

NORTH CAROLINA REGISTER

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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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35:23	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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36:07	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

May 14, 2021

EXECUTIVE ORDER NO. 214

**DISASTER DECLARATION FOR THE CITY OF MARION IN MCDOWELL
COUNTY AND THE TOWN OF LILLINGTON IN HARNETT COUNTY**

WHEREAS, the North Carolina Emergency Management Act, Chapter 166A of the North Carolina General Statutes, authorizes the issuance of a disaster declaration for an emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7) that has been impacted by a Type I, Type II or Type III disaster as defined in N.C. Gen. Stat. § 166A-19.21(b); and

WHEREAS, on August 6, 2020, the Town of Lillington in Harnett County, North Carolina experienced damages from severe weather, heavy rainfall, and flash flooding and on October 29, 2020, the City of Marion experienced severe weather from the remnants of Tropical Storm Zeta; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.22, local states of emergency declarations were issued on August 7, 2020, in the Town of Lillington in Harnett County, North Carolina and on October 30, 2020, in the City of Marion in McDowell County, North Carolina; and

WHEREAS, due to the impacts of the events, local and state emergency management officials conducted joint preliminary damage assessments on September 23, 2020, for the Town of Lillington in Harnett County, North Carolina and on January 27, 2021, for the City of Marion in McDowell County, North Carolina; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.21(a)-(b), the criteria for a Type I disaster are met if: (a) the Secretary of the North Carolina Department of Public Safety has provided a preliminary damage assessment to the undersigned and the General Assembly; (b) local state of emergency declarations have been issued pursuant to N.C. Gen. Stat. § 166A-19.22 in the areas impacted by the Type I disaster; (c) the preliminary damage assessment meets or exceeds the state infrastructure criteria set out in N.C. Gen. Stat. §§ 166A-19.41(b)(2)a and (d) a major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared for Public Assistance; and

WHEREAS, the undersigned has determined that a Type I disaster, as defined in N.C. Gen. Stat. § 166A-19.21(b)(1), exists in the State of North Carolina in the Town of Lillington in Harnett County, North Carolina and the City of Marion in McDowell County, North Carolina; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.41, if a disaster is declared, the undersigned may make state funds available for emergency assistance in the form of individual assistance and public assistance for recovery from those disasters for which federal assistance under the Stafford Act is either not available or does not adequately meet the needs of residents in the emergency area.

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

Section 1.

For purposes of this Executive Order only, the emergency area as defined in N.C. Gen. Stat. § 166A-19.3(7), is the Town of Lillington in Harnett County, North Carolina and the City of Marion in McDowell County, North Carolina ("the Emergency Area").

Section 2.

Pursuant to N.C. Gen. Stat. § 166A-19.21(b)(1), a Type I disaster is hereby declared for the Emergency Area.

Section 3.

I authorize state disaster assistance in the form of public assistance grants to the eligible local governments located within the emergency area that meet the terms and conditions under N.C. Gen. Stat. § 166A-19.41(b)(2). The public assistance grants are for the following:

- a. Debris clearance.
- b. Emergency protective measures.
- c. Roads and Bridges.

Section 4.

I hereby order that this declaration be (a) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) promptly filed with the Secretary of the North Carolina Department of Public Safety, the North Carolina Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) distributed to others as necessary to ensure proper implementation of this declaration.

Section 5.

Pursuant to N.C. Gen. Stat. § 166A-19.21(c)(1), this Type I disaster declaration shall expire sixty (60) days after issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of thirty (30) days each, not to exceed a total of 120 days from the date of first issuance.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 14th day of May in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:



Elaine Marshall
Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

May 14, 2021

EXECUTIVE ORDER NO. 215

**LIFTING COVID-19 RESTRICTIONS TO REFLECT NEW PUBLIC HEALTH
RECOMMENDATIONS**

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; 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, 188-193, 195, 197-198, 200, 204-207, and 209-212; 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

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 lower rates of 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; and

WHEREAS, these improvements are occurring across North Carolina communities, as evidenced by the fact that between April 25, 2021 and May 8, 2021, no counties in the state are rated to have a “critical” rate of 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

Progress in COVID-19 Vaccination

WHEREAS, COVID-19 vaccines are now widely available at no cost to all eligible North Carolinians who wish to receive one, and all eligible North Carolinians are encouraged to get vaccinated; and

WHEREAS, the state has mounted a robust vaccination effort to distribute the state’s allocated supply of COVID-19 vaccines authorized by the Food and Drug Administration (“FDA”) to all people living in or spending significant time in North Carolina; and

WHEREAS, North Carolinians have made great progress in getting vaccinated, and every day, more North Carolinians are protected from this deadly disease; and

WHEREAS, as of the date of this Executive Order, forty-six percent (46%) of the state’s population over age eighteen (18) is fully vaccinated, and fifty-one percent (51%) of the state’s population over age eighteen (18) is partially vaccinated; and

WHEREAS, as of the date of this Executive Order, over seventy-five percent (75%) of the state’s population age sixty-five (65) and older is fully vaccinated, and over seventy-nine percent (79%) of the state’s population age sixty-five (65) and older is partially vaccinated; and

New Public Health Guidance for Fully Vaccinated People

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, on May 13, 2021, the U.S. Centers for Disease Control and Prevention (“CDC”) issued new Interim Public Health Recommendations for Fully Vaccinated People; and

WHEREAS, the new CDC recommendations advise that currently authorized vaccines in the United States are highly effective at protecting vaccinated people against symptomatic and severe COVID-19; and

WHEREAS, the new CDC recommendations advise that a growing body of evidence suggests that fully vaccinated people are less likely to transmit COVID-19 to others; and

WHEREAS, based on this evidence, the new CDC recommendations advise that “[i]ndoor and outdoor activities pose minimal risk to fully vaccinated people,” and that in most settings, “fully vaccinated people can resume activities without wearing face coverings or physically distancing”; and

WHEREAS, the new CDC guidance indicates that the Face Covering requirement and social distancing requirements can be lifted for fully vaccinated people; and

WHEREAS, more than half of all North Carolinians have now received one vaccination dose, and North Carolina is on track to have more and more people be fully vaccinated and at low risk from the disease; and

WHEREAS, given current obstacles, distinguishing between vaccinated and unvaccinated North Carolinians raises enforcement concerns for law enforcement, businesses, and employers; and

WHEREAS, in the totality of these circumstances, the undersigned has determined that at this time the Face Covering requirement should be lifted in most settings, and the capacity restrictions, and social distancing requirements should be lifted for all settings; and

Continuing Dangers of COVID-19

WHEREAS, despite the recent improving trends, COVID-19 is a deadly and dangerous disease; and

WHEREAS, more than nine hundred eighty-nine thousand (989,000) people in North Carolina have had COVID-19, and more than twelve thousand eight hundred (12,800) people in North Carolina have died from the disease; and

WHEREAS, the new CDC recommendations issued on May 13, 2021 confirm that unvaccinated people put themselves at great risk if they do not wear Face Coverings in recommended settings and do not socially distance; and

WHEREAS, for these reasons, the COVID-19 State of Emergency must continue, and this Executive Order modifies only Face Covering requirements, capacity restrictions, and social distancing requirements; and

WHEREAS, it remains critical that North Carolinians exercise personal responsibility to protect themselves and their friends and neighbors from the spread of COVID-19, and the undersigned and the Secretary of the Department of Health and Human Services continue to identify Face Coverings, social distancing, and washing hands as best practices; and

WHEREAS, although a majority of adult North Carolinians have received at least one vaccination dose, vaccination efforts are just beginning for children; and

WHEREAS, children age twelve (12) to fifteen (15) have only recently been allowed to receive a COVID-19 vaccine from one approved manufacturer, and children age twelve (12) and younger have not yet been approved to receive a COVID-19 vaccine; and

WHEREAS, it is necessary to continue some COVID-19 requirements in schools, child care, and day or overnight camps, since for the next few weeks, almost all children will be unvaccinated and able to spread COVID-19; and

WHEREAS, the new CDC recommendations also suggest that in some settings where people congregate, including transportation and health care, people should continue to wear Face Coverings and socially distance; and

WHEREAS, if the state's COVID-19 case rate increases, if the state's vaccination rate slows, or if new evidence arises regarding the risks of COVID-19 and its variants, it may be necessary to reevaluate whether additional restrictions are necessary to reduce the risk of death and serious illness from COVID-19; and

Statutory Authority and Determinations

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

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

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

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.23 in conjunction with N.C. Gen. Stat. §§ 75-37 and 75-38, the undersigned may issue a declaration that shall trigger the prohibitions

against excessive pricing during states of disaster, states of emergency or abnormal market disruptions; and

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

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

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

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

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

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

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

WHEREAS, N.C. Gen. Stat. § 166A-19.30(c) in conjunction with N.C. Gen. Stat. § 166A-19.31(b)(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)(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. “**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.

- b. “**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.
- c. “**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.

1.3. Structure of This Executive Order.

This Executive Order fully lifts the capacity limitations and social distancing requirements on businesses in Executive Order No. 209, and lifts the indoor Face Covering requirement on most businesses and operations. To control the spread of COVID-19 and protect lives during the State of Emergency, this Executive Order lists restrictions on the operations of certain 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 and 3 are prohibited from operating unless they follow all applicable restrictions stated in these Sections.

Section 2. Face Coverings.

In public school units, as defined by N.C. Gen. Stat § 115C- 5(7a), and non-public schools covered by Article 39 of Chapter 115C of the General Statutes, the StrongSchoolsNC Public Health Toolkit (K-12) (“Toolkit”) sets any Face Covering requirements. As of the date of this Executive Order, the Toolkit currently requires Face Coverings indoors. Any future changes to the Face Covering requirement in schools will be issued in the Toolkit.

In addition, Face Coverings are also required in the settings listed in Section 3 of this Executive Order below. In all settings where Face Coverings apply, the exceptions listed in Sections 2.3 to 2.5 of Executive Order No. 209 apply. Otherwise, the Face Covering requirements in Executive Order No. 209 are rescinded.

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. Child Care Facilities.

- a. **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.
- b. **Additional Health and Safety Requirements.** Operators of child care facilities must follow all applicable NCDHHS guidelines.
- c. **Relationship to Other Executive Orders.** Subsections 3.3(a) and (b) 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, 193, 211, and any subsequent executive orders.

3.2. Children’s Day or Overnight Camps.

- a. **Requirements.** Operators of day camps and overnight camps must follow all applicable NCDHHS guidelines.

3.3. Health Care Settings.

- a. **Infection Prevention in Health Care Facilities.** All residents, workers, and visitors in health care settings including hospitals, outpatient healthcare settings, Long Term Care (“LTC”) Facilities, skilled nursing facilities (“SNF”), and intermediate care facilities for individuals with intellectual disabilities (“ICF/IID”), must follow the requirements in the CDC Healthcare Infection and Prevention Control Recommendations in Response to COVID-19 Vaccination, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-after-vaccination.html>.
- b. **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, 193, 211, and any subsequent extensions thereof.

3.4. 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 indoors at all times, unless an exception applies. This provision does not apply to people traveling in their personal vehicles, alone or with family or friends, 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.

3.5 State and Local Correctional and Detention Facilities and Homeless Service Providers.

All persons indoors on-premises at state and local correctional and detention facilities must wear Face Coverings at all times, unless an exception applies. All workers of homeless service providers and clients of homeless service providers must wear Face Coverings indoors any time they are not in their room or on their bed mat in shared sleeping areas, unless an exception applies. A Face Covering is not required to be worn by an individual when sleeping alone on-site at a correctional or detention facility or a facility serving the homeless.

3.6 Private Businesses May Require Face Coverings.

Nothing in this Executive Order is intended to prohibit or discourage private businesses not covered by Sections 2 or 3 herein from requiring Face Coverings for their employees or Guests, unless an exception applies for that individual, or to prevent such businesses from enforcing any existing rights under the law to prohibit Guests from entering without Face Coverings.

Section 4. Recommendations for Large Venues.

It is strongly recommended that all individuals continue to wear Face Coverings in all large indoor seating facilities with a seating capacity of over five thousand (5,000) seats, unless an exception applies.

Section 5. Miscellaneous Provisions.

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

- 5.1. **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.
- 5.2. **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.
- 5.3. **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 this Subsection 5.3, 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 5.3(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 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.

- d. **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.

5.4. Previous Executive Orders. Except for the exceptions to Sections 2.3 to 2.5 of Executive Order No. 209, which remain in place, this Executive Order amends, restates, and replaces Executive Order Nos. 141, 153, 162, 163, 169, 170, 176, 180, 181, 188, 189, 195, 204, and 209 in full. The State of Emergency established in Executive Order No. 116 remains in effect, and no other Executive Orders are modified or rescinded by this Executive Order except as expressly stated herein.

Section 6. 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 June 11, 2021 at 5:00 pm.

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 7. 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 8. 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 9. 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 10. Enforcement.

- 10.1. 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.
- 10.2. 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.
- 10.3. 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 11. Effective Date.

This Executive Order is effective May 14, 2021, at 1:30 pm. This Executive Order shall remain in effect through June 11, 2021, at 5:00 pm, 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 14th day of May 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

May 21, 2021

EXECUTIVE ORDER NO. 216

REINSTATING WORK SEARCH REQUIREMENTS FOR UNEMPLOYMENT INSURANCE BENEFITS

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, 197-198, 200, 204-207, 209-212, and 215; 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 in Executive Order No. 200) 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, North Carolina is taking measured, evidence-based approaches to pandemic recovery, including promoting COVID-19 safety precautions, expediting vaccine rollout, and developing workplace safety measures; and

WHEREAS, due to the measures taken to date by the undersigned and the resilience and persistence of all North Carolinians, the state's key COVID-19 metrics continue to improve; and

WHEREAS, on May 14, 2021, the undersigned, as a result of improving COVID-19 trends, signed Executive Order No. 215 lifting most COVID-19 restrictions related to social distancing, face covering requirements, and capacity limits; and

WHEREAS, the undersigned is committed to supporting North Carolina businesses as they recover from the COVID-19 pandemic; and

WHEREAS, North Carolina employers are actively seeking to hire workers as businesses across sectors return to operating at full capacity; and

WHEREAS, unemployment benefits provide a family-sustaining lifeline to many North Carolinians, covering food, shelter, and other living expenses that remain throughout periods of unemployment; and

WHEREAS, without federal assistance, the unemployment benefit amount and benefit duration period in North Carolina remains one of the lowest and shortest in the country, respectively; and

WHEREAS, since March 2020, NCWorks, North Carolina's workforce development system, has helped hundreds of thousands of jobseekers through job search, training, and networking services; and

WHEREAS, North Carolina's eighty-nine (89) NCWorks Career Centers provide workforce services to jobseekers and businesses in all 100 counties, such as virtual and drive-through career fairs, networking opportunities, and online and telephonic job search support; and

WHEREAS, Work Search Requirements encourage job seekers to diligently explore job opportunities, increasing the chance for job seekers to locate stable employment income before their unemployment benefits are exhausted; and

WHEREAS, on March 1, 2021, the undersigned signed Exec. Order No. 200, 35 N.C. Reg. 2116-2119 (April 1, 2021), to establish flexible Work Search Requirements and direct the Department to increase efforts to help North Carolinians who file for unemployment benefits return to work; and

WHEREAS, the undersigned is committed to helping North Carolinians receiving unemployment benefits find work before benefits expire; and

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

WHEREAS, in an effort to incentivize North Carolinians to return to work, the undersigned directs the Department, in communication with the United States Department of Labor, to explore reemployment incentives for eligible North Carolinians; 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, on March 11, 2021, the President signed the American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021), extending and modifying many of 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 all claimants who are receiving unemployment insurance 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 Nos. 118 and 200, **IT IS ORDERED**:

Section 1. Introduction.

1.1. Definitions.

- a. "**Existing Claimants**" are those individuals who filed for state unemployment insurance prior to March 14, 2021.
- b. "**New Claimants**" are those individuals who filed for state unemployment insurance on or after March 14, 2021.

1.2. Impact of this Executive Order.

For the reasons above and pursuant to the authority herein, this Executive Order reinstates certain work search and work registration requirements, as well as the requirement that the applicant be actively seeking work, for all state unemployment insurance claimants. These requirements were temporarily suspended under Executive Order No. 118. Under Executive Order No. 200, the undersigned directed the Department to reimpose certain work search and work registration requirements on New Claimants, as defined herein, with flexibility given to the Department as to how these requirements could be achieved by the claimant. This Executive Order has the effect of directing the Department to reimpose work search, work registration, and "actively seeking work" requirements on all claimants, effective as of the date specified herein. In addition, the flexibilities authorized for the Department with regard to interpreting the work search and work registration requirements are rescinded by this Executive Order.

The specific provisions of Sections 2 through 7 of this Executive Order take precedence over the general summary in this Section 1.2.

Section 2. Amending Executive Order No. 200.

2.1. Rescinding Sections 1-2.

Effective June 6, 2021, for the reasons and pursuant to the authority above, the undersigned rescinds Sections (1)-(2) of Executive Order No. 200.

2.2. Amendment to Section 3 of Executive Order No. 200: Mandatory NCWorks Registration.

As of the date of this Executive Order, for the reasons and pursuant to the authority above, Section 3 of Executive Order No. 200 is amended as follows:

As part of the Work Search Requirement process, the Department shall 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 an account are provided access to labor market information, opportunities for training scholarships, and can apply for jobs online.

The Department shall create a registration process to assist Existing Claimants with registering with a jobseeker account in NCWorks. The Department is directed to enhance staff training to assist all claimants in creating a jobseeker account in NCWorks. Existing Claimants' registration in NCWorks by the time period required by the Department shall constitute compliance with the terms of this Executive Order and with N.C. Gen. Stat. § 96-14.9(e)(1).

Section 3. Amendments to Executive Order No. 118.

Effective June 6, 2021, the undersigned rescinds Sections 3(a)ii.-v. of Executive Order No. 118. As of June 6, 2021, all Existing Claimants and New Claimants must meet the requirements established in this Executive Order, and any other requirements established by law, to obtain weekly benefits.

Notwithstanding the foregoing, all other waivers or flexibilities permitted under Executive Order No. 118, other than those rescinded or terminated herein, remain in effect for Existing Claimants and New Claimants.

Section 4. Directive to Explore Opportunities for Reemployment Incentives.

The undersigned directs the Department's Division of Employment Security to communicate with the United States Department of Labor and any other relevant federal government entities to explore opportunities to establish a reemployment incentive program, through the use of federal funds, for jobless workers who find and maintain employment.

Section 5. 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 6. 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 and the Division of Employment Security to ensure proper implementation of this Executive Order.

Section 7. 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 21st date of May 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
Department of the Secretary of State

ELAINE F. MARSHALL
SECRETARY OF STATE

**ORDER ADOPTING THE NORTH CAROLINA
NOTICE OF DENIED LIEN OR ENCUMBRANCE FILING
North Carolina General Statute § 14-118.6**

WHEREAS, the Secretary of State of North Carolina ("the Secretary") is a Constitutional Officer of the State of North Carolina pursuant to Article 3, Section 7 of the North Carolina Constitution; and

WHEREAS, the Secretary is the head of the North Carolina Department of the Secretary of State ("the Department"), a principal department of the State of North Carolina, G.S. §143A-11, and is charged by G.S. § 147-54.3 with administering a land records program; and

WHEREAS, the Secretary is assisted in administering the land records program by the Land Records Advisory Committee, G.S. § 147-54.3(f); and

WHEREAS, the Land Records Advisory Committee includes representatives from the public, the North Carolina Association of Registers of Deeds, the North Carolina Bar Association, and the North Carolina Association of County Commissioners; and

WHEREAS, a Register of Deeds may refuse to record a purported lien or encumbrance if the Register has a reasonable suspicion that the instrument purporting to be a lien or encumbrance is materially false, fictitious, or fraudulent, G.S. § 14-118.6(b); and

WHEREAS, if a Register of Deeds refuses to record a purported lien or encumbrance based on reasonable suspicion that it is materially false, fictitious, or fraudulent, the Register of Deeds shall allow the recording of a Notice of Denied Lien or Encumbrance Filing form, G.S. § 14-118.6(b); and

WHEREAS, the Secretary is required by law to adopt a Notice of Denied Lien or Encumbrance Filing form, G.S. § 14-118.6(b); and

WHEREAS, the Secretary requested the assistance of the Land Records Advisory Committee in designing a Notice of Denied Lien or Encumbrance Filing form, and the Land Records Advisory Committee provided that assistance; and

PO BOX 29622 • RALEIGH, NC 27626-0622

WHEREAS, the Secretary adopted a Notice of Denied Lien or Encumbrance Filing form recommended by the Land Records Advisory Committee on the 26th day of November 2012; and

WHEREAS, the law regarding filing false liens or encumbrances has been amended since 2012; and

WHEREAS, the Secretary and the Land Records Advisory Committee have reviewed the law, the changes in the law, and received input from local government representatives; and

WHEREAS, the Land Records Advisory Committee has prepared a revised Notice of Denied Lien or Encumbrance Filing form; and

WHEREAS, the Land Records Advisory Committee has recommended to the Secretary that she adopt the revised Notice of Denied Lien or Encumbrance Filing form;

NOW, THEREFORE, by the power vested in me as Secretary of State by the laws and Constitution of the State of North Carolina,

IT IS ORDERED AND DIRECTED

THAT from this day forward, the attached revised Notice of Denied Lien or Encumbrance Filing form shall be and is adopted, and

THAT the revised Notice of Denied Lien or Encumbrance Filing form shall replace all prior versions, and

THAT this Order shall be submitted to the Codifier of Rules for publication in the North Carolina Register.

This the 26th day of April, 2021.


Elaine F. Marshall
Secretary of State

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order was served upon the following by depositing a copy of the Order in the United States Mail, addressed as follows:

Alex Rankin, PLS, PE
Chair, Center for Geographic Information & Analysis
c/o Concord Engineering
PO Box 268
Concord NC 28026

N.C. Land Records Advisory Committee
Chair Thomas W Morgan PLS
162 Belveu Farm Ln
Hoffman NC 28347

N.C. Bar Association Real Property Section
Chair Bryan W. Byrd
8000 Weston Pkwy
Cary, NC 27513


N.C. Board of Examiners for Engineers and Surveyors
Chair John M. Logsdon, PLS
4601 Six Forks Rd, Suite 310
Raleigh, North Carolina 27609

N.C. Property Mappers Association
President Dawn Perry
Orange County Land Records
PO Box 8181
Hillsborough, NC 27278

N.C. Real Estate Commission
Chair Sandra O'Connor
P.O. Box 17100
Raleigh, NC 27619-7100

Hon. Suzanne Lowder
President, NC Association of Registers of Deeds
Stanly County Register of Deeds
PO Box 97
Albemarle, NC 28002

This the 26th day of April, 2021.


Jennell Baughman, Executive Assistant
N.C. Department of the Secretary of State
P.O. Box 29622, Raleigh, NC 27626-0622

NOTICE OF DENIED LIEN OR ENCUMBRANCE FILING

North Carolina General Statute § 14-118.6

**THIS NOTICE OF DENIED LIEN OR ENCUMBRANCE FILING SHALL NOT ITSELF
CONSTITUTE A LIEN OR ENCUMBRANCE.**

Pursuant to the authority granted in N.C.G.S. 14-118.6, the Register of Deeds of _____ County has determined that a reasonable suspicion exists that the following requested instrument purporting to be a lien/or encumbrance filing is materially false, fictitious, or fraudulent. The undersigned desires to file this document while appealing the determination of the Register of Deeds.

Name and Address of Party Attempting to File Lien or Encumbrance: _____

Party or Parties against whom Lien or Encumbrance is being claimed: _____

Date of Register of Deeds' Refusal to File Lien or Encumbrance: _____

The Real Property against which the lien or encumbrance is claimed is described in an instrument of record in _____ County, NC, Deed Book _____, Page _____

Tax Parcel Number _____.

Notice of Denied Lien or Encumbrance Filing form
Form adopted by North Carolina Secretary of State pursuant to NCGS 14-118.6
Revised April 2021; statute wording per Session Laws 2019-117 and 2019-243

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The Personal Property against which the lien or encumbrance is claimed is identified as follows:

Date: _____

Printed Name of Party Attempting to File Lien or Encumbrance

Signature of Party Attempting to File Lien or Encumbrance

_____ County, North Carolina
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

_____ Name(s) of principal(s)

Date: _____

(Official Seal)

Official Signature of Notary

_____, Notary Public

Notary's printed or typed name

My commission expires: _____

G.S. § 14-118.6 Filing false lien or encumbrance

(a) It shall be unlawful for any person to present for filing or recording in a public record or a private record generally available to the public a false lien or encumbrance against the real or personal property of an owner or beneficial interest holder, knowing or having reason to know that the lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation. Any person who violates this subsection shall be guilty of a Class I felony.

(b) When presented to the register of deeds for recording, if a register of deeds has a reasonable suspicion that an instrument purporting to be a lien or encumbrance is materially false, fictitious, or fraudulent, the register of deeds may refuse to record the purported lien or encumbrance. Neither the register of deeds nor any other entity shall be liable for recording or the refusal to record a purported lien or encumbrance as described in this section. If the recording of the purported lien or encumbrance is denied, the register of deeds shall allow the recording of a Notice of Denied Lien or Encumbrance Filing on a form adopted by the Secretary of State, for which no filing fee shall be collected. The Notice of Denied Lien or Encumbrance Filing shall not itself constitute a lien or encumbrance. When recording is denied, any interested person may initiate a special proceeding in the county where the recording was denied within ten (10) business days of the filing of the Notice of Denied Lien or Encumbrance Filing asking the superior court of the respective county to find that the proposed recording has a statutory or contractual basis and to order that the document be recorded. If, after hearing, upon a minimum of five (5) days' notice as provided in Rule 5 of the Rules of Civil Procedure and opportunity to be heard to all interested persons and all persons claiming an ownership interest in the property, the court finds that there is a statutory or contractual basis for the proposed recording, the court shall order the document recorded, and the party submitting the instrument shall pay the filing fee in accordance with G.S. 161-10. A lien or encumbrance recorded upon order of the court under this subsection shall have a priority interest as of the time of the filing of the Notice of Denied Lien or Encumbrance Filing. If the court finds that there is no statutory

Notice of Denied Lien or Encumbrance Filing form
Form adopted by North Carolina Secretary of State pursuant to NCGS 14-118.6
Revised April 2021; statute wording per Session Laws 2019-117 and 2019-243

Page 2

or contractual basis for the proposed recording, the court shall enter an order finding that the proposed recording is null and void and that it shall not be filed, indexed, or recorded and a certified copy of that order shall be recorded by the register of deeds that originally denied the recording, for which the party who submitted the instrument shall pay the filing fee in accordance with G.S. 161-10. The review by the judge under this subsection shall not be deemed a finding as to any underlying claim of the parties involved. If a special proceeding is not initiated under this subsection within ten (10) business days of the filing of the Notice of Denied Lien or Encumbrance Filing, the purported lien or encumbrance is deemed null and void as a matter of law.

(b1) When a purported lien or encumbrance is presented to a clerk of superior court for filing and the clerk of court has a reasonable suspicion that the purported lien or encumbrance is materially false, fictitious, or fraudulent, the clerk of court may refuse to file the purported lien or encumbrance. Neither the clerk of court nor the clerk's staff shall be liable for filing or the refusal to file a purported lien or encumbrance under this subsection. The clerk of superior court shall not file, index, or docket the document against the property until that document is approved by any judge of the judicial district having subject matter jurisdiction for filing by the clerk of superior court. If the judge determines that the filing is not false, the clerk shall index the claim of lien. A lien or encumbrance filed upon order of the court under this subsection shall have a priority interest as of the date and time of indexing by the clerk of superior court. If the court finds that there is no statutory or contractual basis for the proposed filing, the court shall enter an order that the proposed filing is null and void as a matter of law, and that it shall not be filed or indexed. The clerk of superior court shall serve the order and return the original denied filing to the person or entity that presented it. The person or entity shall have 30 days from the entry of G.S. 14-118.6 Page 2 the order to appeal the order. If the order is not appealed within the applicable time period, the clerk may destroy the filing.

(c) Upon being presented with an order duly issued by a court of competent jurisdiction of this State declaring that a lien or encumbrance already recorded or filed is false, and therefore null and void as a matter of law, the register of deeds or clerk of court that received the recording or filing, in addition to recording or filing the court's order finding the lien or encumbrance to be false, shall conspicuously mark on the first page of the original record previously filed the following statement: "THE CLAIM ASSERTED IN THIS DOCUMENT IS FALSE AND IS NOT PROVIDED FOR BY THE GENERAL LAWS OF THIS STATE."

(d) In addition to any criminal penalties provided for in this section, the presentation of an instrument for recording or filing with a register of deeds or clerk of superior court that purports to be a lien or encumbrance that is determined to be materially false, fictitious, or fraudulent shall constitute a violation of G.S. 75-1.1.

(e) Subsections (b), (b1), and (c) of this section shall not apply to filings under Article 9 of Chapter 25 of the General Statutes or under Chapter 44A of the General Statutes. (2012-150, s. 4; 2013-170, s. 1; 2013-410, s. 27.8; 2015-87, s. 1; 2017-102, s. 3; 2019-117, s. 3; 2019-243, s. 29(a).)

Revised and effective as of December 1, 2019 in accordance with Session Laws 2019-117 and 2019-243.

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

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

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Pesticide Board intends to amend the rule cited as 02 NCAC 09L .0502.

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

Proposed Effective Date: October 1, 2021

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than June 30, 2021 to James W. Burnette, Jr., Secretary, NC Pesticide Board, 1090 Mail Service Center, Raleigh, NC 27699-1090.*

Reason for Proposed Action: *The North Carolina Pesticide Board finds it critical to exempt pesticides approved by the United States Environmental Protection Agency (EPA) on an emergency basis in accordance with 02 NCAC 09L .0318 for use in preventing, destroying, or mitigating COVID-19 from being restricted use pesticides as currently required by 02 NCAC 09L .0502(3). This exemption will bring North Carolina standards in line with other states and ensure North Carolina does not fall behind in its efforts to respond to COVID-19 by allowing for normal distribution of these pesticides.*

Comments may be submitted to: James W. Burnette, Jr., 1090 Mail Service Center, Raleigh, NC 27699-1001; email james.burnette@ncagr.gov

Comment period ends: August 16, 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

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 - FOOD AND DRUG PROTECTION

SUBCHAPTER 09L - PESTICIDE SECTION

SECTION .0500 - PESTICIDE LICENSES

**02 NCAC 09L .0502 LIST OF RESTRICTED USE
PESTICIDES**

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

- (1) any pesticide required by the Environmental Protection Agency to bear the designation on its labeling "Restricted Use Pesticide;"
- (2) arsenic trioxide; and
- (3) any pesticide approved under Rule .0318 of this Subchapter.

(b) Any pesticide approved by the United States Environmental Protection Agency for use in the State of North Carolina in accordance with 02 NCAC 09L .0318 that is labeled as approved for use in preventing, destroying, or mitigating COVID-19 shall be exempt from the provisions of Subparagraph (a)(3) of this Rule and shall not be considered a Restricted Use Pesticide.

Authority G.S. 143-440(a),(b); 143-441; 143-458.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Soil and Water Conservation Commission intends to adopt the rules cited as 02 NCAC 59A .0201- .0204, .0301, .0302, amend the rules cited as 02 NCAC 59A .0101-.0103, and repeal the rule cited as 02 NCAC 59A .0104.

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):
<http://www.ncagr.gov/AdministrativeRules/ProposedRules/index.htm>

Proposed Effective Date: *October 1, 2021*

Public Hearing:

Date: *July 21, 2021*

Time: *1:00 p.m.*

Location: *Farm Bureau – Smithfield Office – Auditorium (Johnston County) at 1809 S. Bright Leaf Boulevard, Smithfield, NC 27577, with virtual component: Join on your computer or mobile app via - [ncgov@m.webex.com](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjBiZWZiYTQOTNmZS00MTZILtIjNmMtOWJkZDI5YTQ3YTMx%40thread.v2/0?context=%7b%22Tid%22%3a%227a7681dc-b9d0-449a-85c3-ecc26cd7ed19%22%2c%22Oid%22%3a%221e9e2b32-1360-4d12-856c-5f2697d63158%22%7d. Join with a video conferencing device <a href=) Video Conference ID: 113 332 538 1 Alternate VTC dialing instructions Or call in (audio only) +1 984-204-1487,989733041# United States, Raleigh Phone Conference ID: 989 733 041#*

Date: *August 3, 2021*

Time: *7:00 p.m.*

Location: *Virtual: Join on your computer or mobile app via - [ncgov@m.webex.com](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YTljOTlkZDctZmQ3NC00NWNiLTk3MDgtYTQ0ZWFiMTZjMjlk%40thread.v2/0?context=%7b%22Tid%22%3a%227a7681dc-b9d0-449a-85c3-ecc26cd7ed19%22%2c%22Oid%22%3a%221e9e2b32-1360-4d12-856c-5f2697d63158%22%7d. Join with a video conferencing device <a href=) Video Conference ID: 112 997 621 6 Alternate VTC dialing instructions Or call in (audio only) +1 984-204-1487,457567489# United States, Raleigh Phone Conference ID: 457 567 489#*

Reason for Proposed Action: *The General Assembly recently enacted Session Law 2018-113 which requires training for appointed and elected soil and water conservation district supervisors under General Statute 139-7.2. Under Session Law 2016-113, the General Assembly provided authority for the Soil and Water Conservation Commission to establish a training program for all district supervisors under General Statute 139-4(d). These rules set forth the guide for this supervisor training program and provide a process for supervisor removal. Supervisor removal authority is provided to the Soil and Water Conservation Commission under General Statute 139-7.*

Comments may be submitted to: *Vernon Cox, 1614 Mail Service Center, Raleigh, NC 27699-1614*

Comment period ends: *August 16, 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 59 - SOIL AND WATER CONSERVATION COMMISSION

SUBCHAPTER 59A - ORGANIZATION AND OPERATION

SECTION .0100 - GENERAL PROVISIONS

02 NCAC 59A .0101 OBJECTIVES

The ~~commission~~ Commission administers a comprehensive statewide soil and water conservation program, giving technical, administrative, and financial assistance to local ~~districts~~; Districts; giving planning assistance to local sponsors of small watershed projects under Public Law 83-566; giving technical and administrative assistance to complete the soils resource inventory for the state; and developing and implementing ~~an agricultural non-point source pollution program~~. State cost share programs for water quality and water quantity.

Authority *G.S. 106-840.*

02 NCAC 59A .0102 ADDRESS

Division of Soil and Water Conservation
 Department of ~~Environment, Health, and Natural Resources~~
Agriculture and Consumer Services
~~Archdale Building~~
512 North Salisbury Street 216 West Jones Street
Raleigh, North Carolina 27603
~~P.O. Box 27687 1614 Mail Service Center~~
Raleigh, North Carolina 27611 27699-1614

Authority *G.S. 106-840; 106-841.*

02 NCAC 59A .0103 DEFINITIONS

As used in this Chapter:

- (1) "Association" means the North Carolina Association of Soil and Water Conservation Districts;

- (1)(2) "Commission" means the Soil and Water Conservation Commission;
- (2)(3) "Department" means the Department of ~~Environment, Health, and Natural Resources;~~ Agriculture and Consumer Services;
- (3)(4) "District" means a Soil and Water Conservation District and does not mean a watershed improvement district or a drainage district or a county or municipal service district;
- (4)(5) "Division" means the Division of Soil and Water Conservation;
- (5)(6) "Public Law 83-566" means the Watershed Protection and Flood Prevention Act of 1954, P.L. 83-566, 68 Stat. 666 [codified at 16 U.S.C. 1001-07 (1976)];
- (6)(7) "Supervisor" means a member of the district body.

Authority G.S. 106-840.

02 NCAC 59A .0104 SUPERVISOR VACANCIES

Authority G.S. 106-840.

SECTION .0200 - SUPERVISOR TRAINING PROGRAM

02 NCAC 59A .0201 GENERAL

Training is required to ensure Supervisors remain knowledgeable and skilled in soil, water, and natural resources conservation, and the duties and responsibilities of Supervisors. This training shall serve to enhance the overall capacity of local Districts to deliver their programs and services.

The Commission shall provide oversight for a Supervisor Training Program, including both required and continuing training requirements. The Commission may delegate its authority to approve specific training courses and related credits to the Division. The Commission shall retain authority to consider appeals for decisions to deny or limit credit for courses or events.

Authority G.S. 139-4(d)(13); 139-7.2.

02 NCAC 59A .0202 REQUIRED BASIC TRAINING

(a) All Supervisors shall complete Basic Training for Soil and Water Conservation District Supervisors.

(b) Participation in this required basic training course shall be completed within the first year of service as an elected or appointed Supervisor.

(c) For Supervisors serving prior to December 2022, documentation of previous participation in this required basic training course shall meet the requirement outlined in Paragraph (a) of this Rule.

(d) For Supervisors that are re-elected in December 2022 that have not previously participated in this required basic training course, participation shall be required in 2023, or at the next available offering.

Authority G.S. 139-4(d)(13).

02 NCAC 59A .0203 CONTINUING TRAINING REQUIREMENTS

(a) All Supervisors shall obtain six Supervisor Training Credits per term; Supervisor Training Credits are outlined in Rule .0204 of this Subchapter.

(b) Supervisor Training Credits earned for required training in Rule .0202 of this Subchapter shall be credited toward the requirements of this Rule.

Authority G.S. 139-4(d)(13); 139-7.2.

02 NCAC 59A .0204 SUPERVISOR TRAINING CREDITS

(a) Supervisor Training Credits will be assigned as one credit being equal to one hour of instruction that deals with content relevant to the topics included in Paragraph (b) of this Rule. Credits are approved in 15-minute increments.

(b) Credits shall be awarded for training that covers the following topics:

(1) Soil, water, and natural resources conservation; and/or

(2) Duties and responsibilities of Supervisors.

(c) Credits may be attained:

(1) At local board meetings when presentation is delivered by a knowledgeable professional; or

(2) At local board meetings using resource materials approved by the Commission; or

(3) Through classroom training, field days, or events sponsored by the District, the Association, the Commission, the Division, the Natural Resources Conservation Service, or the School of Government of the University of North Carolina at Chapel Hill; or

(4) At another event or activity approved by the Commission that meets the requirements outlined in Paragraph (b) of this Rule; or

(5) At other events or activities individually approved by the Commission which meet the requirements of this Rule. Requests shall be submitted in writing to the Commission through the Division. Supervisors may submit a request for Supervisor Training Credit hours for training achieved beyond Subparagraphs (1) – (4) of this Paragraph. Supervisor requests shall provide documentation for how the other events or activities meet requirements outlined in Paragraph (b) of this Rule.

(d) Credits shall not be given for the same course or resource materials more than two times in a given term. Supervisors shall strive to receive training diversity.

(e) The record of credits earned shall be maintained by the Division. Awarded credits shall be posted on the Division website. Supervisors shall be responsible to verify recorded credits.

Authority G.S. 139-4(d)(13); 139-7.2.

SECTION .0300 - SUPERVISOR REMOVAL

**02 NCAC 59A .0301 SUPERVISOR REMOVAL
PROCEDURES AND REPORTING**

(a) Grounds for removal of District Supervisors are set forth in G.S. 139-7. Evidence of neglect of duty shall include, but is not limited to, the failure to attend three consecutive regularly scheduled district meetings, except when prevented by illness. Evidence of neglect of duty shall also include the failure of sitting Supervisors to meet training requirements set forth in 02 NCAC 59A .0200.

(b) District boards shall submit a Supervisor attendance report, annually, for all members. This report shall be delivered by January 31 of each year. Reports shall cover the time period beginning December 1, and ending November 30, of the previous year.

(c) Each District board, through its Chair or other appropriate member of the board, shall notify the Commission of any member that has failed to attend three consecutive regularly scheduled meetings, except when prevented by illness. Notification from the District shall include explanation for non-attendance and the actions that the District board has taken to address the Supervisor's attendance.

(d) the Division shall provide training documentation to the Commission each year following Basic Training for Soil and Water Conservation District Supervisors, and a summary of Supervisor Training Credits outlined in Rule .0204 of this Subchapter, at the end of each term.

(e) The Inquiry Committee outlined in Rule .0302 of this Section shall review documentation submitted to the Commission by Districts and the Division, and shall take action as outlined in this Rule.

(f) When the Inquiry Committee determines that sufficient cause exists for a Commission hearing, the Commission shall take hardship; including illness, financial and familial obligations, and circumstances beyond the control of the Supervisor, into consideration prior to removal from office for neglect of duty.

(g) At least 30-days prior to the consideration of removing a Supervisor from office, the Commission, through the Division, shall provide the Supervisor notice of the grounds for which removal is being considered, as well as the opportunity to provide a written response within 15-days of notice.

- (1) The copy of the notice shall be transmitted to the Supervisor by certified United States Mail, return receipt requested, or by any other means by which a delivery receipt can be provided.
- (2) The notice shall include the date, time, and location of the meeting at which removal will be considered, and inform the Supervisor of the opportunity to address the Commission.
- (3) The notice shall also notify the Supervisor that the failure to submit a written response and failure to appear before the Commission may be considered evidence that the Supervisor does not object to being removed.
- (4) A copy of the notice shall also be forwarded to the District board of which the Supervisor is a member. The copy of the notice may be transmitted to the District board electronically or by United States Mail, First Class. The District board may, but is not required to,

submit information in support of, or opposition to, the Supervisor's removal.

(h) When the matter comes before the Commission, the Supervisor shall be allowed an opportunity to address the Commission and provide information regarding the matter. The time period for addressing the Commission shall be limited to 15 minutes, unless a longer period is allowed by the Commission Chair.

(i) If the matter comes before the Commission at the request of a District board, then a member of the District board shall present the request to the Commission and shall provide the Commission with information in support of the request. Any information provided to the Commission to support a District board's request shall also be provided to the Supervisor at issue.

(j) The Commission may also hear information from Division staff and from the District board, including the District board's staff. Upon request, the Commission Chair may allow other individuals who have relevant information regarding the matter to be heard.

(k) If after considering the material before it the Commission acts to remove the Supervisor, the Commission shall notify the Supervisor in writing.

(l) In making its decision, the Commission shall consider the information in the record before it, including the information received during the hearing.

Authority G.S. 106-840; 139-7.

02 NCAC 59A .0302 INQUIRY COMMITTEE

(a) When a Supervisor is considered for removal under Rule .0301(a) of this Section, an Inquiry Committee will take preliminary actions, prior to any decision needed by the Commission. The Inquiry Committee shall be appointed by the Commission Chair annually. The Inquiry Committee shall include three members; the Commission Chair shall make member replacements when a conflict of interest or need for recusal exists.

(b) Upon receipt of written notice from a District, or supervisor training documentation provided by the Division, the Inquiry Committee will determine if written explanation is required from the Supervisor. When necessary, the Inquiry Committee, through the Division, shall request any supplemental information to be provided by the Supervisor in writing within 30-days. The request shall be transmitted to the Supervisor by certified United States Mail, return receipt requested, or by any other means by which a delivery receipt can be provided.

(c) After reviewing written documentation from the District and any written information provided by the Supervisor, the Inquiry Committee may:

- (1) Determine that sufficient cause exists for a Commission hearing; or
- (2) Determine that basic or continuing training requirements may be extended by one year; or
- (3) Determine that a hearing is unnecessary and the matter will be closed without further action.

Authority G.S. 106-840; 139-7.

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 amend the rule cited as 08 NCAC 06B .0103.

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

Proposed Effective Date: January 1, 2022

Public Hearing:

Date: July 8, 2021

Time: 1:00 p.m.

Location:

<https://ncgov.webex.com/ncgov/j.php?MTID=meff9a0e7dfbf494cf68f7fccd1f06fea>

Reason for Proposed Action: A petition for rulemaking was submitted to the State Board on March 26, 2021. The petition requests to amend the rule pertaining to the arrangement and contents of official ballots, to include the word “Nominee” after the candidate’s name and party designation, and to include “Unaffiliated Candidate” after the candidate’s name when they qualify by petition to run unaffiliated. The petition states that no rule currently specifies how the State Board will display party designations in partisan ballot items, and the current ballot arrangement does not distinguish between a candidate’s personal voter registration and the nominating entity of the candidacy. Currently, for party nominees, the ballot displays the candidate’s name and party designation (for example “Republican” or “Democrat”), but does not specify that the candidate is a nominee of that particular political party. Some voters could think that the current designation refer to the voter registration of the candidate, rather than a party’s nomination of the candidate, so this proposal clarifies that the candidate listed is the party’s nominee for that office. For unaffiliated candidates, currently the word “Unaffiliated” appears after their name. The petition requests that this be changed to “Unaffiliated Candidate.”

In addition to making proposed changes to the rule pertaining to the rulemaking petition itself, the agency is also proposing changes to Paragraph (b), which delineates the order of ballot items on the official ballot. State statute provides for the ballot order more generally, but this is a source of confusion for county boards of elections, so we are simply providing greater detail in this proposal as to the order of specific election contests. So for example, the current rule simply states that Federal offices are to be listed first, and we have actually listed out those specific federal offices in the correct order.

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

Comment period ends: August 16, 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 06 - PARTISAN ELECTIONS

SUBCHAPTER 06B – BALLOTS

08 NCAC 06B .0103 ARRANGEMENT OF OFFICIAL BALLOTS

(a) After the close of the filing period, the State Board of Elections shall certify to the county boards of elections the order of the offices and candidate names to be voted on the official ballot. The State Board of Elections shall provide the text and arrangement of referenda to be voted on the official ballot.

(b) The order of precedence for candidate ballot items shall be as follows:

- (1) ~~Federal Offices;~~ Offices:
 - (A) President and Vice President of the United States
 - (B) US Senate
 - (C) US House of Representatives
- (2) ~~State Offices in the order certified by the State Board of Elections;~~ Offices:
 - (A) NC Governor
 - (B) NC Lieutenant Governor
 - (C) NC Attorney General
 - (D) NC Auditor
 - (E) NC Commissioner of Agriculture
 - (F) NC Commissioner of Insurance
 - (G) NC Commissioner of Labor
 - (H) NC Secretary of State
 - (I) NC Superintendent of Public Instruction
 - (J) NC Treasurer
 - (K) NC Supreme Court Chief Justice
 - (L) NC Supreme Court Associate Justice, in numerical order by seat number
 - (M) NC Court of Appeals Judge, in numerical order by seat number

- (3) District ~~and local offices; offices:~~
 - (A) NC Senate
 - (B) NC House of Representatives
 - (C) NC Superior Court Judge
 - (D) NC District Court Judge
 - (E) NC District Attorney
- (4) ~~Non-partisan offices; and~~ Partisan county offices
- (5) ~~Referenda, unless the voting system design requires referenda to be before candidate ballot items.~~ Partisan municipal offices
- (6) Nonpartisan county offices
- (7) Nonpartisan municipal offices
- (8) Referenda in the order of precedence established in G.S. 163-165.6(h), unless the voting system design requires referenda to be before candidate ballot items.

Ballot items for offices in the same class shall be listed in alphabetical order by office name or in numerical or alphabetical order by district name. Ballot items for full terms of an office shall be listed before ballot items for partial terms of the same office. The term of the unexpired office only shall be listed as part of the title of the office.

(c) ~~Names of candidates shall be printed in the exact form either certified by the State Board of Elections for those candidates who are required to file the Notice of Candidacy with the State Board of Elections, by convention or by petition. Candidates for all offices shall provide their name as it is to appear on the ballot. Candidates may request in writing a change in the manner that their name is to appear on the ballot during the time the filing period is open. For partisan ballot items, the official ballot shall display party designation by listing a candidate's name followed by the nominating political party and "Nominee." When a candidate qualifies by petition to appear on a partisan ballot item, the official ballot shall display the candidate's name, followed by "Unaffiliated Candidate." This Paragraph applies to ballot items for the general election.~~

Authority G.S. 163-22; 163-165.6.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Medical Care Commission intends to amend the rule cited as 10A NCAC 13F .0509, readopt with substantive changes the rules cited as 10A NCAC 13F .0405, .1213; 13G .1214, and readopt without substantive changes the rule cited as 10A NCAC 13G .0509.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for re adoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

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

Proposed Effective Date: January 1, 2022

Public Hearing:

Date: August 4, 2021

Time: 10:00 a.m.

Location: By teleconference using telephone number 1-877-848-7030; Access code: 5133201

Reason for Proposed Action: Pursuant to GS 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years, or they shall expire. As a result of the periodic review of Subchapters 10A NCAC 13F, Licensing of Adult Care Homes of Seven or More Beds, and 10A NCAC 13G, Licensing of Family Care Homes, four proposed re adoption rules were part of the 97 total rules determined as "Necessary With Substantive Public Interest," requiring re adoption. With input from stakeholders, substantive changes are proposed to three rules for re adoption, one rule is proposed without substantive changes for re adoption, and one rule is proposed for amendment for the regulation of licensed Adult Care Homes and Family Care Homes in N.C. An additional intent of the proposed rules is to make the rules of these two types of assisted living residences comparable, if not the same, for regulatory efficiency since they both house the same type of residents as permitted by law.

These proposed rules clarify the qualifications for the food service supervisor and to require consultation with a dietitian as needed to meet the dietary needs of the residents in an adult care home. The rules update and clarify the requirements for family care home and adult care home food service orientation training, that include the staff members required to complete the training and the means to access the training. The proposed rules clarify the timeframes adult care home and family care home survey reports and corrective action reports are to remain available at the facility for review by residents, residents' family members and responsible persons. In addition, the rules remove unnecessary and outdated references.

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: August 16, 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 .0400 - STAFF QUALIFICATIONS

10A NCAC 13F .0405 QUALIFICATIONS OF FOOD SERVICE SUPERVISOR

(a) ~~The~~ Each facility shall have a food service supervisor ~~shall be~~ experienced in food service in commercial or institutional settings ~~and willing to accept consultation from who shall consult with a registered dietitian.~~ dietitian as necessary, to meet the dietary needs of the residents in accordance with Rule .0904 of this Subchapter.

(b) ~~Rule 10A NCAC 13G .0405 (c) and (d) shall control for this Subchapter.~~

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

SECTION .0500 - STAFF ORIENTATION, TRAINING, COMPETENCY AND CONTINUING EDUCATION

10A NCAC 13F .0509 FOOD SERVICE ORIENTATION

The food service supervisor and adult care home dietary staff person in charge of the preparation and serving of who prepare and serve food shall complete a food service orientation program manual established by the Department or an equivalent within 30 days of hire for those staff hired on or after July 1, 2004. hire. Registered dietitians are exempt from this orientation. The orientation program manual is available on the internet website, <http://facility.services.state.nc.us/gepage.htm>, or it is available at the cost of printing and mailing from the Division of Health Service Regulation, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699 2708. <https://info.ncdhhs.gov/dhsr/acls/pdf/foodsrvman.pdf>, at no cost.

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

SECTION .1200 – POLICIES, RECORDS AND REPORTS

10A NCAC 13F .1213 AVAILABILITY OF CORRECTIVE ACTION AND SURVEY REPORTS

An adult care home shall make available to residents and their families or responsible persons and to prospective residents and their families or responsible persons, upon request and ~~within the facility, corrective action reports by the county departments of social services and facility survey reports by state licensure~~

~~consultants that have been approved by the Adult Care Licensure Section of the Division of Health Service Regulation within the past 12 months.~~ in a publicly viewable place in the home the following:

- (1) the most recent annual or biennial and subsequent facility survey reports issued by the Adult Care Licensure Section of the Division of Health Service Regulation;
- (2) any other reports issued by the Adult Care Licensure Section of the Division of Health Service Regulation within the past 12 months; and
- (3) corrective action reports issued by the county department of social services within the past 12 months.

Authority G.S. 131D-2.16; 143-165.

SUBCHAPTER 13G – LICENSING OF FAMILY CARE HOMES

SECTION .0500 – STAFF ORIENTATION, TRAINING, COMPETENCY AND CONTINUING EDUCATION

10A NCAC 13G .0509 FOOD SERVICE ORIENTATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SECTION .1200 – POLICIES, RECORDS AND REPORTS

10A NCAC 13G .1214 AVAILABILITY OF CORRECTIVE ACTION AND SURVEY REPORTS

~~A family care home shall make available within the facility, upon request, corrective action reports by the county departments of social services and facility survey reports by state licensure consultants that have been approved by the Adult Care Licensure Section of the Division of Health Service Regulation within the past 12 months to residents and their families or responsible persons and to prospective residents and their families or responsible persons.~~ to residents and their families or responsible persons and to prospective residents and their families or responsible persons, upon request and in a publicly viewable place in the home the following:

- (1) the most recent annual or biennial and subsequent facility survey reports issued by the Adult Care Licensure Section of the Division of Health Service Regulation;
- (2) any other survey reports issued by the Adult Care Licensure Section of the Division of Health Service Regulation within the past 12 months; and
- (3) corrective action reports issued by the county department of social services within the past 12 months.

Authority 131D-2.16; 143B-165.

TITLE 12 – DEPARTMENT OF JUSTICE

**SECTION .0300 - MINIMUM STANDARDS FOR
CRIMINAL JUSTICE INSTRUCTORS**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rule cited as 12 NCAC 09B .0305.

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

Proposed Effective Date: *October 1, 2021*

Public Hearing:

Date: *August 11, 2021*

Time: *10:00 a.m.*

Location: *Wake Technical Community College Public Safety Center, 321 Chapanoke Rd., Raleigh NC 27603*

Reason for Proposed Action: *To allow the reissuance of an individual's expired Specialized Instructor Certification when that individual has fully met all requirements for reissuance.*

Comments may be submitted to: *Charminique D. Williams, 1700 Tryon Park Drive, Raleigh, NC 27206*

Comment period ends: *August 16, 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 - CRIMINAL JUSTICE EDUCATION AND
TRAINING STANDARDS**

**SUBCHAPTER 09B - STANDARDS FOR CRIMINAL
JUSTICE EMPLOYMENT: EDUCATION: AND
TRAINING**

**12 NCAC 09B .0305 TERMS AND CONDITIONS OF
SPECIALIZED INSTRUCTOR CERTIFICATION**

(a) An applicant meeting the requirements for Specialized Instructor Certification as set forth in Rule .0304 of this Section shall be issued a certification to expire three years from the date of issuance. The applicant shall apply for certification as a Specialized Instructor within 60 days after the date the applicant achieved a passing score on the state comprehensive exam for the respective Specialized Instructor training course.

(b) Where certification for both General Probationary Instructor as set forth in Rule .0303 of this Section and Specialized Instructor Certification are issued on the same date, the instructor is required to instruct, within three years after certification, a minimum of 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued.

(c) When Specialized Instructor Certification is issued during an existing period of General Probationary Instructor Certification, the specialized instructor may satisfy the teaching requirement for the General Probationary Certification by teaching the specialized subject for which certification has been issued.

(d) The term of certification as a specialized instructor shall not exceed three years. An application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted, and that instruction was provided in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators and written certification from a School Director or In-Service Training Coordinator;
- (2) proof that the applicant has, within the three-year period preceding application for renewal, attended and completed all instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of

- completion issued by the institution which provided the instructor updates; and
- (A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form (Form F-12A) stating the instructor taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. The teaching shall have been provided in a Commission-accredited basic training, Specialized Instructor Training course, pursuant to Rule 12 NCAC 09C .0401, Commission-recognized in-service training course, or training course delivered pursuant to 12 NCAC 09F .0101, 12 NCAC 09H, 12 NCAC 10B .0601, .1302, or .2005;
 - (B) a favorable written evaluation by a School Director, Qualified Assistant, In-Service Training Coordinator, or another Specialized Instructor certified in the same specialized subject, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-accredited basic training, Specialized Instructor Training, Commission-recognized in-service training course, or in-service training course delivered pursuant to 12 NCAC 10B .0601, .1302, or .2005 during the three-year period of Specialized Instructor Certification. Such evaluation shall be certified on a Criminal Justice Instructor Evaluation Form F-16, located on the agency's website:
<http://www.ncdoj.gov/getdoc/c2eba6a-a-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>;
 - (C) proof that the applicant has met the requirement set forth in Rule .0303(d) of this Section;
 - (D) proof that the individual applying for renewal as a Specialized Firearms Instructor has achieved a minimum score of 92 on the day and night Basic Law Enforcement Training firearms qualification courses, administered by a certified Specialized Firearms Instructor, within the three-year period preceding the application for renewal; and
 - (E) proof that the individual applying for renewal as a Specialized Physical Fitness Instructor has passed the Basic

Law Enforcement Training Police Officer Physical Abilities Test, administered by a certified Specialized Physical Fitness Instructor, within the three-year period preceding the application for renewal.

(e) Certification as a Specialized Instructor in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topic areas as outlined in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) of this Section shall remain in effect for 36 months from the date of issuance. During the 36 month term all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for Specialized Instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas shall be maintained.

(f) Those individuals who have previously held Specialized Instructor Certification and have not exceeded a three year time period from when his or her Specialized Instructor Certification expired are eligible to reapply for re-issuance of the previously held Specialized Instructor Certification. An application for re-issuance shall contain documented evidence that the applicant:

- (1) holds a current General Instructor certification;
- (2) has completed all pre-qualification requirements for that specialty;
- (3) has passed the state examination for that specialty with a minimum score of 75;
- (4) has completed eight hours of evaluated instruction in the specialty where re-issuance of certification is taught, as documented on an F-16 located on the agency's website: <https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/>. The eight hours of instruction shall be taught within 60 days of the Specialized Instructor Certification being reissued and evaluated by a Specialized Instructor certified in that specialty. Failure to complete the required eight hours of evaluated instruction will result in the reissued Specialized Instructor Certification being revoked.
- (5) documented proof that all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for Specialized Instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas shall be maintained; and
- (6) Applicants for re-issuance of the Specialized Instructor Certification shall have one opportunity to pass the prequalification skills assessment and the state examination for that specialty. Should an applicant not achieve a passing score on either the prequalification skills assessment or the state examination for that specialty, the applicant will be required to successfully complete the specific Specialized Instructor Course in its entirety.

- (7) Applicants whose Specialized Instructor Certification is suspended or revoked does not qualify for re-issuance. The applicant shall complete the specific Specialized Instructor Course in its entirety.

(g)(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" shall be permissible. However, such guest participants are subject to the on-site supervision of a Commission-certified instructor and shall be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall not replace the primary instructor.

Authority G.S. 17C-6.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02N .0406, .0901, .0905, and .0906.

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

Proposed Effective Date: Pending Legislative Review

Public Hearing:

Date: August 3, 2021

Time: 6:00 p.m.

Location: In an abundance of caution and to address protective measures to help prevent the spread of COVID-19, this public hearing will be held by webinar. WebEx Events meeting link:
<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e9c6e4d44cd6121746ecfcd5f43dc3d0>
 Event number: 161 060 8781 Event password: 02NRU

Reason for Proposed Action: The rule changes to 15A NCAC 02N are necessary to incorporate two North Carolina Session Laws (NCSL): NCSL 2018-114 Sections 19.(a)-(e) and 19.1.(a)-(e) and NCSL 2020-74 Section 17.(a)-(e).

Comments may be submitted to: Andria Archer, NCDEQ/DWM/UST Section 1646 Mail Service Center, Raleigh, NC 27699-1646; phone (919) 707-8157; fax (919) 715-1117; email andria.archer@ncdenr.gov

Comment period ends: August 16, 2021

Rule(s) is automatically subject to legislative review. Cite statutory reference: SL 2018-114, Sections 19.(d) and 19.1.(d) and SL 2020-74, Section 17.(d)

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

- ☐ State funds affected
☐ Local funds affected

- ☐ Substantial economic impact (>= \$1,000,000)
☒ Approved by OSBM
☒ No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02N – CRITERIA AND STANDARDS APPLICABLE TO UNDERGROUND STORAGE TANKS

SECTION .0400 - GENERAL OPERATING REQUIREMENTS

15A NCAC 02N .0406 PERIODIC TESTING OF SPILL PREVENTION EQUIPMENT AND CONTAINMENT SUMPS USED FOR INTERSTITIAL MONITORING OF PIPING AND PERIODIC INSPECTION OF OVERFILL PREVENTION EQUIPMENT

The regulations governing "Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment" set forth in 40 CFR 280.35 are hereby incorporated by reference, excluding any subsequent amendments and editions, except that:

- (1) UST system or UST system component installations or replacements completed on or after November 1, 2007, shall meet the requirements of Section .0900 of this Subchapter.
- (2) 40 CFR 280.35(a)(1)(ii)(C) shall be rewritten as follows: (C) Requirements determined by the US Environmental Protection Agency or the Division to be no less protective of human health and the environment than the requirements listed in Paragraphs (a)(1)(ii)(A) and (B) of this section.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

SECTION .0900 - PERFORMANCE STANDARDS FOR UST SYSTEM OR UST SYSTEM COMPONENT INSTALLATION OR REPLACEMENT COMPLETED ON OR AFTER NOVEMBER 1, 2007

15A NCAC 02N .0901 GENERAL REQUIREMENTS

- (a) This Section applies to a UST system or UST system component installation or replacement completed on or after November 1, 2007.
- (b) A UST system or UST system component shall not be installed or replaced within an area defined in Rule .0301(b) of this Subchapter.
- (c) A tank shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule.
- (d) All UST system components other than tanks including connected piping, underground ancillary equipment, dispensers, line leak detectors, submersible pumps, spill buckets, siphon bars, and remote fill pipes shall meet the requirements for secondary containment including interstitial release detection monitoring in accordance with this Rule. Spill buckets replaced on tanks

installed prior to November 1, 2007 may comply with the interstitial monitoring requirements described in Paragraph (k) of this Rule. Gravity-fed vertical fill pipes, vapor recovery, vent lines, and containment sumps are excluded from the secondary containment requirements in this Rule.

(e) A UST system design is required for installation or replacement of a UST system, UST, or connected piping. If required by G.S. 89C, UST system designs must be prepared by a Professional Engineer licensed by the North Carolina Board of Examiners for Engineers and Surveyors.

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined via letter dated December 20, 1993, that preparation of a UST system design constitutes practicing engineering under G.S. 89C.]

(f) If required by the equipment manufacturer, persons installing, replacing or repairing UST systems or UST system components must be trained and certified by the equipment manufacturer or the equipment manufacturer's authorized representative to install, replace or repair such equipment.

(g) UST systems or UST system components shall be installed, tested, operated, and maintained in accordance with the manufacturer's specifications and the codes of practice, and industry standards described in Rule .0907 of this Section.

(h) UST systems or UST system components shall not be installed or replaced in areas where they will be in contact with contaminated soil or free product.

(i) Secondary containment systems shall be designed, constructed, installed and maintained to:

- (1) detect the failure of the inner wall and outer wall for UST system components with double wall construction;
- (2) contain regulated substances released from a UST system until they are detected and removed;
- (3) prevent a release of regulated substances to the environment outside of the containment system;
- (4) direct releases to a monitoring point or points;
- (5) provide a release detection monitoring device or monitoring method for the interstitial space;
- (6) on an uninterrupted basis, monitor the inner and outer walls of double-walled tanks for breaches of integrity using pressure, vacuum or hydrostatic monitoring methods or monitor the interstitial space of double-walled tanks for releases using an electronic liquid detecting sensor method along with periodic testing as specified in Rule .0903(f) of this Section;
- (7) on an uninterrupted basis, monitor the inner and outer walls of double-walled non-tank components for breaches of integrity using pressure, vacuum, or hydrostatic methods, or monitor a non-tank component for releases by using an electronic liquid detecting sensor placed in a containment sump and in the interstitial space of a double-walled spill bucket along with periodic integrity testing as specified in Rules .0904(f), .0905(g) and .0906(e) of this Section; and

(8) provide a printed record of release detection monitoring results and an alarm history for each month.

(j) Electronic liquid detecting sensors used to monitor the interstitial space of double-walled tanks and non-tank components shall meet the following requirements:

- (1) Electronic liquid detecting sensors used for tanks and spill buckets shall be located at the lowest point in the interstitial space. Electronic liquid detecting sensors used for containment sumps shall be located as specified in Rule .0905(d) of this Section.
- (2) A tank shall have a method to verify that an electronic liquid detecting sensor is located at the lowest point of the interstitial space. Verification of the sensor location shall be available for inspection.
- (3) Electronic liquid detecting sensors shall detect the presence of any liquid in the interstitial space and shall activate an alarm when any type of liquid is detected.
- (4) Any liquid detected in the interstitial space must be removed within 48 hours of discovery.

(k) Spill buckets replaced on tanks installed prior to November 1, 2007 may use mechanical liquid detecting sensors for interstitial leak detection monitoring instead of electronic liquid detecting sensors. If a mechanical liquid detecting sensor is used, then Subparagraphs (i)(7) and (8) of this Rule do not apply. However, the spill bucket shall comply with all spill bucket requirements of Rule .0906 of this Section. In addition, the following specific requirements shall be met:

- (1) mechanical liquid detecting sensors shall be located at the lowest point in the interstitial space;
- (2) mechanical liquid detecting sensors shall detect the presence of any liquid in the interstitial space. The presence of liquid shall register on a gauge that can be viewed from within the spill bucket;
- (3) spill buckets shall be monitored every 30 days. The interstitial leak detection monitoring results shall be documented for each month;
- (4) any liquid detected in the interstitial space shall be removed within 48 hours of discovery; and
- (5) spill buckets shall be integrity tested every three years in accordance with Rule .0906(e) of this Section.

~~(4)(1)~~ New or replacement dispensers shall be provided with under dispenser containment sumps and shall meet the secondary containment requirements and performance standards of this Rule.

~~(4)(m)~~ All release detection monitoring equipment shall be installed, calibrated, operated and maintained in accordance with manufacturer's instructions. All release detection monitoring equipment shall be checked annually for operability, proper operating condition and proper calibration in accordance with the manufacturer's written guidelines. The results of the last annual check must be recorded, maintained at the UST site or the tank

owner or operator's place of business, and made available for inspection.

~~(m)(n)~~ Releases detected in an interstitial space shall be reported in accordance with Rule .0601 of this Subchapter and investigated in accordance with the manufacturer's written guidelines. Any changes in the original physical characteristics or integrity of a piping system or a containment sump shall also be reported in accordance with Rule .0601 of this Subchapter and investigated in accordance with the manufacturer's written guidelines.

~~(n)(o)~~ UST systems and UST system components shall also meet all of the requirements specified in 40 CFR 280.20(c), (d), and (e). In addition, overfill prevention equipment shall be ~~checked annually~~ inspected at least once every three years for operability, proper operating condition and proper calibration in accordance with:

- (1) written requirements developed by the manufacturer;
- (2) a code of practice developed by a nationally recognized association or independent testing laboratory; or
- (3) requirements determined by the US Environmental Protection Agency or the Division to be no less protective of human health and the environment than the requirements listed in Subparagraph (1) or (2) of this Paragraph. The inspection shall ensure that overfill prevention equipment is set to activate at the correct level specified in 40 CFR 280.20(c)(1)(ii) and will activate when regulated substance reaches that level.
- (4) The results of the last ~~annual~~ triennial check shall be recorded, maintained at the UST site or the tank owner or operator's place of business, and made available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(a)(2)(h).

15A NCAC 02N .0905 CONTAINMENT SUMPS

- (a) Containment sumps shall be constructed of non-corroding materials.
- (b) Containment sumps shall be designed and manufactured expressly for the purpose of containing and detecting a release.
- (c) Containment sumps shall be designed, constructed, installed, and maintained to prevent water infiltration.
- (d) Electronic sensor probes used for release detection monitoring shall be located no more than two inches above the lowest point of the containment sump.
- (e) At installation, containment sumps shall be tested for tightness after construction, but before backfilling. Tightness testing shall be conducted in accordance with the manufacturer's written guidelines and PEI/RP100, "Recommended Practice for Installation of Underground Liquid Storage Systems." Other tightness test methods may be used if they are approved by the Division. In approving a containment sump tightness testing method the Division shall consider the following factors:

- (1) the inner surface of the sump is tested to at least four inches above the highest joint or penetration fitting, whichever is higher; and

- (2) the method is capable of detecting a fracture, perforation or gap in the sump within the specified test period.

(f) If a containment sump fails an installation tightness test, the sump shall be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following replacement or repair, the containment sump shall be re-tested for tightness in accordance with Paragraph (e) of this Rule.

(g) Containment sumps that are not monitored on an uninterrupted basis for releases using vacuum, pressure or hydrostatic interstitial monitoring methods shall be tested for tightness every three years following installation in accordance with:

- (1) written requirements developed by the manufacturer;
- (2) a code of practice developed by a nationally recognized association or independent testing laboratory; or
- (3) requirements determined by the US Environmental Protection Agency or the Division to be no less protective of human health and the environment than the requirements listed in Subparagraph (1) and (2) of this Paragraph.

If a containment sump fails a periodic tightness test, the sump shall be replaced in accordance with Paragraphs (a), (b) and (c) of this Rule or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications or a code of practice developed by a nationally recognized association or independent testing laboratory. Following replacement or repair, the containment sump shall be re-tested for tightness in accordance with Paragraph (e) of this Rule. The last periodic tightness test record shall be maintained at the UST site or the tank owner or operator's place of business and shall be available for inspection.

(h) All containment sumps shall be visually inspected at least annually in accordance with Rule .0407 of this Subchapter. Any water or regulated substance present in a sump at the time of inspection shall be removed from the sump within 48 hours of discovery. The visual inspection results shall be documented and shall be maintained for at least one year at the UST site or the tank owner's or operator's place of business and shall be available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h).

15A NCAC 02N .0906 SPILL BUCKETS

- (a) Spill buckets shall be pre-fabricated with double-walled construction.
- (b) Spill buckets shall be protected from corrosion by being constructed of non-corroding materials.
- (c) Spill buckets shall be designed, constructed, installed, and maintained to prevent water infiltration.
- (d) After installation but before backfilling, the primary containment and interstitial space of the spill bucket shall be tested in accordance with the manufacturer's written guidelines or a code of practice developed by a nationally recognized association or independent testing laboratory. Any change in

vacuum during a vacuum test or any change in liquid level in an interstitial space liquid reservoir beyond the limits specified by the equipment manufacturer shall be considered a failure of the integrity of the spill bucket. If the spill bucket fails a tightness test, it shall be replaced or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the spill bucket shall be re-tested for tightness in accordance with the manufacturers' written guidelines or a code of practice developed by a nationally recognized association or independent testing laboratory.

(e) Spill buckets that are not monitored on an uninterrupted basis for releases using vacuum, pressure or hydrostatic methods, shall be tested for tightness at installation and every three years following installation. The primary containment and interstitial space of the spill bucket shall be tested in accordance with:

- (1) written requirements developed by the manufacturer;
- (2) a code of practice developed by a nationally recognized association or independent testing laboratory; or

- (3) requirements determined by the US Environmental Protection Agency or the Division to be no less protective of human health and the environment than the requirements listed in Subparagraph (1) and (2) of this Paragraph.

If the spill bucket fails a tightness test, it shall be replaced and tested in accordance with Paragraphs (a) through (d) of this Rule or repaired by the manufacturer or the manufacturer's authorized representative in accordance with the manufacturer's specifications. Following any repair, the spill bucket shall be re-tested for tightness in accordance with the manufacturers' written guidelines or a code of practice developed by a nationally recognized association or independent testing laboratory. The last periodic tightness test record shall be maintained at the UST site or the tank owner or operator's place of business and shall be available for inspection.

Authority G.S. 143-215.3(a)(15); 143B-282(2)(h).

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.
This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

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

Rule-making Agency: Pesticide Board

Rule Citation: 02 NCAC 09L .0502

Effective Date: May 28, 2021

Date Approved by the Rules Review Commission: May 20, 2021

Reason for Action: The North Carolina Pesticide Board finds it critical to exempt pesticides approved by the United States Environmental Protection Agency (EPA) on an emergency basis in accordance with 02 NCAC 09L .0318 for use in preventing, destroying, or mitigating COVID-19 from being restricted use pesticides as currently required by 02 NCAC 09L .0502(3). This exemption will bring North Carolina standards in line with other states and ensure North Carolina does not fall behind in its efforts to respond to COVID-19 by allowing for normal distribution of these pesticides.

CHAPTER 09 - FOOD AND DRUG PROTECTION

SUBCHAPTER 09L - PESTICIDE SECTION

SECTION .0500 - PESTICIDE LICENSES

**02 NCAC 09L .0502 LIST OF RESTRICTED USE
PESTICIDES**

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

- (1) any pesticide required by the Environmental Protection Agency to bear the designation on its labeling "Restricted Use Pesticide;"
- (2) arsenic trioxide; and
- (3) any pesticide approved under Rule .0318 of this Subchapter.

(b) Any pesticide approved by the United States Environmental Protection Agency for use in the State of North Carolina in accordance with 02 NCAC 09L .0318 that is labeled as approved for use in preventing, destroying, or mitigating COVID-19 shall be exempt from the provisions of Subparagraph (a)(3) of this Rule and shall not be considered a Restricted Use Pesticide.

History Note: Authority G.S. 143-440(a),(b); 143-441; 143-458;

Eff. February 1, 1976;

Amended Eff. April 21, 1977;

Emergency Amendment [(e)] Eff. July 8, 1977, for a Period of 176 Days to Expire on December 31, 1977; Emergency Amendment [(e)] Expired Eff. December 31, 1977;
Amended Eff. January 1, 1990; August 1, 1982; January 1, 1979; June 30, 1978;
Readopted Eff. August 1, 2020; 2020;
Emergency Amendment Eff. March 25, 2021;
Temporary Amendment Eff. May 28, 2021.

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

Rule-making Agency: Environmental Management Commission

Rule Citation: 15A NCAC 02H .1301 and .1401-.1405

Effective Date: May 28, 2021

Date Approved by the Rules Review Commission: May 20, 2021

Reason for Action: As a result of the US EPA's Navigable Waters Protection Rule: Definition of "Waters of the United States" Rule (effective June 22, 2020), a subset of wetlands classified under the State law are no longer subject to federal Clean Water Act jurisdiction, and therefore no longer eligible for permitting the mechanism available under the Clean Water Act to authorize impacts to these wetlands. Temporary rules are being adopted to create a replacement permitting mechanism for these wetlands.

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

**SUBCHAPTER 02H - PROCEDURES FOR PERMITS:
APPROVALS**

**SECTION .1300 – DISCHARGES TO ISOLATED
WETLANDS AND ISOLATED WATERS**

15A NCAC 02H .1301 SCOPE AND PURPOSE

(a) The provisions of this Section shall apply to Division of Water Resources (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require State review after October 22, 2001 and that require a Division determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Section, "discharge" shall be the deposition

of dredged or fill material (e.g. fill, earth, construction debris, soil, etc.).

(b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters that have been listed in 15A NCAC 02B .0300. If the U.S. Army Corps of Engineers (USACE) or its designee determines that a particular water is not regulated under Section 404 of the Clean Water Act, and the water meets the definition of isolated waters in Paragraph (f) of this Rule, then discharges to that water ~~or wetland~~ shall be covered by this Section. If the ~~U.S. Army Corps of Engineers USACE~~ or its designee determines that a particular wetland is not regulated under Section 404 of the Clean Water Act, that wetland meets the definition of isolated waters in Paragraph (f) of this Rule, and that wetland is a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/401-isolated> ~~<https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/newam-manual>~~), then discharges to that wetland shall be covered by this Section. The Division shall verify the determination, extent, and location of isolated wetlands and isolated classified surface waters using the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1) and subsequent regional supplements and the Division publication, Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010).

(c) Activities that result in a discharge may be deemed permitted as described in Rule .1305 ~~(b)(a)~~ of this Section or authorized by the issuance of either an individual permit or a Certificate of Coverage to operate under a general permit:

- (1) Individual permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These ~~Individual~~ individual permits do not require approval by the U.S. Environmental Protection Agency.
- (2) General permits may be developed by the Division and issued by the Director for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General permits do not require approval by the U.S. Environmental Protection Agency. All activities that receive a Certificate of Coverage under a general permit from the Division shall be covered under that general permit. When written approval is required in the general permit, the application and review procedures for requesting a Certificate of Coverage under a general permit from the Division for the proposed activity are the same as the procedures outlined in this Section for individual permits.

(d) Discharges resulting from activities that receive an individual permit or Certificate of Coverage under a general permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated surface waters.

- (e) The following are exempt from this Section:
- (1) Activities described in 15A NCAC 02B .0230;
 - (2) Discharges to the following features if they were constructed for erosion control or stormwater management purposes: isolated man-made ~~ponds~~ ponds, isolated man-made wetlands, or isolated man-made ditches; ~~ditches constructed for stormwater management purposes~~;
 - (3) Discharges to any man-made isolated pond;
 - (4) Discharges to any isolated wetland not regulated under Section 404 of the Clean Water Act that is not a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: <https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual>);
 - (5) Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities that receive NPDES Permits or State Non-Discharge Permits;
 - (6) Discharges for water dependent structures as defined in 15A NCAC 02B .0202; and
 - (7) A discharge resulting from an activity if:
 - (A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and these were issued prior to October 22, 2001;
 - (B) The project requires a State permit, such as landfills, NPDES discharges of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that has begun construction or are under contract to begin construction and have received all required State permits prior to October 22, 2001;
 - (C) The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to October 22, 2001; or
 - (D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project that has established a Vested Right under North Carolina law prior to October 22, 2001.
- (f) The terms used in this Section shall be as defined in G.S. 143-212 and G.S. 143-213 and as follows:
- (1) "Class SWL wetland" means the term as defined at 15A NCAC 02B ~~.0101~~ .0231(a).
 - (2) "Class UWL wetland" means the term as defined at 15A NCAC 02B ~~.0101~~ .0231(a).

- (3) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities, regardless of what entities undertake such other actions.
- (4) "Director" means the Director of the Division.
- (5) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.
- (6) "Isolated Wetland" means:
- (A) a wetland confirmed to be isolated by the USACE prior to June 22, 2020; or
- (B) a wetland that has been determined to be non-jurisdictional by the USACE after June 22, 2020 and for which an evaluation confirmed by the Division documents that a significant nexus is not present pursuant to the Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* memorandum dated December 2, 2008 (available online at: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/401-isolated>).
- (7) "Isolated Waters" means:
- (A) a surface water confirmed to be isolated by the USACE prior to June 22, 2020; or
- (B) a surface water that has been determined to be non-jurisdictional by the USACE after June 22, 2020 and for which an evaluation confirmed by the Division documents that a significant nexus is not present pursuant to the Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* memorandum dated December 2, 2008.
- (8) "Project" means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers.
- (6)(9) "Secondary impact" means indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable to the applicant or the Division.
- (7)(10) "Wetland" means the term as defined in 15A NCAC 02B .0202.

Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001; Temporary Adoption Eff. October 22, 2001; Eff. April 1, 2003; Readopted Eff. June 15, 2020; Temporary Amendment Eff. May 28, 2021.

SECTION .1400 – DISCHARGES TO FEDERALLY NON-JURISDICTIONAL WETLANDS AND FEDERALLY NON-JURISDICTIONAL CLASSIFIED SURFACE WATERS

15A NCAC 02H .1401 SCOPE AND PURPOSE

(a) The provisions of this Section shall apply to Division of Water Resources (Division) regulatory and resource management determinations regarding federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters. For the purpose of this Section, "discharge" shall be the deposition of dredged or fill material (e.g. fill, earth, construction debris, ~~soil~~ ~~soil, etc.~~). ~~Isolated Wetlands wetlands and Isolated Waters~~ isolated waters as defined in Rule .1301 of this Subchapter shall be regulated pursuant to Section .1300 of this Subchapter.

(b) This Section outlines the application and review procedures for permitting of discharges into federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters that have been listed in 15A NCAC 02B .0300. If the U.S. Army Corps of Engineers or its designee determines that a particular water or wetland is not regulated under Section 404 of the Clean Water Act, and the particular water or wetland is not an isolated wetland or isolated water as defined in Rule .1301 of this Subchapter, then discharges to that water or wetland shall be covered by this Section. The Division shall verify the determination, extent, and location of federally non-jurisdictional wetlands and federally non-jurisdictional classified surface waters using the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1) (available free of charge on the internet at: <https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/4532/>) and subsequent regional supplements (available free of charge on the internet at: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/) and the Division publication, Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010). Any disputes by the applicant or landowner over on-site wetland or stream determinations shall be referred to the Director in writing within 60 calendar days of written notification from the Division. The Director's determination shall be subject to review as provided in Article 3 of G.S. 150B.

(c) Activities that result in a discharge may be deemed permitted as described in Rule .1405(a) of this Section or authorized by the issuance of either an individual permit or a Certificate of Coverage to operate under a general permit:

- (1) Individual permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These ~~Individual~~ individual permits do not require approval by the U.S. Environmental Protection Agency.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b)(3); 143-215.3(a)(1); 143-215.3(c); S.L. 2014-120, s. 54; S.L. 2015-286, s. 4.18;

- (2) General permits may be developed by the Division and issued by the Director for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General permits do not require approval by the U.S. Environmental Protection Agency. All activities that receive a Certificate of Coverage under a general permit from the Division shall be covered under that general permit. When written approval is required in the general permit, the application and review procedures for requesting a Certificate of Coverage under a general permit from the Division for the proposed activity are the same as the procedures outlined in this Section for individual permits.

(d) Discharges resulting from activities that are deemed permitted as described in Rule .1405(a) of this Section, or that receive an individual permit or Certificate of Coverage under a general permit pursuant to this Section shall not be considered to remove existing uses of the wetland or classified surface waters.

(e) The following are exempt from this Section:

- (1) Activities described in 15A NCAC 02B .0230;
- (2) Discharges to the following features if they were constructed for erosion control or stormwater management purposes: federally non-jurisdictional man-made ponds, federally non-jurisdictional man-made wetlands, or federally non-jurisdictional man-made ditches; ~~ditches constructed for erosion control or stormwater management purposes;~~
- (3) Discharges to any federally non-jurisdictional man-made pond;
- (4) Discharges of treated effluent into federally non-jurisdictional wetlands or federally non-jurisdictional classified surface waters resulting from activities that receive NPDES Permits or State Non-Discharge Permits; and
- (5) Discharges for water dependent structures as defined in 15A NCAC 02B .0202.

(f) The terms used in this Section shall be as defined in G.S. 143-212, G.S. 143-213, and Rule .1301 of this Subchapter.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b)(3); 143-215.3(a)(1); 143-215.3(c);

Temporary Adoption Eff. May 28, 2021.

15A NCAC 02H .1402 FILING APPLICATIONS

(a) Any person ~~needing~~ seeking issuance of an individual permit or Certificate of Coverage under a general permit for discharges resulting from activities that affect federally non-jurisdictional wetlands or federally non-jurisdictional classified surface waters shall file with the Director, at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617, or 512 N Salisbury Street, Raleigh, NC 27604, an original and one copy of an application for a ~~Permit~~ permit or submit one complete copy of an application electronically via the following website: https://edocs.deq.nc.gov/Forms/DWR_Wetlands_Online_Submit_tal_Page. The application shall be made on a form provided or

approved by the Division, available electronically via the following website: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application>. The application shall include at a minimum the following:

- (1) the date of application;
- (2) the name, address, and phone number of the property applicant. If the applicant is not the property owner(s), name, address, and phone number of the property owners(s);
- (3) if the applicant is a corporation, the name and address of the North Carolina process agency, and the name, address, and phone number of the individual who is the authorized agent of the corporation and responsible for the activity for which certification is sought. The corporation must be registered with the NC Secretary of State's Office to conduct business in NC;
- (4) the nature of the discharge, including cumulative impacts to all wetlands and waters (isolated wetlands, isolated classified surface waters, federally non-jurisdictional wetlands, federally non-jurisdictional classified surface waters, jurisdictional ~~wetlands~~ wetlands, and jurisdictional waters) that cause or will cause a violation of downstream water quality standards resulting from an activity to be conducted by the applicant;
- (5) whether the discharge has occurred or is proposed;
- (6) the location and extent of the discharge, stating the municipality, if applicable, and the county; the drainage basin; the name of the nearest named surface waters; and the location of the point of discharge with regard to the nearest named surface waters;
- (7) an application fee as required by G.S. 143-215.3D. If payment of a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule;
- (8) a map(s) with scales and north arrows that is legible to the reviewer and of sufficient detail to delineate the boundaries of the lands owned or proposed to be utilized by the applicant in carrying out the discharge; the location, dimensions, and type of any structures that affect federally non-jurisdictional wetlands or federally non-jurisdictional classified surface waters for use in connection with the discharge; and the location and extent of the federally non-jurisdictional wetlands or federally non-jurisdictional classified surface waters within the boundaries of ~~said~~ the lands; and
- (9) a signature by the applicant or an agent authorized by the applicant. If an agent is signing for the applicant, an agent authorization letter shall be provided. In signing the application, the applicant certifies that all information contained therein or in support

thereof is true and correct to the best of their knowledge.

(b) The Division may request in writing, and the applicant shall furnish, any additional information necessary to clarify the information provided in the application under Paragraph (a) of this Rule, or to complete the evaluation in Rule .1405 of this Section.

(c) If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a) and (b) of this Rule, then the applicant shall submit an explanation detailing the reasons for omission of the information. The final decision regarding the completeness of the application shall be made by the Division based upon the information required in Paragraphs (a) and (b) of this Rule, and any explanation provided by the applicant regarding omitted information provided in this Paragraph.

(d) Pursuant to G.S. 143-215.3(a)(2), the staff of the Division shall conduct such investigation as the Division deems necessary to clarify the information provided in the application under Paragraph (a) of this Rule or to complete the evaluation in Rule .1405 of this Section. For the purpose of review of an application, the applicant shall allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable for those places, upon the presentation of ~~credentials~~ credentials, and advanced notice of at least three days.

(e) Other applications for permitting or certification by a division of the Department shall suffice for application for this ~~Permit~~ permit as long as the application contains all of the information specified in this Rule and it is specifically requested to the Division by the applicant that authorization is sought under this Rule. This application shall be submitted by the applicant to the Division for review under this ~~Permit~~ permit.

*History Note: Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1);
Temporary Adoption Eff. May 28, 2021.*

15A NCAC 02H .1403 PUBLIC NOTICE AND PUBLIC HEARING

(a) The Division shall provide public notice for proposed general permits. This notice shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and posted on the Division's website: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-notices>. Notice shall be made at least 30 calendar days prior to issuance of the general permit by the Division. Public notice shall not be required for those activities covered by Certificates of Coverage under a general permit.

(b) Notice of each pending application for an individual permit shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and shall be posted on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final action by the Division on the application.

(c) The notice for each pending application for an individual permits shall set forth:

- (1) the name and address of the applicant;
- (2) the action requested in the application;
- (3) the nature and location of the discharge; and

- (4) the proposed date of final action to be taken by the Division on the application.

The notice shall also state where additional information is available online and on file with the Division. Information on file shall be made available upon request between 8:00 am and 5:00 pm, Monday through Friday, excluding State holidays, and copies shall be made available upon payment of the cost thereof to the Division pursuant to G.S. 132-6.2.

(d) The public notice requirement for an individual permit as described in Paragraph (b) of this Rule may be satisfied by a joint notice with the Division of Coastal Management, pursuant to 15A NCAC 07J .0206, U.S. Army Corps of Engineers according to their established procedures, by a joint notice by the Division for an individual certification in accordance with Rule .0503 of this Subchapter, or by a joint notice by the Division for an individual permit in accordance with Rule .1303 of this Subchapter.

(e) Any person who desires a public hearing on a general permit or an individual permit application shall submit a written request to the Division at the address listed in Rule .1402 of this Section. The request must be received by the Division within 30 calendar days following the public notice.

(f) If the Director determines that there is significant public interest in holding a hearing, based upon such factors as the reasons why a hearing was requested, the nature of the project, and the proposed impacts to waters of the State, the Division shall notify the applicant in writing that there will be a hearing. The Division shall also provide notice of the hearing to all individuals on the mailing list as described in Paragraph (g) of this Rule and shall post the notice on the Division's website. The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state the time, place, and format of the hearing. The notice may be combined with the notice required under Paragraph (c) of this Rule. The hearing shall be held within 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of 30 calendar days after the public hearing to receive public comments.

(g) Any person may request that he or she be emailed copies of all public notices required by this Rule. The Division shall add the email address of any such person to an email listerv and follow procedures set forth in Rule .0503(g) of this Subchapter.

(h) Any public hearing held pursuant to this Rule may be coordinated with other public hearings held by the Department or the U.S. Army Corps of Engineers.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(a)(3); 143-215.3(c);
Temporary Adoption Eff. May 28, 2021.*

15A NCAC 02H .1404 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF COVERAGE

(a) The Director shall issue the permit or Certificate of Coverage, deny the application, provide notice of hearing pursuant to Rule .1403 of this Section, or request additional information within 60 calendar days after receipt of the application. When the Director requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Director. Failure to issue the permit or Certificate of Coverage, deny the application, provide notice of hearing, or request

additional information within 60 calendar days shall result in the waiver of the permit requirement by the Director, unless:

- (1) The applicant agrees, in writing, to a longer period;
- (2) The final decision is to be made pursuant to a public hearing;
- (3) The applicant refuses the staff access to its records or premises for the purpose of gathering information necessary to the Director's decision; or
- (4) Information necessary to the Director's decision is unavailable.

(b) The Director shall issue the permit or Certificate of Coverage, deny the application, or request additional information within 60 calendar days following the close of the record for the public hearing. Failure to take action within 60 calendar days shall result in the waiver of the permit requirement by the Director, unless Subparagraphs (a)(1), (3), or (4) of this Rule apply.

(c) Any permit or Certificate of Coverage issued pursuant to this Section may contain such conditions as the Director shall deem necessary to ensure compliance with this Section, including written post-discharge notification to the Division.

(d) Modification or Revocation of permit or Certificate of Coverage:

- (1) Any permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification by the Director for violation of conditions of the permit or Certificate of Coverage; and
- (2) Any permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification by the Director upon a determination that information contained in the application or presented in support thereof is incorrect or if the Director finds that the discharge has violated or may violate a downstream water quality standard.

(e) The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application, the Director shall specify the reasons for the denial.

(f) Individual permits and Certificates of Coverage for general permits shall be issued for a period of five years, after which time the permit shall be void, unless the discharge is complete or an extension is granted pursuant to Paragraph (g) of this Rule. The permit shall become enforceable when issued.

(g) Individual permit ~~Permit~~ or Certificate of Coverage renewals shall require a new complete application. The applicant may request in writing that the Division grant an extension before the permit expires. An extension may be granted by the Division based on the new complete application for a time period of one additional year, provided that the construction has commenced or is under contract to commence before the permit expires.

(h) The issuance or denial is a final agency decision that is subject to administrative review pursuant to G.S. 150B-23.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c);
Temporary Adoption Eff. May 28, 2021.*

15A NCAC 02H .1405 REVIEW OF APPLICATIONS

(a) ~~DISCHARGES FROM ACTIVITIES DEEMED TO BE PERMITTED.~~ The following activities shall be deemed to be permitted:

- (1) Discharges resulting from activities that impact less than 1/2 acre of federally non-jurisdictional classified open waters (e.g., lakes, ponds) surface waters for the entire project are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph ~~(b)(4) of this Rule;~~ (4) of this Paragraph, and it shall not be necessary for the Division to issue permits for these activities.
- (2) Discharges resulting from activities that impact less than a total of 150 linear feet of federally non-jurisdictional classified intermittent and perennial streams for the entire project are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph ~~(b)(4) of this Rule;~~ (4) of this Paragraph, and it shall not be necessary for the Division to issue permits for these activities.
- (3) Discharges resulting from activities that impact less than or equal to one acre of federally non-jurisdictional wetlands for the entire project in the coastal region, less than or equal to one-half acre of federally non-jurisdictional wetlands for the entire project in the piedmont region, and less than or equal to one-third acre of federally non-jurisdictional wetlands for the entire project in the mountain region are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph ~~(b)(4) of this Rule;~~ (4) of this Paragraph, and it shall not be necessary for the Division to issue permits for these activities. For purposes of implementing this Subparagraph, the coastal, piedmont and mountain regions shall be as follows:
 - (A) "Coastal Region" includes Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, and Wilson Counties;
 - (B) "Piedmont Region" includes Alamance, Alexander, Anson, Burke, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Iredell, Lincoln, Mecklenburg, Montgomery, Orange, Person, Polk,

- Randolph, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Union, Vance, Wake, Warren, Wilkes, and Yadkin Counties;
- (C) "Mountain Region" includes Alleghany, Ashe, Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Swain, Transylvania, Watauga and Yancey Counties.
- (D) When a landowner believes their property is not in the correct region for purposes of this Rule, they may ~~have a soil scientist~~ conduct a site-specific evaluation to determine the soil series. ~~The soil scientist shall be an individual who is currently licensed or authorized to practice soil science under G.S. 89F by the North Carolina Board for Licensing of Soil Scientists. If required by G.S. 89F, a soil scientist shall prepare this evaluation.~~ The landowner shall submit the soil report to the supervisor of the 401 & Buffer Permitting Branch of the Division of Water Resources for review. Soil series that occur in North Carolina have been categorized by the Natural Resources Conservation Service of the US Department of Agriculture as defined in Rule .1306 of this Subchapter.
- (4) Conditions which shall be met for projects deemed to be permitted:
- (A) Erosion and sediment control practices shall equal at a minimum those required by the N.C. Division of Energy, Mineral, and Land Resources (DEMLR) or its local delegated program for the Sedimentation Pollution Control Act and shall be in ~~full~~ compliance with all DEMLR or appropriate local delegated program specifications governing the ~~proper~~ design, installation, ~~operation~~ operation, and maintenance of such ~~Best Management Practices~~ practices in order to help assure compliance with the appropriate turbidity and other water quality standards;
- (B) All erosion and sediment control practices placed in federally non-jurisdictional wetlands or federally non-jurisdictional classified surface waters shall be removed and the original grade restored within two months after the ~~Division of Energy, Mineral, and Land Resources or local~~ DEMLR or appropriate local delegated program has released the specific drainage area within the project;
- (C) Uncured or curing concrete shall not come into direct contact with waters of the State; ~~and~~
- (D) All work in or adjacent to federally non-jurisdictional intermittent or perennial streams shall be conducted so that the flowing stream does not come in contact with the disturbed ~~area; and area.~~ Approved best management practices from the NC Sediment and Erosion Control Manual, or the NC DOT Construction and Maintenance Activities Manual shall be used to minimize excavation in flowing water.
- (E) Measures shall be taken to ensure that the ~~hydrology~~ hydrologic functions of any remaining federally non-jurisdictional wetland and federally non-jurisdictional classified surface waters are not adversely affected by the discharge.
- (b) ~~EVALUATION.~~ The Division shall issue an ~~Individual Permit~~ individual permit or a Certificate of Coverage under a ~~General Permit~~ general permit upon determining that the proposed activity will comply with State water quality standards, which includes designated uses, numeric criteria, narrative ~~criteria~~ criteria, and the State's antidegradation policy, as defined in the rules of 15A NCAC 02B .0200 and the rules of 15A NCAC 02L .0100 and .0200. In assessing whether the proposed activity will comply with water quality standards, the Division shall evaluate if the proposed activity:
- (1) has no practical alternative. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, ~~configuration~~ configuration, or density of the proposed project and all alternative designs, that the basic project purpose cannot be practically accomplished in an economically viable manner, which would avoid or result in less adverse impact to federally non-jurisdictional ~~wetland~~ wetlands and federally non-jurisdictional classified surface waters;
 - (2) has avoided and minimized impacts to federally non-jurisdictional ~~wetland~~ wetlands and federally non-jurisdictional classified surface waters to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion;
 - (3) would not cause or contribute to a violation of water quality standards;
 - (4) would not result in secondary or cumulative impacts that cause or contribute to, or will cause

or contribute to, a violation of downstream water quality standards; and

- (5) provides for replacement of existing uses through compensatory mitigation as described in Paragraph (c) of this Rule.

(c) **MITIGATION.** Replacement ~~or~~ by mitigation of unavoidable losses of existing uses in federally non-jurisdictional ~~wetland~~ wetlands and federally non-jurisdictional classified surface waters shall be reviewed in accordance with all of the following guidelines:

- (1) The Division shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project;
- (2) Mitigation requirements for impacts to federally non-jurisdictional wetlands shall only apply to the amount of impact that exceeds the threshold set out in Subparagraph ~~(b)(3)(a)(3)~~ of this Rule. The mitigation ratio for impacts exceeding the threshold for the entire project shall be 1:1. Impacts to non-jurisdictional wetlands shall not be combined with the project impacts to ~~404 jurisdictional~~ 404 jurisdictional wetlands that are regulated under Section 404 of the Clean Water Act or isolated wetlands for the purpose of determining when impact thresholds that trigger a mitigation requirement are met;
- (3) Total impacts to less than 300 linear feet of federally non-jurisdictional perennial streams for the entire project shall not require compensatory mitigation. For linear publicly owned and maintained transportation projects that the U.S. Army Corps of Engineers determines are not part of a larger common plan of development, impacts to less than 300 linear feet per stream shall not require compensatory mitigation. The mitigation ratio for federally non-jurisdictional stream impacts shall be 1:1;
- (4) The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for establishment, 2 for enhancement and 5 for preservation. These multipliers do not apply to approved mitigation sites where the Interagency Review Team has approved other ratios;
- (5) Mitigation shall comply with the requirements set forth in G.S. 143-214.11. Mitigation projects implemented within waters or wetlands that are regulated under Section 404 of the Clean Water Act or Section .1300 of this Subchapter may be used to satisfy the requirements of this Paragraph;
- (6) Acceptable methods of mitigation as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include restoration, including both re-establishment and rehabilitation, establishment (creation),

enhancement and preservation. No more than 25 percent of the mitigation required by Subparagraph (2) or (3) of this Paragraph may be met through preservation, unless the Director determines that the public good would be better served by a higher percentage of preservation;

- (7) Mitigation for impacts to federally non-jurisdictional ~~wetland~~ wetlands and federally non-jurisdictional classified surface waters shall be conducted in North Carolina within the same river basin and in accordance with 33 CFR Part 332, available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director; and
- (8) In-kind mitigation is required unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.

History Note: Authority G.S. 143-211(c); 143-214.7C; 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); Temporary Adoption Eff. May 28, 2021.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 34 – BOARD OF FUNERAL SERVICE

Rule-making Agency: *Board of Funeral Service*

Rule Citation: *21 NCAC 34B .0707 and 34C .0202*

Effective Date: *May 28, 2021*

Date Approved by the Rules Review Commission: *May 20, 2021*

Reason for Action: *A serious and unforeseen threat to the public health, safety, or welfare. On March 10, 2020, the Governor of North Carolina by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. Since January 1, 2021 the number of daily deaths in North Carolina related to COVID-19 has remained high, putting significant strain on practitioners in the death care industry to ensure that unembalmed decedents are properly stored and maintained until final disposition. Rules 21 NCAC 34B .0707 and 21 NCAC 34C .0202 regulate a crematory's use of temporary refrigeration units and off-site refrigeration units to ensure proper protocols for a decedent's identification, care, and chain of custody.*

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0700 - PREPARATION OF DEAD BODIES

21 NCAC 34B .0707 REFRIGERATION

(a) Any refrigeration unit procured and maintained by a funeral establishment must satisfy the following requirements:

- (1) be capable of storing at least three adult human bodies, each measuring up to seven feet in length and three hundred pounds in weight, in the holding facility;
- (2) be capable of maintaining an interior temperature of 40 degrees Fahrenheit while loaded with the maximum number of bodies for which it is designed;
- (3) shall have sealed concrete, stainless steel, galvanized, aluminum, or other flooring in walk-in units;
- (4) shall have stainless steel, aluminum, or other non-corrosive materials for the remainder of all units; and
- (5) be subject to inspection by Board inspectors at all times.

(b) Upon declaration of a state of emergency, as provided in G.S. 166A-19.20, the Board shall allow, for a period not to exceed the length of the emergency declaration, funeral establishments to procure and maintain one or more temporary refrigeration units. Any such temporary refrigeration unit must satisfy the requirements set forth in Subparagraphs (a)(2)-(5) of this Rule. Any such temporary refrigeration unit not located inside the funeral establishment shall be kept locked at all times when human remains are stored inside.

(c) Human remains stored in a refrigeration unit, as set forth in Paragraphs (a) and (b) of this Rule, must be kept in a container than complies with G.S. 90-210.121(9)(b)-(f).

(d) Prior to using a refrigeration unit that is not located on its premises, a funeral establishment shall provide the Board with a written document that sets forth the following:

- (1) the name, contact information, and license number, if applicable, of the entity that owns the property on which the refrigeration unit is located;
- (2) the physical address of the property on which the refrigeration unit is located;
- (3) the name, contact information, and license number, if applicable, of the entity responsible for maintaining the refrigeration unit that meets the requirements of Paragraphs (a) and (b) of this Rule;
- (4) certification from both the licensed manager of the funeral establishment and an officer, owner, member, or partner of the entity responsible for maintaining the refrigeration unit in compliance with Paragraphs (a) and (b) of this Rule, acknowledging that:
 - (A) the funeral establishment shall use the refrigeration unit for the storage of human remains;
 - (B) the refrigeration unit complies with Paragraphs (a) and (b) of this Rule;

- (C) a log documenting the chain of possession of human remains shall be maintained, which sets forth the name of the decedent, the funeral establishment or other entity for whom the human remains are being stored, and the date and time that human remains are placed inside and removed from the refrigeration unit;
- (D) the Board inspectors shall have access to the refrigeration unit at all times;
- (E) any licensee or permit holder that uses or maintains a refrigeration unit that is not compliant with this Rule is subject to disciplinary action pursuant to G.S. 210.25(d)(4) and 90-210.25(e)(1)(j).

History Note: Authority G.S. 90-210.23; 90-210.27A(h), (l); Emergency Adoption Eff. February 19, 2021- 2021; Temporary Adoption Eff. May 28, 2021.

SUBCHAPTER 34C - CREMATORIES

SECTION .0200 - EQUIPMENT AND PROCESSING

21 NCAC 34C .0202 REFRIGERATION

(a) ~~Crematory and hydrolysis licensees shall have located on its premises a refrigeration unit that: capable of storing at least three adult human bodies, each measuring up to seven feet in length and three hundred pounds in weight, in the holding facility. Each refrigeration unit required by this Rule shall be capable of maintaining an interior temperature of 40 degrees Fahrenheit while loaded with the maximum number of bodies for which it is designed; shall be a sealed concrete, stainless steel, galvanized, aluminum, or other flooring in walk-in units; and shall be stainless steel, aluminum, or other non-corrosive materials for the remainder of all units.~~

- (1) is capable of storing at least three adult human bodies, each measuring up to seven feet in length and three hundred pounds in weight, in the holding facility;
- (2) is capable of maintaining an interior temperature of 40 degrees Fahrenheit while loaded with the maximum number of bodies for which it is designed;
- (3) has sealed concrete, stainless steel, galvanized, aluminum, or other flooring in walk-in units; and
- (4) has stainless steel, aluminum, or other non-corrosive materials for the remainder of all units.

(b) A refrigeration unit in compliance with Subparagraphs (a)(1)-(4) of this Rule shall satisfy a crematory or hydrolysis licensee's compliance with Paragraph (a) of this Rule if the refrigeration unit is housed in a funeral establishment, crematory, or hydrolysis licensee sharing common ownership with, and located on the same contiguous piece of property as, the crematory or hydrolysis licensee.

~~(b)(c)~~ Unembalmed human remains retained in the custody of a crematory or hydrolysis licensee for more than 24 hours prior to cremation or hydrolysis shall be kept in a refrigeration unit. Human remains stored in a refrigeration unit, as set forth in Paragraphs (a) and (c) of this Rule, must be kept in a container than complies with G.S. 90-210.121(9)(a)-(f). Upon declaration of a state of emergency, as provided in G.S. 166A-19.20, the Board shall allow, for a period not to exceed the length of the emergency declaration, a crematory or hydrolysis licensee to procure and maintain one or more temporary refrigeration units. Any such temporary refrigeration unit must satisfy the requirements set forth in Subparagraphs (a)(1)-(4) of this Rule. Any such temporary refrigeration unit not located inside the crematory shall be kept locked at all times when human remains are stored inside.

(d) Prior to using a refrigeration unit that is not located on its premises, a crematory or hydrolysis licensee shall provide the Board with a written document that sets forth the following:

- (1) the name, contact information, and license number, if applicable, of the entity that owns the property on which the refrigeration unit is located;
- (2) the physical address of the property on which the refrigeration unit is located;
- (3) the name, contact information, and license number, if applicable, of the entity responsible for maintaining the refrigeration unit that meets the requirements of Subparagraphs (a)(1)-(4) of this Rule;
- (4) certification from both the manager of the crematory and an officer, owner, member, or partner of the entity responsible for maintaining the refrigeration unit in compliance with Subparagraphs (a)(1)-(4) of this Rule, acknowledging that:

(A) the crematory or hydrolysis licensee shall use the refrigeration unit for the storage of human remains;

(B) the refrigeration unit complies with Subparagraphs (a)(1)-(4) of this Rule;
(C) a log documenting the chain of possession of human remains shall be maintained, which sets forth the name of the decedent, the funeral establishment or other entity for whom the human remains are being stored, and the date and time that human remains are placed inside and removed from the refrigeration unit;

(D) the Board inspectors shall have access to the refrigeration unit at all times;

(E) any licensee or permit holder that uses or maintains a refrigeration unit that is not compliant with this Rule is subject to disciplinary action pursuant to G.S. 210.25(d)(4) and 90-210.25(e)(1)(j).

~~(c) The provisions of this Rule shall not be construed to require a crematory facility and hydrolysis facility that share common ownership and are located on a single contiguous piece of property to maintain more than one refrigeration unit.~~

*History Note: Authority G.S. 90-210.121(9),(12); 90-210.123(g); 90-210.134(a); 90-210.136(d),(h); Eff. July 1, 1991;
 Recodified from Rule .0201 Eff. July 7, 1992;
 Amended Eff. July 1, 2004;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 19, 2017;
 Temporary Amendment Eff. May 24, 2019;
 Temporary Amendment Expired Eff. March 13, 2020;
 Amended Eff. January 1, 2021;
 Emergency Amendment Eff. February 19, 2021;
 Temporary Amendment Eff. May 28, 2021.*

This Section contains information for the meeting of the Rules Review Commission May 20, 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
Robert A. Rucho

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

June 17, 2021	July 15, 2021
August 19, 2021	September 16, 2021

**RULES REVIEW COMMISSION MEETING
MINUTES****May 20, 2021**

The Rules Review Commission met on Thursday, May 20, 2021 in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx. The Commissioners held a WebEx meeting in accordance with the provisions of G.S. 143-318.13.

Commissioner Bob Rucho was present in the Commission Room. Commissioners present via WebEx were Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Jeff Hyde, Randy Overton, and Paul Powell.

Staff members present were Alex Burgos and Commission Counsel Ashley Snyder, and Amanda_Reeder. Commission Counsel Amber May was present via WebEx.

The meeting was called to order at 9:00 a.m. with Chair Doran presiding.

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

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the April 15, 2021 meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

The Chair notified the Commissioners that the following item on the agenda would be taken up out of order at the end of the agenda: Temporary rules for the Environmental Management Commission.

FOLLOW UP MATTERS

Department of Environmental Quality

01 NCAC 41C .0101, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0301, .0302, .0303; 41D .0102, .0201, .0202, .0301, .and .0401 – Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

01 NCAC 41D .0101 and .0302 – Upon the call of the Chair, the Commission objected to the rules in accordance with G.S. 150B-21.10 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

The RRC objected to the rules for lack of necessity. Specifically, the RRC found for Rule 41D .0101 that as written, the rule does not appear to set any requirements, but instead, partially recites two statutes. For Rule 41D .0302, the RRC found that as written, the Rule does not appear to set any requirements that are not governed by statute. As such, the RRC found that both rules were unnecessary.

Coastal Resources Commission

15A NCAC 07H .0401, .0404, .0405, .0406; 07J .0406 and .0409 – Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

15A NCAC 07J .0403, .0404, .0405, .0406, .0407, .0410; and 07K .0207 - Upon the call of the Chair, the Commission objected to the rules in accordance with G.S. 150B-21.10 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

The Commission objected to 15A NCAC 07J .0403, .0404, and .0405 for failure to comply with the APA. The rules contain changes that were not published in the Register, were not subject to public comment, and were not included in the changes approved by the Coastal Resources Commission at adoption. Further, the changes rise to the level of a “substantial change” as defined in G.S. 150B-21.2(g) because they address a subject matter not addressed in the proposed rule or produce an effect that could not reasonably have been expected. The APA has no procedure to add “amendments” to a rule after publication of notice in the Register and after the agency’s final action to adopt a rule. G.S. 150B-21.2 specifically states: “When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part.” In short, the Commission objected for failure to comply with the APA because the rules contain changes that are substantial, did not meet the notice and comment requirements of the permanent rulemaking process, and that were not adopted by the agency.

The Commission objected to 15A NCAC 07J .0405 on the additional ground of lack of statutory authority based upon the \$400 fee added post-publication to Paragraph (d). The agency provided a 2001 MOA between the Division of Coastal Management and the Department of Environment and Natural Resources, which references G.S. 143-215.3D, as authority for the fee. G.S. 143-215.3D is not listed in the History Note as statutory authority for the Rule. Additionally, the statute grants the authority to establish a fee to the Secretary, not the Coastal Resources Commission. There was no indication in the filing before RRC that the Secretary adopted this Rule. Therefore, the Commission objected for lack of statutory authority.

The Commission objected to 15A NCAC 07J .0407 for lack of clarity. Subparagraph (e)(2) says the Division may suspend or revoke the right to a project if “there has been a change of conditions in the area, or facts that would justify denial of a permit due to additional impacts to coastal resources...”[.] It is unclear under what circumstances “facts” would justify permit denial or under what circumstances “impacts to coastal resources” would justify a permit denial.

The Commission objected to 15A NCAC 07J .0410 for lack of statutory authority. Commission staff could not locate, and the agency did not provide, authority for the agency, instead of a court, to order restoration of sites to pre-development conditions. 113A-126 allows court-ordered restoration.

The Commission objected to 15A NCAC 07K .0207 for ambiguity. It is unclear how the agency determines when alterations are “necessary” and “possible.” It is also unclear when a dune’s capacity as a protective barrier against flooding and erosion is “significantly” diminished.

Department of Transportation - Division of Motor Vehicles

Prior to the review of the rules from the Department of Transportation, Commissioner Bryan recused himself and did not participate in any discussion or vote concerning the rules because his family is involved in litigation with the agency.

19A NCAC 03C .0202, .0220, .0221, .0222, .0223, .0224, .0226, .0228, .0230, .0234, .0235, .0236, .0403, .0404, .0414, .0419, .0420, .0421, .0424, .0425, .0426, .0428, .0429, .0432, .0433, .0436, .0501, .0520, .0521; and 03E .0401 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

19A NCAC 03C .0232 – The agency is addressing the technical change requests from the April meeting. No action was required by the Commission.

Board of Environmental Health Specialist Examiners

21 NCAC 62 .0407 and .0411 - The agency is addressing the technical change requests from the April meeting. No action was required by the Commission.

Building Code Council

Residential Code, N1101.13(R401.2) - Upon the call of the Chair, the Commission objected to the rule in accordance with G.S. 150B-21.10 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

The RRC objected to this Rule for failure to comply with the APA. Specifically, the agency stated that no fiscal note was required for the Rule in its Notice of Text, published August 17, 2020. Pursuant to G.S. 150B-21.9(a), following a request from the public, the RRC sent the rule to the Office of State Budget Management (OSBM) to determine if the Rule created a substantial economic impact. In a letter dated May 6, 2021, OSBM stated that fiscal note was required for this Rule.

LOG OF FILINGS (PERMANENT RULES)

Sheriffs' Education and Training Standards Commission

Upon the call of the Chair, 12 NCAC 10B .0305 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Department of Transportation - Division of Motor Vehicles

Prior to the review of the rules from the Department of Transportation, Commissioner Bryan recused himself and did not participate in any discussion or vote concerning the rules because his family is involved in litigation with the agency.

19A NCAC 03F .0602; .0208, .0212, .0301; 03I .0303, .0402, .0501; 03J .0201, .0204, .0303, .0305, .0306, .0307, .0402, and .0601 - Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

19A NCAC 03I .0307 - Upon the call of the Chair, the period of review was extended by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

19A NCAC 03F .0201, .0202, and .0203 - Upon the call of the Chair, the Commission objected to the rules in accordance with G.S. 150B-21.10 by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

The Commission objected to 19A NCAC 03F .0201, .0202, and .0203 in accordance with G.S. 150B-21.10 for lack of necessity. G.S. 20-166.1(j) states: "The Division may periodically publish statistical information on motor vehicle accidents based on information in accident reports." These rules are purely informational, restating the information contained in the Division's statistical reports. Further, these rules do not affect the procedural or substantive rights of the public. As a result, the Commission objected for lack of necessity because the contents of .0201, .0202, and .0203 do not meet the definition of a "rule" in 150B-2(8a).

Board of Dental Examiners

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Interpreter and Transliterator Licensing Board

Upon the call of the Chair, 21 NCAC 25 .0501 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Landscape Contractors' Licensing Board

Prior to the review of the rule from the Landscape Contractors' Licensing Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides a varied scope of legal services to the Board, some of which includes advice on rulemaking.

Upon the call of the Chair, 21 NCAC 28B .0601 was approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Medical Board

Prior to the review of the rules from the Medical Board, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a potential conflict.

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Board of Nursing

Prior to the review of the rules from the Board of Nursing, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides a varied scope of legal services to the Board, some of which includes advice on rulemaking.

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Onsite Wastewater Contractors and Inspectors Certification Board

Prior to the review of the rules from the Onsite Wastewater Contractors and Inspectors Certification Board, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides a varied scope of legal services to the Board, some of which includes advice on rulemaking.

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Real Estate Commission

Upon the call of the Chair, the period of review was extended by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Respiratory Care Board

Upon the call of the Chair, 21 NCAC 61 .0901 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Board of Examiners for Speech and Language Pathologists and Audiologists

Prior to the review of the rules from Board of Examiners for Speech and Language Pathologists and Audiologists, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rule because her law firm provides a varied scope of legal services to the Board, some of which includes advice on rulemaking.

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

Building Code Council

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)

Pesticide Board

Upon the call of the Chair, 02 NCAC 09L .0502 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Environmental Management Commission

Prior to the review of the rules from the Environmental Management Commission, Commissioner Bryan left the meeting and did not return.

The agency requested a waiver pursuant to G.S. 150B-21.1(a2) waiving the 210-day limitation found in G.S. 150B-21.1(a1). The waiver request was approved by a roll-call vote, ayes 7, noes 1 as follows: Voting in the affirmative: Andrew Atkins, Anna Baird Choi, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: Jeanette Doran - 1.

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Anna Baird Choi, Margaret Currin, Jeanette Doran, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

Phillip Reynolds with the Department of Justice, and representing the agency, addressed the Commission.

Geoff Gisler, with the Southern Environmental Law Center, addressed the Commission.

Board of Funeral Service

Prior to the review of the rule from Board of Funeral Services, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides a varied scope of legal services to the Board, some of which includes advice on rulemaking.

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 7, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 7. Voting in the negative: None.

COMMISSION BUSINESS

The meeting adjourned at 9:55 a.m.

The next regularly scheduled meeting of the Commission is Thursday, June 17, 2021 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Jeanette Doran, Chair

**Rules Review Commission Meeting May 20, 2021
Held Via WebEx**

Name	Agency
Ben Edwards	Mathis Consulting
Russ Davis	
Mary Maclean Asbill	Southern Environmental Law Center
Karen Higgins	DENR
Carl Martin	DOI
Bill Lane	DENR
Carrie Hollis	OSBM
Helen Landi	DOT
Sue Homewood	DENR
Brooks Pearson	Southern Environmental Law Center
Elizabeth Ouzts	
Melissa Vuotto	REC
Paul Wojoski	DENR
Stephanie Robinson	DOT
Laura Rowe	Treasurer
Dauna Bartley	Brocker Law
John Green	DOJ
Robert Privott	Home Builders Association
Geoff Gisler	ggisler@selcnc.org
Makeda Harris	mharris@ncha.org
Melanie Mabrey	Bd of Nurses
Angela Willis	DENR
Jennifer Everett	DEQ
Christopher McLennan	DOJ
Carl Martin	DOI
Phillip Reynolds	EMC/Department of Justice
Connie Stephens	Onsite Wastewater
Bill Croft	Respiratory Care Bd
Diane Konopka	DOJ
Nahale Kalfas	Council of State Governments
Angela Ellis	Bd of Nursing
Calvin Kirven	Landscape Contractors' Licensing Board
Connie Stephens	Onsite Wastewater
Christopher McLennan	DOJ
Carl Martin	DOJ
John Green	DOJ
Dan Dittman	DOI
Mike Lopazanski	DENR

LIST OF APPROVED PERMANENT RULES

May 20, 2021 Meeting

ENVIRONMENTAL QUALITY, DEPARTMENT OF

<u>Definitions</u>	01 NCAC	41C .0101
<u>Eligibility</u>	01 NCAC	41C .0201
<u>Criteria for Energy Conservation Loans</u>	01 NCAC	41C .0202
<u>Loan Percentage and Conditions and Limitations</u>	01 NCAC	41C .0203
<u>Pre-Application Conference</u>	01 NCAC	41C .0204
<u>Application Procedures</u>	01 NCAC	41C .0205
<u>Application Review</u>	01 NCAC	41C .0206
<u>Loan Approval</u>	01 NCAC	41C .0207
<u>Loan Agreement and Promissory Note</u>	01 NCAC	41C .0208
<u>Reports</u>	01 NCAC	41C .0209
<u>Monitoring</u>	01 NCAC	41C .0210
<u>Default</u>	01 NCAC	41C .0211
<u>Technical Analysis Required</u>	01 NCAC	41C .0301
<u>Technical Analyst Disqualifications</u>	01 NCAC	41C .0302
<u>Report Required</u>	01 NCAC	41C .0303
<u>Definitions</u>	01 NCAC	41D .0102
<u>Banking</u>	01 NCAC	41D .0201
<u>Selling</u>	01 NCAC	41D .0202
<u>Proceeds and Distribution</u>	01 NCAC	41D .0301
<u>Reports</u>	01 NCAC	41D .0401

SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Background Investigation</u>	12 NCAC	10B .0305
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COASTAL RESOURCES COMMISSION

<u>Public Water Supply Categories</u>	15A NCAC	07H .0401
<u>AECs Within Public Water Supplies</u>	15A NCAC	07H .0404
<u>Small Surface Water Supply Watersheds</u>	15A NCAC	07H .0405
<u>Public Water Supply Well Fields</u>	15A NCAC	07H .0406
<u>Permit Issuance and Transfer</u>	15A NCAC	07J .0406
<u>Civil Penalties</u>	15A NCAC	07J .0409

TRANSPORTATION - MOTOR VEHICLES, DIVISION OF

<u>Titling and Registration of Branded Vehicles</u>	19A NCAC	03C .0202
<u>Manufacturer's Certificate Of Origin</u>	19A NCAC	03C .0220
<u>Registration: Out-of-State Registered Vehicles</u>	19A NCAC	03C .0221
<u>Registration: Custom Built Motor Vehicles And Trailers</u>	19A NCAC	03C .0222
<u>Registration: Motor Homes: Etc.</u>	19A NCAC	03C .0223
<u>Purchase Information</u>	19A NCAC	03C .0224
<u>Registration: Buses to be Operated for Hire</u>	19A NCAC	03C .0226
<u>Title Only</u>	19A NCAC	03C .0228
<u>Powers of Attorney: Guardians</u>	19A NCAC	03C .0230
<u>Minors May Own Vehicles</u>	19A NCAC	03C .0234

<u>Application for Duplicate Title</u>	19A NCAC	03C .0235
<u>Penalty for Failure to Make Transfer Within 28 days</u>	19A NCAC	03C .0236
<u>Van Pool License Plate</u>	19A NCAC	03C .0403
<u>Original Registration: Staggered Registration System</u>	19A NCAC	03C .0404
<u>Application for License</u>	19A NCAC	03C .0414
<u>Golf Carts</u>	19A NCAC	03C .0419
<u>Handicapped Placard</u>	19A NCAC	03C .0420
<u>Vehicles Used for Passenger and Property Carrying</u>	19A NCAC	03C .0421
<u>Trucks and Truck-Tractors (Private Property Carrying)</u>	19A NCAC	03C .0424
<u>Special Mobile Equipment</u>	19A NCAC	03C .0425
<u>Ten Day Temporary Registration Plate</u>	19A NCAC	03C .0426
<u>Application for Replacement License or Validation Stickers</u>	19A NCAC	03C .0428
<u>License Plate Transfer</u>	19A NCAC	03C .0429
<u>Transporter's Registration</u>	19A NCAC	03C .0432
<u>Driveway Registration</u>	19A NCAC	03C .0433
<u>Highway Use Tax</u>	19A NCAC	03C .0436
<u>For Hire Operations</u>	19A NCAC	03C .0501
<u>For Hire Operations Defined</u>	19A NCAC	03C .0520
<u>Taxicab</u>	19A NCAC	03C .0521
<u>General Information</u>	19A NCAC	03E .0401
<u>Administrative Financial Responsibility Hearings</u>	19A NCAC	03F .0602
<u>Transfer of Certification</u>	19A NCAC	03G .0208
<u>Date of Cancellation</u>	19A NCAC	03G .0212
<u>Driver Education Permit</u>	19A NCAC	03G .0301
<u>Classroom Facility</u>	19A NCAC	03I .0303
<u>Registration: Insurance: Inspection</u>	19A NCAC	03I .0402
<u>Requirements</u>	19A NCAC	03I .0501
<u>Requirements</u>	19A NCAC	03J .0201
<u>Duplicate Copy</u>	19A NCAC	03J .0204
<u>Classroom Facility</u>	19A NCAC	03J .0303
<u>Inspections</u>	19A NCAC	03J .0305
<u>Courses of Instruction</u>	19A NCAC	03J .0306
<u>Student Requirements</u>	19A NCAC	03J .0307
<u>Registration: Insurance: Inspection</u>	19A NCAC	03J .0402
<u>Requirements</u>	19A NCAC	03J .0601

DENTAL EXAMINERS, BOARD OF

<u>Premises</u>	21 NCAC	16J .0101
<u>Sterilization and Infection Control</u>	21 NCAC	16J .0103

INTERPRETER AND TRANSLITERATOR LICENSING BOARD

<u>Continuing Education Requirements</u>	21 NCAC	25 .0501
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LANDSCAPE CONTRACTORS' LICENSING BOARD

<u>Fee Schedule</u>	21 NCAC	28B .0601
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MEDICAL BOARD

<u>Definitions</u>	21 NCAC	32M .0101
<u>Scope of Practice</u>	21 NCAC	32M .0102
<u>Nurse Practitioner Registration</u>	21 NCAC	32M .0103
<u>Education and Certification Requirements for Registration...</u>	21 NCAC	32M .0105
<u>Annual Renewal of Approval to Practice</u>	21 NCAC	32M .0106
<u>Continuing Education (CE)</u>	21 NCAC	32M .0107
<u>Inactive Status</u>	21 NCAC	32M .0108
<u>Quality Assurance Standards for a Collaborative Practice ...</u>	21 NCAC	32M .0110

NURSING, BOARD OF

<u>Definitions</u>	21 NCAC	36 .0801
<u>Scope of Practice</u>	21 NCAC	36 .0802
<u>Nurse Practitioner Registration</u>	21 NCAC	36 .0803
<u>Education and Certification Requirements for Registration...</u>	21 NCAC	36 .0805
<u>Annual Renewal of Approval to Practice</u>	21 NCAC	36 .0806
<u>Continuing Education (CE)</u>	21 NCAC	36 .0807
<u>Inactive Status</u>	21 NCAC	36 .0808
<u>Quality Assurance Standards for a Collaborative Practice ...</u>	21 NCAC	36 .0810
<u>Reporting Criteria</u>	21 NCAC	36 .0815
<u>COVID-19 Drug Preservation Rule</u>	21 NCAC	36 .0817

ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

<u>Definitions</u>	21 NCAC	39 .0101
<u>Types of Certification</u>	21 NCAC	39 .0102
<u>Application Requirements for Certification</u>	21 NCAC	39 .0201
<u>Schedule of Certification Fees</u>	21 NCAC	39 .0301
<u>On-site Wastewater Contractor, Inspector, or Evaluator Ex...</u>	21 NCAC	39 .0401
<u>Time and Place of Examination</u>	21 NCAC	39 .0402
<u>Issuance of Certificates</u>	21 NCAC	39 .0404
<u>Licensure for Military-Trained Applicant; Licensure for M...</u>	21 NCAC	39 .0405
<u>Requirements</u>	21 NCAC	39 .0601
<u>Approval of Continuing Education Courses</u>	21 NCAC	39 .0602
<u>Determination of Credit</u>	21 NCAC	39 .0603
<u>Recordkeeping</u>	21 NCAC	39 .0604
<u>Extension of Time</u>	21 NCAC	39 .0605
<u>Revocation, or Suspension of Certification</u>	21 NCAC	39 .0701
<u>Code of Ethics</u>	21 NCAC	39 .0801
<u>Waiver</u>	21 NCAC	39 .0904
<u>Definitions</u>	21 NCAC	39 .1001
<u>General Requirements for Contractors and Inspectors</u>	21 NCAC	39 .1002
<u>Definitions</u>	21 NCAC	39 .1101
<u>General Requirements for Evaluators</u>	21 NCAC	39 .1102
<u>General Exclusions for Evaluators</u>	21 NCAC	39 .1103
<u>Required Documents for Evaluators</u>	21 NCAC	39 .1104

RESPIRATORY CARE BOARD

<u>Rule Waivers</u>	21 NCAC	61 .0901
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SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF EXAMINERS FOR

<u>Waiver</u>	21 NCAC	64	.0108
<u>Telepractice</u>	21 NCAC	64	.0219
<u>Definitions</u>	21 NCAC	64	.1101
<u>General Requirements</u>	21 NCAC	64	.1102
<u>Licensee Requirements</u>	21 NCAC	64	.1103
<u>Authorized Tasks of Audiology Assistants</u>	21 NCAC	64	.1104
<u>Supervision and Continuing Competence Requirements</u>	21 NCAC	64	.1105

BUILDING CODE COUNCIL

<u>2018 NC Fire and Building Codes/Delayed Egress</u>	1010.1.9.7
<u>2018 NC Residential Code/Referenced Standards</u>	Chapter 44
<u>2018 NC Residential Code/Compliance</u>	N1101.13
<u>2018 NC Residential Code/Definitions</u>	R202

**List of Approved Temporary Rules
May 20, 2021 Meeting**

PESTICIDE BOARD

<u>List of Restricted Use Pesticides</u>	02 NCAC	09L	.0502
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Scope and Purpose</u>	15A NCAC	02H	.1301
<u>Scope and Purpose</u>	15A NCAC	02H	.1401
<u>Filing Applications</u>	15A NCAC	02H	.1402
<u>Public Notice and Public Hearing</u>	15A NCAC	02H	.1403
<u>Decision on Application for Permits or Certificates of Co...</u>	15A NCAC	02H	.1404
<u>Review of Applications</u>	15A NCAC	02H	.1405

FUNERAL SERVICE, BOARD OF

<u>Refrigeration</u>	21 NCAC	34B	.0707
<u>Refrigeration</u>	21 NCAC	34C	.0202

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
				Published			
20	ABC	03504	4/6/2021	NC Alcoholic Beverage Control Commission	v.	Prachi Adhikary, Inc T/A C Mart	Ward
20	ABC	04787	4/14/2021	NC Alcoholic Beverage Control Commission	v.	MAA Gayatri Properties LLC T/A Ganesh Mart	Lassiter
19	DHR	06333	4/26/2021	Lacey Queen	v.	NC Department of Health and Human Services	Sutton
20	DHR	05322	4/6/2021	Adonai Victory Health Services	v.	NC Department of Health and Human Services Division of Health Benefits	Malherbe
20	DOJ	03449	4/22/2021	Robert Erick Jordan	v.	NC Sheriffs Education and Training Standards Commission	Lassiter
20	DOJ	04028	4/6/2021	Ladonte Lashawn Hines-Tobar	v.	NC Sheriffs Education and Training Standards Commission	Jacobs
20	DOJ	04991	4/16/2021	Dustin Matthew Williams	v.	NC Sheriffs Education and Training Standards Commission	Lassiter
21	DOJ	00672	4/8/2021	Julius Jamaal Mckinney	v.	NC Private Protective Services Board	Jacobs
20	DST	03183	4/12/2021	Roger L Stancil	v.	North Carolina Department of State Treasurer, Retirement Systems Division	Lassiter
21	INS	00074	4/12/2021	Micheala Rose Griffin Coleman	v.	NC State Health Plan	May

CONTESTED CASE DECISIONS

21	INS	00076	4/5/2021	Melanie Bearror	v.	North Carolina State Health Plan for Teachers and Employees (A Division of the Department of State Treasurer)	May
20	UNC	04605	4/22/2021	Kammeron Stumpf	v.	University of North Carolina Hospitals	Ward
				<u>Unpublished</u>			
20	CRA	03865	4/9/2021	Taquila S Nelson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
21	CRA	00937	4/14/2021	Mondarius E Henry	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
19	CSE	05837	4/14/2021	Samuel Fianko-Ofori	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Ward
20	CSE	04052	4/19/2021	Carol McCullough	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04074	4/16/2021	Verna Ortiz	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
20	CSE	04174	4/12/2021	Sierras D Cobb	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04175	4/1/2021	Jessica Rappe	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
20	CSE	04194	4/12/2021	Sharef McBride	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04209	4/12/2021	Devin M Phillips	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04233	4/12/2021	Dwight F McArn	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04257	4/12/2021	Harold Moore Jr	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04275	4/19/2021	Otis L Johnson Jr.	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
20	CSE	04276	4/12/2021	Peter B Savage	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Ward
20	CSE	04293	4/16/2021	Andre D Thompson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Byrne
20	CSE	04315	4/27/2021	Erik J Wilson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
20	CSE	04316	4/29/2021	Takoby C Cofield	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Turrentine

CONTESTED CASE DECISIONS

20	CSE	04317	4/20/2021	Darrell Morgan	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
20	CSE	04322	4/23/2021	Matthew Asby	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Byrne
20	CSE	04323	4/29/2021	Derrick Anthony Breckenridge	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Byrne
20	CSE	04333	4/5/2021	Kevin M Bizjak	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
20	CSE	04390	4/16/2021	Halisaam R Thompson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
20	CSE	04394	4/12/2021	Junior R Laguerre	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
20	CSE	04397	4/12/2021	William Smith	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe
20	CSE	04436	4/1/2021	Rudy Kyle Thompson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinhimer
20	CSE	04455	4/21/2021	Derick V Collier	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
20	CSE	04468	4/16/2021	Christopher B Walters	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
20	CSE	04469	4/16/2021	Christopher B Walters	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
20	CSE	04494	4/27/2021	David Coyote-Garcia	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	CSE	04532	4/21/2021	April Burgess	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	CSE	04556	4/26/2021	Peter R Knott	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinhimer
20	CSE	04569	4/26/2021	Harold L Lofton	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinhimer
20	CSE	04572	4/26/2021	Derrick L Terry	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Sutton
20	CSE	04608	4/5/2021	Michael West Miller	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Jacobs
20	CSE	04609	4/23/2021	Cori E Simms	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
20	CSE	04614	4/13/2021	Gregory Kearn Clyburn	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Malherbe

CONTESTED CASE DECISIONS

20	CSE	04667	4/14/2021	Jerron C Faulk	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Malherbe
20	CSE	04669	4/19/2021	Steven T Tipmore II	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
20	CSE	04690	4/15/2021	Jon R Lofthouse	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Bawtinhimer
20	CSE	04692	4/30/2021	David M Kroll	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
20	CSE	04728	4/13/2021	Angelo Newkirk, JR	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
20	CSE	05042	4/16/2021	Brandon M Terrell	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Byrne
21	CSE	00376	4/5/2021	Melvin Lee Williams	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Jacobs
21	CSE	00648	4/8/2021	Daniel James Richards	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Jacobs
21	CSE	01215	4/22/2021	Darrin Butch Strunk	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
21	DCS	00773	4/21/2021	Robin W Morgan	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Sutton
21	DCS	00774	4/21/2021	Sarah Stafford	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Sutton
20	DHR	04043	4/9/2021	India Haynes by her attorney F Lane Williamson	v.	Department of Health and Human Services, Division of Health Service Regulation	Malherbe
20	DHR	04112	4/12/2021	Kathy Irvin	v.	On Site Water Protection Section Rowan County NC Environmental Health	May
20	DHR	04502	4/23/2021	Patricia Dixon	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Bawtinhimer
20	DHR	04600	4/23/2021	Karen Katrina Wilkins	v.	Department of Health and Human Services, Division of Health Service Regulation	Bawtinhimer
20	DHR	04610	4/21/2021	Leslie Dunbar	v.	Ms. Lisa G - General Counsel Department of Health and Human Services Office of Legal Affairs	Sutton
20	DHR	04633	4/13/2021	Daryl Bodricks Bar B Q	v.	NC Department of Health and Human Services, Division of Public Health Environmental Health Section	Sutton
21	DHR	00358	4/6/2021	Room to Grow Michelle P Jones	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Byrne
21	DHR	00833	4/7/2021	Jeffrey D Dekeyser	v.	DHHS	Lassiter

CONTESTED CASE DECISIONS

21	DHR	01159	4/16/2021	Dorothy Edwards	v.	Department of Health and Human Services, Division of Health Service Regulation	Turrentine
21	DHR	01617	4/12/2021	All My Children Child Care Center Paulette Muhammad	v.	North Carolina Department of Health and Human Services, Division of Public Health, Child & Adult Care Food Program	Ward
21	DHR	01643	4/30/2021	Michelle P Jones Room to Grow	v.	NC Dept of Health and Human Services, Division of Child Development	Lassiter
20	DOJ	05456	4/9/2021	Ethan Joseph Cornell	v.	NC Sheriffs Education and Training Standards Commission	Ward
20	DOJ	05457	4/9/2021	Nicole Claire Leslie	v.	NC Sheriffs Education and Training Standards Commission	Ward
21	DOJ	00443	4/19/2021	Jerry Lee McClarin	v.	NC Criminal Justice Education and Training Standards Commission	Bawtinheimer
21	DOJ	00943	4/27/2021	Laura Lee Young Steele	v.	NC Private Protective Services Board	Byrne
21	EHR	00279	4/20/2021	Kevin G Pool	v.	NC Division of Air Quality	Turrentine
21	OSP	00440	4/13/2021	Quinton M Ashe	v.	NC Department of Transportation	Byrne