar days preceding the submission of the written requests or questions; or
- (5) due to the complexity of the response required, State Board staff determines additional time is necessary for the committee to provide a sufficient response.

(b) State Board staff shall submit any subsequent requests to inspect detailed accounts, requests to inspect bank records, or

other questions in writing to the treasurer. For each subsequent submission of requests or questions, the treasurer or assistant treasurer shall respond within 15 business days. An extension of time may be granted for good cause consistent with Paragraph (a) of this Rule.

(c) After the expiration of time for all requests and questions in Paragraphs (a) and (b) of this Rule, State Board staff shall prepare a draft examination memorandum. The draft examination memorandum shall set forth any potential prohibited transactions, reporting errors, or informational items identified by State Board staff during the examination. The draft examination memorandum shall include any recommendations for corrective actions and requests that the committee amend any reports. A copy of the draft examination memorandum shall be submitted in writing to the treasurer. If a candidate committee, a copy of the draft examination memorandum shall also be submitted in writing to the candidate. The treasurer or assistant treasurer shall respond in writing within 20 business days.

(d) After the expiration of time in Paragraph (c) of this Rule, State Board staff shall finalize the examination memorandum. State Board staff shall note any amended reports filed by the treasurer prior to the expiration of time in Paragraph (c) of this Rule. State Board staff shall publish a copy of the final examination memorandum and a copy of any written response provided by the treasurer or assistant treasurer on the State Board of Elections website.

(e) Any day in which the State Board of Elections office is closed shall not be counted as a business day for the purpose of this Rule.

(f) This Rule shall not apply to any examination by a county board of elections of a committee that regularly files reports with the county board of elections.

Authority G.S. 163-278.8; 163-278.21; 163-278.24.

SECTION .0500 – DISCLOSURE REQUIREMENTS FOR MEDIA ADVERTISEMENTS

08 NCAC 21 .0501 BILLBOARDS

For the purpose of Chapter 163, Article 22A, Part 1A, a "billboard" is any sign, flat surface or other display greater than 2,160 square inches.

Authority G.S. 163-278.21; 163-278.39.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to adopt the rules cited as 10A NCAC 13F .1801, .1802; 13G .1701 and .1702.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://info.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: *October 1, 2021*

Public Hearing:
Date: *May 11, 2021*

Time: 10:00 a.m.

Location: Being held by teleconference call using the following:
Telephone number: 1-877-848-7030; Access code: 5133201

Reason for Proposed Action: On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of SARS-CoV-2, commonly known as COVID-19. COVID-19 is a respiratory disease that can result in serious illness or death. The World Health Organization, the Center for Disease Control and Prevention (CDC), and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency. In order to protect the health and safety of citizens residing in adult care homes and family care homes and the healthcare workforce employed in these facilities, the N.C. Medical Care Commission adopted emergency and temporary rules made effective October 23, 2020 and December 30, 2020 respectively to save lives in adult care homes and family care homes and protect the health of the residents and staff.

North Carolina's licensed adult care homes and family care homes, commonly known as "assisted living facilities," serve a population consisting predominantly of individuals in the age range most at risk of contracting a communicable disease (65+), and individuals with one or more of the underlying health conditions that put them at even greater risk. Currently, there are no permanent rules governing the infection control procedures in facilities to prevent, report, and manage the spread of communicable diseases. Over the past few years, the population of residents in adult care homes has not only increased in age, but also in acuity of health status and medical conditions. It is critically important that facilities are prepared, and staff are trained to understand the basic infection prevention practices needed to protect residents from communicable diseases.

Because of the need, and to make rule adoptions permanent in the N.C. Administrative Code, the North Carolina Medical Care Commission proposes to ensure that adult care homes and family care homes are prepared for and adequately respond to communicable diseases, by requiring infection prevention and control policies and procedures, reporting of suspected communicable disease cases, and staff training to ensure safe care of residents and protection of facility staff.

Comments may be submitted to: Nadine Pfeiffer, 809 Ruggles Drive, 2701 Mail Service Center, Raleigh, NC 27699-2701; email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: June 1, 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 13 - NC MEDICAL CARE COMMISSION

SUBCHAPTER 13F – LICENSING OF ADULT CARE HOMES OF SEVEN OR MORE BEDS

SECTION .1800 - INFECTION PREVENTION AND CONTROL

10A NCAC 13F .1801 INFECTION PREVENTION AND CONTROL PROGRAM

(a) In accordance with Rule .1211(a)(4) of this Subchapter and G.S. 131D-4.4A(b)(1), the facility shall establish and implement an infection prevention and control program (IPCP) consistent with the federal Centers for Disease Control and Prevention (CDC) published guidelines on infection prevention and control.

(b) The facility shall assure the following policies and procedures are established and implemented consistent with the federal CDC published guidelines, which are hereby incorporated by reference including subsequent amendments and editions, on infection control that are accessible at no charge online at <https://www.cdc.gov/infectioncontrol>, and addresses the following:

- (1) Standard and transmission-based precautions, for which guidance can be found on the CDC website at <https://www.cdc.gov/infectioncontrol/basics>, including:
 - (A) respiratory hygiene and cough etiquette;
 - (B) environmental cleaning and disinfection;
 - (C) reprocessing and disinfection of reusable resident medical equipment;
 - (D) hand hygiene;
 - (E) accessibility and proper use of personal protective equipment (PPE); and
 - (F) types of transmission-based precautions and when each type is indicated, including contact precautions, droplet precautions, and airborne precautions;
- (2) When and how to report to the local health department when there is a suspected or

confirmed reportable communicable disease case or condition, or communicable disease outbreak in accordance with Rule .1802 of this Section:

- (3) Measures the facility should consider taking in the event of a communicable disease outbreak to prevent the spread of illness, such as isolating infected residents; limiting or stopping group activities and communal dining; limiting or restricting outside visitation to the facility; screening staff, residents and visitors for signs of illness; and use of source control as tolerated by the residents.
- (4) Strategies for addressing potential staffing issues and ensuring staffing to meet the needs of the residents during a communicable disease outbreak;

(c) When a communicable disease outbreak has been identified at the facility or there is an emerging infectious disease threat, the facility shall ensure implementation of the facility's IPCP, related policies and procedures, and published guidance issued by the CDC; however, if guidance or directives specific to the communicable disease outbreak or emerging infectious disease threat have been issued in writing by the North Carolina Department of Health and Human Services or local health department, the specific guidance or directives shall be implemented by the facility.

(d) In accordance with Rule .1211 of this Subchapter and G.S. 131D-4.4A(b)(4), the facility shall ensure all staff are trained within 30 days of hire and annually on the policies and procedures listed in Subparagraphs (b)(1) through (2) of this Rule.

(e) The policies and procedures listed in Paragraph (b) of this Rule shall be maintained in the facility and accessible to staff working at the facility.

Authority G.S. 131D-2.16; 131D-4.4A; 143B-165.

10A NCAC 13F .1802 REPORTING AND NOTIFICATION OF A SUSPECTED OR CONFIRMED COMMUNICABLE DISEASE OUTBREAK

(a) The facility shall report suspected or confirmed communicable diseases and conditions within the time period and in the manner determined by the Commission for Public Health as specified in 10A NCAC 41A .0101 and 10A NCAC 41A .0102(a)(1) through (a)(3), which are hereby incorporated by reference, including subsequent amendments.

(b) The facility shall inform the residents and their representative(s) and staff within 24 hours following confirmation by the local health department of a communicable disease outbreak. The facility, in its notification to residents and their representative(s), shall:

- (1) not disclose any personally identifiable information of the residents or staff;
- (2) provide information on the measures the facility is taking to prevent or reduce the risk of transmission, including whether normal operations of the facility will change;

- (3) provide weekly updates until the communicable illness within the facility has resolved, as determined by the local health department; and
- (4) provide education to the resident(s) concerning measures they can take to reduce the risk of spread or transmission of infection.

Authority G.S. 131D-2.16; 131D-4.4B; 131D-4.5; 143B-165.

SUBCHAPTER 13G – LICENSING OF FAMILY CARE HOMES

SECTION .1700 - INFECTION PREVENTION AND CONTROL

10A NCAC 13G .1701 INFECTION PREVENTION AND CONTROL PROGRAM

(a) In accordance with Rule .1211(a)(4) of this Subchapter and G.S. 131D-4.4A(b)(1), the facility shall establish and implement an infection prevention and control program (IPCP) consistent with the federal Centers for Disease Control and Prevention (CDC) published guidelines on infection prevention and control.

(b) The facility shall assure the following policies and procedures are established and implemented consistent with the federal CDC published guidelines, which are hereby incorporated by reference including subsequent amendments and editions, on infection control that are accessible at no charge online at <https://www.cdc.gov/infectioncontrol>, and addresses the following:

- (1) Standard and transmission-based precautions, for which guidance can be found on the CDC website at <https://www.cdc.gov/infectioncontrol/basics>, including:
 - (A) respiratory hygiene and cough etiquette;
 - (B) environmental cleaning and disinfection;
 - (C) reprocessing and disinfection of reusable resident medical equipment;
 - (D) hand hygiene;
 - (E) accessibility and proper use of personal protective equipment (PPE); and
 - (F) types of transmission-based precautions and when each type is indicated, including contact precautions, droplet precautions, and airborne precautions;

(2) When and how to report to the local health department when there is a suspected or confirmed reportable communicable disease case or condition, or communicable disease outbreak in accordance with Rule .1702 of this Section:

(3) Measures the facility should consider taking in the event of a communicable disease outbreak to prevent the spread of illness, such as isolating infected residents; limiting or stopping group

activities and communal dining; limiting or restricting outside visitation to the facility; screening staff, residents and visitors for signs of illness; and use of source control as tolerated by the residents.

- (4) Strategies for addressing potential staffing issues and ensuring staffing to meet the needs of the residents during a communicable disease outbreak;

(c) When a communicable disease outbreak has been identified at the facility or there is an emerging infectious disease threat, the facility shall ensure implementation of the facility's IPCP, related policies and procedures, and published guidance issued by the CDC; however, if guidance or directives specific to the communicable disease outbreak or emerging infectious disease threat have been issued in writing by the North Carolina Department of Health and Human Services or local health department, the specific guidance or directives shall be implemented by the facility.

(d) In accordance with Rule .1211 of this Subchapter and G.S. 131D-4.4A(b)(4), the facility shall ensure all staff are trained within 30 days of hire and annually on the policies and procedures listed in Subparagraphs (b)(1) through (2) of this Rule.

(e) The policies and procedures listed in Paragraph (b) of this Rule shall be maintained in the facility and accessible to staff working at the facility.

Authority G.S. 131D-2.16; 131D-4.4A; 143B-165.

10A NCAC 13G .1702 REPORTING AND NOTIFICATION OF A SUSPECTED OR CONFIRMED COMMUNICABLE DISEASE OUTBREAK

(a) The facility shall report suspected or confirmed communicable diseases and conditions within the time period and in the manner determined by the Commission for Public Health as specified in 10A NCAC 41A .0101 and 10A NCAC 41A .0102(a)(1) through (a)(3), which are hereby incorporated by reference, including subsequent amendments.

(b) The facility shall inform the residents and their representative(s) and staff within 24 hours following confirmation by the local health department of a communicable disease outbreak. The facility, in its notification to residents and their representative(s), shall:

- (1) not disclose any personally identifiable information of the residents or staff;
- (2) provide information on the measures the facility is taking to prevent or reduce the risk of transmission, including whether normal operations of the facility will change;
- (3) provide weekly updates until the communicable illness within the facility has resolved, as determined by the local health department; and
- (4) provide education to the resident(s) concerning measures they can take to reduce the risk of spread or transmission of infection.

Authority G.S. 131D-2.16; 131D-4.4B; 131D-4.5; 143B-165.

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on February 18, 2021 Meeting.

**REGISTER CITATION TO THE
NOTICE OF TEXT****GASOLINE AND OIL INSPECTION BOARD**

Standard Specifications 02 NCAC 42 .0201* 34:22 NCR

MENTAL HEALTH/DD/SAS, COMMISSION FOR

Schedule V 10A NCAC 26F .0106 n/a G.S. 90-88(d)

INDUSTRIAL COMMISSION

Contact Information 11 NCAC 23A .0109 35:09 NCR

Contact Information 11 NCAC 23B .0105 35:09 NCR

Duties of Parties, Representatives, and Attorneys 11 NCAC 23G .0104* 35:09 NCR

ALCOHOLIC BEVERAGE CONTROL COMMISSION

Records Required 14B NCAC 15A .1405* 35:09 NCR

Mixed Beverages Permit/Invoice Form 14B NCAC 15A .1802* 35:09 NCR

Delivery of Mixed Beverages Permittee Orders 14B NCAC 15A .1903* 35:09 NCR

Transportation of Mixed Beverages Permittee Orders 14B NCAC 15A .1904* 35:09 NCR

Purchase Transportation Permit/Purchase Invoice Form 14B NCAC 15B .0501 35:09 NCR

ENVIRONMENTAL QUALITY, DEPARTMENT OF

Definitions 15A NCAC 13B .1501* 35:09 NCR

Applicability and Application Requirements 15A NCAC 13B .1502* 35:09 NCR

Standards for Qualification for Tax Certification 15A NCAC 13B .1503* 35:09 NCR

Recycling Process 15A NCAC 13B .1504 35:09 NCR

Recycling Equipment 15A NCAC 13B .1505 35:09 NCR

Incidental or Supportive Facilities and Equipment 15A NCAC 13B .1506 35:09 NCR

Operational Requirements for Facilities and Equipment 15A NCAC 13B .1507 35:09 NCR

Application for Tax Certification 15A NCAC 13B .1508 35:09 NCR

Severability 15A NCAC 13B .1510 35:09 NCR

Facilities for Reducing Hazardous Waste Generated 15A NCAC 13B .1512 35:09 NCR

Equipment for Reducing Hazardous Waste Generated 15A NCAC 13B .1513 35:09 NCR

Appeals Procedure 15A NCAC 13B .1514 35:09 NCR

EDUCATION, STATE BOARD OF

Test Administration 16 NCAC 06D .0302 35:07 NCR

Accountability Coordinator 16 NCAC 06D .0303 35:07 NCR

End-of-Course Assessments 16 NCAC 06D .0305 35:07 NCR

Testing Code of Ethics 16 NCAC 06D .0306 35:07 NCR

Test Administration in Public Schools 16 NCAC 06D .0307* 34:13 NCR

Test Coordinators, Administrators and Proctors 16 NCAC 06D .0308* 34:13 NCR

Interscholastic Athletics 16 NCAC 06E .0202 35:05 NCR

<u>Athletic Injury Management</u>	16 NCAC 06E .0203	35:05 NCR
<u>Interscholastic Athletes</u>	16 NCAC 06E .0204*	34:13 NCR
<u>Athletic Trainers</u>	16 NCAC 06E .0206*	34:13 NCR

FUNERAL SERVICE, BOARD OF

<u>Waiver</u>	21 NCAC 34A .0128	35:09 NCR
<u>Renewals: Notices</u>	21 NCAC 34B .0308*	35:09 NCR

The following rules are subject to Legislative Review.

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Permit and Application Fees</u>	15A NCAC 02Q .0203*	35:07 NCR
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EDUCATION, STATE BOARD OF

<u>Requirements Regarding End-of-Course Tests</u>	16 NCAC 06D .0309*	34:13 NCR
<u>Testing Code of Ethics</u>	16 NCAC 06D .0311*	34:13 NCR

DEPARTMENT OF TRANSPORTATION

<u>Local Zoning Authorities</u>	19A NCAC 02E .0204*	34:13 NCR
<u>Applications</u>	19A NCAC 02E .0206*	34:13 NCR
<u>Repair/Maintenance/Alteration/Reconstruction of Signs</u>	19A NCAC 02E .0225*	34:13 NCR

**TITLE 02 - DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES**

02 NCAC 42 .0201 STANDARD SPECIFICATIONS

(a) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for gasoline with the following modifications:

- (1) applications for temporary exceptions to vapor pressure and vapor-liquid ratio specifications as provided in this Subparagraph shall be made to the Director. Said applications shall contain evidence that outlets marketing gasoline in North Carolina cannot be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the Board at which time the Board shall establish the duration of the exception;
- (2) the minimum lead content for gasoline registered or labeled as "leaded" shall be as defined in 02 NCAC 42 .0102;
- (3) vapor pressure and vapor-liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher

volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification.

(b) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for alcohol blends with the following modifications:

- (1) a vapor pressure tolerance not exceeding one pound per square inch (1 psi) for ethanol blends of 9 percent to 15 percent by volume;
- (2) vapor pressure seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification;
- (3) applications for temporary exceptions to vapor pressure specifications as provided in this Subparagraph shall be made to the Director. Said applications shall contain evidence that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the Board at which time the

Board shall establish the duration of the exception;

- (4) the minimum temperature at 50 percent evaporated shall be 150 degrees F (66 degrees C) as determined by ASTM Test Method D 86 for ethanol blends of 1 percent to 15 percent by volume;
- (5) the minimum lead content for gasoline and alcohol blends registered or labeled as "leaded" shall be as defined in 02 NCAC 42 .0102;
- (6) octane rating shall not be less than the octane index certified on the brand name registration as required by 02 NCAC 42 .0500;
- (7) all blends, both leaded and unleaded, shall be blended according to the EPA "Substantially Similar" rule found in the Clean Air Act, CAA Section 211(f)(1)(B), or an EPA waiver for unleaded fuel;
- (8) water tolerance shall be such that no phase separation occurs when subjected to a temperature equal to the temperatures specified in the table for "Maximum Temperature for Phase Separation, C," ASTM D 4814;
- (9) the vapor-liquid ratio specification shall be waived for ethanol blends of up to 10 percent.

(c) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 975, "Standard Specification for Diesel Fuel Oils" as standard specification for diesel motor fuels and renewable diesel fuels with the following modification: For diesel motor fuel grade 2-D, the minimum flash point as determined by ASTM Test Method D 56 shall be 115 degrees F (46 degrees C).

(d) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 396, "Standard Specification for Fuel Oils" as standard specification for fuel oils and blends of biodiesel and fuel oil.

(e) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 3699, "Standard Specification for Kerosene" as standard specification for kerosenes with the following modification: For grade 2-K, the presence or absence of coloring matter shall in no way be determinative of whether a substance meets the requirements of this grade of kerosene.

(f) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 6751, "Standard Specification for Biodiesel (B100) Blend Stock for Distillate Fuels" as standard specification for biodiesel (B100) and for B99 (a blend of 99 percent biodiesel and one percent petroleum diesel).

(g) The Board hereby adopts by reference, including subsequent amendments and editions, ASTM D 5798, "Standard Specification for Ethanol Fuel Blends for Flexible Fuel Automotive Spark-Ignition Engines" as standard specification for Ethanol Flex Fuel.

(h) The Board hereby adopts by reference, including subsequent amendments and editions, NIST Handbook 130, "Uniform Engine Fuels, Petroleum Products and Automotive Lubricants Regulation," section 2.2.1 "Premium Diesel Fuel" as the standard specification of premium diesel fuels in addition to ASTM D 975. Copies of this document may be obtained at no cost from the NIST

Web site - <https://www.nist.gov/pml/weights-and-measures/publications/nist-handbooks/other-nist-handbooks/other-nist-handbooks-2-1>

(i) In addition to meeting all specification requirements as set forth in this Rule, each fuel must be suitable for the intended use. Motor fuels shall not contain concentrations of methyl tertiary butyl ether (MTBE) in violation of G.S. 119-26.3.

(j) ASTM documents adopted by reference herein are available for inspection in the office of the Director of the Standards Division and may be obtained from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 or their Web site - www.astm.org, at the following cost for each document: D 396, fifty-eight dollars (\$58.00); D 975, seventy-five dollars (\$75.00); D 3699, fifty-two dollars (\$52.00); D 4814, seventy-five dollars (\$75.00); D 5798, fifty-two dollars (\$52.00); and D 6751 fifty-eight dollars (\$58.00).

History Note: Authority G.S. 119-26; 119-26.1; Eff. December 1, 1981;

Amended Eff. September 1, 1992; May 1, 1990; March 1, 1989; June 1, 1987;

Temporary Amendment Eff. March 14, 2008;

Amended Eff. July 1, 2008;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 19, 2015;

Amended Eff. March 1, 2021.

TITLE 10A - DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 26F .0106 SCHEDULE V

(a) Schedule V shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name or brand name designated and listed in either G.S. 90-93 or this Rule. Each drug or substance is set forth below with its corresponding Drug Enforcement Administration (DEA) controlled substances code number set forth in the Code of Federal Regulations, Title 21, Section 1308.15.

(b) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

- (1) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams,
- (2) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams,
- (3) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams,
- (4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit,
- (5) not more than 100 milligrams of opium per 100 milliliters or per 100 grams,

- (6) not more than 0.5 milligrams of difenoxin and not less than 25 micrograms atropine sulfate per dosage unit.

(c) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers: Pyrovalerone - DEA controlled substances code number 1485.

(d) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

- (1) Lacosamide – DEA controlled substances code number 2746; and
- (2) Ezogabine – DEA controlled substances code number 2779.

History Note: Authority G.S. 90-88; 90-93; 143B-147; Eff. June 30, 1978; Amended Eff. July 1, 2012; February 1, 2010; April 1, 1992; August 1, 1988; December 1, 1987; April 1, 1983; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016; Amended Eff. March 1, 2021; January 1, 2019.

TITLE 11 - DEPARTMENT OF INSURANCE

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 provide and maintain current 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 contactinfo@ic.nc.gov, facsimile to (919) 715-0282, U.S. mail sent to Office of the Clerk, 1236 Mail Service Center, Raleigh North Carolina 27699-1236, private courier service in accordance with Rule .0101 of this Section, or hand delivery in accordance with Rule .0101 of this Section.
- (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 contactinfo@ic.nc.gov, facsimile to (919) 715-0282, U.S. mail sent to Office of the Clerk, 1236 Mail Service Center, Raleigh North Carolina 27699-1236, private courier service in

accordance with Rule .0101 of this Section, or hand delivery in accordance with Rule .0101 of this Section.

(d) All carriers, third party administrators, and self-insured employers shall provide the Commission, by sending an email to contactinfo@ic.nc.gov, with an email address for service of claim-related documents in cases where the Commission does not have email contact information for a specific representative assigned to the claim.

(e) Instructions on how to provide and update contact information via EDFP are available at <https://www.ic.nc.gov/docfiling.html>.

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

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, facsimile to (919) 715-0282, U.S. mail sent to Office of the Clerk, 1236 Mail Service Center, Raleigh North Carolina 27699-1236, private courier service in accordance with Rule .0101 of this Section, or hand delivery in accordance with Rule .0101 of this Section.

(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 provide and maintain current contact information for the Commission's records via EDFP.

(e) Instructions on how to provide and update contact information via EDFP are available at <https://www.ic.nc.gov/docfiling.html>.

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

11 NCAC 23G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS

(a) Attendance. The following persons shall attend the mediated settlement conference:

- (1) all individual parties;
- (2) in a workers' compensation case, a representative of the employer at the time of injury if:
 - (A) the employer, instead of or in addition to the insurance company or

- administrator, has decision-making authority with respect to settlement;
 - (B) the employer is offering the claimant employment and the suitability of that employment is in issue;
 - (C) the employer and the claimant have agreed to simultaneously mediate non-compensation issues arising from the injury; or
 - (D) the Commission orders the employer representative to attend the conference if the representative's attendance is necessary to resolve matters in dispute in the subject action;
- (3) an officer, employee, or agent of any party that is not a natural person or a governmental entity who is not the party's outside counsel and who has the authority to decide on behalf of the party whether and on what terms to settle the action;
- (4) in a workers' compensation case, an employee or agent of any party that is a governmental entity who is not the party's outside counsel or Attorney General's counsel responsible for the case and who has the authority to decide on behalf of the party and on what terms to settle the action;
- (5) when the governing law prescribes that the terms of a proposed settlement may be approved only by a Board, an employee or agent who is not the party's outside counsel or Attorney General's counsel responsible for the case and who has the authority to negotiate on behalf of and to make a recommendation to the Board. Pursuant to G.S. 143-295, an employee or agent of the named governmental entity or agency is not required to attend the mediated settlement conference. The Attorney General shall attempt to make an employee or agent of the named governmental entity or agency in a State tort claim available via telecommunication, and mediation shall not be delayed due to the absence or unavailability of the employee or agent of the named governmental entity or agency;
- (6) the counsels of record. Appearance by counsel does not dispense with or waive the required attendance of the parties listed in Subparagraphs (1) through (4);
- (7) a representative of each defendant's primary workers' compensation or liability insurance carrier or self-insured that may be obligated to pay all or part of any claim presented in the action. Each carrier or self-insured shall be represented at the conference by an officer, employee, or agent who is not the party's outside counsel and who has the authority to decide on behalf of the carrier or self-insured whether and on what terms to settle the action, or who has been authorized to negotiate on

behalf of the carrier or self-insured and can communicate during the conference with persons who have the decision making authority; and

- (8) by order of the Commission, other representatives of parties, employers, or carriers, who may be obligated to pay all or part of any claim presented in the action and who are not required to attend the conference pursuant to Subparagraphs (1) through (6) of this Paragraph, if the Commission determines that the representative's attendance is necessary for purposes of resolving the matters in dispute in the subject action. Any employer or carrier who may be obligated to pay all or part of any claim presented in the action and who is not required to attend the mediated settlement conference pursuant to Subparagraphs (1) through (6) of this Paragraph or by Commission orders, may attend the conference if the employer or carrier elects to attend. If, during the conference, the mediator determines that the attendance of one or more additional persons is necessary to resolve the matters in dispute in the subject action, the mediator may recess the conference and reconvene the conference at a later date and time to allow the additional person or persons to attend.

(b) Any party or person required to attend a mediated settlement conference shall attend the conference until an agreement is reduced to writing and signed as provided in Paragraph (e) of this Rule, or until an impasse has been declared. "Attendance" shall mean in-person attendance whenever the mediation rules approved by the North Carolina Supreme Court that are in effect at the time of the mediation for use in the Superior Court division require in-person attendance. During any time that attendance means in-person attendance, any party or person, including the mediator, may have the in-person attendance requirement excused or modified by agreement of all the parties and persons required to attend the mediation conference, including the mediator, or by order of the Commission in the interests of justice upon motion of a party and notice to all parties and persons required to attend the conference, including the mediator. "Attendance" shall mean attendance using remote technology whenever the mediation rules approved by the North Carolina Supreme Court that are in effect at the time of the mediation for use in the Superior Court division require attendance through the use of remote technology. During any time that attendance means attendance through the use of remote technology, any party or person required to attend the conference, including the mediator, may have the remote technology attendance requirement excused or modified by agreement of all parties and persons required to attend the conference, including the mediator, or by order of the Commission in the interests of justice upon motion of a party and notice to all parties and persons required to attend the conference, including the mediator. All parties and persons required to attend the conference, including the mediator, shall comply with all public health and safety requirements set forth in the mediation rules approved by the North Carolina Supreme Court that are in

effect at the time of the mediation for use in the Superior Court division.

(c) In appropriate cases, the Commission or the mediator, with the consent of the parties, may allow a party or insurance carrier representative who is required to attend a mediated settlement conference in person under this Rule to attend the conference by telephone, conference call, speaker telephone, or videoconferencing; the attending party or representative shall bear all costs of the telephone calls or videoconferencing. In addition, the mediator may communicate directly with the insurance representative with regard to matters discussed in mediation, and the mediator may set a subsequent mediated settlement conference at which all parties and representatives shall attend the mediated settlement conference in person, subject to Paragraph (b) of this Rule. The failure to appear by telephone or videoconferencing in accordance with this Paragraph shall subject the responsible party(ies) or representative(s) to sanctions pursuant to Rule .0105 of this Subchapter.

(d) Notice of Mediation Order. Within seven days after the receipt of an order for a mediated settlement conference, the carrier or self-insured named in the order shall provide a copy of the order to the employer and all other carriers who may be obligated to pay all or part of any claim presented in the workers' compensation case or any related third-party tortfeasor claims, and shall provide the mediator and the other parties in the action with the name, address, and telephone number of all such carriers.

(e) Finalizing Agreement. If an agreement is reached in the mediated settlement conference, the parties shall reduce the agreement to writing, specifying all terms of the agreement that bear on the resolution of the dispute before the Commission, and shall sign the agreement along with their counsel. The parties may use IC Form MSC8, Mediated Settlement Agreement, or MSC9, Mediated Settlement Agreement – Alternative Form, for this purpose. Execution by counsel of a mediated settlement agreement for an employer or carrier who does not physically attend the mediated settlement conference shall be deemed to be in compliance with this Rule and 11 NCAC 23A .0502. By stipulation of the parties and at the parties' expense, the agreement may be electronically or stenographically recorded. All agreements for payment of compensation shall be submitted for Commission approval in accordance with 11 NCAC 23A .0501 and .0502.

(f) Payment of Mediator's Fee. The mediator's fee shall be paid at the conclusion of the mediated settlement conference, unless otherwise provided by Rule .0107 of this Subchapter, or by agreement with the mediator.

(g) Related Cases. Upon application by any party or person and upon notice to all parties, the Commission may, in the interests of justice, order an attorney of record, party, or representative of an insurance carrier who may be liable for all or any part of a claim pending in a Commission case to attend a mediated settlement conference convened in another pending case, regardless of the forum in which the other case may be pending, provided that all parties in the other pending case consent to the attendance ordered pursuant to this Paragraph. Any disputed issues concerning such an order shall be addressed to the Commission's Dispute Resolution Coordinator. Unless otherwise ordered, any attorney, party, or carrier representative who attends a mediated settlement conference pursuant to this Paragraph shall not be required to pay

any of the mediation fees or costs related to that conference. Requests that a party, attorney of record, or insurance carrier representative in a related case attend a mediated settlement conference in a Commission case shall be addressed to the court or agency where the related case is pending, provided that all parties in the Commission case consent to the requested attendance.

History Note: Authority G.S. 97-80; 143-296; 143-300; Rule 4 of Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 04 NCAC 10A .0616; Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000; Recodified from 04 NCAC 10G .0104 Eff. June 1, 2018; Emergency Amendment Eff. June 16, 2020; Amended Eff. August 1, 2020; Temporary Amendment Eff. August 28, 2020; Amended Eff. March 1, 2021.

TITLE 14B - DEPARTMENT OF PUBLIC SAFETY

14B NCAC 15A .1405 RECORDS REQUIRED

(a) A record of all orders, receipts, invoices, and payments shall be maintained by local boards and be available for inspection by any representative of the Commission during the local board's normal business hours.

(b) Local boards shall retain the following records for the length of time specified in this Paragraph:

- (1) sales report until the annual audit is completed;
- (2) warehouse report for one year;
- (3) daily store report until the annual audit is completed;
- (4) stock difference report for three years;
- (5) receiving report until the annual audit is completed;
- (6) clerk's daily sales and cash report until the annual audit is completed;
- (7) paid invoices for three years;
- (8) loss and damage claim records for three years; and
- (9) required records pursuant to 14B NCAC 15A .1903 and 14B NCAC 15B .0501 related to the sale of mixed beverages for three years.

History Note: Authority G.S. 18B-100; 18B-203(a)(4); 18B-205; 18B-207; 18B-702(s), (u); Eff. January 1, 1982; Amended Eff. May 1, 1984; Transferred and Recodified from 04 NCAC 02R .1406 Eff. August 1, 2015; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015; Amended Eff. March 1, 2021; December 1, 2019.

14B NCAC 15A .1802 MIXED BEVERAGES PERMIT/INVOICE FORM

(a) A local board in a jurisdiction where the sale of mixed beverages is lawful shall provide to a mixed beverages permittee purchasing spirituous liquor for resale in mixed beverages a Purchase-Transportation Permit/Invoice Form for every purchase of spirituous liquor by the permittee.

(b) Each Purchase-Transportation Permit/Invoice Form shall be printed in duplicate and shall show on the face of the form the information required by 14B NCAC 15B .0501. The local board shall retain one copy in its permanent records for a period of three years and shall give one copy of the Form to the mixed beverages permittee, or the mixed beverages permittee's designated employee or independent contractor, to accompany the spirituous liquor during transport.

History Note: Authority G.S. 18B-100; 18B-205(b); 18B-207; 18B-404(b); 18B-807;

Eff. January 1, 1982;

Amended Eff. November 1, 2010; May 1, 1984;

Transferred and Recodified from 04 NCAC 02R .1802 Eff. August 1, 2015;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 22, 2015;

Amended Eff. March 1, 2021.

14B NCAC 15A .1903 DELIVERY OF MIXED BEVERAGES PERMITTEE ORDERS

(a) A local board's employee or independent contractor may deliver spirituous liquor purchased by a mixed beverage permittee to the permittee's licensed premises if all of the following conditions are met:

- (1) the mixed beverages permittee paid the local board for the spirituous liquor prior to transportation to the mixed beverage permittee;
- (2) alcoholic beverages are transported from the place of purchase to the permitted premises;
- (3) deliveries are made by 9:30 p.m. on the date of purchase;
- (4) a copy of the Purchase-Transportation/Invoice Form for the alcoholic beverages being transported is in the possession of the individual during transportation and shall be provided to the mixed beverages permittee at the time of delivery;
- (5) the local board's employee or independent contractor obtains a signed acknowledgment of receipt of the alcoholic beverages delivered from the mixed beverages permittee and shall return a copy of the signed acknowledgement to the local board. The local board shall retain a copy of the signed acknowledgement of receipt pursuant to 14B NCAC 15A .1405(b)(9); and
- (6) the local board is liable for any damage, breakage or theft of the alcoholic beverages being transported until possession is acknowledged by the mixed beverages permittee.

(b) A local board may contract with an independent contractor to provide delivery of spirituous liquor from an ABC store or the local board's warehouse to a mixed beverages permittee if all of the following conditions are met:

- (1) the local board enters into a written contract with the independent contractor;
- (2) the independent contractor furnishes proof to the local board that the independent contractor is a motor vehicle carrier with a surety bond in compliance with G.S. 18B-1115(d) and (e);
- (3) the contract may be terminated at will by either party without cause;
- (4) the independent contractor maintains in force an indemnity and fidelity insurance policy with the local board named as an additional insured in an amount sufficient to insure the value of the alcoholic beverages to be delivered by the independent contractor on the behalf of the local board; and
- (5) the independent contractor remains in compliance with this Rule.

(c) An independent contractor may deliver spirituous liquor to a mixed beverages permittee pursuant to a contract with a local board if all of the following conditions are met:

- (1) the local board issues a purchase-transportation permit to the independent contractor pursuant to G.S. 18B-403 for the spirituous liquor to be delivered; and
- (2) the independent contractor assumes liability for any damage, breakage, or theft of the spirituous liquor to be delivered from the time possession is taken by the independent contractor from the local board until delivery of the spirituous liquor is acknowledged by the mixed beverages permittee that purchased the spirituous liquor.

(d) A local board may charge a mixed beverages permittee any amount of a fee for the delivery of spirituous liquor to a mixed beverages permittee by an employee of the local board. In determining the amount of the fee to be charged for the delivery of spirituous liquor to a mixed beverages permittee by an employee of the local board, the local board shall set the fee structure or rate at a public meeting. In setting the delivery fee structure or rate, the local board shall specify what cost factors the local board considered in determining the fee structure or rate.

(e) If a local board uses an independent contractor to deliver spirituous liquor to a mixed beverages permittee, the local board shall charge a mixed beverages permittee any amount of a fee for the delivery, provided that the amount of the fee covers at a minimum the actual amount paid by the local board to the independent contractor for the delivery. The fee charged pursuant to this Paragraph shall be set in accordance with Paragraph (d) of this Rule.

History Note: Authority G.S. 18B-100; 18B-207; 18B-701(a)(1) and (2); S.L. 2019-182, s. 25.(b);

Eff. March 1, 2021.

14B NCAC 15A .1904 TRANSPORT OF MIXED BEVERAGES PERMITTEE ORDERS

(a) A mixed beverages permittee may contract with an independent contractor to transport alcoholic beverages purchased by the mixed beverages permittee from a local board or from a wine wholesaler to the licensed premises of the mixed beverages permittee if all of the following conditions are met:

- (1) the mixed beverages permittee enters into a written contract with the independent contractor;
- (2) the independent contractor furnishes proof to the mixed beverages permittee that the independent contractor is a motor vehicle carrier with a surety bond in compliance with G.S. 18B-1115(d) and (e);
- (3) the mixed beverages permittee furnishes the local board with a copy of the mixed beverages permittee's contract with the independent contractor. The mixed beverages permittee shall notify the local board within two business days of the termination of any contract the mixed beverages permittee previously had with an independent contractor pursuant to this Rule; and
- (4) the independent contractor remains in compliance with this Rule.

(b) A mixed beverages permittee may authorize an independent contractor to transport alcoholic beverages on behalf of the mixed beverages permittee from a local board or a wine wholesaler if all of the following conditions are met:

- (1) the independent contractor has in its possession a copy of the executed contract with the mixed beverages permittee at the time the independent contractor receives and possesses alcoholic beverages on behalf of the mixed beverages permittee from a local board or a wine wholesaler;
- (2) the independent contractor possesses a purchase-transportation permit issued by the local board to the independent contractor pursuant to G.S. 18B-403 for the alcoholic beverages to be delivered;
- (3) the independent contractor possesses a copy of the Purchase-Transportation/Invoice Form for the alcoholic beverages being transported during transportation to the mixed beverages permittee that shows the independent contractor as the agent for the mixed beverages permittee;
- (4) the mixed beverages permittee signs an acknowledgment of receipt of the spirituous liquor delivered and a copy of the signed acknowledgement is returned by the mixed beverages permittee to the local board within two business days of the date of the delivery for retention by the local board;
- (5) the mixed beverages permittee assumes liability for any damage, breakage, or theft of the spirituous liquor to be transported from the time possession is taken by the independent

contractor from the local board until delivery of the spirituous liquor to the mixed beverages permittee; and

- (6) the mixed beverages permittee may by contract require the independent contractor to assume liability and maintain in force an indemnity and fidelity insurance policy with the mixed beverages permittee named as an additional insured in an amount sufficient to insure the value of the alcoholic beverages to be delivered by the independent contractor on the behalf of the mixed beverages permittee. The policy may include coverage for any damage, breakage, or theft of the alcoholic beverages to be delivered from the time possession is taken by the independent contractor from the local board or wine wholesaler until delivery of the alcoholic beverages is acknowledged by the mixed beverages permittee that purchased the alcoholic beverages.

History Note: Authority G.S. 18B-100; 18B-207; 18B-701(a)(1) and (2); S.L. 2019-182, s. 25.(b); Eff. March 1, 2021.

14B NCAC 15B .0501 PURCHASE TRANSPORTATION PERMIT/ INVOICE FORM

(a) A mixed beverages permittee, or a mixed beverages permittee's designated employee or independent contractor, shall obtain a Purchase-Transportation Permit/Invoice form from the ABC store designated by the local board as the place where spirituous liquor will be sold to mixed beverages permittees.

(b) A Purchase-Transportation Permit/Invoice form shall be completed by the local board and contain the following:

- (1) the permittee's name;
- (2) the trade name, address, and telephone number of the permittee's licensed premises;
- (3) the permittee's Mixed Beverages Permit number;
- (4) the name and driver's license number of person or persons authorized to purchase and transport spirituous liquor;
- (5) the number and location of ABC store where purchase is to be made;
- (6) the permittee's transaction or order number;
- (7) the date of transaction;
- (8) the address of the destination of the spirituous liquor;
- (9) the brand, quantity, size and item code number of each spirituous liquor container purchased and transported, including the serial number of each complete case or carton sold;
- (10) the signatures of persons issuing and receiving permit/invoice form;
- (11) the retail price per container;
- (12) the mixed beverages surcharge per container;
- (13) the total price per container;
- (14) the total cost of transaction; and

- (15) the date of order, date of purchase, and expiration date of the permit/invoice form.
- (c) The Purchase-Transportation Permit/Invoice form shall be retained by the permittee for three years.
- (d) The destination for the spirituous liquor being transported pursuant to a Purchase-Transportation Permit/Invoice form shall be the address of the permittee's licensed premises.

*Amended Eff. July 1, 1992; May 1, 1984;
Transferred and Recodified from 04 NCAC 02S .0502 Eff. August 1, 2015;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 20, 2016;
Amended Eff. March 1, 2021.*

*History Note: Authority G.S. 18B-100; 18B-207; 18B-404;
Eff. January 1, 1982;*

TITLE 15A - DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02Q .0203 PERMIT AND APPLICATION FEES

- (a) The owner or operator of any facility holding a permit shall pay the following annual permit fees:

ANNUAL PERMIT FEES (FEES FOR CALENDAR YEAR 2021)			
Facility Category	Tonnage Factor	Basic Permit Fee	Nonattainment Area Added Fee
Title V	\$40.00	\$8,775	\$4,056
Synthetic Minor		\$1,500	
Small		\$250	
General		50% of the otherwise applicable fee	
General Title V ACI		10% of the otherwise applicable fee	

A facility, other than a Title V facility, that has been in compliance is eligible for a 25 percent discount from the annual permit fees as described in 15A NCAC 02Q .0205(a). Annual permit fees for Title V facilities in this Paragraph shall be adjusted for inflation as described in 15A NCAC 02Q .0204. Annual permit fees for Title V facilities in this Paragraph are equal to the sum of the basic permit fee, tonnage factor fee, and nonattainment area added fee, as applicable.

- (b) In addition to the annual permit fees required by Paragraph (a) of this Rule, the owner or operator of a Title V facility shall pay the following annual complexity fee, as applicable:

- (1) for facilities subject to at least three and no greater than six of the federal programs identified in Paragraph (c) of this Rule, the added annual complexity fee shall be two thousand five hundred dollars (\$2,500); or
- (2) for facilities subject to seven or greater of the federal programs identified in Paragraph (c) of this Rule, the added annual complexity fee shall be seven thousand five hundred dollars (\$7,500).

Annual complexity fees for Title V facilities shall be adjusted for inflation as described in 15A NCAC 02Q .0204.

- (c) For purposes of Paragraph (b) of this Rule, each of the following shall be considered a federal program for the purposes of determining annual complexity fees:

- (1) the PSD program is considered one federal program for any facility that is subject to 15A NCAC 02D .0530;
- (2) the Risk Management Program under Section 112r of the Clean Air Act is considered one federal program for any facility that is subject to 15A NCAC 02D .2100;
- (3) each Subpart under 40 CFR Part 60, New Source Performance Standards (NSPS) is considered one federal program, with the exception of Subparts A, B, Ba, and C;
- (4) each Subpart under 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP) is considered one federal program, with the exception of Subpart A; and
- (5) each Subpart under 40 CFR Part 63, NESHAP for Source Categories, is considered one federal program, with the exception of Subparts A, B, C, D, and E.

The sum of all applicable federal programs identified in Subparagraphs (1) through (5) of this Paragraph shall be used to determine the annual complexity fee in accordance with Paragraph (b) of this Rule.

(d) In addition to the annual permit fee and any applicable annual complexity fee, a permit applicant shall pay a non-refundable permit application fee as follows:

**PERMIT APPLICATION FEES
(FEES FOR CALENDAR YEAR 2021)**

Facility Category	New or Modification	New	Significant Modification	Minor Modification	Ownership Change
Title V		\$10,325	\$7,000	\$3,000	\$60
Title V (PSD or NSR/NAA)	\$15,631				\$60
Title V (PSD and NSR/NAA)	\$30,402				\$60
Synthetic Minor	\$400				\$50
Small	\$50				\$50
General		50% of the otherwise applicable fee			\$25
General Title V ACI		10% of the otherwise applicable fee			

Permit application fees for Title V facilities shall be adjusted for inflation as described in 15A NCAC 02Q .0204.

(e) The current annual permit fees, annual complexity fees, and permit application fees shall be found on the Division's website at <https://deq.nc.gov/about/divisions/air-quality/air-quality-permits/modifying-applying-for-air-quality-permit>.

(f) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

(g) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not include the amount of actual emissions of each pollutant that exceeds 4,000 tons per year nor the actual emissions of the following pollutants:

- (1) carbon monoxide;
- (2) any pollutant that is regulated solely because it is a Class I or II substance listed pursuant to Section 602 of the federal Clean Air Act (ozone depleters);
- (3) any pollutant that is regulated solely because it is subject to a regulation or standard pursuant to Section 112(r) of the federal Clean Air Act (accidental releases); and
- (4) greenhouse gases.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more than one permit, the tonnage factor fee for the facility's combined total actual emissions as described in this Paragraph shall be paid only on the permit whose anniversary date first occurs on or after July 1.

(h) The nonattainment area added fee shall be applicable only to Title V facilities required to comply with 15A NCAC 02D .0531, Sources in Nonattainment Areas, 15A NCAC 02D .0900, Volatile

Organic Compounds, or 15A NCAC 02D .1400, Nitrogen Oxides, and either:

- (1) are in an area designated in 40 CFR 81.334 as nonattainment; or
- (2) are covered by a nonattainment or maintenance State Implementation Plan submitted for approval or approved as part of 40 CFR Part 52, Subpart II.

(i) The facility category, Title V (PSD or NSR/NAA), in the permit application fees table in Paragraph (d) of this Rule means a facility whose application shall be subject to review pursuant to 15A NCAC 02D .0530, Prevention of Significant Deterioration, or 15A NCAC 02D .0531.

(j) The facility category, Title V (PSD and NSR/NAA), in the permit application fees table in Paragraph (d) of this Rule means a facility whose application shall be subject to review pursuant to 15A NCAC 02D .0530 and .0531.

(k) Minor modification permit applications that are group processed shall require the payment of only one permit application fee per facility included in the group.

(l) No permit application fee shall be required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a change pursuant to 15A NCAC 02Q .0523, Changes Not Requiring Permit Revisions, or for a construction date change, a test date change, a reporting procedure change, or a similar change.

(m) The permit application fee paid for modifications pursuant to 15A NCAC 02Q .0400, Acid Rain Procedures, shall be the fee for the same modification if it were subject to 15A NCAC 02Q .0500, Title V Procedures.

(n) An applicant who files permit applications pursuant to 15A NCAC 02Q .0504 shall pay an application fee equal to the application fee for the permit required pursuant to 15A NCAC 02Q .0500; this fee shall cover both applications, provided that the second application covers only what is covered under the first application. If permit terms or conditions in an existing or future permit issued pursuant to 15A NCAC 02Q .0500 are established or modified by an application for a modification and if these terms or conditions are enforceable by the Division only, then the

applicant shall pay the fee under the column entitled "Minor Modification" in the table in Paragraph (d) of this Rule.

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner.

Eff. July 1, 1994;

Amended Eff. January 1, 2015; March 1, 2008; April 1, 2004;

April 1, 2001; July 1, 1996;

Readopted Eff. April 1, 2018;

Amended Eff. Pending Legislative Review.

15A NCAC 13B .1501 DEFINITIONS

The definitions in Article 9 of Chapter 130A of the General Statutes and the following definitions shall apply to the rules of this Section.

- (1) "Applicant" means a person that submits an application to the Department to request tax certification for real property or personal property. The applicant shall be a business conducting a recycling or resource recovery process or shall be a person that owns real or personal property that is being used by or leased to a business conducting a recycling or resource recovery process.
- (2) "County assessor" means the county assessor established by Article 16 of Chapter 105 of the General Statutes.
- (3) "Incidental or supportive equipment" means personal property that is used at any time for a purpose other than recycling or resource recovery; is not necessary for recycling or resource recovery to occur; or has a primary purpose that is not recycling or resource recovery. Incidental or supportive equipment includes personal property that is used at any time for administrative, safety, or maintenance services, even though it may be used in support of a recycling or resource recovery process, or that is used to provide comfort, safety, or convenience for employees such as:
 - (a) spare parts;
 - (b) office furniture or equipment;
 - (c) employee personal protective or safety equipment;
 - (d) kitchen or breakroom furniture, equipment, or appliances;
 - (e) heating or air conditioning equipment for employee comfort;
 - (f) fire alarms or fire suppression systems;
 - (g) vehicles used to transport employees, new materials, or waste for disposal at any time; and
 - (h) landfill gas vents or wells that are required by a permit issued by the Department.

- (4) "Incidental or supportive facilities" means real property or parts thereof that is used at any time for a purpose other than recycling or resource recovery; is not necessary for recycling or resource recovery to occur; or has a primary purpose that is not recycling or resource recovery. Incidental or supportive facilities include real property that is used at any time for administrative, safety, or maintenance services, even though it may be used in support of a recycling or resource recovery process, or that is used to provide comfort, safety, or convenience for the employees such as:
 - (a) office space;
 - (b) conference rooms;
 - (c) bathrooms;
 - (d) kitchens;
 - (e) employee breakrooms;
 - (f) employee parking;
 - (g) maintenance sheds;
 - (h) maintenance areas;
 - (i) stormwater basins; and
 - (j) unused areas.
- (5) "New material" means a material that has been chemically or mechanically changed through a recycling process so that it can be introduced into a production process or can be marketed for sale as a good.
- (6) "Personal property" means equipment that is used by a business that is not permanently affixed to real property.
- (7) "Production process" means a process by which goods are produced for sale or use from raw materials, or from new materials, or a combination of these materials.
- (8) "Production scrap" means excess or unusable material that is generated during a production process and is returned to be reused in the same production process. An example of production scrap is excess metal or cardboard or textiles from a sheet of metal or cardboard or batting that remains after a portion of the sheet is cut, stamped, trimmed, or formed to make a product, and the excess material is collected and returned to the process or equipment where the original sheet or batting was created. Another example of production scrap is a material that does not meet the quality standards or customer specifications for sale or use as determined by the person or business, and are returned to the production process. Production scrap does not include excess materials that are combined with recovered materials and returned to be reused in a recycling process.
- (9) "Qualifying property" means requested property that meets the standards set forth in Rule .1503(b) or (c) of this Section to qualify for certification as a recycling or resource recovery facility or as recycling or resource

recovery equipment for the purpose of special tax classification or treatment in accordance with G.S. 130A-294(a)(3) to be eligible for exclusion from the tax base as set forth in G.S. 105-275(8)(b).

- (10) "Real property" means land and buildings, structures, improvements, or permanent fixtures on land, or a portion thereof.
- (11) "Requested property" means the real and personal property that have been included in an application for tax certification submitted in accordance with Rule .1502 of this Section because the applicant is requesting that the Department make a determination on whether the property qualifies for exclusion from the property tax base.
- (12) "Spare parts" means parts of equipment that are purchased for future or speculative use, but that have not been installed in the equipment for which they were purchased.
- (13) "Tax certification" means a certification issued by the Department of Environmental Quality certifying that the Department has determined that the real or personal property listed on the certification document meets the requirements of the rules of this Section to qualify for certification as a recycling or resource recovery facility or as recycling or resource recovery equipment for the purpose of special tax classifications or treatment in accordance with G.S. 130A-294(a)(3) to be eligible for exclusion from the tax base as set forth in G.S. 105-275(8)(b).

*History Note: Authority G.S. 130A-294(a)(3);
Eff. June 2, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. December 6, 1991;
Readopted Eff. March 1, 2021.*

15A NCAC 13B .1502 APPLICABILITY AND APPLICATION REQUIREMENTS

- (a) The rules of this Section shall apply only to the qualification of personal property, such as equipment, or for real property, such as areas within a building, land area, or portions thereof, for tax certification by the Department in accordance with G.S. 105-275(8)(b) and G.S. 130A-294(a)(3). Nothing in the rules of this Section shall interpret, establish, or supersede the requirements for tax exemption established or enforced by the county assessor, or any other requirements of Chapter 105 of the General Statutes.
- (b) The rules of this Section shall not apply to the certification of real or personal property that is required for air or water pollution abatement by a permit issued by the Department, or that is used in a process that is regulated by a permit issued by the Department's Division of Water Resources or the Division of Air Quality.
- (c) An applicant for a tax certification for real and personal property used in recycling or resource recovery shall submit one electronic copy of an application to the Department. The applicant

shall submit a copy of the application to the county assessor in accordance with the requirements of the county assessor. The applicant shall provide a copy of the application to the person responsible for management, operation, and maintenance of the requested property. The application form may be accessed on the Department's website at <https://deq.nc.gov/about/divisions/waste-management/solid-waste-section/tax-certification>. The application shall be signed by the applicant and the person receiving the benefit of the tax exemption.

(d) An application for tax certification shall contain the following information:

- (1) the applicant name, address, phone number, and email address;
- (2) the name, address, and phone number for the location of the requested property;
- (3) the name, phone number, and email address for the person responsible for management, operation, and maintenance of the requested property;
- (4) the name, phone number, and email address of the person filling out the application;
- (5) a description of facility operations, including the following information:
 - (A) the types of business conducted at the facility location, such as manufacturing, retail, solid waste management, recycling, or resource recovery;
 - (B) the type and source of recyclable material that is received at the facility for resource recovery, or recovered material that is received at the facility for recycling;
 - (C) a description of the recycling or resource recovery process showing the steps involved in the process, which may be in the form of a flow chart or a narrative; and
 - (D) the intended destination of any solid waste, recovered material, or new material leaving the facility;
- (6) the following information for each item of personal property for which certification is requested:
 - (A) name, make, and model number;
 - (B) a unique identification number that is affixed to the personal property, such as a serial number, vehicle identification number, or asset number;
 - (C) the cost or value at the time of acquisition;
 - (D) the year of acquisition, provided as the last two-digits of a four-digit year;
 - (E) a description of how the personal property is used for recycling or resource recovery;

- (F) the percent of time the personal property is used for recycling or resource recovery; and
- (G) the vehicle registration or the invoice from the purchase of the personal property if the personal property is a vehicle, trailer, or container that will be in use off-site at the time of inspection by the Department. If an invoice is required to be submitted and the trailer or container has no serial number that can be matched to the invoice, the invoice number from the purchase of the trailer or container may be used as the unique identification number required by Part (B) of this Subparagraph;
- (7) the following information for the real property for which certification is requested:
 - (A) a facility drawing and aerial map outlining the recycling or resource recovery areas, including the measurements of these areas;
 - (B) a description of the real property, including the parcel number of the land and the requested square footage of the facility space and the acreage of the land areas; and
 - (C) a description of how the areas are used for recycling or resource recovery;
- (8) a copy of any notice of violation issued by the Department for violations of G.S. 113A, 130A, or 143, or the rules adopted under G.S. 113A, 130A, or 143 that are under the authority of the Department to administer or enforce, if the applicant has not complied with the requirements of the notice of violation at the time of application submittal;
- (9) if the real or personal property is under a lease agreement, the contact information for the lessor and lessee stated in the agreement, the expiration date of the lease agreement, and a copy of the executed lease agreement and amendments signed by the lessor and lessee; and
- (10) a list of permit numbers for permits issued by the Department, or a unit of local government under delegated authority by the Department, in accordance with G.S. 113A, 130A, and 143 and the rules adopted under G.S. 113A, 130A, and 143. The Department may request a copy of the permit if it is necessary to determine compliance with the rules of this Section.

(e) Requested property that is owned under a lease agreement shall be listed on a separate application from requested property that is not owned under a lease agreement. A separate application shall be required for each separate lease agreement, unless the lessor, lessee, and expiration date for the lease agreements are the same.

(f) The Department may request additional information if it is necessary to determine compliance with the rules of this Section, G.S. 105-275(8)(b), or G.S. 130A-294(a)(3). If the Department requests additional information, the Department shall request the information in writing via email at the email address provided in the application in accordance with Subparagraph (d)(4) of this Rule. The applicant shall provide the requested information within 15 days of the request.

(g) The Department shall review the application to determine if the application complies with the requirements of this Rule. If the Department determines that the application does not comply with this Rule, the Department shall return the application to the applicant, with a written statement of the reasons the application is not in compliance with this Rule. The Department shall also provide a copy of this notice to the county assessor.

*History Note: Authority G.S. 130A-294(a)(3);
Eff. June 2, 1976;
Readopted Eff. March 1, 2021; December 5, 1977.*

15A NCAC 13B .1503 STANDARDS FOR QUALIFICATION FOR TAX CERTIFICATION

(a) When the Department receives an application for tax certification that complies with Rule .1502 of this Section, the Department shall conduct an inspection, investigation, or verification of the requested property to confirm that it qualifies as a recycling or resource recovery facility or as recycling or resource recovery equipment for the purpose of special tax classifications or treatment in accordance with G.S. 130A-294(a)(3) and the requirements of this Rule.

(b) Real property shall qualify as a recycling or resource recovery facility in accordance with G.S. 130A-294(a)(3) if the following conditions are met:

- (1) the real property was included in the application for tax certification submitted to the Department in accordance with Rule .1502 of this Section;
- (2) the person that will receive the benefit of exclusion from the property tax base for the real property complies with G.S. 113A, 130A, and 143 and the rules adopted under G.S. 113A, 130A, and 143 that are under the authority of the Department to administer or enforce;
- (3) the real property shall not be used at any time for a purpose other than the following:
 - (A) recycling or resource recovery; or
 - (B) transportation or storage for recycling or resource recovery;
- (4) the real property shall be necessary for recycling or resource recovery to occur;
- (5) the real property shall not be incidental or supportive facilities;
- (6) the real property shall not be used for handling, storing, packaging, or transportation of new materials, production scrap, or solid waste intended for disposal;
- (7) the buildings, structures, improvements, or permanent fixtures on land shall be constructed

- prior to the effective date of the tax certification; and
- (8) the land itself shall not be located beneath any area of a building or structure that does not meet the requirements of Subparagraphs (1) through (7) of this Paragraph.
- (c) Personal property shall qualify as recycling or resource recovery equipment in accordance with G.S. 130A-294(a)(3) if the following conditions are met:
- (1) the personal property was included in the application for tax certification submitted to the Department in accordance with Rule .1502 of this Section;
 - (2) the unique identification number required to be included in the application in accordance with Rule .1502(d)(6)(B) of this Section can be matched to the same identification number affixed to the personal property during the inspection, unless the personal property meets the conditions of Rule .1502(d)(6)(G) of this Section;
 - (3) the person that will receive the benefit of exclusion from the property tax base for the personal property complies with G.S. 113A, 130A, and 143 and the rules adopted under G.S. 113A, 130A, and 143 that are under the authority of the Department to administer or enforce;
 - (4) the personal property shall not be used at any time for a purpose other than the following:
 - (A) recycling or resource recovery; or
 - (B) transportation or storage for recycling or resource recovery;
 - (5) the personal property shall be necessary for recycling or resource recovery to occur;
 - (6) the personal property shall not be incidental or supportive equipment;
 - (7) the personal property shall not be used for handling, storing, packaging, or transportation of new materials, production scrap, or solid waste intended for disposal; and
 - (8) the personal property shall be installed prior to the effective date of the tax certification.
- (d) If the Department determines that none of the requested property in an application qualifies for exclusion from the property tax base in accordance with this Rule, the Department shall notify the applicant and the county assessor of the reasons for this determination in writing.
- (e) The tax certification shall be effective upon the date of signature by the Department.
- (f) The tax certification shall list the qualifying property.
- (g) The Department shall provide a copy of the tax certification to the applicant and to the office of the county assessor.
- (h) The applicant shall be responsible for maintaining records of all tax certifications issued to the applicant.
- (i) Unless an expiration date is provided on the tax certification, the tax certification shall remain valid until there is a change in use, ownership, or lease agreement of the qualifying property.
- (j) Tax certifications are not transferrable. If there is a change in ownership or lease agreement or if the facility changes locations of qualifying property after the Department issues a tax certification, then the real or personal property shall no longer qualify for exclusion from the property tax base. The new owner, lessor, or lessee of the real or personal property that was previously listed on a tax certification may apply for a new tax certification in accordance with Rule .1502 of this Section.
- (k) If there is a change in the use of the qualifying property after the Department issues the tax certification, and the new use does not comply with the requirements of Paragraphs (b) or (c) of this Rule, then the real or personal property shall no longer qualify for exclusion from the property tax base.
- (l) If the person receiving the benefit of exclusion from the property tax base ceases to be in compliance with G.S. 113A, 130A, or 143 or the rules adopted under G.S. 113A, 130A, or 143 that are under the authority of the Department to administer or enforce after the Department issues the tax certification, the Department may determine that the real or personal property no longer qualifies for exclusion from the property tax base and revoke the tax certification if the person does not comply by the deadline for compliance required by the Department. If the Department revises or revokes a tax certification, the Department shall notify the applicant, the person receiving the tax benefit, and the county assessor's office of the determination in writing. The applicant may submit a new application for tax certification in accordance with Rule .1502 of this Section when the person receiving the benefit complies with G.S. 113A, 130A, and 143 and the rules adopted under G.S. 113A, 130A, and 143 that are under the authority of the Department to administer or enforce.
- (m) The Department may revoke a tax certification if the Department discovers that false information was provided in the application for tax certification submitted in accordance with Rule .1502 of this Section. If the Department revokes a tax certification, the Department shall notify the applicant, the person receiving the tax benefit, and the county assessor's office of the determination in writing.
- (n) The Department shall not be required to verify or confirm the cost or value of requested property that is provided by the applicant. The Department may include the cost of requested personal property provided by the applicant on the tax certification for ease of reference. Any change in cost or value shall not change the qualification status of the real or personal property.
- (o) Real or personal property that was listed on a tax certification issued prior to the readopted effective date of this Rule, and equivalent real or personal property purchased to replace such property within five years of the readopted effective date of this Rule, shall be deemed qualifying property for the purpose of this Section if the following conditions are met:
- (1) the use of the real or personal property has not changed;
 - (2) the person that is receiving the benefit of exclusion from the property tax base for the real or personal property complies with G.S. 113A, 130A, and 143 and the rules adopted under G.S. 113A, 130A, and 143 that are under the authority of the Department to administer or enforce;

- (3) the real or personal property has not changed ownership since the tax certification was issued; and
- (4) any expiration date on the tax certification has not passed.

(p) If an application meeting the requirements of Rule .1502 of this Section is submitted within five years of the readopted effective date of this Rule for requested property that was previously certified under a lease agreement, the requested property that meets the requirements of Subparagraphs (o)(1) through (o)(3) of this Rule shall be deemed qualifying property for the purpose of this Section.

History Note: Authority G.S. 130A-294(a)(3);
Eff. June 2, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. December 6, 1991;
Readopted Eff. March 1, 2021.

15A NCAC 13B .1504 RECYCLING PROCESS
15A NCAC 13B .1505 RECYCLING EQUIPMENT
15A NCAC 13B .1506 INCIDENTAL OR SUPPORTIVE
FACILITIES AND EQUIPMENT
15A NCAC 13B .1507 OPERATIONAL
REQUIREMENTS FOR FACILITIES AND EQUIPMENT
15A NCAC 13B .1508 APPLICATION FOR TAX
CERTIFICATION

History Note: Authority G.S. 130A-294(a)(3);
Eff. June 2, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. December 6, 1991; September 1, 1990; July 1, 1985;
Repealed Eff. March 1, 2021.

15A NCAC 13B .1510 SEVERABILITY

History Note: Authority G.S. 130A-294(a)(3);
Eff. June 2, 1976;
Readopted Eff. December 5, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. January 9, 2018;
Repealed Eff. March 1, 2021.

15A NCAC 13B .1512 FACILITIES FOR REDUCING
HAZARDOUS WASTE GENERATED
15A NCAC 13B .1513 EQUIPMENT FOR REDUCING
HAZARDOUS WASTE GENERATED

History Note: Authority G.S. 130A-294(a)(3);
Eff. October 1, 1983;
Amended Eff. December 6, 1991; September 1, 1990;
Repealed Eff. March 1, 2021.

15A NCAC 13B .1514 APPEALS PROCEDURE

History Note: Authority G.S. 130A-294(a)(3);
Eff. February 1, 1987;
Amended Eff. September 1, 1990;

Repealed Eff. March 1, 2021.

TITLE 16 – STATE BOARD OF EDUCATION

16 NCAC 06D .0302 TEST ADMINISTRATION
16 NCAC 06D .0303 ACCOUNTABILITY
COORDINATOR

History Note: Authority G.S. 115C-12(9)c; 115C-81(b)(4);
Eff. July 1, 1986;
Amended Eff. May 1, 2001; August 1, 1999; November 1, 1997;
June 1, 1996;
Repealed Eff. March 1, 2021.

16 NCAC 06D .0305 END-OF-COURSE
ASSESSMENTS
16 NCAC 06D .0306 TESTING CODE OF ETHICS

History Note: Authority G.S. 115C-12(9)c; 115C-81(b)(4);
Eff. November 1, 1997;
Amended Eff. October 1, 2006; January 2, 2006; April 1, 2002;
September 1, 2001; August 1, 2000; July 1, 2000; August 1, 1999;
Repealed Eff. March 1, 2021.

16 NCAC 06D .0307 TEST ADMINISTRATION IN
PUBLIC SCHOOLS

(a) Only current or retired professional educators as defined in G.S. 115C-270.1 or teachers who

- (1) are employed by local education agencies (LEAs); and
- (2) have training in the Annual Testing Program as required in Rule .0308 of this Section shall administer secure tests.

(b) "Secure test" for purposes of this Chapter means "any test developed, adopted, or provided by the State Board of Education that has not been released under G.S. 115C-174.13."

(c) "Annual Testing Program" for purposes of this Chapter means:

- (1) beginning of grade 3 reading proficiency test;
- (2) grades 3 through 8 end-of-grade (EOG) English language arts/reading and mathematics;
- (2) grades 5 and 8 EOG science;
- (3) grade 10 end-of-course (EOC) English II;
- (4) grade 11 EOC assessments in NC Math 1, NC Math 3, and EOC Biology;
- (5) grade 11 ACT; and
- (6) grade 12 Career and Technical Education Concentrators and ACT WorkKeys.

(d) The North Carolina Department of Public Instruction (NCDPI) shall supply the secure tests to LEAs. LEAs shall:

- (1) account to the NCDPI for all secure tests received;
- (2) provide a secure, locked storage facility for all secure tests received;
- (3) prohibit the reproduction of any or all parts of a secure test; and
- (4) prohibit their employees from disclosing the content of a secure test or specific items

contained in a secure except as necessary to administer the test.

(e) LEAs shall monitor test administration procedures. If a school employee discovers any violation of the rules in this Subchapter, he or she shall notify the principal, charter school director, or school test coordinator who shall notify the superintendent or the LEA test coordinator. If the superintendent or the LEA test coordinator determines that the violation affected the validity of the test for its intended purpose, he or she shall have the authority to order the affected students to be retested.

(f) If NCDPI determines that the failure to administer a test in accordance with the rules in this Subchapter produced a result which is invalid for measuring student achievement, then NCDPI may remedy the error or order the LEA to remedy the error, including requiring retesting students.

(g) LEAs shall, at the beginning of each school year, provide information to students and parents or guardians advising them of the districtwide and State-mandated tests that students will be required to take during that school year. In addition, LEAs shall advise students and parents or guardians of the dates the tests will be administered and how the results from the tests will be used. Also, information provided to parents shall include whether the State Board of Education or the local board of education requires the test(s).

(h) LEAs shall report scores resulting from the administration State-mandated tests from the Annual Testing Program to students and parents or guardians no later than 30 days after the test is administered and along with available score interpretation information within 30 days from receipt of the scores and interpretive documentation from the NCDPI.

Selected LEAs and schools, determined through stratified random samples, shall participate in field testing and other sample testing.

(i) LEAs shall participate in National Assessment of Educational Progress (NAEP) and other national or international assessments as designated by the SBE.

History Note: Authority G.S. 115C-12(9); 115C-174.10; 115C-174.11; 115C-174.12; 115C-174.13; 115C-174.16; Emergency Adoption Eff. August 20, 2019; Eff. March 1, 2021.

16 NCAC 06D .0308 TEST COORDINATORS, AMINISTRATORS AND PROCTORS

(a) The local superintendent in a local education agency (LEA) shall act as or appoint an LEA test coordinator to assist in the local administration, reporting, and interpretation of results of any "secure test," as defined in Rule .0307(b) of this Section, administered in the Annual Testing Program, as defined in Rule .0307(c) of this Section

(b) LEA test coordinators shall attend required monthly test administration training sessions provided by the North Carolina Department of Public Instruction on subjects including proper test administration, test security, appropriate use of accommodations, scanning and scoring answer sheets, and preparation of test materials for scoring at a central site.

(c) LEA test coordinators shall in turn conduct training in the Annual Testing Program for any school test coordinators.

(d) School test coordinators shall conduct training in the Annual Testing Program for any test administrators or proctors.

(e) The LEA test coordinator shall arrange for the scanning, scoring, and reporting of results for any secure test administered in the Annual Testing Program from tests adopted by the State Board of Education.

History Note: Authority G.S. 115C-12(9); 115C-174.11; 115C-174.12;

Emergency Adoption Eff. August 20, 2019;

Eff. March 1, 2021.

16 NCAC 06D .0309 REQUIREMENTS REGARDING END-OF-COURSE TESTS

(a) All students enrolled in a course requiring an end-of-course test (EOC) in the Annual Testing Program defined in Rule .0307(c) of this Section shall participate in the administration of the EOC, either a standard administration with or without accommodations or an alternate assessment, as defined in G.S. 115C-83.3. Accommodations and alternative assessments shall be administered in accordance with 16 NCAC 06G .0315(c) and (d). This Rule shall apply to all public school units (PSUs).

(b) PSUs shall include each student's end-of-course (EOC) results in the student's permanent records and high school transcript.

(c) PSUs shall adopt policies and use results from all EOCs as a minimum of 20 percent of the student's final grade for each respective course with the exception of:

- (1) students whose Individualized Education Programs (IEPs) created under the Individuals with Disabilities Education Act, 33 U.S.C. 1414, and regulations adopted pursuant to that Act, exclude their EOC results from their final grades;
- (2) English Learner (EL) students, as defined in 25 CFR 30.101, in their first year in a United States school; or
- (3) students enrolled in a course during the initial implementation year of the new EOC for that course where proficiency scores are not available due to standard setting.

(d) PSU students who are enrolled for credit in courses in which an EOC is required shall take the EOC.

(e) PSU students who are exempt from final exams by local board of education policy shall not be exempt from the required EOC.

(f) PSU students shall take the EOC the first time the student takes the course requiring the EOC.

(g) PSU students shall take the EOC at the end of the course regardless of the grade level in which the course is offered.

(h) PSU students who are identified as failing a course for which an EOC is required shall take the EOC.

(i) PSU students may drop a course with an EOC within the first 10 days of enrollment in a semester block schedule or within the first 20 days of enrollment in a yearlong traditional schedule. Students who are enrolled for credit after the 10 or 20 days shall not drop a course with a required EOC and shall participate in the EOC administration at the completion of the course.

(j) PSU students who obtain a proficient score on an EOC and retake that course may use their higher EOC score as a minimum of 20 percent of their final course grade.

History Note: Authority G.S. 115C-12(9d)a; 115C-105.20; 115C-174.11; 115C-174.12; 115C-218.85(a)(3); Emergency Adoption Eff. August 20, 2019; Eff. Pending Legislative Review.

16 NCAC 06D .0311 TESTING CODE OF ETHICS

(a) This Rule shall apply to all public school unit (PSU) employees or agents while they are administering the Annual Testing Program defined in Rule .0307(c) of this Section.

(b) The PSU shall develop local policies and procedures to ensure maximum test security in coordination with the policies and procedures developed by the test publisher.

(c) The PSU shall require all testing coordinators, school test coordinators, test administrators and proctors to be trained as required in Rule .0308 of this Section.

(d) The PSU shall designate the personnel who are authorized to have access to secure test materials. "Access" to test materials by school personnel means handling the materials but does not include reviewing tests or analyzing test items.

- (1) Persons who have access to secure test materials shall not use those materials for any purpose other than test administration.
- (2) No person shall copy, reproduce, or paraphrase the test materials without the express written consent of the test publisher.

(e) The principal shall store test materials in a locked facility to which only the principal has access. The principal shall not allow anyone access to the test materials except as necessary for administration.

(f) When PSU personnel discover loss of materials, failure to account for materials, or any evidence of unauthorized access to the materials, they shall report the discovery without delay to the principal, school test coordinator, school system (LEA) test coordinator, or charter school director.

(g) PSUs shall ensure that test coordinators:

- (1) plan and implement training for school test coordinators, test administrators, and proctors;
- (2) ensure each school test coordinator and test administrator is trained in accordance with Rule .0308 of this Section; and
- (3) in conjunction with program administrators, ensure test accommodations to students entitled to testing accommodations as defined in 16 NCAC 06G .0315; are documented and provided.

(h) The principal or the principal's designee shall serve as school test coordinator.

(i) The principal shall ensure the school test coordinator maintains test security and accountability of test materials, including taking the following actions:

- (1) before each test administration, the school test coordinator shall count and distribute test materials;
- (2) after each test administration, the school test coordinator shall without delay collect, count, and return all test materials to the locked storage facility;
- (3) establishes procedures to assure all students participating in the Annual Testing Program

have an equal opportunity to demonstrate their knowledge on the test; and

- (4) identifies and trains personnel, proctors, and backup personnel for test administrations.

(j) Teachers may help students improve test-taking skills by:

- (1) helping students become familiar with test formats using curricular content;
- (2) teaching students test-taking strategies and providing practice sessions;
- (3) helping students learn ways of preparing to take tests; and
- (4) using resource materials such as test questions from test item banks and linking documents in instruction and test preparation.

(k) With respect to test administration, PSUs shall:

- (1) assure each school establishes procedures to ensure all test administrators comply with test publisher guidelines;
- (2) inform the local board of education of any breach of this code of ethics; and
- (3) inform test coordinators and principals of their responsibilities.

(l) The school test coordinator shall:

- (1) assure school personnel know the content of rules in this Section and local testing policies;
- (2) implement the school system and local testing policies and procedures to assure all students participating in the Annual Testing Program have an equal opportunity to demonstrate their knowledge on the test;
- (3) ensure proctors are trained; and
- (4) ensure all violations of rules in this Section and local testing policies are reported to the school system (LEA) test coordinator.

(m) Test administrators shall:

- (1) administer tests according to the directions in the assessment guide and any subsequent updates developed by the test publisher;
- (2) administer tests to all students enrolled in a grade or course that requires a test in the Annual Testing Program;
- (3) report all violations of rules in this Section and local testing policies to the school test coordinator; and

(n) Proctors shall serve as additional monitors to help the test administrator assure that students have an equal opportunity to demonstrate their knowledge on the test.

(o) Scoring. The school system test coordinator shall:

- (1) ensure each test is scored according to the procedures and guidelines defined for the test by the test publisher;
- (2) maintain quality control during the entire scoring process, which consists of handling and editing documents, scanning answer documents, and producing electronic files and reports. Quality control shall address scoring accuracy and scoring consistency.
- (3) maintain security of tests and data files at all times, including;

- (A) protecting the confidentiality of students at all times when publicizing test results; and
- (B) maintaining test security of answer keys and item-specific scoring rubrics.

(p) Educators shall use test scores as one piece of information to be interpreted together with other scores and indicators when determining a student's grade. The PSU shall ensure that school personnel analyze and report test data within the limitations described in this Paragraph.

- (1) Educators shall maintain the confidentiality of individual students. PSU personnel shall not publicize test scores or any written material containing personally identifiable information from the student's educational records except as permitted under the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g and regulations adopted pursuant thereto.
- (2) Staff development relating to testing must enable school personnel to respond knowledgeably to questions related to testing, including the tests, scores, scoring procedures, and other interpretive materials.

(q) Unethical testing practices include the following practices:

- (1) encouraging students to be absent the day of testing;
- (2) encouraging students not to do their best;
- (3) using secure test items or modified secure test items for instruction;
- (4) changing student responses at any time;
- (5) interpreting, explaining, or paraphrasing the test directions or the test items;
- (6) classifying students for the purpose of avoiding State testing;
- (7) not testing all students enrolled in a grade or course that requires a test in the Annual Testing Program;
- (8) failing to provide required accommodations during testing to students entitled to testing accommodations as defined in 16 NCAC 06G .0315;
- (9) modifying scoring programs including answer keys, equating files, and lookup tables;
- (10) modifying student records for the purpose of raising test scores;
- (11) using a single test score to place a student in a grade or a course; and
- (12) providing inaccurate test results and interpretations to the public.

(r) In the event of a violation of this Rule, the State Board of Education may impose any one or more of the following sanctions:

- (1) withhold any monetary incentive awards;
- (2) file a civil action against the person or persons responsible for the violation for copyright infringement or for any other available cause of action;

- (3) seek criminal prosecution of the person or persons responsible for the violation; and
- (4) in accordance with the provisions of 16 NCAC 06C .0312, suspend or revoke the professional license of the person or persons responsible for the violation.

*History Note: Authority G.S. 115C-12(9); 115C-174.11; 115C-174.12; 115C-218.85(a)(3);
Emergency Adoption Eff. August 20, 2019;
Eff. Pending Legislative Review.*

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

*History Note: Authority 115C-12(12); 115C-47(4); G.S. 150B-19(4); N.C. Constitution, Article IX, Sec. 5;
Eff. July 1, 1986;
Amended Eff. July 1, 1994; July 1, 1990;
Codifier of Rules objected to the Findings of Need for the Temporary Rule Eff. December 9, 1994;
Temporary Amendment Eff. December 27, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. August 1, 2000; June 1, 1996; June 1, 1995;
Codifier determined that findings did not meet criteria for temporary rule on December 10, 2001;
Temporary Amendment Eff. December 31, 2001;
Amended Eff. September 30, 2002 (Executive Order No. 33);
Repealed Eff. March 1, 2021.*

**16 NCAC 06E .0204 INTERSCHOLASTIC
ATHLETICS**

(a) Local Education Agencies (LEAs) are authorized to determine whether and to what extent students in grades 6-12 may participate in interscholastic athletics; provided, however, that students in sixth grade are not eligible to participate in football.
(b) In order to qualify for participation in public school athletics, a student shall meet the following requirements:

- (1) The student shall meet the residence criteria of G.S. 115C-366(a). The student shall participate only at the school to which the student is assigned by the LEA or, if over the age requirements, the school to which the student would be assigned at the next higher grade level.
- (2) The student shall meet age requirements at each grade level to participate. The principal shall have evidence of the legal birth date of the student. A student who is ineligible to participate at one grade level due to age is eligible to participate at the next higher grade level only. However, no student is eligible to participate at the middle school level for a period lasting longer than six consecutive semesters, beginning with the student's entry into sixth grade. No student shall participate at the high school level for more than eight

consecutive semesters, beginning with the student's first entry into grade nine or participation on a high school team, whichever occurs first.

- (A) A student shall not participate on a sixth, seventh, or eighth grade team if the student becomes 15 years of age on or before August 31 of that school year.
- (B) A student shall not participate on a ninth grade junior high school team if the student becomes 16 years of age on or before August 31 of that school year.
- (C) A student is eligible to participate in high school athletic contests during a school year if the student does not reach his or her 19th birthday on or before August 31 of that school year.

(c) To be eligible to compete during any semester in grades 6, 7, and 8, the student shall have passed at least one less course than the number of required core courses the immediate prior semester and meet promotion standards established by the LEA. To be eligible to compete during any semester in grades 9-12, the student shall have passed at least five courses (or the equivalent for non-traditional school schedules) the immediate prior semester and meet promotion standards established by the LEA. Regardless of the school organization pattern, a student who is promoted from the fifth grade to the sixth grade automatically meets the courses passed requirement for the first semester of the sixth grade. Regardless of the school organization pattern, a student who is promoted from the eighth grade to the ninth grade automatically meets the courses passed requirement for the first semester of the ninth grade.

(d) The student shall receive a medical examination each year by a licensed physician, nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9, 90-18.1, and 90-18.2.

(e) The student shall not participate in interscholastic athletics after any of the following:

- (1) graduation;
- (2) becoming eligible to graduate;
- (3) signing a professional athletic contract;
- (4) receiving remuneration as a participant in an athletic contest; or
- (5) participating on an all-star team or in an all-star game that is not sanctioned by the association of which the student's school is a member. The student is ineligible only for the specific sport involved.

(f) Each principal of a school that participates in interscholastic athletics shall certify a list of eligible students for each sport.

(g) Any student-athlete, coach, or school official in grades 6-12 who is ejected from any athletic contest shall at least be penalized as follows:

- (1) for the first offense, the person shall be reprimanded and suspended for the next game at that level of play (varsity or junior varsity) and for any intervening games at either level;

- (2) for a second offense, the person shall be placed on probation and suspended for the next two games at that level of play (varsity or junior varsity) and for any intervening games at either level;
- (3) for a third offense, the person shall be suspended for one calendar year;
- (4) a coach who is suspended at any level of grades 6-12 (middle school, junior high or high school) shall not coach in any other grade level in grades 6-12 during the period of suspension.
- (5) Penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.

(h) LEAs may allow their schools to belong to the North Carolina High School Athletic Association (NCHSAA), which has established as a minimum the rules adopted by the SBE. The NCHSAA may waive any eligibility requirement contained in this Rule, except the age requirement, if it finds that the rule fails to accomplish its purpose, or it works an undue hardship on a student who has lost eligibility due to circumstances that made participation impossible such as prolonged illness or injury. The NCHSAA may enforce penalties for the violation of this Rule at the high school level.

(i) The LEA that has jurisdiction over the high school may impose additional penalties. LEAs or conferences may adopt and impose penalties at the middle and junior high school levels.

*History Note: Authority G.S. 115C-12(12); 115C-12(23); 115C-47(4);
Emergency Adoption Eff. August 20, 2019;
Eff. March 1, 2021.*

16 NCAC 06E .0206 ATHLETIC TRAINERS

(a) Each Local Education Agency (LEA) shall designate for each high school within its jurisdiction either a licensed athletic trainer who is qualified pursuant to Article 34 of Chapter 90 of the General Statutes of North Carolina or a first responder. These persons may be employed on a full-time or part-time basis or may serve as a volunteer.

(b) If not a licensed athletic trainer, a first responder shall:

- (1) have completed and continue to maintain certification in cardiopulmonary resuscitation as certified by an organization such as the American Red Cross or the American Heart Association;
- (2) have completed and continue to maintain certification in first aid as certified by an organization such as the American Red Cross or the American Heart Association;
- (3) have completed and continue to maintain training in concussion management as offered by an organization such as the National Federation of State High School Associations (NFHS).
- (4) have completed and continue to maintain continuing education in injury prevention and

management as offered by an organization such as the National Federation of State High School Associations (NFHS); and

- (5) complete 10 hours total of staff development each school year specific to first aid and injury recognition and prevention. The 10 hours may include hours necessary for recertifications or renewals.

(c) The licensed athletic trainer or first responder shall not have concurrent coaching responsibilities during the time in which the person is working as a licensed athletic trainer or first responder.

(d) A licensed athletic trainer or first responder shall attend all football practices and games, unless excused by the superintendent due to emergency.

(e) Each LEA shall monitor school athletic trainer's or the first responder's compliance with this Rule.

History Note: Authority G.S. 115C-12(12); 115C-12(23); Emergency Adoption Eff. August 20, 2019; Eff. March 1, 2021.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

19A NCAC 02E .0204 LOCAL ZONING AUTHORITIES

(a) A local zoning authority may become certified to control outdoor advertising within its jurisdiction. In accordance with 23 CFR 750.706(c), the local zoning authority must demonstrate to the Chief Engineer that it has established effective control through regulations or ordinances with respect to size, lighting and spacing of outdoor advertising signs in commercial and industrial zones as allowed under the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, and with customary use.

(b) Upon authorization from the Chief Engineer to the local zoning authority, the size, lighting and spacing requirements set forth in this Section shall not apply to those areas and the local zoning authority shall be authorized to issue permits for the erection and maintenance of outdoor advertising signs, subject to G.S. 136-131.2. A permit issued by a local zoning authority shall be accepted in lieu of a state permit issued by the Department of Transportation.

(c) The Chief Engineer shall notify the Federal Highway Administration in writing of those zoning jurisdictions wherein local control applies.

(d) Nothing contained herein shall relieve the State of the responsibility of limiting signs within controlled areas to commercial and industrial zones. Where a local zoning authority fails to satisfy its obligations for maintaining local control, the local zoning authority may be decertified.

(e) Outdoor advertising signs with a valid Department of Transportation permit are subject to the limitations set forth in G.S. 136-131.2.

History Note: Authority G.S. 136-130; 136-131.2; 136-138; 160D-912; Eff. July 1, 1978; Amended Eff. December 1, 2012; November 1, 1993; Amended Eff. Pending Legislative Review.

19A NCAC 02E .0206 APPLICATIONS

(a) An application for an outdoor advertising structure shall be required for a new outdoor advertising structure and shall be made on NCDOT form OA-1, which may be obtained at any District Office or the NCDOT website at www.ncdot.gov. Upon completion, the application shall be submitted to the district office for the district where the proposed site is located. Applications shall include the following information:

- (1) The applicant's contact information;
- (2) Configuration and description of sign structure; and
- (3) The applicant's signature.

(b) The application shall include the following attachments:

- (1) a written lease or written proof of interest in the land where a sign is proposed to be constructed. An applicant may redact information pertaining to term and amount of lease;
- (2) a right of entry form to provide the right of entry from the property owner or adjacent property owners to allow DOT personnel to enter upon property when necessary for the enforcement of the Outdoor Advertising Control Act of these Rules;
- (3) if zoned, a written statement from the local zoning authority indicating the present zoning of the parcel and its effective date. Upon request of the District Engineer's Office the applicant shall submit copies of minutes from the zoning authority pertinent to the zoning action;
- (4) if the area is an unzoned commercial or industrial area, a copy of the documentation confirming that the requirements Rule .0203(5)(a)(i) and (ii) of this Section have been met;
- (5) a sign permit or zoning permit, if required by the local government having jurisdiction over the proposed location;
- (6) a written certification from the permit applicant indicating there has been no misrepresentation of any facts regarding the permit application, or other information supplied to acquire a permit; and
- (7) the initial permit fee of one hundred twenty dollars (\$120.00).

(c) Any omission of attachments, information, or certification required in this Rule shall cause the rejection and return of the application and fee.

(d) The act of reconstruction or relocation of a conforming sign within the permitted parcel boundaries as authorized in Rule .0225 of this Section is not the erection of a new sign and does not require a new permit; only an alteration permit addendum to the existing permit shall be necessary.

History Note: Authority G.S. 136-130; 136-133; Eff. July 1, 1978; Amended Eff. August 1, 2000; November 1, 1993; December 1, 1990; June 15, 1981; Amended Eff. Pending Legislative Review.

**19A NCAC 02E .0225 REPAIR/MAINTENANCE/
ALTERATION/RECONSTRUCTION OF SIGNS**

(a) Signs shall not be serviced from or across the right-of-way, or the right-of-way of interstates and fully controlled access primary routes or from or across controlled access barriers or fences of controlled routes.

(b) Conforming signs may be altered in accordance with the following:

- (1) A conforming sign that has been destroyed or significantly damaged may be reconstructed in accordance with this Rule and Rule .0203 of this Section.
- (2) Conforming sign structures may be reconstructed so long as the reconstruction does not conflict with any applicable State rules or statutes or Federal regulations.
- (3) Any alteration beyond reasonable repair and maintenance, reconstruction, or relocation of a conforming sign structure shall not commence until the District Engineer's office receives from the permit holder a written notice detailing the proposed alteration and the schedule for the alteration work. The written notice shall include the sign owner's name, the permit number, and the proposed sign configuration. This written notice shall be attached to the sign permit as an alteration permit addendum. The sign structure, except sign faces, shall be completed within 180 days from the date of the receipt of the alteration permit addendum. If the sign structure, except sign faces, is not constructed within 180 days of receipt of the alteration permit addendum then any intervening rule change shall apply to the sign structure.
- (4) Any change to a sign that is not considered reasonable repair or reconstruction as defined by this Rule shall obtain local approval before receiving an alteration permit addendum if required by the local government having jurisdiction over the sign location.
- (5) Conforming signs that are altered, reconstructed, or relocated shall not require a new permit unless the sign is relocated outside of the parcel boundary of the sign location. Conforming signs may be relocated within the same parcel boundary of the sign location. Conforming signs relocated on the same parcel shall have their sign location updated after the alteration, reconstruction, or relocation work is completed. The new location shall be listed on the permit addendum by Department of Transportation personnel.

(c) Subject to G.S. 136-131.2, signs not conforming to State standards shall not be altered beyond reasonable repair and maintenance, reconstructed, or relocated unless the sign structure becomes a conforming sign.

(d) The addition of lighting or illumination to existing signs not conforming to State standards is specifically prohibited as

reasonable maintenance; however, the lighting may be permanently removed from such sign structure.

(e) A sign not conforming to State standards may continue to be maintained as long as it is not abandoned, destroyed, discontinued, or significantly damaged.

(f) When the combined damage to the face and support poles of a sign not conforming to State standards appears to be significant, as defined in 19A NCAC 02E .0201(28), the permit holder may request the Department to review the damaged sign, including salvageable sign components, prior to repairs being made to determine the extent or percentage of the damage. Should the permit holder perform repairs without notification to the Department, and the Department later determines the damage is greater than 50 percent of the combination of the sign face and support poles, the permit shall be revoked. To determine the percent of damage to the sign structure, the only components to be used to calculate this value are the sign face and support poles. The percent damage shall be calculated by dividing the unsalvageable sign components by the original sign structure component quantities, using the following criteria:

- (1) Outdoor Advertising on Wooden Poles: The percentage of damage attributable to poles shall be 50 percent and the percentage of damage attributable to sign face shall be 50 percent;
- (2) Outdoor Advertising on Steel Poles or Beams: The percentage of damage attributable to poles shall be 80 percent and the percentage of damage attributable to sign face shall be 20 percent; and
- (3) Outdoor Advertising on Monopoles: The percentage of damage attributable to poles shall be 80 percent and the percentage of damage attributable to sign face shall be 20 percent.

(g) For the purposes of this Rule, the following activities are considered to be reasonable repair and maintenance:

- (1) change of advertising message or copy on the sign face;
- (2) replacement of border and trim;
- (3) repair and replacement of a structural member, including a pole, stringer, or panel, with like material;
- (4) alterations of the dimensions of painted bulletins incidental to copy change; and
- (5) any net decrease in the outside dimensions of the advertising copy portion of the sign; but if the sign face or faces of a Sign Not Conforming to State Standards are reduced they shall not thereafter be increased beyond the size of the sign on the date it became a Sign Not Conforming to State Standards.

(h) For the purposes of this Rule and G.S. 136-131.2, "reconstruction" means the rebuilding of a sign and shall include the changing of an existing multipole outdoor advertising structure to a new monopole structure. "Reconstruction" shall not include the changing of a static face to an automatic changing face nor increasing the sign height.

History Note: Authority G.S. 136-89.58; 136-130; 136-131.2; Eff. August 1, 2000;

*Amended Eff. August 1, 2000;
Amended Eff. Pending Legislative Review.*

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 34 – BOARD OF FUNERAL SERVICE

21 NCAC 34A .0128 WAIVER

(a) The Board may waive any rule in this Chapter that is not statutorily required if a licensee, trainee, or continuing education course provider submits a written request. Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver;
- (5) notice to and opposition by the public;
- (6) need for the waiver; and
- (7) previous requests for waivers submitted from the requesting party.

(b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during a disaster declaration by the President of the United States or the Governor, a national emergency declaration by the President of the United States, or a state of emergency declaration issued under G.S.

166A-19.3(19), based on the factors set forth in Paragraph (a)(1), (2), (3), (5) and (6) of this Rule. If the Board wishes to waive a rule, it shall provide notice by posting a link on their website and sending out information to their interested persons mailing list.

(c) Any waiver granted by the Board in accordance with this Rule based upon a declared state of emergency shall include a date certain upon which the waiver will expire, not to exceed 12 months from the date that the waiver is granted.

*History Note: Authority G.S. 90-210.23(a); 150B-19(6);
Emergency Adoption Eff. April 14, 2020;
Temporary Adoption Eff. July 24, 2020;
Eff. March 1, 2021.*

21 NCAC 34B .0308 RENEWALS: NOTICES

The Executive Director of the Board shall, on or about December 1 of each year, send by electronic mail to each licensee or permit holder a written notice that the license, permit, or courtesy card shall expire as provided in G.S. 90-210.25 unless renewed. The notice shall contain instructions on how to renew said license, permit, or courtesy card online.

*History Note: Authority G.S. 90-210.23(a); 90-210.25
Eff. February 1, 1976;
Readopted Eff. September 27, 1977;
Amended Eff. November 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without
substantive public interest Eff. August 19, 2017;
Amended Eff. March 1, 2021.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission April 15, 2021 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 984-236-1850. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jeanette Doran (Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jeff Hyde
Vacant

Appointed by House

Anna Baird Choi (1st Vice Chair)
Andrew P. Atkins (2nd Vice Chair)
Paul Powell
Randy Overton
Vacant

COMMISSION COUNSEL

Amber Cronk May	984-236-1936
Amanda Reeder	984-236-1939
Ashley Snyder	984-236-1941

RULES REVIEW COMMISSION MEETING DATES

April 15, 2021	June 17, 2021
May 20, 2021	July 15, 2021

AGENDA

RULES REVIEW COMMISSION

THURSDAY, APRIL 15, 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. Department of Environmental Quality – 01 NCAC 41C .0101, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0301, .0302, .0303; 41D .0101, .0102, .0201, .0202, .0301, .0302, .0401 (Reeder)
 - B. Coastal Resources Commission - 15A NCAC 07H .0401, .0404, .0405, .0406; 07J .0403, .0404, .0405, .0406, .0407, .0409, .0410; 07K .0207 (Snyder)
 - C. State Board of Education - 16 NCAC 06G .0508 (Snyder)
 - D. Building Code Council - Residential Code, N1101.13(R401.2) (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed between February 23, 2021 through March 22, 2021
 - Plant Conservation Board (May)
 - Department of Commerce - Division of Employment Security (Snyder)
 - Criminal Justice Education and Training Standards Commission (Reeder)
 - Sheriffs' Education and Training Standards Commission (Reeder)
 - Marine Fisheries Commission 03O (Reeder)
 - Wildlife Resources Commission (Snyder)
 - Environmental Management Commission (May)
 - Marine Fisheries Commission 18A (Reeder)
 - Department of Transportation - Division of Motor Vehicles (May)
 - Board of Environmental Health Specialist Examiners (May)
 - State Human Resources Commission (May)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review

- VII. Commission Business
- Next meeting: May 20, 2021
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**Commission Review
Log of Permanent Rule Filings
February 23, 2021 through March 22, 2021**

PLANT CONSERVATION BOARD

The rules in Chapter 48 are from the Plant Conservation Board and cover plant industry.

The rules in Subchapter 48F concern plant conservation and include the endangered and threatened plant species lists and the list of species of special concern (.0300); collection, propagation and movement of endangered and threatened plant species (.0400); and forms (.0500).

<u>Protected Plant Species List</u>	02	NCAC	48F	.0301
Amend*				

COMMERCE - EMPLOYMENT SECURITY, DIVISION OF

The rules in Subchapter 24D concern tax administration including account charge protests (.0100); request for noncharging of benefits payments (.0200); adequacy (.0300); voluntary election and payments (.0400); records (.0500); reports (.0600); transfer of experience rating to related entity successor account (.0700); agreements to compromise (.0800); special tax investigations (.0900); requests and hearings to review and redetermine tax rate (.1000); treasury offset program and employer setoff debt collection (.1100); seasonal pursuits (.1200); collection methods of employer debt (.1300); and records (.1400).

<u>Notice to Employer of Potential Charges</u>	04	NCAC	24D	.0102
Amend*				
<u>Requirements for Requesting Noncharging of Benefit Payments</u>	04	NCAC	24D	.0103
Repeal*				
<u>Time for Filing Requests for Noncharging</u>	04	NCAC	24D	.0104
Repeal*				
<u>Determination on Requests for Noncharging</u>	04	NCAC	24D	.0105
Repeal*				
<u>Appealing Denial or Request for Noncharging</u>	04	NCAC	24D	.0106
Repeal*				
<u>Notice of Employer Quarterly Charges</u>	04	NCAC	24D	.0201
Adopt*				
<u>Requirements for Filing Protests to List of Charges</u>	04	NCAC	24D	.0202
Amend*				
<u>Grounds for Protesting List of Charges</u>	04	NCAC	24D	.0203
Amend*				
<u>Time for Filing Protests and Appeals</u>	04	NCAC	24D	.0206
Adopt*				

The rules in Subchapter 24F concern the board of review including general provisions (.0100); higher authority review of appeals decisions (.0200); and tax liability hearings (.0300).

<u>Telephone Hearings Before the Board of Review</u>	04	NCAC	24F	.0303
Repeal*				
<u>In-Person Hearings</u>	04	NCAC	24F	.0304
Amend*				

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

<u>Responsibilities of the School Director</u> Amend*	12	NCAC	09B	.0202
<u>Criminal Justice Instructor Training</u> Amend*	12	NCAC	09B	.0209
<u>Evaluation for Training Waiver</u> Amend*	12	NCAC	09B	.0403

The rules in Subchapter 9E relate to the law enforcement officers' in-service training program.

<u>Minimum Training Specifications: Annual In-Service Training</u> Amend*	12	NCAC	09E	.0105
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The rules in Subchapter 9G are the standards for correction including scope, applicability and definitions (.0100); minimum standards for certification of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0200); certification of correctional officers, probation/parole officers, probation/parole officers intermediate and instructors (.0300); minimum standards for training of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0400); enforcement of rules (.0500); professional certification program (.0600); and forms (.0700).

<u>Instructor Training</u> Amend*	12	NCAC	09G	.0414
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SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Subchapter 10B govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

<u>Terms and Conditions of Detention Officer Instructor Cert...</u> Amend*	12	NCAC	10B	.0905
<u>Terms and Conditions of a Limited Lecturer Certification</u> Amend*	12	NCAC	10B	.0909
<u>Terms and Conditions of Telecommunicator Instructor Certi...</u> Amend*	12	NCAC	10B	.0915

MARINE FISHERIES COMMISSION

The rules in Subchapter 3O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

<u>Standards and Requirements for Shellfish Leases and Franc...</u> Readopt with Changes*	15A	NCAC	03O	.0201
<u>Shellfish Lease Applications</u> Readopt with Changes*	15A	NCAC	03O	.0202

<u>Marking Shellfish Leases and Franchises</u>	15A NCAC 03O .0204
Readopt with Changes*	

The rules in Subchapter 3R specify boundaries for various areas (.0100); and fishery management areas (.0200).

<u>Permanent Secondary Nursery Areas</u>	15A NCAC 03R .0104
Amend*	

<u>Special Secondary Nursery Areas</u>	15A NCAC 03R .0105
Readopt with Changes*	

<u>Oyster Sanctuaries</u>	15A NCAC 03R .0117
Amend*	

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10A cover general WRC practices and procedures including petitions for rulemaking (.0400); declaratory rulemaking (.0500); warning tickets (.1000); waivers (.1100); emergency powers (.1200); wildlife poacher reward fund (.1300); interstate wildlife violator compact (wcv) (.1400); and evidence (.1500).

<u>Emergency Closures and Waivers</u>	15A NCAC 10A .1102
Adopt*	

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>Wildlife Taken for Depredations</u>	15A NCAC 10B .0106
Amend*	

<u>Attendance of Traps</u>	15A NCAC 10B .0110
Readopt with Changes*	

<u>Permitted Archery Equipment</u>	15A NCAC 10B .0116
Amend*	

<u>Bear</u>	15A NCAC 10B .0202
Amend*	

<u>Deer (White Tailed)</u>	15A NCAC 10B .0203
Amend*	

<u>Wild Quail Management Areas</u>	15A NCAC 10B .0227
Adopt*	

The rules in Subchapter 10C cover inland fishing including jurisdictional issues involving the Marine Fisheries Commission (.0100); general rules (.0200); game fish (.0300); non-game fish (.0400); primary nursery areas (.0500); and anadromous fish spawning areas (.0600).

<u>Public Mountain Trout Waters</u>	15A NCAC 10C .0205
Amend*	

<u>Possession of Certain Fishes</u>	15A NCAC 10C .0211
Amend*	

<u>Largemouth Bass</u>	15A NCAC 10C .0305
Amend*	

<u>Striped Bass</u>	15A NCAC 10C .0314
Amend*	

<u>Trout</u>	15A NCAC 10C .0316
Amend*	

<u>Smallmouth Bass</u>	15A NCAC 10C .0321
Amend*	

RULES REVIEW COMMISSION

<u>Alabama Bass and Spotted Bass</u>	15A	NCAC	10C	.0322
Amend*				
<u>Manner of Taking Nongame Fishes</u>	15A	NCAC	10C	.0401
Amend*				
<u>Taking Nongame Fishes for Bait or Personal Consumption</u>	15A	NCAC	10C	.0402
Readopt with Changes*				

The rules in Subchapter 10D are game lands rules.

<u>General Regulations Regarding Use</u>	15A	NCAC	10D	.0102
Amend*				
<u>Hunting on Game Lands</u>	15A	NCAC	10D	.0103
Amend*				

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>Brunswick County</u>	15A	NCAC	10F	.0305
Amend*				

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), reptiles and amphibians (.1300), wildlife captivity and rehabilitation (.1400), wildlife and alligator control agents (.1500).

<u>Wildlife Control Agent License Eligibility and Requirements</u>	15A	NCAC	10H	.1501
Adopt*				
<u>Depredation Permits Issued by Wildlife Control Agents</u>	15A	NCAC	10H	.1502
Adopt*				
<u>Manner of Take</u>	15A	NCAC	10H	.1503
Adopt*				
<u>Records and Reporting Requirements</u>	15A	NCAC	10H	.1504
Adopt*				
<u>Wildlife Control Agent License Renewal and Revocation</u>	15A	NCAC	10H	.1505
Adopt*				
<u>Alligator Control Agent Certification Eligibility and Req...</u>	15A	NCAC	10H	.1506
Adopt*				
<u>Additional Permit Requirements for Alligator Control Agents</u>	15A	NCAC	10H	.1507
Adopt*				
<u>Alligator Control Agent Certification Eligibility and Req...</u>	15A	NCAC	10H	.1508
Adopt*				
<u>Alligator Control Agent Certification Renewal and Revocation</u>	15A	NCAC	10H	.1509
Adopt*				

The rules in Subchapter 10J cover wildlife conservation areas.

<u>Hunting on Wildlife Conservation Areas</u>	15A	NCAC	10J	.0103
Amend*				

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 13 concern Solid Waste Management.

The rules in Subchapter 13B concern Solid Waste Management including general provisions (.0100); permits for solid waste management facilities (.0200); treatment and processing facilities (.0300); transfer stations (.0400); disposal sites (.0500); monitoring requirements (.0600); administrative penalty procedures (.0700); septage management (.0800); yard waste facilities (.0900); solid waste management loan program (.1000); scrap tire management (.1100); medical waste management (.1200); disposition of remains of terminated pregnancies (.1300); municipal solid waste compost facilities (.1400); standards for special tax treatment of recycling and resource recovery equipment and facilities (.1500); requirements for municipal solid waste landfill facilities (.1600); requirements for beneficial use of coal combustion products (.1700); and financial assurance requirements for solid waste management facilities (.1800).

<u>Definitions</u>	15A	NCAC	13B	.1701
Readopt/Repeal*				
<u>General Provisions for Structural Fill Facilities</u>	15A	NCAC	13B	.1702
Readopt/Repeal*				
<u>Notification for Structural Fill Facilities</u>	15A	NCAC	13B	.1703
Readopt/Repeal*				
<u>Siting for Structural Fill Facilities</u>	15A	NCAC	13B	.1704
Readopt/Repeal*				
<u>Design, Construction, and Operation for Structural Fill F...</u>	15A	NCAC	13B	.1705
Readopt/Repeal*				
<u>Closure of Structural Fill Facilities</u>	15A	NCAC	13B	.1706
Readopt/Repeal*				
<u>Recordation of Structural Fill Facilities</u>	15A	NCAC	13B	.1707
Readopt/Repeal*				
<u>Other Uses for Coal Combustion By-Products</u>	15A	NCAC	13B	.1708
Readopt/Repeal*				
<u>Storage and Containment of Coal Combustion By-Products</u>	15A	NCAC	13B	.1709
Readopt/Repeal*				
<u>Annual Reporting</u>	15A	NCAC	13B	.1710
Readopt/Repeal*				
<u>Requirements for Existing Structural Fills</u>	15A	NCAC	13B	.1713
Adopt*				

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>Floors</u>	15A	NCAC	18A	.0140
Readopt without Changes*				
<u>Walls and Ceilings</u>	15A	NCAC	18A	.0141
Readopt without Changes*				
<u>Lighting</u>	15A	NCAC	18A	.0142
Readopt without Changes*				

<u>Ventilation</u>	15A	NCAC	18A	.0143
Readopt without Changes*				
<u>Premises</u>	15A	NCAC	18A	.0146
Readopt with Changes*				
<u>Sewage Disposal</u>	15A	NCAC	18A	.0150
Readopt with Changes*				
<u>Employees' Personal Articles</u>	15A	NCAC	18A	.0154
Readopt with Changes*				
<u>Supply Storage</u>	15A	NCAC	18A	.0155
Readopt with Changes*				
<u>Separation of Operations</u>	15A	NCAC	18A	.0159
Readopt with Changes*				
<u>Raw Crustacea Receiving and Refrigeration</u>	15A	NCAC	18A	.0160
Readopt with Changes*				
<u>Cooked Crustacea Refrigeration</u>	15A	NCAC	18A	.0163
Readopt without Changes*				
<u>Delivery Window of Shelf</u>	15A	NCAC	18A	.0167
Readopt with Changes*				
<u>Freezing</u>	15A	NCAC	18A	.0169
Readopt without Changes*				
<u>Shipping</u>	15A	NCAC	18A	.0170
Readopt without Changes*				
<u>Whole Crustacea or Crustacea Products</u>	15A	NCAC	18A	.0171
Readopt with Changes*				
<u>Cooked Claw Shipping Conditions</u>	15A	NCAC	18A	.0172
Readopt with Changes*				
<u>Recall Procedure</u>	15A	NCAC	18A	.0179
Readopt with Changes*				
<u>Sampling and Testing</u>	15A	NCAC	18A	.0180
Readopt with Changes*				
<u>Hazard Analysis</u>	15A	NCAC	18A	.0188
Readopt without Changes*				
<u>HACCP Plan</u>	15A	NCAC	18A	.0189
Readopt with Changes*				
<u>Sanitation Monitoring</u>	15A	NCAC	18A	.0190
Readopt with Changes*				
<u>Standards for an Approved Shellfish Growing Area</u>	15A	NCAC	18A	.0431
Readopt/Repeal*				
<u>Laboratory Procedures</u>	15A	NCAC	18A	.0704
Readopt with Changes*				
<u>Definitions</u>	15A	NCAC	18A	.0901
Readopt with Changes*				
<u>Classification of Shellfish Growing Waters</u>	15A	NCAC	18A	.0902
Readopt with Changes*				
<u>Sanitary Survey</u>	15A	NCAC	18A	.0903
Readopt with Changes*				
<u>Approved Waters</u>	15A	NCAC	18A	.0904
Readopt with Changes*				
<u>Conditionally Approved Waters</u>	15A	NCAC	18A	.0905
Readopt with Changes*				
<u>Restricted Areas</u>	15A	NCAC	18A	.0906
Readopt with Changes*				

<u>Prohibited Waters</u>	15A	NCAC	18A	.0907
Readopt with Changes*				
<u>Unsurveyed Areas</u>	15A	NCAC	18A	.0908
Readopt/Repeal*				
<u>Buffer Zones</u>	15A	NCAC	18A	.0909
Readopt with Changes*				
<u>Reclassification</u>	15A	NCAC	18A	.0910
Readopt/Repeal*				
<u>Public Health Emergency</u>	15A	NCAC	18A	.0913
Readopt with Changes*				
<u>Laboratory Procedures</u>	15A	NCAC	18A	.0914
Readopt with Changes*				

TRANSPORTATION - MOTOR VEHICLES, DIVISION OF

The rules in Chapter 3 concern the division of motor vehicles. The rules in Subchapter 3C concern vehicle registration including general provision (.0100); registrations (.0200); financial responsibility (.0300); motor vehicles operated for-hire (.0400); motor vehicles operated for hire (.0500); and international registration plan (.0600).

<u>Purpose</u>	19A	NCAC	03C	.0101
Readopt/Repeal*				
<u>Forms</u>	19A	NCAC	03C	.0102
Readopt without Changes*				
<u>Function</u>	19A	NCAC	03C	.0201
Readopt without Changes*				
<u>Titling and Registration of Branded Vehicles</u>	19A	NCAC	03C	.0202
Readopt without Changes*				
<u>Manufacturer's Certificate of Origin</u>	19A	NCAC	03C	.0220
Readopt without Changes*				
<u>Registration: Out-of-State Registered Vehicles</u>	19A	NCAC	03C	.0221
Readopt without Changes*				
<u>Registration: Custom Built Motor Vehicles and Trailers</u>	19A	NCAC	03C	.0222
Readopt without Changes*				
<u>Registration: Motor Homes: Etc.</u>	19A	NCAC	03C	.0223
Readopt without Changes*				
<u>Purchase Information</u>	19A	NCAC	03C	.0224
Readopt without Changes*				
<u>Class of License Plate</u>	19A	NCAC	03C	.0225
Readopt without Changes*				
<u>Registration: Buses to be Operated for Hire</u>	19A	NCAC	03C	.0226
Readopt without Changes*				
<u>Date First Operated</u>	19A	NCAC	03C	.0227
Readopt without Changes*				
<u>Title Only</u>	19A	NCAC	03C	.0228
Readopt without Changes*				
<u>Signature</u>	19A	NCAC	03C	.0229
Readopt without Changes*				
<u>Powers of Attorney: Guardians</u>	19A	NCAC	03C	.0230
Readopt without Changes*				
<u>Registration Information and Certified Records Fees</u>	19A	NCAC	03C	.0232
Readopt without Changes*				
<u>Leased Vehicles</u>	19A	NCAC	03C	.0233
Readopt without Changes*				

<u>Minors May Own Vehicles</u> Readopt without Changes*	19A	NCAC	03C	.0234
<u>Application for Duplicate Title</u> Readopt without Changes*	19A	NCAC	03C	.0235
<u>Penalty for Failure to Make Transfer Within 28 days</u> Readopt without Changes*	19A	NCAC	03C	.0236
<u>Display of License Plate Renewal Sticker</u> Readopt without Changes*	19A	NCAC	03C	.0237
<u>Van Pool License Plate</u> Readopt without Changes*	19A	NCAC	03C	.0403
<u>Original Registration: Staggered Registration System</u> Readopt without Changes*	19A	NCAC	03C	.0404
<u>Application for License</u> Readopt without Changes*	19A	NCAC	03C	.0414
<u>Golf Carts</u> Readopt without Changes*	19A	NCAC	03C	.0419
<u>Handicapped Placard</u> Readopt without Changes*	19A	NCAC	03C	.0420
<u>Vehicles Used for Passenger and Property Carrying</u> Readopt without Changes*	19A	NCAC	03C	.0421
<u>Self-Propelled Camping Vehicles</u> Readopt without Changes*	19A	NCAC	03C	.0423
<u>Trucks and Truck-Tractors (Private Property Carrying)</u> Readopt without Changes*	19A	NCAC	03C	.0424
<u>Special Mobile Equipment</u> Readopt without Changes*	19A	NCAC	03C	.0425
<u>Ten Day Temporary Registration Plate</u> Readopt without Changes*	19A	NCAC	03C	.0426
<u>Personalized Plates</u> Readopt without Changes*	19A	NCAC	03C	.0427
<u>Application for Replacement License or Validation Stickers</u> Readopt without Changes*	19A	NCAC	03C	.0428
<u>License Plate Transfer</u> Readopt without Changes*	19A	NCAC	03C	.0429
<u>Purchase of Out-Of-State Vehicles: Removal of Plates</u> Readopt without Changes*	19A	NCAC	03C	.0431
<u>Transporter's Registration</u> Readopt without Changes*	19A	NCAC	03C	.0432
<u>Driveway Registration</u> Readopt without Changes*	19A	NCAC	03C	.0433
<u>Highway Use Tax</u> Readopt without Changes*	19A	NCAC	03C	.0436
<u>For Hire Operations</u> Readopt without Changes*	19A	NCAC	03C	.0501
<u>For Hire Operations Defined</u> Readopt without Changes*	19A	NCAC	03C	.0520
<u>Taxicab</u> Readopt without Changes*	19A	NCAC	03C	.0521

The rules in Subchapter 03E concern international registration plan (IRP) section including registration of rental vehicles by nonresidents (.0300); international registration plan (.0400); and safety rules and registration (.0500).

<u>General Information</u>	19A	NCAC	03E	.0401
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Readopt without Changes*

ENVIRONMENTAL HEALTH SPECIALIST EXAMINERS, BOARD OF

The rules in Chapter 62 are from the Board of Environmental Health Specialist Examiners including organization (.0100); rulemaking procedures (.0200); contested cases (.0300); rules of operation (.0400).

<u>Renewal</u>	21	NCAC	62	.0407
Amend*				
<u>Specialized Training</u>	21	NCAC	62	.0411
Amend*				

STATE HUMAN RESOURCES COMMISSION

The rules in Chapter 1 are from the State Personnel Commission. The rules in Subchapter 1C concern personnel administration including employment (.0100); general employment policies (.0200); personnel records and reports (.0300); appointment (.0400); work schedule (.0500); competitive service (.0600); secondary employment (.0700); requirements for teleworking programs (.0800); employee recognition programs (.0900); and separation (.1000).

<u>Temporary Appointment</u>	25	NCAC	01C	.0405
Amend*				

The rules in Subchapter 1E cover employee benefits including general leave provisions (.0100); vacation leave (.0200); sick leave (.0300); workers compensation leave (.0700); military leave (.0800); holidays (.0900); miscellaneous leave (.1000); other types of leave without pay (.1100); community involvement (.1200); the voluntary shared leave program (.1300); family and medical leave (.1400); child involvement leave (.1500); community services leave (.1600); administrative leave (.1700) and incentive leave (.1800).

<u>Eligibility</u>	25	NCAC	01E	.0908
Amend*				

CONTESTED CASE DECISIONS

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 984-236-1850.

OFFICE OF ADMINISTRATIVE HEARINGS**Chief Administrative Law Judge****JULIAN MANN, III****Senior Administrative Law Judge****FRED G. MORRISON JR.****ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter
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>			
16	DHR	03629	1/20/2021	Community Helps Network LLC	v.	NC Department of Health and Human Services Division of Medical Assistance (DMA) and Eastpointe Human Services (Eastpointe)	May
20	DHR	02507	1/28/2021	Orlando McCullough owner/operator Honeybees Nest Learning Center LLC	v.	NC Department of Health and Human Services, Div of Child Dev and Early Education	Lassiter
20	DHR	03502	1/22/2021	Wayne D Joiner	v.	NC Department of Health and Human Services	Byrne
19	DOA	05891	1/14/2021	Corvel Enterprise Comp Inc	v.	North Carolina Department of Administration Division of Purchase and Contract and the North Carolina Office of State Human Resources	Lassiter
20	DOJ	03444	1/29/2021	Michael Douglas Wise	v.	NC Sheriffs Education and Training Standards Commission	Byrne
20	OSP	01100	1/6/2021	Regina McLymore	v.	NC Department of Public Safety Division of Adult Correction and Juvenile Justice	Byrne
20	OSP	01101	1/29/2021	Andrew Larcell McArthur	v.	North Carolina Central University	Lassiter
20	SOS	02582	1/22/2021	John Finley Jr	v.	Department of the Secretary of State	Malherbe
				<u>Unpublished</u>			

CONTESTED CASE DECISIONS

20	BOE	02691	1/7/2021	Aaron Martin	v.	NC State Board of Elections	Sutton
20	BOE	04155	1/21/2021	Michael M Hunt Sr	v.	NCSBE	Mann
20	CPS	03995	1/21/2021	Tiffany King	v.	Victim Compensation	Jacobs
19	CSE	05798	1/12/2021	Rashawn Jordan	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Jacobs
19	CSE	06135	1/22/2021	Trudyann Brown	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
20	CSE	03632	1/26/2021	Rodney T Tyson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Byrne
20	CSE	04136	1/19/2021	Donald W Swayne	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	04226	1/11/2021	Donald Mabe	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	CSE	04285	1/11/2021	Alexzandria Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	CSE	04319	1/12/2021	Robert A Fitzgerald	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
20	CSE	04320	1/5/2021	Jackson Adamczak	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinheimer
20	CSE	04553	1/26/2021	Roger Lee Johnson Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
20	DAG	03080	1/19/2021	Nicole Jones Loving Pup Resort	v.	North Carolina Department of Agriculture and Consumer Services Veterinary Division	May
20	DCS	03958	1/5/2021	Nicole Mosteller	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	DHR	03950	1/22/2021	James Elbert Sutton	v.	DHHS	Mann
20	DHR	04975	1/6/2021	Pamela R Carr	v.	Child and Adult Care Food Program Courtney Jones	Lassiter
20	SOS	03889	1/22/2021	Craven County Partners in Education	v.	NC Department of the Secretary of State, Charitable Solicitation Licensing Division	Mann